



SOME PENSION ISSUES OF INTEREST IN DIVORCE

By Marvin Snyder

In Nevada we find the top few pension plans that arise most often in divorce cases. They are:

PERS - the Public Employee Retirement System, is for civilian employees of police & firefighters. PERS has strict QDRO requirements that must be followed. But a QDRO for a PERS pension may be structured by using either the *Gemma* and *Fondi* cases, or in accordance with NRS 125.155. *Gemma* and *Fondi* QDROs generally address the pension at retirement and award a portion by the time rule, while NRS 125.155 generally limits the QDRO pension portion to only that earned as of the date of marital dissolution. The issue of the PERS option at retirement must be considered in the QDRO. The important point is that only one beneficiary is allowed by PERS. The PERS system increases pensions after retirement by a cost-of-living adjustment (COLA).

CSRS & FERS - for civilian employees of the Federal Government. The Civil Service Retirement System is for employees hired before 1983 (they are not covered by Social Security), and the Federal Employees Retirement System is for employees hired in 1983 and later (they are covered by Social Security). Also, the TSP (Thrift Savings Plan) is available. The "QDRO" for CSRS and FERS is called a "COAP"— a Court Order Acceptable for Processing. The order for the TSP is a "RBCO"— Retirement Benefits Court Order. The CSRS and FERS pensions increase after retirement by COLA.

CULINARY - Southern Nevada Culinary and Bartenders Pension Trust, a defined benefit pension plan with a partial lump sum available at retirement in addition to the pension.

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Nevada Family Law Report

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PENSION ISSUES

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MILITARY - the Armed Forces Retirement System, for Active, Reserve, and National Guard. The QDRO order for military loses the "Q" to become just a "DRO." To be eligible for a portion of the military pension as marital property there must be at minimum a ten-year marriage coincident with at least ten years of military service. There is a post-retirement death (survivor) benefit available but there can be only one beneficiary. This potential after-retirement death benefit is covered by the SBP (Survivor Benefit Plan), which must be specified both in the order and in the decree of marital dissolution as well. The military pension has a COLA.

UNIONS - carpenters, laborers and electricians have two plans each: a defined benefit pension plan and an individual account plan known as the "annuity plan." Plumbers & pipefitters, operating engineers and Teamsters have one plan each: a defined benefit pension plan.

CASINO HOTELS - for their non-union employees they have 401(k) plans. These are individual account defined contribution plans.

Of course, there are many more plans with employees who may be in divorce matters. The above is a sampling of the most common ones encountered.

Articles Are Invited!

The Family Law
Section wants you
to write for the
*Nevada Family
Law Report.*

Please contact Bob Cerceo via e-mail at bobcerceo@aol.com with your proposed articles anytime before the next submission date, September 5, 2006. Target lengths are either 1500 words or 350 words, but we are flexible. Please do not include footnotes— all text must be contained in the body of the work.

Reach the Executive Council Members for the Family Law Section at www.nvbar.org.

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PARENTING COORDINATORS: PANACEA OR PLAGUE?

By Allison L. Herr, Esq.

Recently, there has been increased discussion about the use of parenting coordinators in Nevada. While the concept is novel to our state, many other jurisdictions, including the surrounding states of Arizona and California, embrace the concept. Parenting coordinators are known by many names across the nation including special masters, custody coordinators, referees and family court advisors. Regardless of the name, the model is the same, and, depending upon whom you ask, the model is either the next great panacea of the family court or the coming plague. Both sides to the debate, however, agree that the keys to success are strictly defined guidelines and specific parameters established in a carefully drafted and well-thought-out order.

The model for parenting coordinators or parenting coordination claims its genesis in the field of alternative dispute resolution. Conceptually, the parenting coordinator (traditionally someone with either a legal or a mental health background) is a neutral third party appointed in high conflict custody cases, where close oversight and monitoring is necessary. That third party is charged with the obligation to work with the parents to facilitate better parenting, compliance with court orders, and when necessary to make limited decisions on behalf of the family. Northern California first began embracing the concept in the early 1990s after a study was released of 166 cases administered by parenting coordinators in Santa Clara County that reflected a 25-fold decrease in litigation after the introduction of a parenting coordinator into the case. As groups around the county experimented with various programs, it became clear that the model pro-

vided a useful means to unburden the court of some of its most troublesome cases.

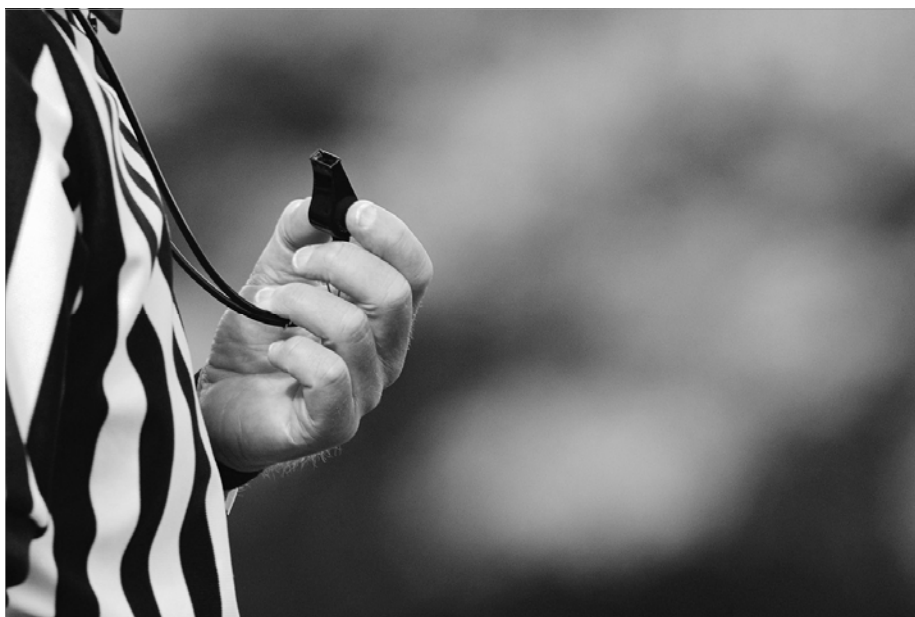
Experience has shown us that custodial timeshare agreements, commonly referred to as parenting plans, tend to break down over small issues. Particularly in the case of high conflict couples, disputes arise over issues as mundane as haircuts and ear piercing to such passionate issues as school selection, religious preference, or the introduction of a new spouse or significant other into a child's life. While litigation is always an option in these cases, as the court system becomes more and more overburdened, its tolerance for the resolution of these types of disputes is lessened, as is the satisfaction of the parties with the traditional litigation process.

The purpose of the parenting coordinator is to reduce the parties' need for litigation by providing a more immediate and cost-effective means to resolve their disputes. The role of the

Parenting Coordinator is essentially threefold. The first role is to educate the parents on communication skills and the potential emotional damage their continued controversies create for the children. Second, their purpose is to monitor the parties' compliance with court-ordered custodial schedules, and to facilitate the parties' ability to mediate their own disputes. Thirdly, and this is perhaps the most controversial area, is the ability to arbitrate disputes when the parties are unable to reach their own resolutions.

Many of the readers of this article can no doubt recount tales of emergencies arising between parents in which the traditional court system was not effective, such as a case of whether a child should or should not attend the funeral of a family member. Even in the case of an expedited hearing, the matter at issue is likely to be moot before the court can intervene. However, a parenting coordinator is

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PARENTING COORDINATORS

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only a phone call away and can, in most instances, resolve in a matter of hours what the court system would otherwise require days or even weeks to address. The idea behind the parenting coordinator model is to allow a neutral third-party authority to resolve day-to-day parenting issues. Commonly this would include such matters as decisions about a child's education, extra-curricular activities or health care. Additionally, this could include matters of interpretation and application of pre-existing orders such as the application of holiday visitation, defining when "weekends" begin, and how vacations should be coordinated.

The Association of Family and Conciliation Courts ("AFCC") has been monitoring the initiation of parenting coordinator programs throughout the country for some time. In fact, they formed a task force in 2001 to promulgate standards for the use of parenting coordinators. Those standards were released last year after extensive research and public debate. It is the suggestion of the authors of this article that those standards should be adopted by the local jurisdictions of Nevada. This would give Nevada a firm platform for the implementation of Parenting Coordinator Program as the AFCC has already provided well-defined, specific standards of practice.

But what of the coming plague? If a parenting coordinator can reduce judicial case loads and quiet the high-conflict couple, can there be a downside? Emphatically, yes. The primary concern from a legal standpoint arises around due process claims. A parenting coordinator given the authority to arbitrate a dispute is in effect given quasi-judicial authority. If that authority is exercised in a way that does not otherwise comport with state law (i.e., the right of notice prior to custodial changes, the right to evidentiary hearings, etc.), then legal problems can and have arisen. Additionally, since

most parenting coordinators are third-party vendors, what judicial oversight does or should the court have over the coordinators' decisions? For instance, how does one appeal the decision of a parenting coordinator?

From the mental health standpoint, there are also concerns regarding the duality of the roles played under this model. A parenting coordinator is called upon to exercise legal, mental health, and practical expertise. At any time, they may be called upon for education, counseling, mediation, or arbitration of disputes. Given the strict ethical guidelines promulgated by the American Psychological Association prohibiting dual roles in a case, can guidelines be written which meet these stringent standards? Moreover, since the parenting coordinator is acting in a quasi-judicial capacity, is he/she entitled to judicial immunity, and are they bound by the Judicial Code of Ethics?

As the body of case law began to build nationwide, it became evident that standards of practice were necessary, and that in implementing the model it was also necessary and appropriate that specific orders be entered by the courts setting the limits of the parenting coordinators' authority. The AFCC Task Force, comprised of a multi-disciplinary group of professionals, has promulgated a model set of standards for the use of parenting coordinators. Given the comprehensive nature of the model guidelines, it is not possible to reiterate the standards in their entirety. However, the full body of the text can be found online at www.afccnet.org. The intent of this article will be to summarize loosely the most pertinent portions of those guidelines as they address the specific legal, professional and ethical concerns addressed above. See pages 5 and 6 for the summary.

With specific guidelines and parameters in place, a parenting coordinator program can be developed for Nevada that will reduce the recurrence of litigation in high-conflict cases, while still providing adequate legal, professional, and ethical protection to

survive judicial scrutiny. Let's face it: none of us enjoy representing high-conflict couples. If we can provide them with a better road map for success, we should pave the road with the right tools and provide a parenting coordinator for directions!

We believe that the time has arrived to implement a parenting coordinator program in Nevada to accomplish the goals discussed above. We propose implementing such a program by adopting the AFCC Guidelines for Parenting Coordinators and establishing a model order detailing the scope of authority and practice of the parenting coordinator. The Family Mediation Center could certify that parenting coordinators had obtained the necessary training to function in this capacity. The establishment of such a program could assist in reducing litigation and provide for a means of conflict resolution in the most difficult, high-conflict situations. We invite your input and feedback.

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Grateful appreciation is extended for the contributions and research provided by Robert Cerceo, Esq., Stephanie Holland, Ph.D., Gary Lenkeit, Ph.D., and Louis F. Mortillaro, Ph.D.

Parenting Coordinators: Summary of AFCC Task Force Model Set of Standards

(1) A parenting coordinator should be either a licensed mental health professional or a legal professional with both education and experience in dealing with families. Coordinators should be trained in mediation and complete a comprehensive training program which encompasses both the legal and mental health aspects of the process. Finally, coordinators should have extensive practical experience with high-conflict parents and with the litigation process.

(2) A parenting coordinator should maintain impartiality in the process and be free of favoritism or bias. The coordinator should avoid the creation of any conflict of interest. Communication with the parties, their counsel, or the court should be accomplished in a manner which preserves the integrity of the process.

(A) Since this is intended to be a non-adversarial process, ex parte communication may be appropriate in some circumstances. However, any such communication should be considered in an objective and balanced manner which takes into consideration the possibility of bias. Ex parte communication should never occur between a parenting coordinator and a judge presiding over an action.

(B) Any written reports, orders, or decisions issued by the parenting coordinator should be communicated to the parties and their counsel at the same time. In some emergency circumstances, agreements and/or decisions may need to be communicated orally as circumstances dictate. However, in any event a written report should follow as soon as administratively reasonable.

(3) A parenting coordinator cannot serve dual roles. For instance, a legal advocate for one of the parties cannot later serve as a parenting coordinator, nor can the mental health professional who acted as the custodial evaluator or family therapist act as a subsequent parenting coordinator in a case.

(4) A parenting coordinator should assist the parties in reducing conflict and promoting the best interests of the children through the following:

(A) Since the parenting coordinator will need to assess the parties' abilities, the coordinator should review prior custody evaluations and other relevant records including court orders, information from interviews and collateral sources, and similar documentation brought forth by the parties.

(B) As a parenting coordinator also serves an educational function, the coordinator should educate the parties about child development, divorce research, and the impact of their behavior on their children. The coordinator should coach the parties in parenting skills, communication, and conflict resolution.

(C) Additionally, a parenting coordinator serves a case management function. The coordinator should be allowed access to all necessary parties including therapists, educators, lawyers, and even the children themselves. The coordinator should be prepared to work with other professionals in the system, as well as extended family members, step-parents, and other parties who play significant roles in the lives of the children.

(D) Since a parenting coordinator also serves a conflict management function, their primary role will be to assist the parties to work out disagreements and to minimize conflicts. Any agreements reached by the parties should be documented. In order to monitor the compliance of the parties and assist the parties in reducing conflict, a parenting coordinator should be allowed to monitor communication between the parties and suggest techniques to limit any inappropriate communication. Further, the coordinator should have access to all prior pleadings and orders filed in the case.

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Summary of AFCC Task Force Model Set of Standards *(cont'd. from page 5)*

(E) Finally, since a parenting coordinator will also serve a decision-making function when parents are not able to decide or resolve disputes of their own, a parenting coordinator should be empowered to make certain decisions to the extent allowed under a court order or a stipulated agreement of the parties. Any such decisions should be documented in writing.

(5) A parenting coordinator should only serve by stipulated agreement of the parties or formal order of a court. Whether by stipulation or order, the scope of the coordinator's authority and responsibility should be specifically defined. Under the guidelines promulgated by the AFCC, it is suggested that the scope of authority given to a parenting coordinator should be limited to the following types of issues:

- Minor changes or clarification of parenting time/access schedules or conditions, including vacations, holidays, and temporary variations from the existing parenting plan.
- Transitions/exchanges of the children including date, time, place, means of transportation, and transporter.
- Health care management including medical, dental, orthodontic and vision care.
- Child rearing issues.
- Psychotherapy or other mental health care, including substance abuse assessment or counseling for the children.
- Psychological testing or other assessment of the children and parents.
- Education or daycare, including school choice, tutoring, summer school, participation in special education testing and programs or other major educational decisions.
- Enrichment and extra-curricular activities including camps and jobs.
- Religious observances and education.
- Children's travel and passport arrangements.
- Clothing, equipment, and personal possessions of the children.
- Communication between the parents and not the children, including telephone, fax, e-mail, notes in backpacks, etc.
- Communication by a parent with the children, including telephone, cell phone, pager, fax and e-mail, when they are not in that parent's care.
- Alteration of appearance of the children, including haircuts, tattoos, ear and body piercings.
- Role of and contact with significant others and extended family.
- Substance abuse assessment or testing for either or both parents of the child, including access to results; and
- Parenting classes for either or both parents.

Moreover, such stipulation or order should specifically provide whether ex parte communication will be permitted with the parties or their counsel, whether and under what circumstances written reports are required, how the court will monitor the process, and the standard for judicial review.

(6) A process to appeal a parenting coordinator's decisions should be implemented which is similar in format and substance to that of objections to other referee or commissioner decisions. This would entail a limited time frame to submit a motion to the district court challenging a parenting coordinator's written decision. The standard of review would be abuse of discretion. Such judicial review would only be applicable in the case of a decision rendered by the parenting coordinator, and would not apply to mediated resolutions reached by the parties.

For full text, go to www.afccnet.org.

CONTEXT IS EVERYTHING: Domestic Violence in the Real World¹

By *Billie Lee Dunford-Jackson, J.D.*,
and *Hon. Scott Jordan*²



Introduction

The effective issuance and enforcement of custody and visitation orders, protection orders, and various other domestic relations orders, and the effective delivery of services to victims of domestic violence and their children, require all systems, including advocates, child protection workers, attorneys, the judiciary, law enforcement, and prosecution, to work in concert to achieve the best and safest outcomes for them. However, effective collaboration to achieve this outcome requires an understanding among the systems about the meaning of domestic violence. These various systems often define domestic violence in vastly different ways, which leads to confusion among them in advocating for and issuing and enforcing orders and delivering services. This system confusion not only makes an already complex domestic violence case even more complex, but also impedes the overall goal of achieving safe outcomes for victims of domestic violence and their children.

What is Domestic Violence?

As currently used, this term has two related but distinct meanings. It can refer to any single instance

of physical or emotional maltreatment by one intimate partner against the other. Or, it can refer to a course of conduct by one partner intended to assert and maintain control and power over the other. This course of conduct includes the use of physical harm and the threat of harm, but it involves a panoply of other control strategies as well. The course-of-conduct meaning is sometimes referred to as true domestic violence, in that it has the potential for much more universal, long-lasting and severe consequences for its victims and their children.

When a domestic violence case enters the legal system, whether in the form of victims and their children seeking services at a domestic violence shelter, a 911 call, a report to child protection services, a criminal prosecution, an application for an order of protection, or a divorce or other family action, understanding the meaning of the conduct in the particular case is crucial. Without a clear grasp of the nature of the violence involved and the context from which it came, lawyers and judges run the risk of misunderstanding the behavior of the parties and harming rather than helping the family members as a result of their intervention.

Casual observers may miss the pattern that emerges from course-of-conduct domestic violence. To them, domestic violence may appear to be a series of isolated incidents where one partner to a relationship, acting out of anger, or perhaps in response to some action on the part of the other, strikes out and causes that other physical injury. Some conflicts between partners do in fact happen that way. In order to understand the nature of a relationship earmarked by conflict, it is necessary first to consider the context of the violent behavior to determine whether it exemplifies true domestic violence. And that determination hinges upon a clear grasp of the dimensions and dynamics of domestic violence.

The Context of The Behavior

An analysis of the context out of which violent behavior arises is crucial. Otherwise, intervention could further endanger victims of ongoing violence, embolden the perpetrators of such violence by seeming to give them permission to continue their violent behavior, and expose the children of the relationship to further risk of physical and other types of harm. The context of violence encompasses three

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elements, all of which must be considered together:

- The offender's **INTENT** in using violence;
- The **MEANING** of the violence to the victim; and
- The **EFFECT** of the act on the victim.

The Intent of The Perpetrator

Those who use physical violence in an intimate relationship may be acting from any of several motivations. A perpetrator may be suffering a mental incapacity which calls for clinical intervention; may tend to use violence to resolve conflict in general social contacts; may be acting out of stress, anger, or poor impulse control as a one-time assailant; may be acting in self-defense or in response to battering; or may be a true domestic violence abuser, motivated by the intent to exert power and control over the other partner in the relationship. How can you tell which is which?

A **generally violent fighter**, unlike a batterer or someone responding to battering, uses violence in many contexts and relationships, including against random victims. Such individuals generally have poor communication skills and a paucity of problem-solving tools and so tend to default to violence when faced with any problem. Violent fighters are at risk of abuse of alcohol or drugs and often have criminal or employment histories that document their use of aggression in multiple contexts.

A **one-time perpetrator** does not characteristically or routinely react in violence against either the target victim or others and does not

use other tactics to obtain and maintain power and control over the target victim. Generally the violence is neither aggravated nor performed in response to ongoing abuse from the victim. Such people tend at the time of the assault to be suffering unusually high stress in some area of life, whether physical or emotional.

A **violent response to a pattern of violence and intimidation to which an individual has been subjected** may constitute self-defense, and thus be non-criminal, or may be retaliatory in nature. The level of violence generally increases in response to the degree and length of the violent behavior directed at this individual, sometimes rising to extreme and even lethal levels. Perpetrators of this form of violence, however, seldom harm children or other family members and do not act violently to others in society.

A **true domestic violence batterer** uses an ongoing constellation of power and control tactics, of which violence is only one, to intimidate and threaten the victim into compliance. The other tactics may include such strategies as threats, economic control, isolation, insults and emotional abuse. These actions are based upon the abuser's belief that he or she is entitled to control the victim and often the children as well. Such a batterer generally uses violence only to the extent that other tactics appear to be ineffective; thus violent episodes often erupt in response to a victim's attempts to assert independence or to disagree with the perpetrator. However, even in the absence of violence, the power and control tactics, and the threats that such controlling tactics will escalate into violence, are always present. The violence

in these relationships often escalates in severity and frequency over the years. Moreover, controlling batterers commonly become more violent at or immediately after separation from their victims, when they perceive their control to be threatened. They tend to be jealous in the extreme and to believe that they cannot live without their victims. Although their violence is not caused by drug or alcohol abuse, substance abuse may escalate the level of violence. Separate interventions to address both the violence and the substance abuse are necessary when both problems are present.

The Impact and Meaning of Violence to The Victim

It is readily apparent that the meaning and effect of the violence to the victim in each of these settings varies dramatically. Unlike the victims of the other types of violence, only the victim of the true domestic violence batterer lives with the constant risk of further violence and the unremitting potential of lethality. These victims also suffer the ever-present threat of nonviolent abuse and intimidation. For them, there are no normal times.

The Dynamics of Domestic Violence

As indicated above, true domestic violence is an intentional pattern of coercive behavior, patterned and repetitive, in which the batterer engages with the sole purpose of achieving and maintaining power and control over the victim. The instruments the batterer selects to achieve this goal are designed to induce fear in and to punish the victim for noncompliance. Although women and men engage equally in conflict in the other contexts described above, study after

study has shown that most true domestic violence batterers are men; and the great majority of victims of this type of abuse are women³. Thus to the batterer, separation constitutes loss of control and is a time to escalate the use of his abusive tactics in order to:

- Reestablish control;
- Recapture what he perceives as his rightful ownership over the victim;
- Retaliate against her for what he perceives as her betrayal;
- Take revenge for his perceived loss of integrity because of her betrayal, and in extreme cases, if all else fails, to destroy her and sometimes the rest of the family and himself.

It is the common practice of true batterers to engage in rule-making. They believe it is their right to compose and enforce the rules by which their victims and children are to live; and they further believe that they have the right to use violence and threats of violence as necessary to enforce their rules. The rules have one purpose and one purpose only: control of the victim. However, the scope and detail of the rules vary from batterer to batterer, as do the tactics used to enforce the rules. Common enforcement tactics include coercion, intimidation, degradation, exploitation, and violence, often interspersed with gifts and promises to change.

Since batterers' partners do not necessarily comply willingly, the rules are not self-implementing. These abusers commonly make strategic use of enforcement, engaging in a cost/benefits analysis that includes the importance of the rule; the efficacy of a given control

tactic; the risk of inflicting injury that cannot be concealed; and the concomitant risk of intervention, with social and legal consequences. Thus, the standard explanation that abuse results from uncontrollable anger or provocation has no validity in these circumstances.

In response, victims engage in a process of their own, continually analyzing which rules are crucial and must be obeyed to the letter; and which rules they can resist, and when and how and to what degree. Their decisions whether to comply or resist a particular rule hinge on a number of factors, including:

- Their cultural and religious beliefs;
- The extent to which compliance compromises their integrity or safety;
- The risks versus the benefits (for themselves and their children) of compliance or resistance in a given situation;
- Legal, financial, social and other options and resources which may facilitate resistance;
- The opportunity to reflect and develop a safety plan;
- Supports and connections which may make resistance possible and feasible; and
- Hope that things can and will change.



In cases of true domestic violence, the batterer often seeks to maintain his control even after the relationship has ended and a court order has been entered. Tactics may include stalking or spying; courting the victim with flowers, letters, or gifts; withholding or delaying support; or undermining the victim's relationship with employer or friends. When there are children, the batterer may visit erratically to prevent the victim from making other plans; make unilateral parental decisions regarding such things as tattoos, piercing, or dramatic changes in hair style; keep the children from attending planned activities; and undermine the custodial parent's relationship with the children.

Impact on Children

In cases involving children, the system's primary concerns are the safety of the children and their best interests. Children's best interests are served when both their own physical and emotional safety, and that of their primary caretaker, are assured. Coupled with responsibility for their children, non-abusing parents must have both the autonomy and authority to act on their children's behalf, without interference by the batterer, and the resources to protect their children and meet their needs. Systems can best accomplish these results by familiarizing themselves with the resources available to victims, children, and batterers in their communities; crafting or advocating for visitation orders with sufficient specificity and enforceability to assure the physical and emotional safety of children and their primary caretakers; and, when appropriate, allowing maximum access to the non-custodial parent consistent with safety requirements for chil-

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dren and their custodial parent alike. Systems that accomplish these results, and that enforce the terms of orders stringently, most surely protect the safety of children and their primary caretakers and do the best job realizing children's best interests.

Conclusion

Whenever there are allegations of domestic violence, the systems that victims and their children reach out to must make a number of important decisions. Because such allegations are often denied, determining whether the violence actually occurred, and what it really means, is one of the first and most critical issues in achieving the best and safest outcomes for

the targets of violence and their children. It is imperative that all systems involved in any domestic violence-related case understand both the true nature of domestic violence and the dynamics of the individual case, provide safe and appropriate services, and advocate for and create orders that assure the safety and protect the rights of all family members. Getting it wrong is likely to have drastic consequences.

¹ The original version of this article appeared in the National Council of Juvenile and Family Court Judges' Today magazine, Winter 2003, and was drawn largely from portions of *Enhancing Judicial Skills in Domestic Violence Cases*, the curriculum of the National Judicial Institute, a joint project of the National Council of Juvenile and Family Court Judges (NCJFCJ) and the Family Violence Prevention Fund (FVPF). Barbara Hart, JD, and Loretta Frederick, JD, are the Institute

faculty members primarily responsible for developing and presenting the portions of the curriculum upon which this article is based.

² **Billie Lee Dunford-Jackson, JD**, is a Co-Director of the Family Violence Department of the NCJFCJ; **Hon. Scott Jordan** is a senior District Court Judge in Reno, NV, where he served 12 years on the bench, a member of the NCJFCJ, and is on the National Judicial Institute faculty.

³ Matthew R. Durose et al., U.S. Dep't of Justice, *Family Violence Statistics: Including Statistics on Strangers and Acquaintances* 1 (June 2005, NCJ 207846) (reporting that the majority (73%) of family violence victims were female and that males were 83% of spouse murderers and 75% of murderers who killed a boyfriend or girlfriend); Shannan M. Catalano, U.S. Dep't of Justice, *National Crime Victimization Survey: Criminal Victimization, 2004* 10, (Sept. 2005, NCJ 210674) (reporting that of offenders victimizing females, 21% were intimates of the female victim, as compared to offenders victimizing males, of which only 4% were intimates of the male victim).

MINORS' SURNAMES EASILY CHANGED IN NEVADA?

by *Maria A. Perez Esq. and Jack Howard Esq.*

A common situation facing many families today is the stepchild name change, where a child is essentially raised in a blended family of a stepfather and the natural mother. Even though no formal adoption occurs, a trend of children and blended families is to use the stepfather's last name in place of or added to child's birth name. Much litigation across the country has arisen from this trend. Some natural fathers request an injunction which prohibits the child, stepfather and natural mother from using the stepfather's last name. Other litigation arises in the context of the child or natural parent requesting the court allow a change in last name. Generally speaking

there are three different standards used by courts in making this legal determination: (1) a presumption in favor of the status quo, (2) "best interests of the child," and (3) custodial parent presumption. (Merle H. Weiner, "We Are Family": *Valuing Associationalism in Disputes Over Children's Surnames*, 75 N.C. L. Rev. 1625, 1662 (1996-1997)). Of course these standards are blended to varying degrees and although a court may state the standard at "best interests" with a high burden of proof. *Id.*

In Nevada, NRS 41.270 governs name changes and provides as follows:

Any natural person desiring to have his name changed may file a verified petition with the clerk of the District Court of the district in which he resides. The petition shall be addressed to the court and shall state the applicant's present name, the name which he desires to bear in the future, the reason for desiring the change and whether he has been convicted of a felony.

Clearly the statute requires the following elements:

1) The natural person requesting the name change shall file a verified petition;

2) The natural person requesting the name change shall state the reason that he wants the change; and

3) The natural person requesting the name change must state whether he has been convicted of a felony.

Magiera v. Luera, 106 Nev. 775, 802 P.2d 6 (1990) set the standard for minor name changes in Nevada as follows:

The only factor relevant to the determination of what surname a child should bear is the best interests of the child. See *Schiffman*, 169 Cal. Rptr. At 922-23, 620 P.2d at 583; *Jacobs v. Jacobs*, 309 N.W.2d 303 (Minn. 1981). Finally, the burden is on the party seeking the name change to prove, by clear and compelling evidence, that the substantial welfare of the child necessitates a name change. See, e.g., *Robinson v. Hansel*, 302 Minn. 34, 223 N.W.2d 138 (1974); *Collinsworth v. O'Connell*, 508 So.2d 744 (Fla. Dist.Ct.App. 1987).

In *Magiera* the Court considered the request of an absentee natural father who requested that his two-year-old child's name be changed only after the natural mother's child support enforcement case hailed the natural father into court. There, the court considered the length of time the child had the mother's maiden name, the father's motives and rationale for the name change, and the interaction between the child and the father. The court affirmed the District Court finding that the natural father did not meet his burden to show by clear and compelling evidence that the best interests of the child necessitated the name change. See also, *Gardner v. Russo*, 114 Nev.

283, 956 P.2d 98 (1998) (Nevada Supreme Court confirmed the standard articulated in *Magiera*).

Clearly Nevada law adheres to a restrictive approach to minor name changes by adopting such a high burden of proof. For those undaunted by the high burden of proof required by Nevada case law in a contested matter, then the practitioner must look to other jurisdictions where courts have set forth "best interest of the child" factors. Factors considered by other jurisdictions are exemplified by the case of *Hamby v. Jacobson*, 769 P.2d 273, 278 (Utah.Ct.App. 1989) which directs the court to consider the following factors in analyzing the best interests of the child:

- 1) The child's preference in light of the child's age and experience;
- 2) The effect of a name change on the development and preservation of the child's relationship with each parent;
- 3) The length of time a child has used a name;
- 4) The difficulties, harassment or embarrassment a child may experience from bearing the present or proposed name;
- 5) The possibility that a different name may cause insecurity and lack of identity; and
- 6) The motive of interests of the custodial parent.

The most common contested change-of-name scenarios which many practitioners face are: (a) father of a child born out of wedlock requests a change of name after the child's birth, (b) mother requests that absentee father's name be changed to that of her current name, whether maiden or married name, (c) father requests his name be added any time after a

child support proceeding is instituted. An informal survey of Las Vegas family law practitioners revealed the ease with which local practitioners obtained a minor name change *or* successfully and quickly defeated the name change. Practitioners who regularly obtained name changes for minors listed factors such as the father's complete lack of participation in the child's life and their continued apathy upon being served with a name change motion or petition, and the child's age, either very young or close to adulthood. Practitioners who stated that they quickly defeated name change requests cited factors such as the natural father's continued custodial and monetary involvement as well as Nevada case law which clearly provide an onerous burden of proof on the moving party. Not a single practitioner reported the necessity of evidentiary hearing or trial on the issue.

More interesting than the letter and judicial enforcement of the law is the evolution of the permanent versus modifiable nature of children's surnames. I recommend two articles for those interested in the topic: Merle H. Weiner, "We Are Family:" *Valuing Associationism in Disputes Over Children's Surnames*, 75 N.C. L. Rev. 1625, 1662 (1996-1997) referenced above, and *Like Father Like Child: The Rights of Parents in Their Children's Surnames*, 70 Va. L. Rev. 1303 (1984).

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