The Family Law Review

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Editor's Corner

By Kem A. Eyo

It's that time of year again. Time to say farewell to the old and usher in the new. With the new year often comes making a list of resolutions that we are likely to abandon within months – maybe even weeks – after making them. But what if this year were different? What if you make a vow, rather than a resolution. One that, once started, would be relatively easy to maintain.

A topic I often hear discussed amongst fellow practitioners and members of the judicial bar is professionalism. It feels to many as though professionalism amongst members of the Family Law Section is dissipating. Instead, we focus on our client's fight and adopt it as our own. My directive to you for 2026 is to vow to reinstitute professionalism into the family law practice. If each and every one of us remembers that 1) our reputations are more important than our clients' complaints and concerns; 2) our clients fair better when we maintain our professional roles rather than devolving into fighting; 3) we are likely to encounter this same opposing counsel again in the future, and may need something from them next time around; and 4) though this profession is a calling, it is also merely a job; then just imagine how much less difficult our practice can be.

Now let me get off of my soapbox and welcome you to Winter 2025 edition of the Family Law Review! This edition is a little different from most in that there are fewer articles but more information. Informative articles include information about topics that we likely all need to know more about – irrevocable trusts, special needs trusts, and Georgia's Kinship Care Program. In the spirit of getting to know our judges, an interview of Fulton County's Judge Esmond Adams is included. Finally, within the following pages you will find information from a survey regarding the Family Law Institute as well as the August 2025 Case Law Update.

Whether you find the Family Law Review to be a useful tool or a waste of print, you can help improve it. The Executive Committee is always soliciting articles. If you don't have the time or means to write something, then consider either interviewing someone related to the practice (a judge or unique expert) or just sending topic ideas. Either way, if you have something to contribute, please send it to me at kem@rbafamilylaw.com.

From the Chair

By Jeremy Abernathy

The Gift of Rest: A holiday Reflection for Family Lawyers

As the year winds to a close, it feels as though time has raced ahead. Suddenly, the holidays are here — ushering in the familiar comforts of warm meals, festive gatherings, and the annual parade of wonderfully hideous ugly sweaters. Yet beyond the celebrations, I hope we are also anticipating something just as nourishing and far more elusive: rest.

In the world of family law, rest is often treated as a luxury we cannot afford. But in truth, it is one of the most essential tools we have.

One of my favorite quotes on this topic comes from author Jo Saxton, who reminds us that *"rest is not the absence of activity but the presence of peace."* That distinction resonates deeply for those of us whose work centers around conflict, crisis, and constant motion. Rest is not simply doing nothing — it is allowing ourselves to return to a state of calm, clarity, and groundedness.

Family lawyers operate in an environment that is uniquely intense. We are inundated with client calls, late-night emails, emergencies, and shifting crises. We move from courthouse to courthouse, appearing in emotional hearings that shape the futures of parents and children. We carry our client's burdens — sometimes quietly, sometimes heavily — and we do so day after day.

This continuous flurry of activity can wear us down in ways we don't always notice. The exhaustion is cumulative. The emotional weight is real. And the

risk of compassion fatigue is ever-present. That is why rest must be embraced not as an indulgence, but as a professional necessity. Rest restores the mind that strategizes, the voice that advocates, and the heart that empathizes.

I recently read a story about a woman in Western Carolina who loved plants — moonflowers, in particular. She learned that moonflower seeds require extraordinary effort to grow. Their hard shells must be soaked for hours, carefully cut open, and tended with patience. She poured herself into the task. She even stayed awake through the night to try to witness the flower bloom. But despite all her constant vigilance, she never saw it. Then one afternoon, after finally allowing herself a nap, she awoke to find the moonflower in full, breathtaking bloom. After all her planning, effort, and sleepless attention, the beauty arrived not because she pushed harder — but because she paused.

There is a lesson there for all of us. Some of the most meaningful things — clarity, peace, resilience — do not come through relentless effort. They appear when we give ourselves space to breathe.

We work tirelessly all year: drafting, arguing, solving, guiding, and advocating. We carry the emotional intensity of families in crisis. We balance impossible schedules. We measure our days in hearings, deadlines, and emergencies.

But we cannot pour from an empty cup.

This holiday season, I hope each of us finds time to rest — not merely to stop working, but to invite peace back into our lives. Rest makes us better thinkers, better advocates, and frankly, better humans.

Whether it is a quiet morning, an unplugged afternoon, a walk outside, a nap, a moment of stillness, or a few days truly off the clock — choose rest. Protect it. Honor it. And allow the “moonflowers” in your life to bloom.

Inside This Issue

Challenging the Strategic Deployment of Irrevocable Trusts in Divorce:

A Doctrinal and Litigation Perspective under Georgia Law

By Adam Gaslowitz, Esq. and LeAnne Gilbert, Esq.**, Gaslowitz Frankel LLC*

I. Introduction

The utilization of irrevocable trusts as instruments for the reallocation and concealment of marital assets in contemplation of divorce represents one of the most sophisticated and contentious challenges in matrimonial litigation. While irrevocable trusts serve critical functions in estate planning and asset protection, they have increasingly been repurposed as vehicles for insulating assets from equitable distribution, thereby subverting the principles of fairness underpinning Georgia's marital dissolution framework. Given the intersection of trust law, fraudulent conveyance statutes, and jurisdictional conflicts arising from the proliferation of trust-protective states, family law practitioners must cultivate a nuanced comprehension of both doctrinal underpinnings and litigation strategies necessary to unwind these transactions. This article explores the doctrinal constraints governing irrevocable trusts under Georgia law, the mechanics of asset protection schemes, countervailing legal theories for trust penetration, and the tactical methodologies required to effectively challenge these structures in divorce proceedings.

II. The Doctrinal Foundations of Irrevocable Trusts in Georgia

Georgia law generally adheres to the principle that once a trust is irrevocably established, the settlor surrenders dominion and control over the assets contained therein, treating them as outside to the marital estate for equitable distribution purposes, so long as the settlor does not control or benefit from the trust assets. Nevertheless, exceptions to this general rule can arise when a trust is utilized as a stratagem to perpetrate fraud, evade marital property division, or when the settlor retains de facto control in contravention of the trust's purported irrevocability.

Key statutory frameworks governing these inquiries include:

- O.C.G.A. § 53-12-1. et. seq., delineating the foundational legal tenets governing trust creation and administration.
- O.C.G.A. § 53-12-80, which furnishes a basis for invalidating trusts established under conditions of fraud, duress, or undue influence.
- The Uniform Voidable Transactions Act (UVTA) (O.C.G.A. § 18-2-70 et seq.), codifying statutory mechanisms for unwinding fraudulent asset transfers, particularly those effectuated to frustrate a spouse's equitable claim to marital wealth.

A significant obstacle in combating these structures arises when trusts are domiciled in jurisdictions that aggressively shield assets from creditor and spousal claims, including, BUT by no means limited to, Nevada, Alaska, Delaware, and South Dakota. In such instances, Georgia courts must reconcile the competing imperatives of recognizing foreign trust laws and safeguarding the integrity of Georgia's domestic family law jurisprudence. The resolution of these tensions often hinges on the extent to which Georgia courts are willing to apply doctrines of public policy exception to reject the enforcement of asset protection schemes designed to circumvent equitable division.

III. Mechanisms of Asset Concealment: Analyzing Trust Structures

1. **Discretionary Trusts**: These instruments confer expansive distributional authority upon trustees, thereby obscuring a beneficiary spouse's entitlement to trust assets. Judicial scrutiny often focuses on historical distribution patterns, indicia of settlor influence over trustee

discretion, and the presence of side agreements facilitating disguised financial benefits.

2. **Self-Settled Domestic Asset Protection Trusts (DAPTs)**: Permitted in select jurisdictions around the United States, these trusts allow settlors to retain beneficial interests while insulating assets from spousal and creditor claims. Georgia courts, however, do not recognize DAPTs, and may nullify their asset-protective efficacy in divorce proceedings.

3. **Foreign Asset Protection Trusts (FAPTs)**: Established in so called "tax haven" jurisdictions outside the United States, these trusts pose significant enforcement barriers due to their jurisdictional autonomy and the often-insurmountable cost of challenging these vehicles overseas. However, judicial recourse may exist through in personam orders mandating repatriation or coercive contempt remedies for noncompliance.

4.

IV. Doctrinal Strategies for Penetrating Irrevocable Trusts in Divorce

1. **Fraudulent Conveyance under UVTA**
   - Georgia courts may void transfers executed with intent to hinder or defraud a spouse under **O.C.G.A. § 18-2-74**.
   - Factors evidencing fraud include the temporal proximity of the transfer to divorce proceedings, settlor retention of enjoyment or control over trust assets, and inadequacy of consideration exchanged. This can be the case when, for example, a spouse transfers the vast majority of marital assets to an irrevocable trust that is arguably outside the reach of both spouses even though the spouses continue to live off the trust assets and the income derived therefrom.
   - Georgia courts have invalidated trusts where transfers were structured with manifest intent to defeat marital property claims. They also seem to ignore the trust structure completely when it suits the ends of justice or to achieve equity.

2. **Sham Trust Doctrine and Alter Ego Analysis**
   - Courts may disregard a trust's separate legal status where the settlor's retained powers render it a mere extension of personal ownership. This is particularly true when the trustee is effectively under the control of the settlor or behaving in ways that ignore the terms of the trust or the rules governing the trustee's fiduciary duties to the actual beneficiaries. For example, if husband and wife are not beneficiaries of the trust but all distributions are funneled to them through "loans" or distributions through friendly third parties.
   - Cases like these exemplify judicial willingness to collapse sham trusts that function as subterfuges for continued settlor control.

3. **Marital Property Tracing**
   - If an irrevocable trust is funded with marital assets, equitable claims may survive despite nominal transfer of asset ownership, such as when a spouse has left few assets in the marital estate for the couple to live on in the manner they have become accustomed.
   - The forensic burden necessitates rigorous financial analysis to track the flow of funds into trust structures.

4. **Constructive Trusts and Equitable Remedies**
   - Courts may impose constructive trusts over assets fraudulently transferred into irrevocable trusts to prevent unjust enrichment (**O.C.G.A. § 53-12-132**).

V. Countervailing Arguments from Trust Practitioners

Opponents of trust penetration efforts advance several doctrinal and policy-based defenses, including:

- Legitimacy of Estate Planning: Trusts serve bona fide creditor protection, tax planning, and wealth preservation purposes, rather than functioning solely as divorce avoidance mechanisms.
- Trust Separation Principle: Once irrevocably established, the trust assumes an autonomous legal existence, negating the spouse's claim to the underlying assets.
- Jurisdictional Enforceability: Out-of-state and offshore jurisdictions may refuse to

honor Georgia court orders seeking to unwind transfers.

- Legislative Policy: Some state legislatures have expressly sanctioned asset protection mechanisms, limiting judicial intervention absent clear fraudulent intent.

However, if any of these legitimate purposes were actually the case, the parties would voluntarily submit such assets for equitable division, something which rarely happens in divorce practice.

VI. Strategic Considerations in Trust

1. **Discovery Tactics**
   - Deploying subpoenas, forensic audits, and electronic discovery to expose settlor-beneficiary relationships and uncover hidden distributions.
2. **Injunctive Relief**
   - Seeking preliminary injunctions to prevent further dissipation of assets pending adjudication.
3. **Expert Witness Engagement**
   - Retaining forensic accountants and trust law specialists to substantiate allegations of fraudulent conveyance or sham trust operation.
4. **Coercive Judicial Remedies**
   - Utilizing contempt proceedings, financial sanctions, and incarceration threats to compel trust compliance with court orders.

VII. Conclusion

The pervasive deployment of irrevocable trusts as a means of circumventing equitable distribution in divorce necessitates a sophisticated jurisprudential response. While Georgia law provides numerous statutory and equitable mechanisms for challenging these structures, the evolving landscape of asset protection necessitates continuous refinement of litigation strategies. Effective advocacy in this domain requires mastery of fraudulent transfer doctrines, trust law exceptions, and multi-jurisdictional enforcement strategies. By integrating doctrinal rigor with strategic litigation methodologies, family law practitioners can often counteract asset concealment tactics and preserve the equitable integrity of marital dissolution proceedings.

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The Georgia Kinship Care Legal Project

*By Vicky O. Kimbrell**

What happens to children in Georgia when parents are unable to care for them? Often, the Office of Child Protective Services is called in and the state intervenes in the family. Ideally, whatever was the cause of the concern would be remedied for the family. The state has an array of options to protect these children, from providing services that remedy the problem to taking the children out of the home and putting them into state sponsored foster care. Most people would agree, and studies show, that doing whatever can be done to keep the children safe in their own home is the best option. But when the state does not have or will not provide sufficient resources for ongoing safety or support in their home, children can be removed by the state.

In these cases, grandparents, siblings, aunts, uncles, or other relatives can be the best choice to care for children. Across the country, Kinship Care is increasingly recognized as a child protective strategy and, under the best circumstances, is gaining support as an alternative to removing children to stranger foster care. When these new kinship families are established, they need both legal and financial support. Georgia's **Kinship Care Project** provides legal representation for grandparents, relatives, even fictive kin who are helping

children stay out of state foster care and with family that they know and can care for them. The Georgia Kinship Project provides attorneys through Georgia's two legal services agencies - Georgia Legal Services and Atlanta Legal Aid.

Legal Relationships that Can Establish Kinship Care Families

New legal relationships may be needed to help stabilize families and protect children being cared for by kinship families. They can also help families secure financial benefits for their support and security. Kinship caregivers can secure legal rights and responsibilities to care for a child through various legal options, including:

Kinship Caregiver Affidavits
Powers of Attorney for the Care of a Child
Guardianships
Third Party Custody cases
Equitable Caregiver cases
Juvenile Court Dependency actions, or
Adoption

For each of these rights and responsibilities, kinship caregivers must navigate the various courts and legal systems. Some of these can be handled without an attorney, but an attorney is advised, whenever possible.

Kinship Caregiver Affidavit

Kinship caregivers need to provide medical care and assure that the child is enrolled in school. O.C.G.A. § 20-2-690.1. Caregivers can secure a Kinship Caregiver Affidavit, which allows them to give consent for the child to 1) receive educational services, 2) receive medical services related to academic enrollment, and 3) participate in curricular or extracurricular activities. The Kinship Caregiver Affidavit must be substantially similar to the form laid out in the statute and be signed and notarized by the kinship caregiver. The caregiver should also use reasonable efforts to locate at least one of the child's parents prior to executing the affidavit. The affidavit is filed with the school and is valid for one year from its execution. O.C.G.A. § 20-1-16.

While the affidavit is in effect, the caregiver serves as the primary point of contact for the school. However, decisions made by the kinship caregiver can be overruled by a parent or legal custodian of the child if the parent's or custodian's decision does not jeopardize the child's life, health, safety, or welfare. O.C.G.A. § 20-1-16.

Local educational agencies have three options when asked to enroll a child in school. They can 1) enroll the student, 2) provisionally enroll the student for a minimum of 30 days and then require the caregiver to obtain guardianship, or 3) require the caregiver to complete a Kinship Caregiver Affidavit. Ga. Comp. R. & Regs. 160-5-1-.28. Even with a Kinship Caregiver Affidavit, the school may require the caregiver to supply further documentation. The affidavit is typically the simplest method of giving the caregiver input into medical or educational decisions. O.C.G.A. § 20-1-18.

Power of Attorney for the Care of a Child

When a parent wants to voluntarily delegate authority over their child to a kinship caregiver for a limited time, the best option is often through a power of attorney. The Supporting and Strengthening Families Act, O.C.G.A. § 19-9-120 et seq., authorizes a parent to execute a power of attorney over their child to an adult residing in Georgia who is related to the child or who is approved as an agent of the child. Relatives eligible for a power of attorney are grandparents, great-grandparents, stepparents, former stepparents, step grandparents, aunts, uncles, great aunts, great uncles, cousins, and siblings. O.C.G.A. § 19-9-122.

The power of attorney generally conveys the same rights, duties, and obligations of the custodial parents. The power of attorney can grant the agent the authority to access the child's records; arrange for and consent to medical and other treatment for the child; provide for the child's food, lodging, recreation, and travel; and consent to other necessary options for the child's care. The primary restrictions on a power of attorney are the power to consent to the marriage or adoption of the child, the performance or inducement of an abortion for the child, and the termination of parental rights to the child. O.C.G.A. § 19-9-124. The agent must act in the best interest of the child, and the parent retains the authority to revoke the power of attorney at any time by notifying the agent in writing. O.C.G.A. § 19-9-130.

The custodial parent and the agent must sign, notarize, and file the power of attorney with the probate county court on a form that substantially conforms with O.C.G.A. § 19-9-134. An individual with sole custody of the child must provide written notice to the noncustodial parent within 15 days of the execution of the power of attorney. The noncustodial parent may then object to the execution within 21 days of the delivery of the notice. O.C.G.A. § 19-9-125. Once granted, the power of attorney generally may last for up to a year before requiring renewal. O.C.G.A § § 19-9-130. However, if the agent is a grandparent, the power of attorney may last indefinitely; and if the parents are deployed in the military, the power of attorney may last for their term of deployment plus 30 days. O.C.G.A. § 19-9-132.

Guardianship in Probate Court

The power and obligations of a legal guardian of a minor are like those of a parent. O.C.G.A. § 29-2-21; *Boddie v. Daniels*, 288 Ga. 143, 144 (2010). The legal guardian must act as a fiduciary for the minor's best interest and exercise reasonable care, diligence, and prudence. The legal guardian must also file annual reports of the minor's condition with the court, unless excepted elsewhere by statute. O.C.G.A. § 29-2-21. A judicial termination of a guardianship requires written findings of fact and conclusions of law. *In re A.R.*, 309 Ga. App. 844, 845 (2011).

Parents are the natural guardians of a child. O.C.G.A. § 29-2-3. Guardians can also be testamentary guardians, permanent guardians, standby guardians, or temporary guardians. O.C.G.A. § 29-2-1. An individual may not be appointed as guardian if he or she is a minor, ward, protected person, or someone who has a substantial conflict of interest with the child, unless the court determines that the conflict of interest is insubstantial or that the appointment is in the minor's best interest. O.C.G.A. § 29-2-2.

Temporary Guardianships

An individual who has physical custody of a minor can file a petition to be appointed the minor's temporary guardian. O.C.G.A. § 29-2-5. If the parent[s] of the minor consents to the appointment, the court must grant the petition without a hearing. O.C.G.A. § 29-2-6. However, if one or both parents have not consented to the temporary guardianship, the petitioner must give a statement of the circumstances giving rise to the need for the appointment of a temporary guardian. O.C.G.A. § 29-2-6. The petitioner must give notice to any parent who has not consented, and the parent has approximately two weeks to object in writing, depending on the method of notice. Upon timely objection, the court will hold a hearing to determine the issues, with the standard being the best interest of the child in accordance with O.C.G.A. §§ 15-11-26 and 29-2-6(e).

Upon being granted, a temporary guardianship conveys all the powers of a natural guardian. O.C.G.A. § 29-2-7. The guardianship ends upon the earliest of a variety of events: the minor reaches 18 years of age, the minor is adopted, the minor is emancipated, the minor dies, the temporary guardian dies, a permanent or testamentary guardian is appointed, or the court enters an order terminating the guardianship. Furthermore, the natural guardian of the child may petition the court to end a temporary guardianship at any time, as long as the natural guardian provides notice to the temporary guardian. O.C.G.A. § 29-2-8. To object to the termination, the temporary guardian must show that the guardianship is in the best interest of the child. The best interest standard requires clear and convincing evidence that the child would suffer physical or emotional harm if custody were awarded to the biological parent, and that the continuation of the guardianship would promote the child's welfare and happiness. Boddie v. Daniels, 288 Ga. 143 (2010).

Permanent Guardianships

When a child has no natural guardian, the probate court may appoint a permanent guardian. O.C.G.A § 29-2-14. Any interested person may file a petition for the appointment of a permanent guardian of a minor. O.C.G.A. § 29-2-17. Notice must be given to the minor's biological father if the biological father (1) is known to the petitioner, (2) is a registrant on the putative father registry who has either acknowledged paternity of the minor or indicated possible paternity of a child of the minor's mother during the two years prior to the minor's date of birth, or (3) if the biological father has demonstrated a variety of parental behaviors to the minor. O.C.G.A. § 29-2-15. Notice must also be given to no more than three of the minor's (1) adult siblings, (2) grandparents, if there are no adult siblings, or (3) nearest adult relatives, if there are no grandparents.

Any objection must be filed within ten days of personal service, 14 days of the mailing of the notice, or ten days of the second publication of the notice. O.C.G.A. § 29-2-17.

When making the appointment of a permanent guardian, the standard for determination of all matters is the best interest of the minor. O.C.G.A. § 29-2-18. To appoint a guardian who will serve the best interest of the minor, the court follows an order of preferences laid out by O.C.G.A. § 29-2-16, but has the discretion to ignore it and consider any facts and circumstances presented to it.

Third Party Custody in Superior Court

Third parties can obtain custody of a child from the parents or custodian over the objections of the parents or guardians. The requirements and standards for doing so vary with the type of relationship between the third party and the child.

Relative Custody

Specified relatives of a minor — limited to grandparents, great-grandparents, aunts, uncles, great aunts, great uncles, siblings, and adoptive parents — can petition for custody in Superior Court pursuant to O.C.G.A. § 19-7-1(b.1). In these cases, the court will impose a rebuttable presumption that it is in the best interest of the child for custody to be awarded to the parent(s). However, this presumption can be rebutted by a showing of clear and convincing evidence that it is in the best interest of the child to award custody to the specified relative instead. O.C.G.A. § 19-7-1(b.1). To show that awarding custody to the specified relative is in the best interest of the child, the relative must show that (1) parental custody would cause either physical or significant long-term harm to the child; and (2) an award of custody to the relative would best promote the child's health, welfare, and happiness. *Clark v. Wade*, 273 Ga. 587, 598 (2001) (clarifying and limiting the "best interest of the child" standard). The court will consider a variety of factors in determining the best interest of the child, including the child's past and present caretakers, the psychological bonds the child has formed, the parties' evidenced interest and contact with the child, and the child's medical or psychological needs. *Id.* at 598-99.

Generally, the Georgia Supreme Court has held that O.C.G.A. § 19-7-1(b.1) limits the third parties who can ask for custody of children to the relatives listed in that section. Wallace v. Chandler, 360 Ga. App. 541 (2021)

Equitable Caregiver Statute

The Equitable Caregiver Statute allows third parties that are "like family," but without a biological connection to a child, to claim parental rights and obligations. O.C.G.A. § 19-7-3.1. The Equitable Caregiver Statute has been used to provide rights to same-sex partners, *Skinner v. Miles,* 361 Ga. App. 764 (2021), and friends of a family member, *Hackett v. Stapleton*, 365 Ga. App. 405 (2022). An individual seeking to be adjudicated an equitable caregiver of a child may establish standing by filing an affidavit alleging specific facts to support the existence of an equitable caregiver relationship. The court must then find, by clear and convincing evidence, that the individual has:

1. Fully and completely undertaken a permanent, unequivocal, committed, and responsible parental role in the child's life;
2. Engaged in consistent caretaking of the child;
3. Established a bonded and dependent relationship with the child that was fostered or supported by a parent of the child; and the individual and the parent have understood, acknowledged, or accepted that relationship or behaved as though the individual is a parent of the child;
4. Accepted full and permanent responsibilities as a parent of the child without expectation of financial compensation; and
5. Demonstrated that the child will suffer physical harm or long-term emotional harm if equitable caregiver is not granted, and that continuing the relationship between the caregiver and the child is in the best interest of the child. O.C.G.A. § 19-7-3.1(d).

To determine harm, the Court must consider factors related to the child's needs, including the past and present caretakers of the child, the psychological bonds of the child, whether the competing parties have expressed a dedicated interest in and contact with the child over time, and whether the child has unique needs that one party is better able to meet. O.C.G.A. § 19-7-3.1(e).

Equitable caregivers are barred from bringing an original action for custody rights if (1) the parents are not separated and the child is living with them, (2) the equitable caregiver relationship was created in juvenile court proceedings, or (3) the Department of Human Services has an open case concerning the child or parent. O.C.G.A. § 19-7-3.1 (h), (i). However, the statute is silent on whether putative equitable caregivers may bring a motion to intervene in a pre-existing custody action, which may provide an avenue for those caregivers otherwise barred from obtaining custody rights to assert their claims. A Petition and Affidavit to create an Equitable Caregiver relationship can be found at O.C.G.A § 19-7-3.1(e).

Adoptions

Adoption creates a relationship of parent and child between the petitioner and the adopted child, as if the child were a biological child of that petitioner. Adoption also terminates all legal relationships between the adopted child and their biological parents. The Adoption Code in Georgia is extensive and complex, and begins at O.C.G.A. § 19-8-1.

For the Court to complete an adoption, the child's relationship with the biological parents will be completely terminated. This can happen one of two ways: (1) each living parent can voluntarily surrender their rights to the child, in writing, or (2) the court can find good reason to legally terminate the biological parents' rights. Adoptions are complicated legal proceedings and should only be filed with an adoption attorney. https://www.georgiacouncilofadoptionlawyers.org/

Financial Security for Kinship Care Families

Often as important as legal stability, these kinship care families need financial security. Georgia has important benefits programs that can help provide healthcare, food security, and cash benefits. Georgia Legal Services Program has created a Benefits Checklist to set out the benefits that may be available to families.

In addition, the Barton Clinic at Emory Law School has prepared a chart of benefits that children may receive, including the IV-E child welfare benefits.

You can contact the Georgia Kinship Care Project by contacting the legal services organizations at:

Georgia Legal Services Program

Kinship Care Project

833 457-7529

Georgia Legal Services Program

www.glsp.org

Vicky O. Kimbrell, Project Director

(Serves the 154 counties outside of metro Atlanta.)

Atlanta Legal Aid Society

Kinship Care Project

855 357-6566

Legal Aid Atlanta

www.atlantalegalaid.org/apply

Jacqueline Payne, Project Director

(Serves the five metro Atlanta Counties)

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	Benefit	Eligibility Requirements
Enhanced Relative Rate (ERR)/ERR-UC Undocumented Child) ONLY AVAILABLE WHILE CHILD IS IN PLACEMENT http://fostergeorgia.com/options-for-relatives/ https://dhs.georgia.gov/kinship-care-portal	Provides financial support to **relative caregivers** who meet the TANF degree of relationship **as long as funds are available** to defray expenses related to the **child's care and well-being.** **Subsidy Rates** Effective July 1, 2022: • Child age birth through 5 . . . . . $776.57/month • Child age 6 through 12 . . . . . $829.76/month • Child age 13 and older . . . . . $894.00/month **Additional Support** • Initial Clothing Allowance Birth to 12 $311.00 13 and over $415.00 Must be used within six months of entering care • Annual Clothing Allowance All ages $690.00/year • Car/booster seats Maximum $200.00	• Child must be a US Citizen/Legal Permanent Resident (ERR) • If the child is undocumented, the relative must be a U.S. citizen/legal permanent resident (ERR-UC) • (ERR-UC) - If permanent guardianship is transferred to the relative, the child must be a U.S. Citizen or legal permanent resident to meet eligibility criteria for other subsidies • The Enhanced Relative Rate is available to children placed in a relative home that does not receive foster care per diem. • Income Eligibility Requirements: o **Relative**: None o **Child**: The income (child support, Social Security Income, Retirement, Survivors, and Disability Insurance etc.) of the child will be used to offset the child's subsidy (excluding the child's wages) **Annual Clothing Allowance**: annual clothing may be a one-time expenditure or spent in incremental amounts during a fiscal year, but it cannot be claimed during the calendar year that the child entered care
Foster Care Kinship Placement ONLY AVAILABLE WHILE CHILD IS IN FOSTER CARE PLACEMENT http://fostergeorgia.com/current-foster-parents/	Provides financial support (foster care per diem) for expenditures for a child in a relative home that has been approved by DFCS. **Subsidy Rates** Effective July 1, 2022: • Child age birth through 5 . . . . . $27.80/day ($834/month) • Child age 6 through 12 . . . . . $29.996/day ($899.88/month • Child age 13 and older . . . . . $32.62/day (978.6/Month) **Additional Support** • Sibling incentive (3 or more), additional $3.44 per day/child • Initial Clothing Allowance Birth to 12 $311.00 13 and over $415.00 Must be used within six months of entering care • Annual Clothing Allowance All ages $415.00/year • Additional per diem may be paid based on needs of child	• No income eligibility requirements • Kinship Assessment completed • The relative's home meets the same requirements as a regular foster home. • Complete IMPACT training and assessment to become an approved foster parent • Child remains in the legal custody of the Department.
Subsidized Guardianship (SG) ONLY AVAILABLE AFTER CHILD HAS ACHIEVED PERMANENCY WITH THE RELATIVE http://fostergeorgia.com/options-for-relatives/ https://dhs.georgia.gov/kinship-care-portal	Provides financial support to a **relative caregiver** who **meets the Temporary Assistance to Needy Families (TANF) degree of relationship** and has **obtained permanent guardianship, as long as funds are available** to defray expenses related to the **child's care and well-being.** Relatives may be eligible for a higher payment, 80% of current family foster care rates based on the child's current age. **Subsidy Rates** Effective July 1, 2019: • Child age birth through 5 . . . . . $705.97/month • Child age 6 through 12 . . . . . $754.33/month • Child age 13 through 18 . . . . . $812.73/month • Medicaid (34 different programs) • Independent Living Program (ILP) services for youth age 14 or older and who were in care at least six months	•The kinship caregiver meets the TANF degree of relationship. • The child is a citizen/legal permanent resident of the U.S. • Child must have resided with the relative under DFCS supervision for a minimum of 6 months prior to the transfer of permanent guardianship • Non-reunification was granted by the Court • Relative was granted permanent guardianship of the child until age 18 by the court • There is an approved Kinship Assessment or current approved foster family home evaluation • Child has been in the custody of DHS for a minimum of 12 months • SG Application and Agreement signed by the caregiver and approved by the County Director • Income Eligibility Requirements: o **Relative**: None o **Child**: The child's income, excluding wages, cannot be more than the subsidy which the caregiver may be entitled. (This would need to discussed in detail with the child's case manager)
Non-Relative Subsidized Guardianship (NRSG) ONLY AVAILABLE AFTER CHILD HAS ACHIEVED PERMANENCY WITH THE NON-RELATIVE OR RELATIVE OUTSIDE OF THE TANF DEGREE OF RELATIONSHIP http://fostergeorgia.com/options-for-relatives/ https://dhs.georgia.gov/kinship-care-portal	Provides financial support to a **relative caregiver who does not meet the Temporary Assistance to Needy Families (TANF) degree of relationship** (see above) or a **non-relative** and has obtained permanent guardianship to defray expenses related to the **child's care and well-being, as long as funding is available.** **Subsidy Rates** Effective July 1, 2018: • Child age birth through 5 . . . . . $371.40/month • Child age 6 through 12 . . . . . $419.88/month • Child age 13 through 18 . . . . . $478.22/month • Medicaid (34 different programs) • Independent Living Program (ILP) services for youth age 14 or older and who were in care at least six months	• The child is a citizen or legal permanent resident of the US • The income of the child, excluding the child's wages, is less than the amount of the NRSG payments • There is an approved Kinship Assessment or current approved foster home study • A Subsidized Guardianship/Non-Relative Subsidized Guardianship Application and Agreement has been signed by the caregiver and approved by the County Director/Designee NOTE: The Subsidized Guardianship/Non-Relative Subsidized Guardianship Application and Agreement must be signed by the caregiver prior to the transfer of permanent guardianship. • Non-reunification was granted by the court and verified via a copy of the court order • The caregiver was granted permanent guardianship of the child until age 18 • The child has resided with the caregiver under DFCS supervision for a minimum of six months prior to the transfer of permanent guardianship

[1] Eligibility requirements may not be exhaustive of all the program requirements; amounts subject to change; some programs are based on availability; and for additional information the appropriate DFCS representative should be consulted. All information is current as of November 2022.

Results of Survey regarding Family Law Institute

*By Roslyn G. Holcomb**

The Executive Committee would like to extend a heartfelt thanks to all of our section members who completed our survey regarding the Family Law Institute! We had close to 200 responses, which is approximately two-thirds of our average number of FLI attendees.

Your responses seem to overwhelmingly suggest that you all have been pleased with previous institutes and wish to maintain many of the selections made by previous section leaders. For example, most of you enjoy attending the institute at luxury beachfront locations within driving distance of metro Atlanta. The majority also seem to enjoy our two section-sponsored receptions at the institute with heavy hors d'oeuvres, open bar, and live music.

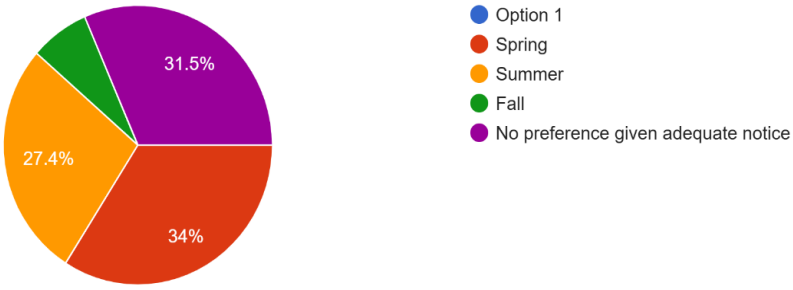
Your feedback also highlighted meaningful opportunities for improvement. Some of you expressed interest in greater diversity among our speakers — more specifically, you desire to hear from speakers from different regions of our state, and from practices of different sizes, different ages, and experience levels. Respondents also said they seek more diversity in topics presented.

The survey results are provided herein below. The Executive Committee is sharing these results so that, as plans for upcoming institutes manifest, you know that we have heard you and that we are making our best efforts to bring you more of the high-quality institutes you have come to know and enjoy.

I. DATE, TIME, AND LOCATION

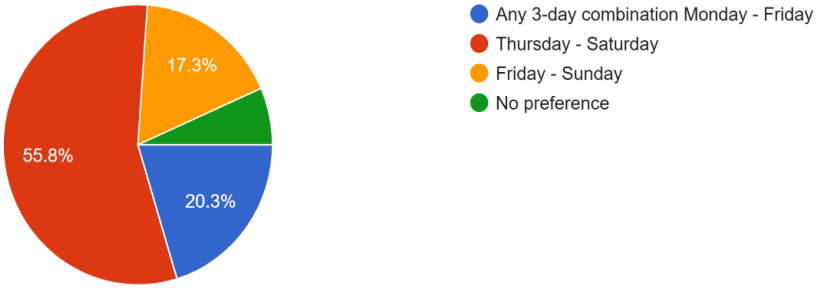
What time of year would you be most likely to attend the institute?

197 responses



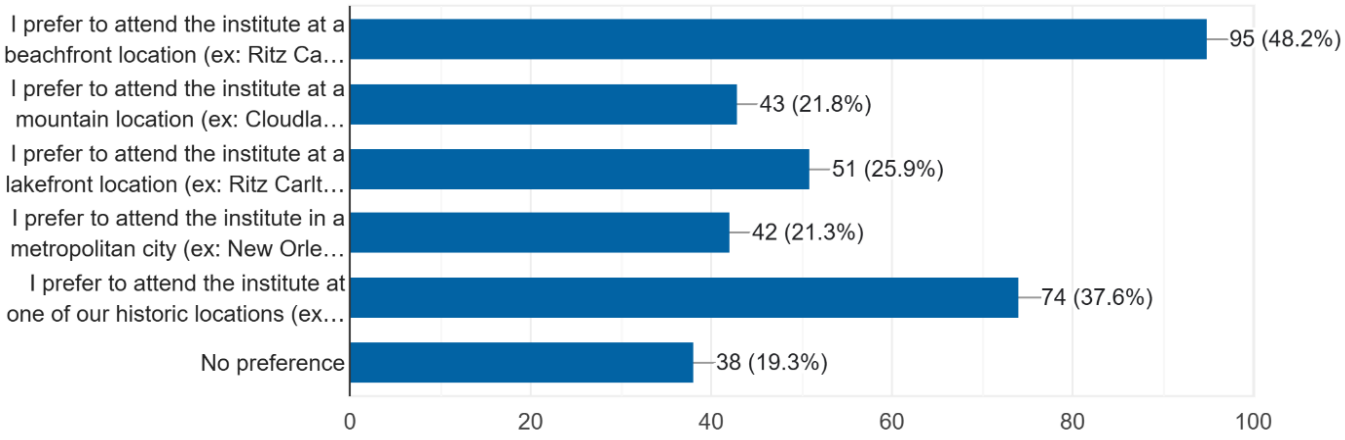
Which days of the week woud you prefer the institute to be held?

197 responses



Which statement(s) best reflect your view regarding the location of the institute? (Check all that apply)

197 responses



Do you have any recommendations for future locations? (must accommodate approximately 400+ attendees)

62 responses

None

I prefer to have the institute at a location in our state.

I'd pay more to go somewhere interesting like Hawaii, Grenada, or Tahiti.

jekyll island

I don't like the beach with FLI - I do not want to spend time with work colleagues at the beach

Destin / 30A area would be a nice change of pace to include on occasion.

Theme Parks (Universal, Disney, etc.). NYC.

Not so expensive. I have never attended due to cost prohibitive

I LOVE Amelia Island, but would also prefer us spending our money in our own State (I get the paradox there).

Savannah has just expanded its Convention Center and is building another hotel on Hutchinson Island in addition to the Westin.

Las Vegas, Orlando

Anything other than an Omni facility

Biltmore Estate in Asheville, NC, The Omni Resort/Grove Park Inn in Asheville NC, Charleston, SC, Destin FL, Hilton Resort, Aspen, Steamboat Springs, or Vail Colorado do a Skiing Family Law Institute, do Family Law Seminar at new locations with new activities and not the same as it has been. A Washington DC seminar would be nice.

las vegas

Morally - I cannot support the State of Florida's economy so anywhere except Florida is fine.

Disney World

1-2 hours away from Atlanta at most

Please do not take it to a remote location like New Orleans or Nashville - too expensive for most people. And, the one year that we had it in the mountains the attendance was terrible.

Return to Ritz in Amelia Island, Jekyll Island was okay, not sure why Sandestin Beach Hilton fell off the list.

Charleston, New Orleans

Destin, Hilton Head

Chicago

It hasn't been in Destin in a long time

St. Simon's Island - King and Prince;

I can never attend when the location is always out of the state. I have a brand new baby and the locations are so inconvenient so I never can attend.

Beachfront; somewhere we haven't been yet

The Gulf of Mexico!! Surely there is somewhere to accommodate a group of 400. Followed by Savannah or Charleston, perhaps?

No

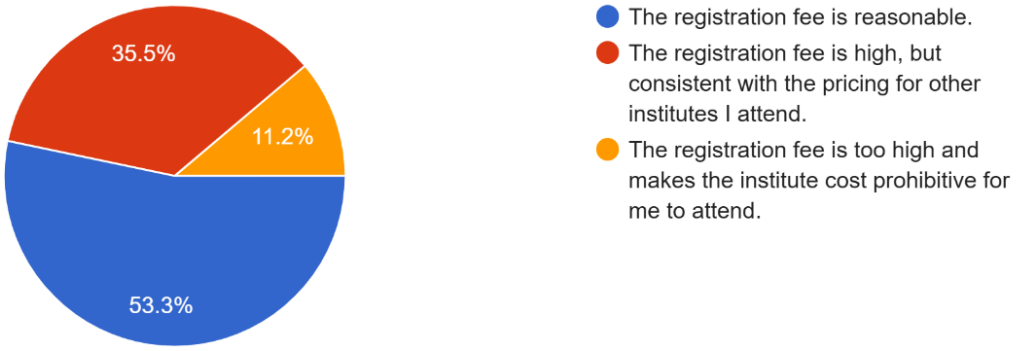
Savannah, GA, New Orleans, Asheville, NC

Vegas

II. FEE(S)

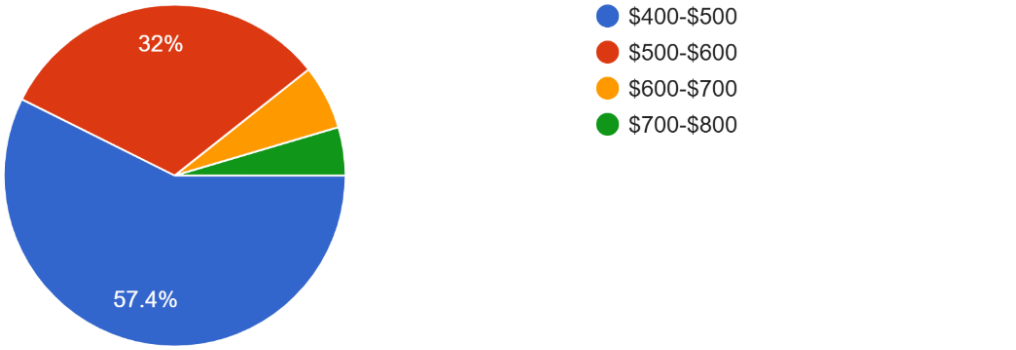
Which response best captures your view regarding the registration fee assessed to attend the institute?

197 responses



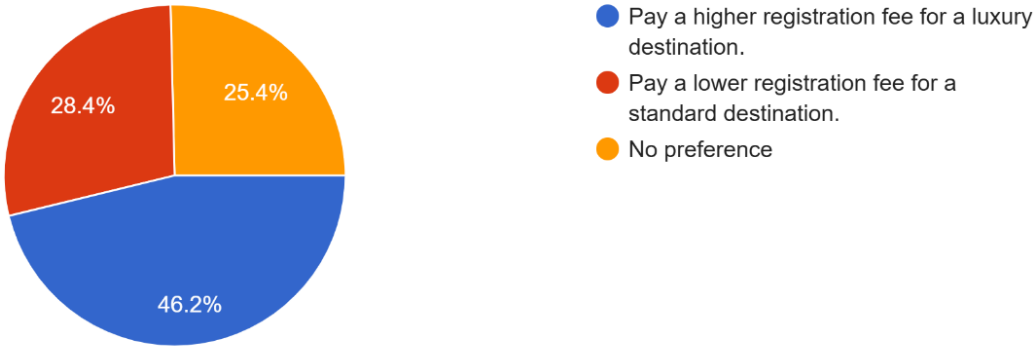
Which registration fee range are you most comfortable paying to attend the institute?

197 responses



I would rather...

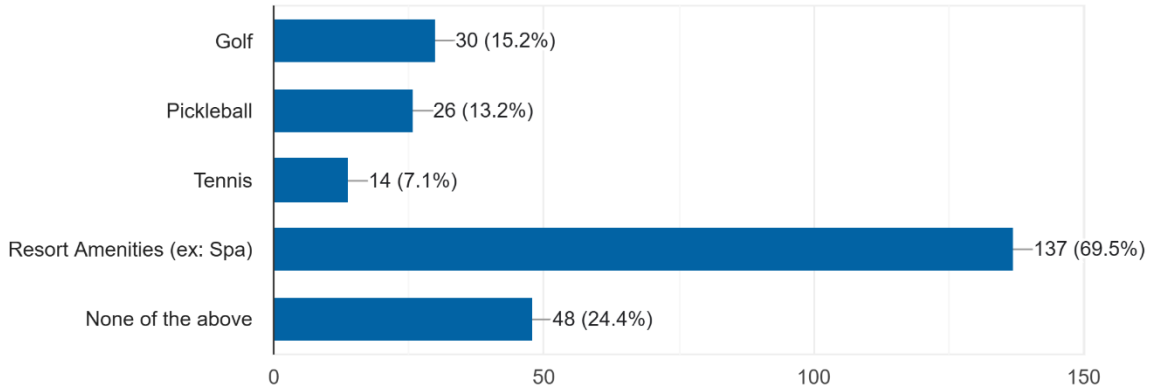
197 responses



III. EXTRACURRICULAR ACTIVITIES

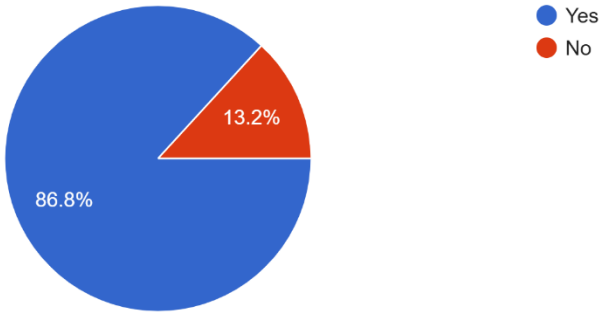
Which activities are you most likely to participate in? (Check all that apply)

197 responses



Extracurriculars are currently included in the registration fee. Would you rather pay a lower registration fee and pay for extracurriculars out of pocket?

197 responses

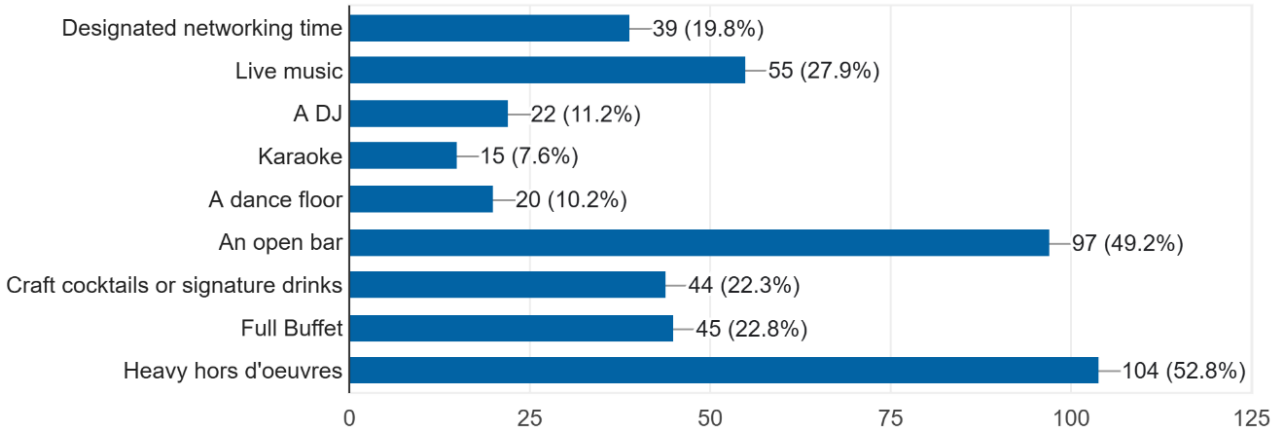


Which statement best reflects your attitude regarding the section reception(s)?

197 responses

If we keep the reception(s), what would you like to see the reception(s) include? (Check all that apply)

197 responses



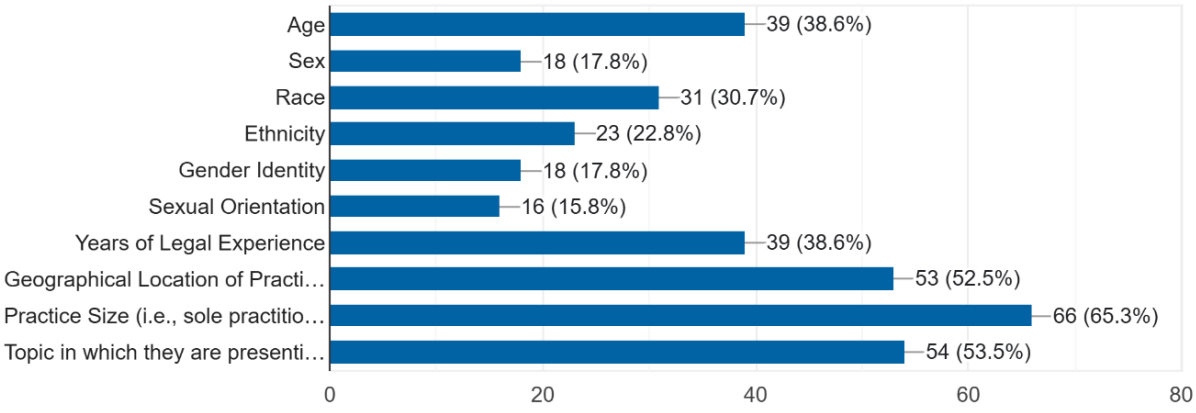
IV. SPEAKERS & PRESENTERS

Which statement best describes your view of speakers that speak at the institute?

197 responses

If you agree that FLI Speakers need to be more diverse, please identify the type of diversity to which you are referring. (Check all that apply)

101 responses



If you would like to see a more diverse pool of presenters, what suggestions do you have for how new presenters may be recruited?

42 responses

Forms

This year's invitation to people to apply was a good start. Ask around widely for suggestions of very effective program presenters. Speaking should not be as directly tied to sponsorship as it has been in the past, should not be just AAML members, and should not focus on "the usual firms". I know that we need to have Judges as speakers, but don't let them just recite a bunch of cliches (e.g., "Be prepared"). And eliminate or severely limit the speakers from the general counsel's office and replace them with people who can describe good management practices that help minimize/ avoid malpractice claims and some discussion of hypos that present some professionalism dilemmas and avoid the professionalism segments that just recite the rules and throw in some platitudes. A good topic for this year might involve what to do to protect families with gay and trans members from having their rights taken away -- and the related professionalism question of when an attorney should decline to present an argument that would annul rights that were created with the consent and wholehearted support of both parents.

I liked the survey option that was provided this year.

networking with local and specialty bar associations

The Board constantly asks people to speak from the same pools of people. Even when folks volunteer, they are not chosen if they are not from those particular pools of people.

Ask. Ask for presentations or seek out presenters from local bar associations. Maybe a survey like this where a lawyer can suggest names and topics of an impressive opposing counsel for the committee to reach out to.

Attorneys & judges outside of the perimeter, attorneys from outside of state if they have unique topics

Possibly reach out to affinity groups like county specific bar associations, stone wall bar, gate city etc

I was very happy to see a call for topics for 2026 FLI. I have been asking for that in surveys for years. That *should* provide a vehicle for a more diverse speaker pool and topics. We have been repeating topics for years with the same group while other members have made multiple requests to present.

Volunteer or referral based on experience; referrals should not be based on solely to experience of presenting, but rather the knowledge/experience on a subject worth sharing

Simply ask - I suspect many new individuals would help

Application Process

Your emails soliciting speakers are good; maybe allow others to suggest someone too

I would ask judges for a recent case they had where an attorney stood out to them and why (i.e. professionalism, cross-examination, discovery) and ask that attorney to speak on that. I also would ask (maybe in the FLAN FB group) people what area of their practice they are passionate about and consider having people speak about things they are passionate about and that are current to our practice.

We need to focus on topic and experience and not on any biological attributes of a speaker. I am there to learn and to network.

Local Bar Associations

Look at other places where people are teaching, perhaps in the Juvenile Court section

What was done this year was excellent! Opening it up via e-mail to anyone interested.

Attorney/Realtor

Ask reputable practitioners OUTSIDE of metro Atlanta (we do exist!). Use Super Lawyers to try and find names of folks to reach out to about presenting a topic. The presenters seem to always be the same roster of folks from Metro Atlanta and/or are in the "good ol' boy (and girl)" system within the domestic bar, which grows tiresome.

more events throughout the state or virtually.

Focusing on topics/issues that are more pertinent to smaller areas and smaller firms.

Recommendations from other attorneys. People aren't likely to suggest themselves, so have others nominate them, and reach out to them to gauge interest.

Get recommendations and contact them directly. Offer speaker incentives

Solicit/recruit from the volunteer/specialty bar organizations

Don't care about diversity of people, just topics and having people knowledgeable on those topics

Maybe reach out to judges in all circuits and ask them who the good family law attorneys are and why

I do not care for diversity. Just
have good speakers.

Emails, referrals, pay presenters CLE fee, ask newer attorneys

Recruit through other practice groups and group specific bar organizations.

Phone calls

Ask a wide variety of attorneys (in the categories above) who they would like to hear present.

Looking into the YLD, Judge's conference, or recent opinions that have come out for the attorneys or the Judge(s) to discuss.

Linkedin

Invitation via a general blast

I like what you did this year with inviting everyone who wants to volunteer. While I want to see diverse ages, I don't think anyone with less than 5 years of experience should be presenting. I also think that large geographical segments are ignored, like Gwinnett; there are almost never any speakers from Gwinnett, even though it is the second largest county in the State. Having more topics that would interest a larger group of people would be helpful, along with breakout sessions. Firm owners attend, and they would like to hear materials that practicing attorneys do not. Two optional breakout sessions where people choose what they attend would be helpful. One could be designed for practicing attorneys with less than 5 years of experience, and the other could be for owners and solo practitioners.

recruit people from outside the family law section.

Stonewall Bar Association is a great resource for LGBTQ+ and affirming legal professionals

Free attendance and room

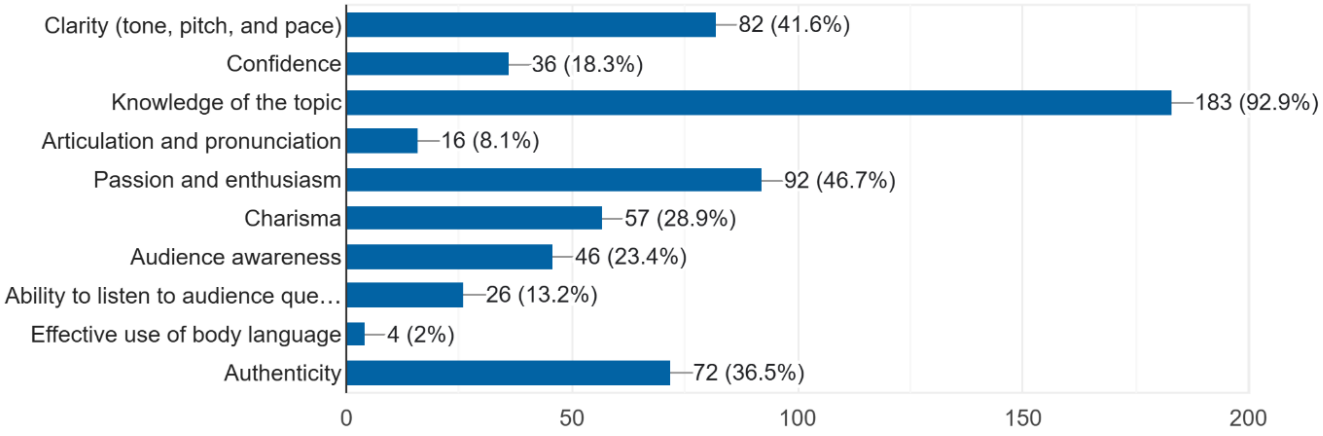
Seek speakers from different areas of the state that can address regional issues. Hear from lawyers of all backgrounds. Don't eliminate speakers simply because they have less than 15 years of experience, they may have insightful information.

Planners have done well previously. Keep it going.

Honestly, please stick with experienced presenters. It'll be fine. You've done great.

Which qualities are most important to you in our institute presenters? (Choose three (3)

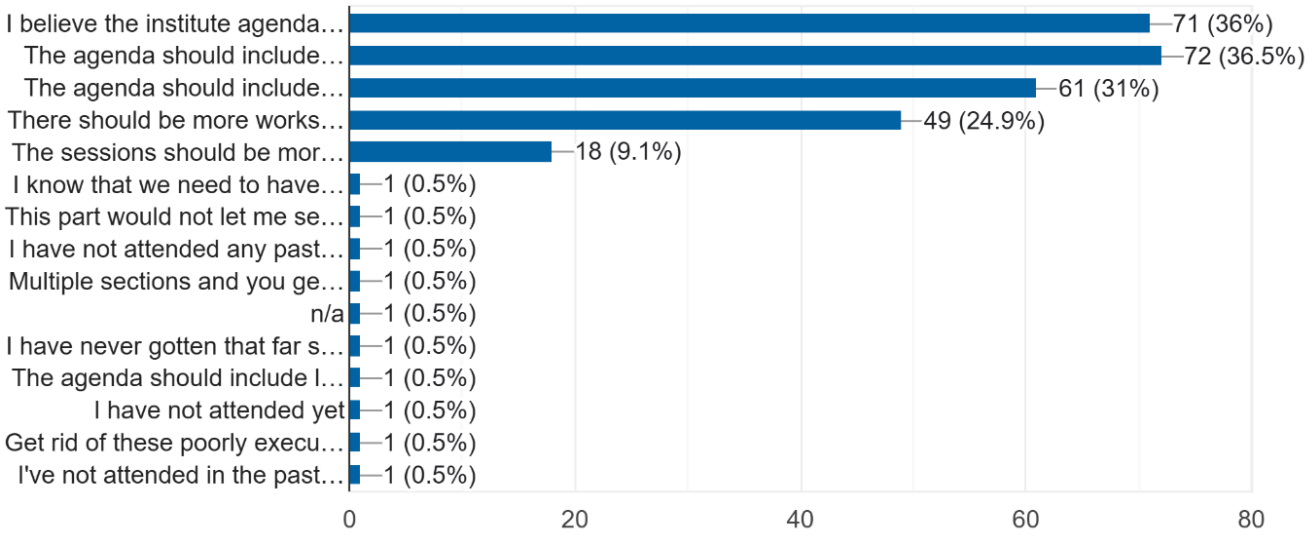
197 responses



V. AGENDA

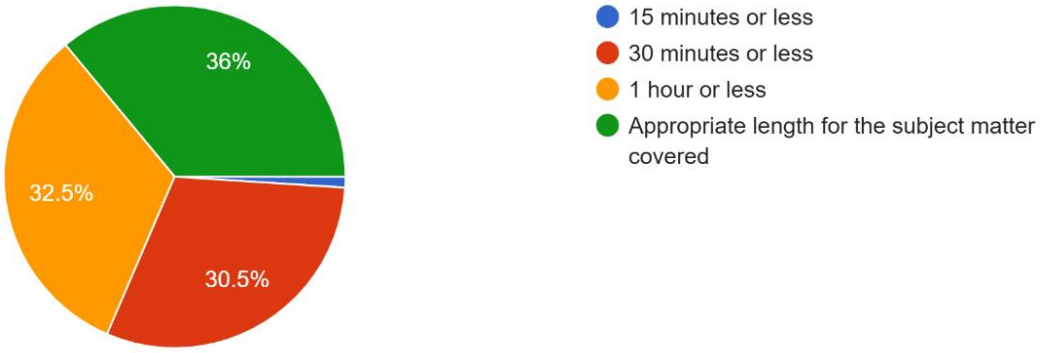
Which statements best describes your view of the past institute agendas? (Check all that apply)

197 responses



Do you prefer presentations that are:

197 responses



What topics would you appreciate learning more about?

197 responses

N/A

Evidence

AI; Practice management; work/life balance; marketing/client acquisition

Navigating high conflict custody issues pending litigation

AI and use of it for practice and business

Updates in the law; new cases

Spousal Support

Investigating the facts in a cost-effective manner (Incl. how to avoid spending huge amounts of client $$ on letters arguing about discovery).

Parenting Time Adjustment to Child Support

Complex asset division and tax consequences

Technology and the law

Child support calculations & changes to the guidelines effective 1/1/2026

Equitable Division, High Income CS Deviations, Managing Judicial Temperament

adoption, intersection between superior and juvenile/probate courts, property distribution, military divorces

interviewing children in custody cases

Case law updates and legislative updates

The business of running a law firm; types of insurance we need for running a law firm and why; changes in the tax rules that affect our clients; corporations refresher (differences between LLC, LLP, Corp, S-Corp, etc.); pension pitfalls - things to be aware of when trying to divide pensions (teacher, military, etc.)

Separate property issues and business equitable division.

Taxes, AI, premarital retirement valuations especially pensions, custody focused topics e.g., how borderline parenting disorder impacts parenting. ALSO FAMILY LAWYERS DO NOT KNOW THE RULES OF EVIDENCE.

trial tactics

Stocks and stock options and language to ensure your client is protected with regard to those....basics of tax implications in family law....

Equitable Caregiver developments

more nuanced subjects like business evaluations, forensic accounting, things that practitioners use in our practice or could be using in our practice more often

Practical tips for daily practice like working with difficult clients, effective discovery and mediation prep

Prenuptial agreements, step-parent adoption, TRS/GRS valuations and divisions.

Current trends

not sure

non-traditional and underexplored topics like the intersectionality of family law and elder law, where elder divorce impacts social security, pensions, long-term care, and estate planning, etc.

I liked the year when we did an advanced and a basic track for some of FLI.

What objections are actually proper in discovery, as opposed to what people are using;

Workshops on practical topics- how to use technology tools to become more efficient; marketing/business management; Bring your file; examination/cross examination; financial discovery tools and techniques to aid in division, alimony, and child support in more complex cases; evidence presentation and objections

emerging case law

Firm management / HR

tech, business of law,

Trending legislation and case law

Issues with calculation of gross income for child support; i.e. unreliable sources of income, willful unemployment; self-employment adjustments; use of assets for support of family, etc.

It would be helpful to have some more topics on practice management as opposed to just family law topics. I recently attended the Solo/Small Firm Institute, and there was a big focus on AI and how better to use technology to increase efficiency and enhance marketing within your practice, which I found very useful.

Evidence, Social media, obtaining discovery when other side not cooperative

Judge Panels

New Child Support calculations

New Child Support parenting time calculation, high conflict divorces, adoption issues

evolving/new laws, review/reminders of good practice (written advocacy and courtroom advocacy), review of various circuit practice preferences

Updates on New Case law and what is the practical application? New Child Support adjustment for parenting time and what is the practical application, Family Law Practical Application Tips by County and by Judge and new changes from a Family Lawyers perspective not just a Judge's panel; Family Law Marketing and Practice, The new changes implemented to Uniform Superior Court Rules and practical application in family law practice, Speaker on New Legal software and programs for attorneys and how it can benefit your practice and streamline the same/ differences between the programs, Tips and tricks on Drafting Family Law Pleadings presently and changes, Efilings, forms requirements vary by county, streamline the same, identify the differences, tips, tricks and solutions for the Family Law Practitioner to effectively and quickly efile and common practices by County. Family Law Technology and Marketing. Chat GPT and AL for Family Lawyers, a benefit or a detriment? Electronic Discovery Tips and tricks, how to quickly make same available to opposing counsel and use in Court during trial and hearings- In person vs. Virtual, what to do and not to do. There needs to be more topics and shorter times frames for each presentation and on point. It needs to be more of a practical application. Family Lawyers know and can read cases and statutes, but it is the practical application that counts. Evidence and the practical application especially now where everything is in social media, text messages and apps and what are the best practices to obtain and subpoena the same. As a Family Lawyer, how to navigate and get around the road blocks in obtaining discovery for your case and in the presentation of the evidence. What are the common pitfalls or oversights and how to avoid the same quickly and efficiently to move your case forward in the right direction.

trial practice and discovery

Specific sub speciality fields in family law

What to do when your client has a mental health issue; setting boundaries with clients; better use of discovery;

n/a

New developments

New trends and case law updates.

Complex / advancing issues

Handling cases involving same sex partners and custody cases with the same.

Caselaw updates; trial practice

Family law practice outside of metro areas, focus on everyday divorce - mom and dad, 2 kids and no money to pay the bills

valuing assets

financial

None

practical matters

Immigration consequences in family law matters

Guardian Ad Litem topics

Proving adultery, pursuing motions to compel, adoption, IVF issues

current issues on FL

Client selection, avoiding burnout, litigator professionalism, cyber issues

Parenting time adjustment; artificial intelligence in mediation and litigation - I also think that the judges' panels have been over saturating the Institute for awhile - I know that we use this as a way to get them there comped, but, it seems like the same thing over and over year to year.

Complex custody issues, trust and estates

Business calculations in child support

Child custody proceedings

an advanced nuts & bolts presentation

Pre-marital real property that becomes issue for division of marital property; Deviations in child support cases; award of attorney's fees

Marital v. Non-marital contributions

Child support worksheet

How to use AI in small firms. What should be included in contracts.

HOW to use AI as an efficient practice resource, not just the dangers and liabilities of using it.

Trusts and Judge's perspective on issues.

Adoption, breakout groups between beginner and advanced, jury trials.

Things more on the firm management side (AI, younger generation employees, etc.)

Advanced legal topics

Juvenile Law and the intersection of Family Law

Not sure

Caselaw and statute updates

Nothing that I can think of

AI, trial practice techniques, executive compensation, uniform statutes

Selling real estate

Trusts for special needs children

Use of AI

evidence presentation in family law cases

Practice Mgmt; AI innovations for both substantive and practical practice use

current changes or anticipated legislative chandes

A panel of North Georgia judges (selfishly); strategies for dealing with the onslaught of mostly fathers now asking for 50-50 parenting time due to the new PT deviation; equitable caregiver act and issues with it; real estate topics connected to family law (i.e. assumption v. refinance of mortgage, creative ideas of "what to do with the house" especially given the economy, high interest rates, etc.); creative solutions for child support contempt; how to ethically and efficiently and realistically use AI within our practice (and I don't mean a lecture from the JQC about why we shouldn't be using AI, because it's here and we're all going to be left behind if we don't use it, the JQC included...); what to do in situations where supervised parenting time is warranted but you live in an area with ZERO supervised parenting centers or services

High Asset Divorce Casea

new laws, judge impressions

Guardians ad litem and custody disputes; updates in family law, and judges' (throughout the state) views on hearings,

appeals

Office technology

New child support changes,

military law as it relates to divorce (BAH, child support, retirement/pension, etc.)

Practice management

attorney liens; psychological evaluations; business valuations

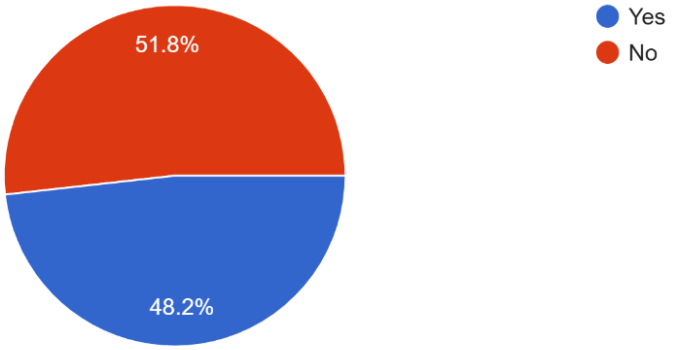
The business side of running a family law firm

client management

VI. SPONSORSHIP

Would you appreciate a brief presentation of products and services offered by some of our sponsors? (ex: a "Sponsor Spotlight")

197 responses



What would it take for you to become a sponsor of the institute?

197 responses

N/A

n/a

Not sure

N/a

Already am

I am

na

Not at this time

I already sponsor

We have been a sponsor

Notice and entry level sponsorship opportunities

Cost

more time and money

I already am a sponsor

Not held during a holiday family weekend.

Here is one idea: Tie sponsorship to production/distribution of something that will go someone other than other family lawyers, who are my competitors. For instance, allow sponsors to contribute to a magazine, CLE materials reprint, or something else that includes the sponsors' work product and is distributed to lawyers from a different section who are likely to have some clients who need our services (e.g., Estate planning??) or to an organization of therapists.

Less expensive sponsorship opportunities.

N/A - I work for the State of Georgia.

Paying clients. :)

a lot more disposable income than i have

Unable to because of position

I do not believe I would get any value out of sponsoring the institute. I have a very small firm.

we already are and we do it out of obligation; it is ridiculous to sponsor given how much we have to pay to attend and how much the rooms cost, how much food costs, etc.

Lower levels with greater benefits

not interested

A $250-500 option (if there isn't already).

we usually sponsor on some level as a firm

If my firm paid for my attendance!

Lower price

not possible

I have sponsored FLI in the past at high amounts. Attorneys in my Firm submitted suggested topics they were willing to speak on and received absolutely no response. I'm not suggesting that one is tied to the other, but it leaves a bitte taste to get no response at all while other Firms seem to have 4 and 5 attorneys from the same Firm given the opportunity.

more benefits

?

More perks at the institute (invite to judge's dinner, etc.)

Attractive benefits, feeling more included

I am a sponsor

Firm already is

I don't really see a benefit to being a sponsor. I do think it might be nice to have a service-oriented activity offered as an extracurricular option and could get behind being a sponsor of something like that. For instance, I serve on the Board of Savannah's food bank, Second Harvest, and when the State Bar has held their midyear meeting in Savannah, they have often sent a group to Second Harvest to pack boxes or sort food. Everyone gets a t-shirt for their participation, and it provides a networking opportunity that isn't focused on alcohol.

Presentations that are engaging, live band, good dinner food (not finger food), plenty of seating space, and limit the number of hours each day.

Know what the money is being spent on.

lower cost

A job outside the government

not my decision

Low sponsor minimums

Eventually. Just joined.

Recognition

You need to add the same to the registration form and description as to what your donation or sponsorship will provide for the specific program and Family Law Section. How much would you like to raise and why? What is the goal? How can you help the Family Law Section by your contribution and how does it support the Family Law Section as a whole? Also, provide a benefit or separate reception or networking event for sponsors that contribute xx dollars and more than just their name on the board with diamond levels or flashed on a screen in the convention center. You have to make people want to contribute to the Family Law Section and be part of the same even if it is a nominal amount, the more people that contribute, the more money vs. the same people or large firms listed on your black board and same speakers every year, the program and routine is old and not new and not practical. The Family Law Seminar, needs to be at different locations and different places, with a new and improved program, and not at the same place almost every year, and same routine. If the sessions are shorter get more attention, or if not interested as doesn't apply to your practice, you can leave and come back after 15 minutes. It needs to be shorter sessions and not the same routine, not the same place, and not the same speakers.

Financial ability

As I am a family law attorney, I don't see the value in sponsoring

not sure.

I already am

I don't earn enough.

make me a speaker

Not sure.

An affordable program and venue

I am unable financially

More experience on my behalf

A new job

I am not sure.

I won't

much lower pricing

I believe our firm continues to be a sponsor as it has in the past.

No thanks

We sponsor already

Already a sponsor.

Lower levels of sponsorship. Maybe co-sponsors for the big events.

value for the cost

A great year practicing law!

Not a decision for me to make.

Unsure

people to pay their bills so I could donate more time and money

I have sponsored before and would consider sponsoring again.

Honestly depends on level of sponsorship and cost/benefit. Being a family lawyer at a family law seminar would not equate to business benefit.

Nothing, as it's out of the price range of most solo's I know (myself included) and it wouldn't translate to a smart use of marketing dollars.

I need to know the benefits

Free spa services, pre planning event two days prior to the start of the CLE, post event wrap up two days after the CLE. Guaranteed placement in a speaker panel.

insufficient funds- I'm semi-retired.

Free registration

More available office funds

Firm's name displayed

I don't know off the top of my head.

More revenue 😁

Not a financial option right now.

Just ask.

I'm ready to sponsor at a beginner level. - Deidre'

no interest in being a sponsor

Interview With Judge Kimberly M. Esmond Adams

By Tera Reese-Beisbier and Irena Chernova***

Nothing stirs up the fervor of the Family Law Bar like the buzz of a new Judge rotating onto the Family Law Bench in Fulton County Superior Court. Every transition tends to be accompanied by a bevy of rumors, fueled by a proverbial game of 'telephone' inevitably leading to an established understanding of how that new Judge operates by way of policy, procedure, and as head of the courtroom. What is the issue with this particular progression of information? Well, if we were litigating the issue, the typical objection would be that it's clearly hearsay.

Fortunately, in the case of Fulton County's newest addition to the Family Law Bench, two members of the bar were privy to information via direct testimonial evidence.

In May 2025, Irena Chernova and I (Tera Reese-Beisbier) had the pleasure of trying a three-day final divorce trial before Judge Kimberly Esmond Adams, a Superior Court Judge in Fulton County. For the sake of full transparency, before arriving at this particular step of litigation, we had filed a Motion for Continuance and a Consent Motion for Binding Arbitration, submitting a proposed Order to the Court for consideration. We were called in for trial the Wednesday before the Monday start date, every word-of-mouth fueled rumor swirling in our minds.

Fortunately, these rumors were quickly dispelled. For example, when we asked Judge Adams to sign our proposed Order, she took the time to explain to us and our clients that when she holds a calendar call (which occurred on April 22), her goal is to finish all cases within six to eight weeks, and our arbitration date fell outside of this time frame. This was the first sign that our understanding of the Judge's methodology as a collective might be quite different than the information circulating among the Family Law Bar. The second sign? At the start of the trial, Irena inquired about her Leave of Absence, which was set to begin on Thursday (we had announced a four-day final trial). Judge Adams matter-of-factly stated that since the Leave was filed prior to the April calendar call without any objection, we would proceed as far as possible through Wednesday and resume after her Leave was complete. (Rumor number two was dispelled.)

After the trial concluded, Irena and I decided to help our fellow bar members get to know Judge Adams better. We requested an interview, and she graciously obliged.

The result is this article in which we hope to fully dispel any other inaccurate information about our newest Family Law Bench Judge; replacing it with a proper foundation of evidence on what to really expect when your family law case lands on her docket.

The Rumors: Fact or Fiction?

Rumor #1: Judge Adams will keep you on an indefinite trial calendar that could last a year or more!

Verdict: False! Judge Adams aims to resolve cases within six to eight weeks of being called.

Rumor #2: Judge Adams doesn't honor Leaves of Absence.

Verdict: False! If filed correctly and in accordance with the law, she will honor them. (She values vacations too and isn't interested in ruining yours.)

What We Learned During Litigation (we won't be admitting whether it was by trial and error!)

Judge Adams is a jurist who values the formality and history of the legal profession. She expects attorneys to follow proper courtroom decorum, and leads by example. Knowing evidence and procedure is essential when trying a case before her because, in my 27 years of practice, I've never encountered a judge who knows them better.

She allows attorneys to present their cases without frequent interruptions; but when she does ask you to "move on," it's warranted. Addressing her as "Judge" or "Your Honor" is important, and her explanation for why will make you think twice about calling any judge "Ma'am" or "Sir." Tradition and respect matter in her courtroom, so come prepared for both.

At the time of writing this article, Irena and I have not received a ruling on our case. So, please don't think we're under a spell because she ruled in our favor. What matters most in family law is that our clients felt heard—and they did.

Courtroom Etiquette: The Myths That Are True

During the case, Irena and I kept our drinks on the floor, as we'd heard this was important to Judge Adams. Her Court Reporter also advised us to avoid bringing "clicky" pens into the courtroom. Both of these rumors turned out to be true. Drinks (water and coffee only) are allowed but must be covered and kept off surfaces. And yes, leave your "clicky" pens at home—you'll inevitably click them and make noise.

The Interview (we won't even make you pay us for the transcript):

Q: Do you mind sharing a bit about yourself—your family, hobbies, etc.?

A: Not at all. I'm married and have an adult son. I'm part of a close, extended family. I have two brothers—one played football at the University of Tennessee when they won the National Championship. My nephew is also a talented football player and won the state championship, and my niece won State for volleyball. We're an athletic, sports-oriented family, and I love supporting them at their events.

My hobbies include spending time at the lake—it's my happy place—and traveling, especially internationally. I also love to sing and perform with my church choir and praise team. Additionally, I enjoy spending time with my family and friends, including my sorority sisters of Alpha Kappa Alpha. And I love college football, especially the SEC!

Q: Where is your favorite place you've traveled?

A: It's hard to choose, but I've traveled extensively in Africa and loved it all. If I had to pick one, I'd say Tanzania and Morocco. I also really enjoyed the Maldives.

Q: What has been the hardest part of transitioning from the civil/criminal bench to the family law bench?

A: The families involved in these cases need relief—and fast. I like to move cases along for the sake of the children, who shouldn't be stuck in the middle of adult conflicts. This is different from civil and criminal cases, where the impact on the children's home life isn't usually a concern.

Q: What timeline do you prefer for family law cases?

A: If temporary relief is needed, I expect litigants to request it by the 60-day conference. After that, unless it's an emergency, it's often too close to the final hearing to justify a temporary hearing. Judicial economy is important to me.

Q: What are your thoughts on Guardians Ad Litem (GALs) and custody evaluations?

A: GALs provide a valuable service, but I'm often concerned about the costs, especially in cases that often need them the most. I recently had a pro bono GAL who did an outstanding job. I just ask that GALs be timely and prepared for trial. As for custody evaluators, I haven't worked with many, but I would think their expertise would be helpful in custody cases.

Q: What do you expect at the 30- and 60-day conferences?

A: Discovery exchanges should be completed by the 30-day conference, or you should present a plan for completing discovery. I don't want these conferences reset. I want cases to move forward and stay on track.

Q: How does your calendar call work?

A: Cases on my trial calendar should be ready for trial. I prioritize cases by age and aim to resolve them within six to eight weeks barring extraordinary circumstances and scheduling conflicts, including leaves of absence. While I generally call cases in order as they appear on the Trial Calendar, I may adjust for Leaves of Absence or court conflicts.

Q: What should attorneys do about subpoenas when they don't know when their case will be called?

A: You can list the calendar call date or the first day of trials as the date, but attorneys should inform witnesses that the case is on call for at least the next six weeks or until it is resolved. While the Trial Calendar notice specifies four-hour call, the Court always endeavors to provide as much notice as possible. Alternatively, depositions can be taken to preserve evidence and avoid inconvenience, though this may be costlier and not an option in some instances.

Q: What do you expect of attorneys when appearing before you?

A: First and foremost, I expect attorneys to be prepared and to ensure compliance with the Court's pretrial instructions. I value the formality of the institution and expect everyone to respect it. I prefer to be addressed as "Judge" or "Your Honor" and ask that no one refer to me as "Ma'am." Similarly, I expect my staff to be treated with respect, using "Mr." or "Ms." when addressing them.

Attorneys should know their evidence and objections. I do not allow speaking objections; and, while I often have to remind attorneys of this, most listen and adapt quickly. My advice? Be the attorney who listens and catches on.

I take extensive notes during hearings and often highlight

them throughout the proceeding. There's no need to repeat evidence or yourself — I heard it the first time. And, if I didn't, I will let you know. Daily, I strive to create a division with fairness, uniformity, and consistency as the hallmarks. My most important advice, still, is to be prepared and know your case inside and out.

Q: Are you planning to issue a standing order to outline your expectations for attorneys and litigants?

A: We've drafted a very detailed standing order that contains a lot of information. However, I've hesitated to release it because I wasn't sure if it would be read or appreciated. Do you think attorneys would find it helpful?

Irena/Tera: We believe it's always helpful to have as much information as possible about the Court's processes and expectations. Even if it's lengthy, those who don't follow it will stand out—and you'll know who they are. (We shared a laugh with the Judge at this point.)

Irena and I hope this article gives you a better understanding of Judge Adams. We enjoyed our time with her and hope you will too – and that we all pause the next time we allow unfounded information to fuel stress-inducing rumors regarding our fellow colleagues in what is an already difficult profession without the additional challenges.

**Tera Reese-Beisbier is the owner and a partner (with Kem Eyo) of Reese-Beisbier & Associates, a Family Law Firm. Tera has practiced family law in and around metro-Atlanta since 1998. Tera is also a registered civil and family law mediator with the Georgia Office of Dispute Resolution.*

Tera was a board member-at-large of the Family Law Section of the State Bar's Executive Committee from August 2011 through May 2017. She is a member of the Family Law Section of the Bar, a member of the Forsyth County Bar Association, and a member of the North Fulton and Forsyth County Chambers of Commerce. Tera has also served on the board of and been active with local non-profit organizations.

Tera works hard to balance her career with her family life. She has been married to Brad Beisbier for almost 28 years and they have three children.

*** Irena Chernova is a Senior Attorney at Pepitone Family Law in Lawrenceville, GA. With over a decade of experience solely in family law, Irena has a deep knowledge of complex legal matters, including divorce, contempt, family violence, modification, and adoption. A zealous advocate for her clients' interests, Irena prioritizes educating her clients throughout the legal process in an effort to help them understand all available options and make the most informed decisions.*

Born in St. Petersburg, Russia, Irena grew up in Georgia and holds strong ties to the area through her experiences and education, including her undergraduate alma mater, the University of Georgia.

Special Needs Trust

By Ruthann P. Lacey, Certified Elder Law Attorney*

With one in every twenty-six American families reporting raising a child with a disability,[1] interest in and demand for Special Needs Trusts is on the rise. No longer a novel concept reserved just for special situations, today's Family Law, Elder Law, Special Needs, and Estate Planning attorneys regularly encounter situations in which good planning centered around an individual with a disability is essential.

As public benefit eligibility law becomes more complicated, it should come as no surprise that legal planning tools are evolving to enable children and adults with disabilities to more easily become eligible for public benefits while also providing for at least partial reimbursement to the government for some of these benefits. Special Needs Trusts ("SNTs," also sometimes known as Supplemental Needs Trusts) are among the legal planning tools that fill this need. In order to understand the full benefit of SNTs, it is necessary to gain a fundamental understanding of public benefits eligibility rules.

While there are many government benefit programs that may be available to a person with a disability, depending on his particular situation, there are four principal federally funded programs that provide benefits for individuals who are aged, blind, or disabled. They can best be understood as "insurance" programs and "welfare" programs.

"Insurance" Programs

The two "insurance" programs are Social Security Disability Insurance (SSDI) and Medicare. These benefits are not affected by the client's financial status. A person with a disability[2] is entitled to SSDI benefits if he is under full retirement age, has at least 20 credits in the 40-quarter period ending with the quarter in which he became disabled (the 20/40 rule), files an application for benefits, and establishes a waiting period of five consecutive months beginning with a month in which he was both insured and disabled.

Benefits may also be available based on the record of a living (Social Security Dependent's Benefits) or deceased (Social Security Survivors' Benefits) parent. Children who became disabled before age 22 and have remained continuously disabled may draw benefits on the record of a disabled, deceased, or retired parent as long as the child is disabled and unmarried.

Medicare is a national health insurance program that guarantees access to health insurance for Americans ages 65 and older and younger people with disabilities. Created in 1965 under Title XVIII of the Social Security Act for the elderly, it has since been expanded to include younger people who receive SSDI benefits (after two years of SSDI eligibility) and those who have end-stage renal disease or Lou Gehrig's disease. Medicare has four parts: A, B, C, and D. Traditional Medicare includes Part A (inpatient hospital, skilled nursing facility, home health, and hospice care) and Part B (physician, outpatient, home health, and preventive services). Part C (Medicare Advantage) allows Medicare enrollees to participate in private health plans that are required to cover all the Part A and B benefits as an alternative to traditional Medicare. In 2003, Congress created Part D, which covers outpatient prescription drugs – also through private plans.

"Welfare" Programs: SSI Eligibility Criteria

The very similarly named Supplemental Security Income ("SSI") and Medicaid programs, as well as Temporary Aid to Needy Families ("TANF," formerly "AFDC") and Food Stamps, are "welfare" programs, and so place strict limits on eligibility based on the financial status of the applicant.

SSI is a federal welfare program established under Title XVI of the Social Security Act[3] to provide cash assistance to financially needy individuals who are aged,[4] blind,[5] or disabled, to assure such individuals a minimum level of income ($967 per month in 2025; more in states that add a state supplement). An individual is considered financially needy if he has "countable resources" of no more than $2,000 (or $3,000 for a married couple),[6] and has limited income.

A disabled adult is a person age eighteen or older who is unable to engage in substantial gainful activity ("SGA") due to a medically determinable mental or physical impairment which has lasted, or is expected to last, at least twelve months or result in death.[7] "Gainful activity" is activity for remuneration or profit, or intended for profit whether or not it is realized,[8] and SGA involves the performance of significant physical or mental duties which are productive in nature. The primary consideration in determining whether work activity is SGA is the amount of gross monthly wages which are paid for the work. In general, an employee with a disability who earns more than $1,620 per month in gross wages (in 2025) will be considered to be engaging in SGA. For blind employees, the 2025 SGA threshold is $2,700 per month. The presumption of SGA can be rebutted through several exceptions.[9]

Resources

As mentioned above, an individual is considered financially needy if he has "countable resources" of no more than $2,000.[10] Resource determinations for SSI eligibility purposes are based on the resources an individual has at the first moment of the month for which the eligibility determination is made.[11] In determining resource eligibility for an SSI applicant, is it important to identify which resources are countable and which are excluded.

A "resource" is cash on hand, other personal property, or real property that an individual owns or has an ownership interest in; has the legal right, authority or power to dispose of or to liquidate and convert to cash; and is not legally restricted from using for support

and maintenance.[12] Examples of countable resources include cash on hand that is not current month's income; money in checking or savings accounts that is not current month's income; stocks and bonds; certificates of deposit; U.S. savings bonds; land or property on which the person does not reside; life insurance policies with a total face value exceeding $1,500; and certain trusts created to benefit the recipient.

Excluded (non-countable) resources include the home in which the person lives and the contiguous land on which it stands;[13] one car, regardless of value, if it is used for the transportation of the individual or a member of the individual's household;[14] household goods which are found in or near the home and used on a regular basis or needed by the household for maintenance, use and occupancy of the premises as a home;[15] personal effects which are ordinarily worn or carried by the individual or which have an intimate relationship to the individual (items such as jewelry which were acquired or are held for their value are not exempt, as the Social Security Administration ("SSA") does not consider these to be personal effects);[16] back-payments of SSI benefits for nine months from the date of receipt;[17] life insurance policies with a face value of $1,500 or burial funds of $1,500;[18] burial plots or spaces;[19] property used for self-support;[20] the proceeds from the sale of a home, if they are used within three months to purchase another primary residence;[21] resources necessary to fulfill a "Plan to Achieve Self Support" (PASS);[22] real property, for up to nine months, pending efforts to sell;[23] real property, the sale of which would cause undue hardship;[24] any grant, scholarship, fellowship, or gift for the cost of tuition or fees, for nine months;[25] and possibly any resource which is "inaccessible" to the applicant.[26]

In making an eligibility determination for SSI, the SSA considers not only resources belonging to the applicant, but also resources which belong to others who reside with or in a close relationship with the applicant. Under its "deeming" rules, the SSA "deems" or treats the countable resources of SSI ineligible parents, spouses, or alien sponsors, whether or not the sponsor lives with the alien SSI recipient, as if they were available to the SSI recipient, even if the resources are not actually available.[27]

The usual resource exclusions which have been discussed above apply in determining countable resources for deeming purposes. Additionally, funds in an individual retirement account or other work-related pension plan of an SSI ineligible parent or spouse are excluded from countable resources for parent-to-child and spouse-to-spouse deeming purposes.[28]

Income

The SSA defines income as "anything you receive in cash or in kind that you can use to meet your needs for food and shelter."[29] To be eligible for SSI benefits in 2025, an individual's countable monthly income cannot exceed $967 (or $1,450 for a couple). However, because many kinds of income are not counted in determining SSI eligibility, an individual may be eligible for SSI even though his income is somewhat higher.

Countable income reduces the maximum monthly benefit amount to which an SSI recipient would otherwise be entitled. If the amount of the income is large enough, countable income can reduce the benefit amount to $0, making the individual financially ineligible for SSI.[30]

There are several types of income to be considered in determining SSI eligibility. Unearned income consists of income from non-work sources, including alimony,[31] child support,[32] pensions, annuities, rents, interest from bank accounts, Social Security benefits, Veterans Administration benefits, worker's compensation benefits, unemployment benefits, prizes, awards, gifts, and inheritances.[33] Earned income is income from work, including wages, salary, tips, commissions and bonuses.[34] Income is counted on a monthly basis and is income in the month of receipt.[35] If retained, it is counted as a resource in the following month.[36]

Certain types of income received by an SSI applicant or recipient are excluded in determining financial eligibility for SSI benefits. Examples of excluded income include income tax refunds; proceeds of a loan; bills paid by others directly to the vendor for goods or services that are not food or shelter; weatherization assistance; grant, scholarship, or fellowship funds used for paying necessary education expenses; one-third of child support paid by an absent parent; assistance based on need from a state or local government, including rent subsidies; in-kind income based on need provided by nonprofit organizations; impairment-related work expenses; domestic commercial airline tickets received as gifts, as long as they are not cashed-in; certain income earned by a blind or disabled student regularly

attending school;[37] food stamps; interest and dividend income earned on countable resources;[38] $30 per quarter of infrequent, irregular earned income; and $60 per quarter of infrequent, irregular unearned income.[39]

After applying all of the appropriate income exclusions, the SSA will apply the relevant income deductions to determine the individual's countable monthly income for SSI financial eligibility purposes. Countable monthly income is then deducted from the maximum benefit amount to which the individual is entitled. This result is the monthly SSI benefit payable to the individual.

While the concepts of unearned and earned income may be applicable outside the realm of public benefits, a third category – in-kind income – is a concept that is unique to the world of public benefits. When an SSI recipient receives food or shelter for free or at a reduced charge (such as living with his parents or having his rent paid by a special needs trust), the SSA counts the value of that food or shelter as in-kind income.[40] This in-kind income is known as in-kind support and maintenance ("ISM"), and is considered by the SSA when determining an individual's monthly SSI award. Two rules are used to determine the amount of ISM that must be counted: the "One-Third Reduction" rule and the "Presumed Maximum Value" rule.

The One-Third Reduction rule applies when an SSI recipient lives in the household of a person who supplies both food and shelter without charge. Under this scenario, the SSI benefit will be reduced by one-third of the federal benefit rate ("FBR").[41] For 2025, the FBR is $967, meaning that the decrease in benefits for this living situation would be $322.

The Presumed Maximum Value ("PMV") rule applies any time that the One-Third Reduction rule does not. Under this scenario, SSA reduces the SSI recipient's benefit by the actual value of the ISM or one-third of the FBR – whichever is less.[42]

As is the case with resources as discussed above, in certain circumstances, the SSA "deems" or treats another person's income as the unearned income of an SSI recipient. The deemed income is considered available to the SSI recipient, whether or not it is actually available. The deemed income will be deducted from the maximum benefit to which the SSI recipient is entitled.[43] Income deeming applies only in the following situations: from an SSI-ineligible spouse to an SSI-recipient spouse in the same household; from an SSI-ineligible parent to an SSI-eligible child in the same household; from a sponsor to an SSI-eligible alien; and from an SSI-ineligible essential person.[44]

"Welfare" Programs: Medicaid Eligibility Criteria

Medicaid is a joint program between the state and federal governments that pays for necessary health care expenses of eligible individuals.[45] In many states, eligibility for SSI automatically entitles the SSI recipient to Medicaid benefits.[46] In fact, in many situations it is the Medicaid benefit that is most valuable to the SSI recipient.

While Congress establishes the Medicaid eligibility criteria, each state applies that criteria as it sees fit. There are a number of different Medicaid programs in each state, each of which has specific financial eligibility criteria. The general criteria is that one must be aged, blind, or disabled;[47] have no more than $2,000 in countable resources; and may retain exempt resources including the home place, an automobile, certain life insurance, and limited funds designated for funeral expenses. If the Medicaid applicant is married, the limits are increased somewhat, depending on the criteria of the specific Medicaid program.

Recipients of SSDI benefits who are eligible for Medicare coverage may also need to turn to the means-tested Medicaid program to pay for care for which Medicare does not pay. Long-term care in a nursing facility, for instance, is not covered by Medicare and many who need extended care in a nursing facility will have to rely on Medicaid at some point to pay for that care.

Minor children with disabilities who are living in the community with their parents may become eligible for Medicaid benefits under the Katie Beckett Deeming Waiver (under which the income and resources of the parents are not deemed to the child for eligibility purposes). Benefits available under this waiver program assist in paying for health care and therapy costs for the child with a disability.

Why Plan to Maintain Public Benefits Eligibility?

When a child or adult who is presently eligible for SSI or Medicaid benefits receives alimony, child support, an inheritance, a personal injury settlement, or another windfall, these resources will be considered by SSI and Medicaid to be "countable resources."[48] If the value exceeds the $2,000 resource limit, this windfall will

render the individual ineligible for further benefits. Prudent planning to prolong the benefit of these funds may be appropriate when the individual has needs beyond essential medical care, such that it would be to his benefit to preserve these resources to purchase goods and services not covered by Medicaid.

The objective, however, is not to preserve the funds indefinitely while the individual with a disability relies on public benefits to pay for living and medical expenses. Rather, good planning allows the windfall to be invested to generate income, and then spent carefully over a longer period of time – ideally for the individual's lifetime – for the sole benefit of the individual. Obviously, this is of particular importance for a child who may have a normal life expectancy, as it may be impossible for the person to obtain private health insurance due to pre-existing issues and exorbitant costs. If proper planning is not done and SSI and Medicaid benefits are lost, the funds may be spent very quickly for medical care and living expenses and the person will be returned to poverty status before he again becomes eligible for benefits. This draws attention to the importance of ensuring that both children and adults have lifetime access to a broad level of healthcare and personal maintenance so that they might experience a better quality of life and a longer period of better and more stable health than they otherwise might. This also ultimately benefits society in that as these recipients of government benefits experience better and more stable health, they may become less dependent on these same government programs.

Further, not every such individual requires planning to extend the advantage of the windfall. If it can be determined that the anticipated funds will be more than sufficient to provide for the individual with a disability for the duration of his lifetime, planning to maintain SSI or Medicaid eligibility may not be necessary or appropriate.

Transfer Rules

So, what can legally be done with the "excess" resources? There are several options. They can be spent to purchase exempt resources that will benefit the individual, or they might be gifted to another individual with the expectation that the recipient will hold the assets for the benefit of the donor. However, if a gift is made, then under both the SSI and the Medicaid rules a transfer penalty will be imposed.[49] This "penalty" is a period of time during which the donor cannot become eligible for SSI or Medicaid benefits because he made this gift.

For SSI purposes,[50] a transfer made after December 13, 1999 will result in a penalty period of up to three years.[51] This ineligibility period is determined by dividing the total value of the gift by the maximum monthly SSI benefit effective on the date of application,[52] but the maximum penalty period is 36 months from the date of the transfer.[53]

The Medicaid rules provide for a five year look-back,[54] meaning that any transfer made in the five-year window prior to filing an application for Medicaid benefits will be penalized and result in a period of ineligibility for the applicant. The length of this penalty period is related to the value of the asset that was transferred, and can be extended if a Medicaid application is filed before the penalty period has elapsed.

Thus, if an individual makes a gift of his windfall, he will become ineligible for both SSI and Medicaid benefits for a time, during which time it will be necessary for him to pay for all of his living and medical expenses from his own funds. At the same time, the assets he transferred may be in jeopardy if the trusted individual to whom they are gifted spends them, gambles them away, has a judgment or tax lien entered against him, gets divorced, goes bankrupt, or dies; there may also be significant gift and estate tax implications to such a transfer

Special Needs Trusts: Exception to the Transfer Rules

Special Needs Trusts are an important exception to the transfer rules.[55] A Special Needs Trust (SNT) is a discretionary spendthrift trust created for a beneficiary with a disability which supplements, but does not supplant, public benefits for which the beneficiary may be eligible. It must be carefully drafted to conform with statutory and regulatory requirements to assure the ongoing SSI and Medicaid eligibility of the person with a disability. The SSI and Medicaid rules regarding SNTs are similar, though not identical.

Two SNTs which are specifically authorized by federal and state law for use by individuals who receive a windfall and presently are, or expect to become, eligible for SSI or Medicaid benefits are the individual self-settled SNT and the pooled SNT. When the planning is oriented toward using third party assets

to supplement public benefits, both the pooled SNT and the third party settled SNT are useful advance planning tools.

Individual Self-Settled Special Needs Trusts

An irrevocable SNT funded with assets belonging to the beneficiary is a self-settled SNT. A self-settled SNT can be created with proceeds from the settlement of a lawsuit, with an inheritance that was left outright to the individual, or with court-ordered alimony or child support.[56] The trust can be funded with one lump sum or over time with a structured settlement. If it is funded with the proceeds of a lawsuit, then any existing Medicaid, Medicare, and private insurance liens related to the injury for which the lawsuit was brought must first be negotiated and paid.[57]

A SNT created under 42 U.S.C. §1396p(d)(4)(A) (commonly called a "d4A trust") must be "established" by a parent, grandparent, legal guardian, or court for a beneficiary with a disability who is under age 65, and must be irrevocable.[58] It can continue in effect after the beneficiary becomes 65, but assets cannot be added to it after that time unless they are part of a structured settlement.

For both SSI and Medicaid purposes the trust document must state that the trust is "for the sole benefit" of the beneficiary,[59] and must provide for Medicaid (but not SSI) to be reimbursed at the death of the beneficiary for the medical care provided during his lifetime.[60] Remainder beneficiaries can be named to receive those residual assets not needed to reimburse Medicaid.[61]

Some see the requirement that Medicaid be reimbursed as a potential down-side to a d4A trust. However, because Medicaid pays less for health services than the beneficiary would pay in the open market, the expense is not as large as it would have been had trust assets instead been spent to provide medical care during the beneficiary's lifetime. Further, this is an equitable way to provide for the beneficiary during his lifetime while alleviating some of the burden on the state's Medicaid programs.

Pooled Special Needs Trusts

An irrevocable pooled SNT account (established under 42 U.S.C. §1396p(d)(4)(C) and commonly called a "d4C trust") can be established for a beneficiary who is under age 65 by the individual (if he is a competent adult), a parent, a grandparent, a legal guardian, or a court.[62] There are pooled trust options in most states now, with multiple options in many states.[63]

The pooled SNT can be a self-settled trust (if funded with assets belonging to the beneficiary) or a third-party trust (if funded with third party funds). It is managed by a non-profit association, where each sub-account is tracked separately while the funds are pooled for investment purposes. As with a d4A, the assets in the trust can be used to supplement the public benefits the beneficiary receives.

If the funds transferred to the trust belonged to a third party, then the funds remaining after the death of the beneficiary will be distributed to the beneficiaries designated in the Joinder Agreement. If the funds were transferred by the beneficiary to the trust, the remaining balance must first be used to reimburse the state for Medicaid payments made on behalf of the beneficiary; the remainder can then be distributed according to the Joinder Agreement or be retained by the trust for the benefit of indigent individuals with a disability. In that event, there is no requirement to reimburse the state.[64]

Among the benefits of a pooled SNT is the fact that a person with a disability can establish his own account. Further, the pooled SNT entity already exists, so there are no lengthy documents to draft; completing a Joinder Agreement is all that is required to open an account, and the costs are nominal for professional management and trustee services. A pooled-account trust is often a good option when the size of the trust estate is insufficient to make it economically feasible to engage a corporate trustee.

Third Party Settled Special Needs Trusts

Third party settled SNTs are those to which assets are contributed by someone other than the beneficiary.[65] Typically they are created by family members of persons with disabilities, naming the person with a disability as the beneficiary. They may be created by transfers during life (inter vivos trusts[66]) or in a last will and testament document (testamentary trusts[67]). As long as the beneficiary does not have the legal authority to revoke the trust or direct the use of the trust assets for his or her own support and maintenance, the trust principal is not considered to be the beneficiary's resource for SSI and Medicaid purposes.[68]

The benefit to planning with a third party SNT is obvious: because the funds don't belong to the beneficiary these SNTs need not have provisions for repaying Medicaid

benefits after the beneficiary's death, and they are not affected by the age restrictions on self-settled trusts discussed above. As such, it is not generally wise to commingle estate planning (third party) SNT funds with the beneficiary's (self-settled) SNT funds. The option of establishing such a trust should be seriously considered in any estate plan involving a beneficiary with a disability. For example, a third party SNT can be a particularly attractive option when planning for an individual who has a known disability, such as Alzheimer's disease or schizophrenia, and who now or later may be eligible for public benefits.

Failure to properly plan in advance may mean that the only option is to use a d4A trust to "save" an inheritance when the grantor has died and the beneficiary with a disability is entitled to the assets; however, to do so while maintaining SSI and/or Medicaid eligibility requires that the SNT include a pay-back provision, with the result that Medicaid is the first remainder beneficiary. Further, due to the age restriction, if the beneficiary is 65 years of age or older it would be impossible to establish a self-settled SNT.

Distribution Standards

Because the essential purpose of a SNT is to provide for a beneficiary's supplemental needs without jeopardizing his eligibility for needs-based public benefits, a critical portion of any such trust is language describing and limiting the standard by which the trustee can make distributions to or for the benefit of the trust beneficiary. This standard should be appropriate to the circumstances of the particular beneficiary. An inappropriate or inadequate standard can be a source of litigation and, therefore, potential liability.

A widely used distribution standard for third party trusts is a "fully discretionary support standard." Such a trust would contain language such as this: "My trustee may distribute to or for the benefit of the beneficiary those amounts of income and principal which my trustee may determine, in my trustee's sole, absolute, and unfettered discretion, are necessary for the beneficiary's health, maintenance, and support." While common, this language may be inadequate in a special needs context to protect the trust principal from being considered by government agencies as "available" to the beneficiary. The discretionary support trust is an unreliable method by which the grantor can continue to provide for the beneficiary's additional needs beyond basic necessities.

An alternative distribution standard is the strict "SSI standard" prohibiting any distributions for food or shelter.[69] For example, the trust might state: "No part of the principal or income of this trust may be distributed for food or shelter, or to replace any public assistance benefits for which the beneficiary may be eligible." While this is the safest and most conservative standard for a SNT, it is also the most inflexible and can create problems later. For example, a beneficiary may improve dramatically so that eligibility for public benefits is less important than spending income and principal on support to re-establish the beneficiary as a working, self-sufficient member of society. At the time the SNT is drafted, the scrivener is often not in a position to predict how well the beneficiary will recover. This is particularly true of beneficiaries who have suffered traumatic brain injuries and children with cerebral palsy.

This standard could be unduly restrictive, even for beneficiaries who remain on SSI. For example, there may be substantial assets in a SNT but the beneficiary is living in substandard housing. If this strict standard applied, there would be little the trustee could do to improve the beneficiary's living situation.

A more flexible option is a fully discretionary standard, with precatory language stating the grantor's intent that distributions should be made to supplement, rather than replace, public benefits, but nevertheless permitting distributions to supplant such benefits if the trustee believed this to be in the best interest of the beneficiary. Such a trust provision might read: "The trustee is authorized, but not required, to make distributions from the trust to or for the benefit of the beneficiary, in the trustee's sole, absolute, and uncontrolled discretion. The trustee shall make no distributions that would result in a loss or reduction of public benefits (such as Medicaid or SSI), unless the trustee believes that the advantage of making such distributions outweighs the loss of such benefits."

Use of Funds in a SNT

A common misperception is that the funds in the SNT can only be used to purchase medical care that Medicaid doesn't cover. This is incorrect. In fact, the real benefit a SNT brings to the beneficiary is the higher quality of life that the beneficiary can enjoy

while maintaining his public benefits.

The trustee should work with the beneficiary, keeping in mind the criteria discussed above, to determine which goods and services the trust will purchase for the beneficiary. Following is a comprehensive, but not necessarily complete, list of things that are generally permissible, all of which are, of course, subject to being appropriate for the beneficiary and to having sufficient assets in the trust: accounting services; acupuncture; alterations and mending; appliances; assisted living care; automobile, gasoline, insurance, and maintenance; camera and photography supplies; clothing; care manager; clubs, dues, and supplies; companions; computer hardware, software, and internet; classes (academic or recreational) and supplies; counseling not paid by Medicaid or other insurance; curtains and blinds; dental work; dry cleaning; durable medical equipment; elective surgery; fitness equipment or gym dues; funeral expenses (prepaid); furniture and furnishings; haircuts; holiday cards, decorations, and parties; home purchase, insurance, improvements, maintenance, alarm, and taxes; house cleaning; legal fees; linens and towels; massage and facial; medical specialists not covered by Medicaid or other insurance; musical instruments and lessons; non-food grocery and personal care items; personal assistance not paid by Medicaid or other insurance; pet, pet supplies, food, and veterinary services; rehabilitation and therapy not paid by Medicaid or other insurance; repair services; sporting equipment, uniform, team fee, and travel; stationery and cards; storage unit; supplemental nursing care; transportation; telephone service and equipment; tickets to concerts, theater, and sporting events; travel and vacation; utility bills; and vitamins.

A good starting point for determining which goods and services the trust will provide is with the use of a budget developed based upon the beneficiary's known annual expenses, his anticipated income from SSDI and SSI, the value of the assets in the trust, the anticipated income to the trust, and the beneficiary's life expectancy. To the extent possible, involving the beneficiary in the budget calculations can be beneficial not only for establishing an accurate representation of ongoing expenses, but also for setting expectations and demonstrating to the beneficiary why a requested distribution might not be appropriate. Adhering to a well-planned budget will help ensure that the trust will not be exhausted prematurely.

Trustee Selection and Duties

The selection of a trustee is among the most important decisions that must be made when establishing a SNT. The trustee has a number of important duties and must be knowledgeable about his responsibilities as a trustee as well as about public benefits law. He must stay current with his obligations and know when to seek counsel. While a family member of the beneficiary may be capable of serving in this role, it is wise to consider engaging a professional entity or individual to serve as trustee.

It is crucial that the trustee realize that a SNT is indeed special and accordingly, simply adhering to general trustee guidelines is not sufficient. While general trustee duties are applicable to the trustees of a SNT, a second, complex layer of duties exists and the adherence to that layer of duties is just as (if not more) important in order to effectively administer the trust.

The duties of a trustee arise from state law and from the trust document itself. Like the trustee of any other trust, the trustee of a SNT can look to state law for guidance in administering the trust. The duties of a trustee are set forth in the Uniform Trust Code[70] ("UTC"), which to date has been enacted in nineteen states[71] and the District of Columbia and upon which many other states have based their own trust codes. Among the duties of a trustee are the duty to administer the trust,[72] the duty of loyalty,[73] the duty of impartiality,[74] the duty of prudent administration,[75] the duty to keep administration costs reasonable,[76] the duty to use special skills or expertise,[77] the duty to be wise in delegating,[78] the duty to control and protect trust property,[79] the duty to keep records,[80] the duty to enforce claims of the trust,[81] the duty to collect trust property,[82] and the duty to inform and report.[83] The UTC further contains general powers which are intended to grant trustees the broadest possible powers in exercising authority over property contained in a trust and also specific, enumerated powers granted to trustees.[84]

While a well-drafted SNT is critically important to achieving the best result for a beneficiary, problems inevitably arise in the administration, even with the best-drafted SNTs. The vast majority of those problems center around the need to maintain public benefits for the beneficiary. To accomplish this, the trustee must become familiar with a myriad of complicated rules associated with such programs as SSI, Medicaid,

Veterans Benefits, Food Stamps, Utility Assistance, Section 8 Housing, In-Home Support Services, and other locally available benefits.

If the SNT is not properly administered, the result can be the loss of critical public benefits for the beneficiary and therefore liability for the trustee and the attorney advising the trustee. It is advisable for a trustee to retain the services of an experienced Special Needs Law attorney[85] who can advise the trustee about the relevant public benefits – an arena which may well be beyond the expertise of even an experienced professional trustee. After the SNT has been drafted and funded, it is important that the attorney provide clearly documented guidance to the trustee regarding the administration of the trust.[86]

Ongoing Knowledge of the Beneficiary's Condition

As any trustee of multiple SNTs knows, each beneficiary's situation is different. What is an appropriate disbursement for one beneficiary may well be egregious for another. Furthermore, what was an appropriate distribution last year might be entirely inappropriate this year. It is vital that the trustee of a SNT have a personal knowledge of the beneficiary's situation and continue that awareness on an ongoing basis. The trustee should make sure that the beneficiary is safe and secure, living in a clean environment, and enjoying the best possible standard of living. Without current knowledge of a beneficiary's situation, it is not possible for a trustee to exercise these duties.

Upon accepting a trusteeship, the trustee should undertake an evaluation of the beneficiary, which should include an assessment of the beneficiary's physical and mental condition; contact with family members; living conditions; medical care; finances; actual and potential eligibility for public benefits; emotional status; and social needs.

Recognizing that the trustee may not be equipped to offer such an evaluation, it is within the trustee's discretion to hire professionals to assess the beneficiary. In fact, it is quite common to find a requirement within the trust document that the trustee hire a care manager to oversee the ongoing needs of the beneficiary. The trust document should be carefully reviewed to determine what the specific obligations of the trustee are with regard to overseeing the beneficiary's care.

Reporting Requirements

In keeping records and rendering accountings, the trustee of a SNT can have an obligation to multiple individuals and/or entities.

While generally a trustee may have only the obligation to communicate with qualified beneficiaries of a trust, the obligation of the trustee of a SNT can extend not only to the beneficiary but also the guardian or legal representative of the beneficiary, a co-trustee, a beneficiary advocate, state and federal benefits agencies, and a supervising court. Accordingly, the trustee of a SNT must understand to whom reports must be made, the frequency with which those reports must be rendered, and the required contents of the report.

The UTC sets forth the legal standards for trustees with regard to the establishment and administration of a trust, including the requirements for record keeping and identification of trust property[87] and the duty to inform and report.[88] Though the provisions of the UTC do not specifically address SNTs, the UTC does provide an appropriate starting point for the analysis of the duty of a trustee in rendering accountings for SNTs.

As a general rule, the UTC serves as a default statute, meaning that a drafter in a UTC state is free to override a substantial majority of the UTC's provisions by including the desired contrary terms within the trust instrument itself. However, under the UTC, there are certain exceptions to the ability of a drafter to override select provisions of the UTC.[89] Notably, two of these exception provisions which cannot be "drafted around" pertain to the grantor's ability to waive trustee notices and other disclosures to beneficiaries that would otherwise be required under the UTC.[90] The UTC provides that a trustee shall provide a report of the trust property at least annually and at the termination of the trust.[91] The statutes in many non-UTC states mirror this annual standard. By providing an annual accounting to beneficiaries, the trustee also triggers the running of a one-year statute of limitations, provided that the report adequately disclosed the existence of a potential claim for breach of trust and informed the beneficiary of the time allowed for commencing a proceeding.[92]

In addition to providing accountings to beneficiaries, the trustee of a SNT may also be required to provide accountings to government agencies, including state

departments of community health, county departments of family and children services, and the Social Security Administration. A trustee might also be required to file an annual budget or gain pre-approval of certain expenditures, and file an annual return with the court which authorized the establishment and/or the funding of the trust. There is little consistency between the states with regard to what is required of trustees of SNTs with regard to reporting.

Durable Powers of Attorney

A good Durable Financial Power of Attorney (DFPOA) is a key planning document that should be considered when working with the client who has a family member with special needs. A good DFPOA can be very valuable in a situation such as one where the parent of a child with a disability becomes incapacitated. A well drafted DFPOA that specifically authorizes the agent to establish or fund a SNT, change beneficiary designations, or make gifts of the principal's assets, would allow for the agent to establish a d4A SNT to be funded with assets held in the name of the person with a disability, or do estate planning to provide for assets the spouse or child with a disability will inherit to be used to fund a SNT.

Having a well-crafted DFPOA makes it easier and less costly for the agent to act by providing two significant benefits. It enables decision making to be kept within the family unit, and it can eliminate the need for Conservatorship. The DFPOA document should always specifically say that is it durable. While under the law of some states Financial Powers of Attorney are presumed to be durable unless they expressly provide otherwise,[93] it is simple and always wise to include the language in the document. This is particularly important if the principal has an interest in, or could at any time in the future have an interest in, property in another state.

Title companies have become particular about the language that must be included in the DFPOA in order for the agent to have the authority to sell, lease, mortgage, make a gift of, or otherwise convey the principal's interest in real property – including transferring ownership of real property to a SNT. This authority is not typically included in form documents, and title companies often reject language that is too broad and that does not specifically describe the property. In addition to drafting specific language into the DFPOA, it is wise to include the legal description for each property in which the principal has an interest. Finally, it is also wise to include language specifically authorizing the agent to create agency accounts, custodial accounts, or revocable or irrevocable intervivos trusts, including a SNT, or to add funds or properties to existing trusts previously established.

Attorney Liability

Courts have held attorneys liable for malpractice for failing to identify and address issues relating to settling claims and establishing SNTs. A Maine court sanctioned an attorney for not including a Special Needs Trust in a testator's will so the primary beneficiary of the will would not lose her Medicaid eligibility.[94] An Illinois Appellate Court ordered to trial an attorney malpractice case in which the plaintiffs allege that the attorneys who drafted their father's last will and testament were aware that two of his children were disabled, and that they were negligent in failing to advise the testator of the possibility of establishing a "special needs" trust for his children which would not impair their eligibility for certain public assistance benefits.[95] Other cases have held likewise.[96]

Conclusion

It's been said that a society will be judged by how it treats its weakest members. Providing meaningful help and support to the American child or adult with a disability is one of the great inequities in our system. Congress' authorization of the use of Special Needs Trusts reasonably addresses that inequity in as socially responsible a manner as possible by enabling the beneficiary to become or remain eligible for SSI and Medicaid benefits while procuring supplemental benefits that he would not otherwise receive, and at the same time helping to take pressure off of an already overburdened benefits system thereby allowing for the continuation of these benefits to future generations of individuals with disabilities. Individuals with a disability and their families would be wise to take advantage of these options which provide alternatives to many who are most in need of engaging in solid financial and long-term care planning.

End Notes

1. "Disability and American Families: 2000," US Census Bureau, July 2005 Report.

2. Disability is defined as the inability to do any substantial gainful activity by reason of any medically determinable physical or mental impairment which can be expected to result in death or which has lasted or can be expected to last for a continuous period of not less than 12 months. 42 U.S.C. §423(d) (2010).

The federal law regarding SSI is found at 42 U.S.C. §1381 et seq. Regulations are found in Title 20 Part 416 of the Code of Federal Regulations ("CFR"). Operating procedures can be found in the Social Security

Administration's Program Operating Manual System ("POMS"). The rules in the POMS are not legally binding because they are not passed pursuant to administrative rule making procedures; however, they carry great weight as the agency's interpretation of the federal law. The CFR and the POMS can both be found at http://www.ssa.gov.

3. "Aged" is sixty-five years or older.

4. "Blind" is having central visual acuity of no better than 20/200 in the better eye, with corrective lenses or having a visual field in the better eye of twenty degrees. 20 C.F.R. §416.981 (2011).

5. 20 C.F.R. §416.1205 (2011).

6. 20 C.F.R. §416.905 (2011).

7. 20 C.F.R. §416.972 (2011).

8. 20 C.F.R. §§416.947(a)(2), 416.973(c), 416.974(c), and 416.976 (2011); POMS DI10520.000 et seq.

9. 20 C.F.R. §416.1205 (2011).

10. 20 C.F.R. §416.1207(d) (2011).

11. 20 C.F.R. §416.1201 (2011).

12. 20 C.F.R. §§416.1210 and 416.1212 (2011).

13. 20 C.F.R. §416.1218 (2011).

14. 20 C.F.R. §416.1216 (2011).

15. 20 C.F.R. §§416.1216 and 416.1205 (2011).

16. 20 C.F.R. §416.1233 (2011).

17. 20 C.F.R. §§416.1230, 416.1231(b)(1) and (b)(5) (2011).

18. 20 C.F.R. §416.1231(b)(1) (2011).

19. 20 C.F.R. §416.1220 (2011).

20. 20 C.F.R. §416.1212(d) (2011).

21. 20 C.F.R. §416.1210(f) (2011).

22. 20 C.F.R. §416.1245 (2011).

23. Id.

24. 20 C.F.R. §416.1210(u) (2011).

25. 20 C.F.R. §416.1201 (2011)

26. The resource deeming rules vary according to each of the deeming relationships, and can be found as follows: Parent to Child, 20 C.F.R. §416.1160(d) (2011); Spouse to Spouse, 20 C.F.R. §416.1202(a) (2011); and Sponsor to Alien, 20 C.F.R. §416.1204 (2011).

27. 20 C.F.R. §416.1202(b)(1) (2011).

28. 20 C.F.R. §416.1102 (2011).

29. 20 C.F.R. §§416.1100 et seq. (2011).

30. POMS SI 00830.418.

31. POMS SI 00830.420.

32. 20 C.F.R. §416.1121 (2011).

33. 20 C.F.R. §416.1110 (2011).

34. 20 C.F.R. §416.1100 (2011).

35. 20 C.F.R. §416.1207(d) (2011).

36. 20 C.F.R. §416.1112(c)(2) (2011).

37. 20 C.F.R. §§416.1121(c) and 416.1123(a) (2011).

38. POMS SI 00810.410.

39. 20 C.F.R. §416.1130 (2011).

40. 20 C.F.R. §416.1131 (2011).

41. 20 C.F.R. §416.1140 (2011).

42. 20 C.F.R. §416.1160 (2011).

43. Parent to Child, 20 C.F.R. §416.1165 (2011); Spouse to Spouse, 20 C.F.R. §§1160 and 1163 (2011); and Sponsor to Alien, 20 C.F.R. §416.1120 (2011).

44. Title XIX of the Social Security Act, 42 U.S.C. §§1396 et seq. (2010).

45. 42 U.S.C. §1396a(a)(10)(A)(i)(II) (2010). The states in which SSI eligibility does not automatically entitle one to Medicaid benefits include Connecticut, Hawaii, Illinois, Indiana, Minnesota, Missouri, New Hampshire, North Dakota, Ohio, Oklahoma, and Virginia. POMS SI 01715.010.

46. 42 C.F.R. §§435.520, 435.522, 435.530, 435.531, 435.540, and 435.541 (2011).

47. 20 C.F.R. §416.1201 (2011).

48. Some Medicaid programs in some states do not have transfer penalties; consult a local elder or special needs law attorney to determine which Medicaid programs in your state apply transfer penalties.

49. Foster Care Independence Act of 1999, Pub. L. No. 106-169, December 14, 1999.

50. 42 U.S.C. §1382b (c)(1)(A)(ii)(I) (2010); 20 C.F.R. §416.1246 (2011).

51. 42 U.S.C. §1382b (c)(1)(A)(iv) (2010).

52. 42 U.S.C. §1382b (c)(1)(A)(iv)(II) (2010).

53. 42 U.S.C. §1396p (c)(1)(B)(i) (2010). The five year look-back went into effect on February 8, 2006.

54. 42 U.S.C. §1382b (c)(1)(C)(ii)(IV) (2010); 42 U.S.C. §1396p (d)(4) (2010); POMS SI 01120.203 B.; POMS SI 01150.121 A.3.

55. POMS SI 01120.200 G.1.d.

56. 42 U.S.C. §1396a(a)(25)(A) and (B) (2010); Cricchio v. Pennisi, and Link v. Town of Smithtown, 90 N.Y.2d 296, 683 N.E.2d 301, 660 N.Y.S.2d 679 (1997).

57. 42 U.S.C. §1382b(c)(1)(C)(ii)(IV) (2010); 42 U.S.C. §1396p(d)(4)(A) (2010). "A trust containing the assets of an individual under age 65 who is disabled (as defined in §1614(a)(3)) and which is established for the benefit of such individual by a parent, grandparent, legal guardian of the individual, or a court if the State will receive all amounts remaining in the trust upon the death of such individual up to an amount equal to the total medical assistance paid on behalf of the individual under a State plan under this title." POMS SI 01120.203 B.1.

58. 42 U.S.C. §1382b(c)(1)(C)(ii)(IV) (2010); 42 U.S.C. §1396p(c)(2)(B) (2010); POMS SI 01120.201.F.2.

59. 42 U.S.C. §1396p(d)(4)(A) (2010); POMS SI 01120.203 B.1.h.; POMS SI 01120.203 B.2.g.

60. POMS SI 01120.201 F.2.

61. 42 U.S.C. §1382b(c)(1)(C)(ii)(IV) (2010); 42 U.S.C. §1396p(d)(4)(C) (2010). "A trust containing the assets of an individual who is disabled (as defined in §1614(a)(3)) that meets the following conditions: (i) The trust is established and managed by a non-profit association; (ii) A separate account is maintained for each beneficiary of the trust, but, for purposes of investment and management of funds, the trust pools these accounts; (iii) Accounts in the trust are established solely for the benefit of the individuals who are disabled (as defined in §1614(a)(3)) by the parent, grandparent, or legal guardian of such individuals, by such individuals, or by a court; (iv) To the extent that amounts remaining in the beneficiary's account upon the death of the beneficiary are not retained by the trust, the trust pays to the State from such remaining amounts in the account an amount equal to the total amount of medical assistance paid on behalf of the beneficiary under the State plan under this title." In some states the account can be established after the beneficiary's 65th birthday.

See http://www.specialneedsanswers.com/resources/directory_of_pooled_trusts.asp for a complete list of pooled trusts.

62. 42 U.S.C. §1396p(d)(4)(C)(iv) (2010); POMS SI 01120.203 B.2.g.

63. POMS SI 01120.200 B.17.

64. 42 U.S.C. §1382b(c)(1)(C)(ii)(III) (2010); 42 U.S.C. §1396p(c)(2)(B)(iii) and (iv) (2010).

65. 42 U.S.C. §1382b(e)(2)(A) (2010); 42 U.S.C. §1396p(d)(2)(A) (2010).

66. POMS SI 01120.200 D.1.a. and b.

67. This previously also included clothing; however, the SSI rules changed effective March 9, 2005 so that if the SNT pays for clothing the value of such payments is no longer considered to be in-kind support and maintenance to the beneficiary. POMS SI 00835.400.

The full text of the Uniform Trust Code can be found at http://www.law.upenn.edu/bll/archives/ulc/uta/2005final.htm.

68. Alabama, Arkansas, Florida, Kansas, Maine, Missouri, Nebraska, New Hampshire, New Mexico, North Carolina, Ohio, Oregon, Pennsylvania, South Carolina, Tennessee, Utah, Vermont, Virginia, and Washington.

69. UNIF. TRUST CODE §801 (amended 2005).

70. UNIF. TRUST CODE §802(a) (amended 2005). Chief Justice Cardozo eloquently described this duty: "Many forms of conduct permissible in a workaday world for those acting at arm's length are forbidden to those bound by fiduciary ties. A Trustee is held to something stricter than the morals of the marketplace. Not honesty alone, but the punctilio of honor the most sensitive, is the standard of behavior." Meinhard v. Salomon, 249 N.Y. 458 (1928).

71. UNIF. TRUST CODE §803 (amended 2005).

72. UNIF. TRUST CODE §804 (amended 2005). In lieu of this "prudent person" standard,

however, many states have adopted a version of the Prudent Investor Act which requires that a non-professional trustee exercise the skill and care that a man of "ordinary prudence" would exhibit in managing his own financial affairs. Harvard College v. Amory, 9 Pick. 446, 469 (Mass. 1830).

73. UNIF. TRUST CODE §805 (amended 2005).

74. UNIF. TRUST CODE §806 (amended 2005).

75. UNIF. TRUST CODE §807 (amended 2005).

76. UNIF. TRUST CODE §809 (amended 2005).

77. UNIF. TRUST CODE §810 (amended 2005).

78. UNIF. TRUST CODE §811 (amended 2005).

79. UNIF. TRUST CODE §812 (amended 2005).

80. UNIF. TRUST CODE §§813 and 814 (amended 2005).

81. UNIF. TRUST CODE §§815 and 816 (amended 2005).

To locate an attorney experienced in advising trustees of Special Needs Trusts, go to http://www.specialneedsalliance.org/locate-an-attorney.

The Handbook for Trustees is available at no cost in English and Spanish at http://www.specialneedsalliance.org/free-trustee-handbook.

82. UNIF. TRUST CODE §810 (amended 2005).

83. UNIF. TRUST CODE §813 (amended 2005).

84. UNIF. TRUST CODE §105 (amended 2005).

85. UNIF. TRUST CODE §105(b)(8) and (9) (amended 2005).

86. UNIF. TRUST CODE §813(c) (amended 2005).

87. UNIF. TRUST CODE §1005 (amended 2005).

88. O.C.G.A. §10-6-36 (2011).

89. Board of Overseers of the Bar v. Ralph W. Brown, Esq., 2002 Me. LEXIS 190 (Me. October 25, 2002).

90. Rajcan v. Donald Garvey & Associates, Ltd., 347 Ill. App. 3d 403, 807 N.E.2d 725, 283 Ill. Dec. 120 (2004).

91. See Grillo v. Petiete et al., Cause No. 96-145090-92, and Grillo v. Henry, Cause No. 96-167943-96, 96th District Court, Tarrant County, Texas, where the personal injury attorney and guardian ad litem were held liable for $4.1 million for failing to consult competent experts concerning a structured settlement and failing to plan to preserve the plaintiff's SSI and Medicaid eligibility. Also, Dept. of Social Services v. Saunders, 247 Conn. 686, 724 A.2d 1093 (1999), where the court said: "With the creation of the trust, Jamie will retain his Medicaid eligibility and [the conservator] can provide for his supplemental needs from the trust assets, while Medicaid provides for his basic medical care. Therefore, not only is the latter course of action clearly better for Jamie, it may be fairly stated that by failing to follow it, the probate court, and [the conservator] potentially could be deemed to be in dereliction of their duties to Jamie." This duty thus requires the fiduciary of an estate, and indirectly the planning lawyer, to protect the settlement of the client with a disability.

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Case Law Update - August 2025

*By Vic Valmus**

CHILD SUPPORT/IMPUTED INCOME/TERM OF COURT

Gibson v. Fowler; **A25A0128** (June 11, 2025)

The parties were never married, but had two 5-year-old twin boys. Fowler (mother) petitioned to establish paternity and child support for which a Final Order was approved in June 2019. Gibson (father) was to pay $1,584.00 in child support. Shortly afterwards, he moved to St. Louis for employment purposes. Both children were diagnosed with some speech delayed issues and required speech therapy.

In October 2022, the mother filed a Petition to Modify Child Support, alleging the father's income had increased. During the hearing, the father testified that his income from Equifax was $418,191.00 in 2019, $1,200,572.00 in 2020, $945,450.00 in 2021, and $330,000.00 in 2022. The father explained that his high income in 2020 and 2021 was because of the pandemic unemployment claims, and the two years were like lightening in a bottle or once in a century type of deal. The father left Equifax in February 2022 and went to work for an education tech firm with a base salary of $300,000.00. However, he was laid off in November 2022. His 2022 W-2 gross was $330,000.00. Since the layoff, he has applied to over 270 sales manager jobs and at the time of the hearing, had not been employed full time, and had been doing temporary contract work. His 2023 W-2 showed his gross income of $230,510.00. In addition, the father testified that he had jewelry worth $30,000.00, a retirement account of $1,200,000.00, and 2 vehicles worth $90,000.00, and he was having to withdraw money from savings and some of his retirement accounts to maintain his financial obligations.

The mother testified that she works full-time, she spends $2,000.00 per month for child care, and the children are currently having tuition of $1,995.00 per year per child. She was also looking at Woodward Academy, which would cost $33,000.00 per child per year, but it was an

unlikely option.

At the final hearing on April 15, 2024, the Court entered a Final Order which imputed annual income to the father at $681,820.00. To arrive at that number, the Court did not consider the most recent W-2 and eliminated the highest and lowest yearly earnings, and also gave a high-income deviation which increased his child support obligation of $1,584.00 to $4,589.00. The Court was unhappy that the father had not exercised more visitation with the children, granted the mother requested additional work-related child-care costs in an amount not to exceed $1,600.00 per month, and used Woodward Academy tuition of $33,000.00 per year per child as a template to add extraordinary educational expenses of $3,575.00 per month; resulting in a total child support obligation of $9,764.00 per month. The Trial Court concluded that although he was currently unemployed, the father was capable of obtaining another high paying job comparable to his Equifax position.

The father filed a Notice of Intent to File a Discretionary Application. The mother moved to correct a clerical omission and requested the Trial Court amend its Order to make the terms of the Order a new Temporary Order and thus enforceable pending the appeal. The Trial Court agreed. On May 20, 2024, it entered an Amended Order providing the new child support obligation act as a Temporary Order which will bind the parties during the pendency of the appeal and Final Judgment. The father appeals and the Court of Appeals reverses and remands.

The father argues the Trial Court erred in increasing the child support obligation by imputing an inflated income. Under Georgia Law in determining each parent's monthly gross income is the first step in calculating child support. Georgia Supreme Court has held that the text of O.C.G.A. §19-6-15(f)(4)(B) creates two conditions precedent before the Court can impute income and it is only if these two conditions are met that the tryer fact may resort to the remedy prescribed in the statute. Here, the Trial Court did not find the father failed to produce reliable evidence of his gross income or that no reliable evidence of his current income existed, which is required before the statute imputation becomes applicable. In addition, nothing in the Order or the hearing transcript indicates that the Court questioned the father's credibility to his past income or earnings from the temporary contract work. In light of the lack of any determination that the two conditions precedent had been satisfied, the Trial Court erred in imputing the father's income by analyzing his earning capacity.

In addition, in order to sustain an award of child support premised on earning capacity, there must be evidence that the parent has the ability to earn an amount sufficient to pay an award of support, otherwise the award cannot stand. Here, the Trial Court imputed annual income to the father of $681,820.00 which is three times what he made in the most recent year of fulltime employment. The Court overlooked the father's most recent W-2, which seemed to be more predictive of his future earning capacity. Additionally, the Trial Court ignored the father's unrefuted testimony that two years reflected an anomalous earning due to a pandemic – an event not likely to be repeated. Also, the Trial Courts Order assumed the father could find employment comparable to his prior employment relatively quickly even though the evidence showed he had been trying for several months, and applied for over 200 positions, without success. Given these particular circumstances, the Trial Court abused its discretion by cherry picking the evidence on which it relied to calculate the father's earning capacity. Absent evidence of the father's present ability to earn $681,820.00 and his ability to pay $9,764.00 monthly in child support, this portion of the award cannot stand and is vacated and remanded.

The father also argued the Trial Court erred by amending its Order in a subsequent Term of Court to make the judgment temporary rather than final, which required him to pay the new support award during the pendency of the appeal. It is well established that ordinarily, Trial Courts power to amend or modify its judgment ends with the Term of Court which the judgment was entered. But under O.C.G.A. §9-11-60(g) mistakes in judgments and orders or other parts of the record can be corrected by the Court at any time on its own initiative. However, it does not provide the authority for making substantive changes to an Order. The second amended order providing that the support award would be temporary was entered on May 20, 2024 in the May Term of Court, which was outside of the original Term of Court in April 2024. Therefore, the Trial Court erred by modifying its April 2024 Order providing that the child support modification would be temporary under the guise of correcting a clerical error.

CONTEMPT/IMPUTED INCOME

Ricci v. West; **A25A0618** (May 1, 2025)

The parties were divorced in Virginia in 2009. Pursuant to the divorce decree, Ricci (husband) was to make monthly payments equal to 21% of his base salary not including bonuses, incentives, or other payments. The husband worked in a corporate job and changed positions at several times over the years, and he adjusted his child support payments as his base salary shifted. The base salary was to be adjusted effective July 1st of every year if a substantial change occurred, including either a $10,000.00 increase or decrease. In March 2018, his base salary was $238,000.00 and in September 2018, he left his corporate job to begin a new career as commercial airline pilot. From October 2018 to June 2019, the husband earned $50,000.00 per year and he reduced his child support payments substantially, but failed to give West (wife) complete verification and documentation of his income until February 2023.

In October 2019, the wife filed a Petition for Contempt alleging the husband had failed to provide documentation of his income and under paid his child support for years. A hearing was held in February 2024 and the Judge entered a Final Order finding the husband in arrears on his child support obligation in the amount of $151,589.00. The Trial Court concluded the husband's career change was a willful and voluntary decrease, was an act of voluntarily underemployment, and therefore, his subsequent reductions of support payments was a willful violation of the decree. The Trial Court imputed the husband's income at $238,000.00 and recalculated the child support obligations for the period of September 2018 through June 2023 based upon the imputed income. The Court further ordered the husband to pay $23,415.30 in post judgment interest on the arrears and $9,200.00 in attorney's fees. The husband appeals and the Court of Appeals reverses and remands.

The husband contends the Trial Court erred by disregarding the terms of the party's separation agreement. Here, the separation agreement incorporated in the Divorce Decree provided, among other things, the child support would be automatically adjusted upon the occurrence of an annual change of more than $10,000.00. The plain language of the self-executing escalator/de-escalator provision did not distinguish between involuntary and voluntary salary changes. Neither, did it provide a mandatory minimum for child support payments. The Trial Court may interpret a Divorce Decree or clarify a prior order of judgment, but the Trial Court has no power to modify the terms of a Divorce Decree in a contempt proceeding. There is no evidence to support the Trial Courts ruling that the husband's voluntary decrease in his salary in September 2018 actually violated the terms of the Decree. In addition, a foreign judgment must be given full faith and credit if it was proper under the laws in which a judgment was rendered, and a valid foreign judgment will be enforceable in Georgia even though such judgment could not have been obtained in Georgia Courts. Therefore, the case is vacated and remanded. In addition, the ruling on the derivative claims for attorney's fees and interest are remand to be reconsidered in light of this opinion.

DIRECT/DISCRETIONARY/INTERLOCUTORY APPEALS

Onyemobi v. Onyemobi; **A25A0570** (May 29, 2025)

The father (pro se) filed for divorce against his wife and filed an interlocutory appeal of the Temporary Order which granted the mother custody of the parties' five children. The Court of Appeals dismisses.

The underlying subject matter of the appeal is the divorce action and must be pursued by the discretionary application. O.C.G.A. §5-6-35(a)(2)(b). On the other hand, all judgments or orders in child custody cases awarding, refusing to change, or modifying child custody or holding or declining to hold the person in contempt of such child custody judgments or orders are deemed to be directly appealable under O.C.G.A. §5-6-34(a)(11). Because child custody is frequently litigated within the larger frame of divorce cases, some confusion has developed as to whether a child custody order in a divorce case is subject to direct appeal or requires a discretionary application. Further confusion has evolved when the custody determination is made part of a Temporary Order and is not part of the Final Divorce Decree.

Both O.C.G.A. §5-6-34(a) and O.C.G.A. §5-6-35(a) are involved when, as here, the Trial Court issues a judgment listed in the direct appeal statute in a case whose subject matter is covered under discretionary appeal statute. In resolving similar conflicts, the Court has ruled that an application for appeal is required when the underlying subject is listed in the discretionary appeal statute and that procedure must be followed even when a party is

appealing a judgment or an order there is procedurally subject to direct appeal. The determination of child custody does not transform the case into a child custody case for the purposes of determining the appropriate method of appealing a child custody order. Therefore, when a Trial Court issues a child custody determination as part of a divorce proceeding, any appeal seeking review of that child custody determination requires the Appellant to utilize discretionary appeal procedures. If the Order is not a Final Judgment, but an Interlocutory Judgment, as was the Order at issue in this case, the additional requirements as set forth by O.C.G.A. §5-6-34(b) are also applicable. Since compliance with the discretionary appeal procedure is jurisdictional, the father has failed to follow the mandated procedure in this case and deprives this Court of jurisdiction over the appeal.

DISCOVERY/RIGHT TO PRIVACY/MEDICAL DOCUMENTS

Moulton v. Goodell; **A25A0273** (June 17, 2025)

During the parties' 13-year relationship, there were several breakups, some periods of co-habitation, engagement and financial support. Goodell contends they were both dating other people during the periods of breakup in their relationship. Moulton alleged the couple continued their relationship until she was diagnosed with genital herpes in 2023, at which time she confronted Goodell about the infection. Thereafter, Moulton sued Goodell, alleging several causes of action. Goodell denied all the allegations. Moulton moved to compel Goodell to respond to her First Request for Admission, Interrogatories, and Request for Production of Documents related to medical records, treating physicians, and other information related to his alleged herpes infection status and treatment. After the hearing, the Trial Court denied the Motion in part, finding that the right to privacy in this State barred Moulton from discovering the requested information because Goodell had not placed his medical history into issue. The Trial Court denied the Motion, but granted a certificate of immediate review. Moulton appeals and the Court of Appeals reverses and remands.

Moulton argues the Trial Court abused its discretion because the Trial Court misapplied the law pursuant to O.C.G.A. §9-11-26(b)(1). Privileged matters are those that fall under O.C.G.A. §24-5-501(a)(1) – (9), which include many privileges, including attorney-client, accountant-client, between litany of mental health professionals and their clients, but there is no general physician-patient privilege in Georgia. Georgia has also recognized causes of action for negligently or intentionally transmitting a virus that causes genital herpes lesions. Because Moulton has articulated a recognizable complaint for non-privileged information regarding Goodell's medical records, the Trial Court should have issued orders narrowly tailoring the discovery to the necessary information.

Goodell also argues that the Georgia Constitution prohibits discovery of his information because Goodell himself did not file suit putting his medical history at issue. In pertinent part, O.C.G.A. §24-12-1(a) states, "this privilege shall be waived to the extent the patient places his or her care and treatment or the nature and extent of his or her injuries at issue at any judicial proceeding". However, that language merely goes to a waiver and not availability, and ignores the state law cause of action to give rise to Moulton's right to access to Goodell's medical records. It is true that Georgians have a right to privacy in their medical records, and this right is protected by prohibition of release of records without either consent of the subject or due process via hearing which the subject of the records has a right to object. In this case, the motion and hearing were sufficient due process to meet the requirements of Goodell's right to privacy. The law recognizes the right to privacy is not absolute, but must be kept within the proper limits. Therefore, on remand, the Trial Court should enter an Order narrowly tailored to the properly identify the discovery to which Moulton is authorized under our case law, and it should enter any necessary qualifying protective orders related thereto.

DIVORCE BY PUBLICATION/ARTIFICIAL INTELLIGENCE/FRIVOLOUS MOTION PENALTY

Shahid v. Esaam; **A25A0196** (June 30, 2025)

The parties separated in July 2021 and the wife moved to Texas. In April 2022, the husband filed a Complaint for Divorce in which service was performed by publication. The Trial Court entered a Final Judgment in July 2022. In October 2023, the wife filed a petition to reopen the divorce case stating that the husband failed to use reasonable diligence to determine her whereabouts before obtaining service by publication. Following the hearing, the Superior Court denied the wife's Motion. The wife appeals and the Court of Appeals reverses.

The wife cites *Reynolds v. Reynolds* in arguing the Superior Court erred when it denied her petition to reopen the case and set aside the divorce because the husband did not make sufficient showing of due diligence to allow service by publication pursuant to O.C.G.A. §9-11-4(f). In addition, the wife points out in her brief that the Trial Court relied on two fictious cases in denying her petition. In the husband's brief, he did not respond to the wife's assertion that the Trial Court relied on bogus case law. The husband's attorney relied on four cases in this division, two of which appeared to be fictious, possibly "hallucinations" made up by generative artificial intelligence (AI), and the other two cases having nothing to do with the proposition stated in the husband's brief. In addition, the husband requested attorney's fees on appeal and supported his request one of the new hallucinated cases. The Appellate Court is troubled by the citations of bogus cases in the Trial Court's Order. In addition, the husband's attorney cited two fictious cases that made it in the Trial Court's Order; and the husband's response to the petition to reopen and cited additional fake cases both in the response and in the Appellant's brief filed in the Appellate Court.

It appears the irregularities in the filing suggest that they were drafted using generative AI. Although the present case may be the first occasion for the Georgia Appellate Court to confront the problems that can flow from a lawyer's apparent adoption of generative AI, other courts have commented on the issue. Here, the husband's attorney's use of fictious cases and citations has deprived the opposing party of the opportunity to appropriately respond to her arguments. In addition, the husband's request for attorney's fees citing O.C.G.A. §9-15-14 is a blatant misstatement of the law. For more than 30 years, this Court has held that O.C.G.A. §9-15-14 does not authorize the imposition of attorney's fees and expense of litigation for proceedings before an Appellate Court. The husband's attorney also cited *Johnson v. Johnson* 285 Ga. 408 (2009). This Court cannot find the cited case either by case name or citation, and not surprisingly this Court cannot locate the case by its purported holding. In addition, it would be worth pointing out that the grant of the wife's application for discretionary review, which established as a matter of fact and law that her appeal is not frivolous, should have prompted an attorney to reconsider his approach before filing the Appellate brief requesting attorney's fees under O.C.G.A. §9-15-14; and even if O.C.G.A. §9-15-14(b) would allow attorney's fees in Appellate cases, the wife's case has substantial justifications and was not frivolous. Therefore, the Appellate Court imposed a $2,500.00 frivolous motion penalty on the attorney, which is the most the law allows pursuant to the Court of Appeals Rule 7(e)(2). The Court had no information why the husband's brief repeatedly cites to nonexistent cases and can only speculate that the brief may have been prepared by AI.

The husband also argues that the Superior Court findings are not reviewable because the wife failed to include a transcript of the Trial Court's hearing to be included in the record on appeal. A general rule is that in the absence of a transcript or legal substitute for a transcript, there is no evidence before the Court and the judgment of the Trial Court on evidentiary matters cannot be reviewed. However, this rule is based on the presumption the Trial Court followed the law, and the presumption can be rebutted. The absence of a transcript does not authorize such presumption of correctness when the record plainly shows harmful error. In this case, the wife has rebutted the presumption of regularity by pointing out that both of the cases cited in the order her denying her petition to reopen do not exist. Therefore, on remand, the Superior Court is to impose a $2,500.00 penalty against the husband's attorney. This penalty shall constitute a money judgment in favor of the wife against the husband's attorney and the Trial Court is directed to order such judgment upon remittitur.

HOLD HARMLESS/JOINDER

Red Dress Boutique, Inc. et al. v. Harbour; **A25A0723** (June 24, 2025)

Dianna (wife) and Joshua (husband) formed Red Dress Boutique in Athens in 2005. The husband and wife were equal owners of the business. The husband became a licensed attorney in 2013 and had various rolls as an officer in Red Dress Boutique. The parties were divorced in 2023 and the parties' Divorce Decree incorporated a Settlement Agreement in which the husband agreed to sell his interest in the Red Dress Boutique to the wife so she would be the sole owner of the business, and she agreed to hold him harmless from any liability associated with Red Dress Boutique. In 2024, Red Dress sued the husband for breach of fiduciary duty, professional negligence, and conversion, alleging he misappropriated Red Dresses assets, improperly altered financial documents, and deliberately underpaid sales taxes when he worked for the business. The husband answered and counterclaimed for breach of

contract, and asserted that Red Dress is a third-party beneficiary of the Settlement Agreement and violated the hold harmless clause by suing him. In addition, the husband filed a third-party complaint against the wife alleging she had breached the hold harmless clause, and he moved to add her as a party to the lawsuit. Red Dress moved to dismiss the counterclaim and third-party complaint. In response, the husband claimed that the wife knew about, acquiesced in, and participated in most of the conduct about which Red Dress complained. After the hearing, the Court denied Red Dress's motion to dismiss and permitted joinder of the wife as a third-party defendant. Red Dress files an interlocutory appeal and the Court of Appeals affirms.

Red Dress and the wife contend that the Trial Court erred in concluding that the husband had a stated claim against Red Dress for breach of the settlement agreement's hold harmless clause. They argue the hold harmless clause does not apply because it does not specifically indemnify the husband from his own misconduct, and as a result, he cannot assert counterclaims or third-party claims based on violations of that clause. The hold harmless clause in the divorce settlement agreement at issue here did not constitute a promise by the wife to indemnify the husband for his own negligence. Under Georgia law, the words of a contract of indemnification must be construed strictly against the indemnitee and every presumption is against an intention to indemnify. However, the husband has asserted that the wife knew about, acquiesced in, and participated in most of the complained of conduct. Therefore, if his behavior constitutes negligence, then the wife's behavior does so as well, and their combined negligence caused Red Dress's injuries. This Court has previously held that an indemnification provision that does not indemnify a defendant for its own acts of negligence could grant indemnity to the defendant for damages due to the combined negligence of the defendant and a third-party. Accordingly, given the possibility that a showing of combined negligence could allow indemnification under the hold harmless clause of the Settlement Agreement, the Trial Court was correct in the denial of the motion to dismiss and the grant of the husband's motion to join the wife as a third-party defendant.

IMPROPER MODIFICATION/STATUTORY INTEREST

Saint-Albin v. Eubanks; **A25A0218** (May 20, 2025)

The parties, Saint-Albin (husband) and Eubanks (wife), were married in April 2009 and had two minor children. They divorced in September 2019 and the husband was awarded certain unencumbered property, including the residence at 2497 Rutherford Place and the property located at 2030 Main Street in Atlanta. The husband agreed to pay $4,441.67 in alimony for 120 months, $55,000.00 equitable division of property, child support, and child related medical and extracurricular activity costs. The husband did not make the payments as directed. The wife filed for contempt and in June 2023, the parties entered a consent order finding the husband in contempt and ordering him to pay $250,000.00 to the wife under specific payment schedule in addition to alimony payments. The Order did not alter the award of property to the husband. In September 2023, the wife filed another motion for contempt alleging the husband failed to pay the sum of $61,764.00 for his portion of the children's expenses and extracurricular activities. In February 2024, the parties reached a temporary consent order on the contempt and noted that the husband was in the process of refinancing the property located at 2030 Main Street, Atlanta and the closing was to take place no later than February 16, 2024. The parties agreed that at the closing, $167,955.00 shall be paid directly into the wife's account.

In March 2024, the wife again amended her Motion for Contempt claiming the husband owed the original $167,955.00 plus an additional $67,799.00 since the entry of the February 1, 2024 Temporary Order. Upon the hearing, the Trial Court entered a May 29, 2024 order finding the husband in willful contempt of the June 2023 Consent Order and awarding interest and attorney's fees. The Court ordered the husband to place both properties on the market for sale. Upon the sale of the properties, the husband shall pay $214,400.00 for his tax liability to the IRS and then pay the wife a total of $247,667.00. The husband appeals and the Court of Appeals reverses and remands.

The husband argues the Trial Court erred by modifying the terms of the parties' original divorce decree. It is well settled that the Court can craft a remedy for contempt, but it cannot modify a final decree of divorce on a motion for contempt. In this case, it's undisputed that the parties' settlement agreement awarded the two

properties at issue to the husband, unencumbered. Thus, under the circumstances presented in this contempt proceeding, the Trial Court's May 2024 order requiring the husband to sell the two properties awarded solely to him in the divorce decree constitutes an impermissible modification of the divorce decree. The wife argues that the original 2019 divorce decree and settlement agreement are no longer relevant because the parties entered into a June 2023 and February 2024 consent order. Therefore, the Trial Court's May 2024 order requiring the husband to sell his property was not an impermissible modification of the subsequent orders. However, the June 2023 consent order did not change or modify the original, unencumbered award of the two properties issued to the husband. In addition, the February 2024 consent temporary order indicated the husband agreed to an amount he owed the wife, the husband was in the process of refinancing the property located at 2030 Main Street, and the parties agreed the proceeds from the refinance would be paid into an account for the wife's benefit. None of this language changed or modified the original, unencumbered award of the two properties at issue to the husband. The husband may have contemplated using the 2030 Main Street property to pay the wife what he owed; and even if he agreed to refinance the 2030 Main Street property, such agreement does not authorize the Trial Court to require the husband to sell the property.

The husband next argues the Trial Court abused its discretion in awarding the wife interest pursuant to O.C.G.A. §7-4-12.1, which provides, in pertinent part, that all awards, court orders, decrees, or judgments rendered pursuant to title 19 expressed in monetary amounts are to accrue interest at the rate of 7% per annum commencing 30 days from the date of such award. The statue gives the Trial Courts discretion whether to apply or waive past due interest and mandates the Court to consider four factors in making this determination. The Court found the total interest on all sums due and owing is calculated at $5,694.83. The order does not indicate whether the Court knew it had the discretion to waive or reduce past due child support interest or whether it considered the statutory factors in exercising its discretion. Therefore, the statutory interest award is vacated and remanded for consideration of the factors set out in O.C.G.A. §7-4-12.1.

PRENUPTIAL/UNDISCLOSED RELATIONSHIP

Pickren v. Campbell; **A25A0458** (June 24, 2025)

The parties began their romantic relationship in 2015, when they were both married to other people. Both parties divorced their spouses, and in 2018, Campbell (husband) proposed to Pickren (wife). The husband prepared a prenuptial agreement and financial disclosure, which each reviewed. The wife retained an attorney and deliberated for about a week on the terms of the agreement. After executing the prenuptial agreement, the parties married in October 2019. During the marriage, the wife was unemployed and the husband paid all the expenses, and even the expenses of her children prior to the marriage. In April 2023, the husband filed a complaint for divorce. The wife answered, contesting the enforceability of the prenuptial agreement based upon the husband's undisclosed relationship with another romantic partner. The husband moved to enforce the prenuptial agreement, and the wife filed a demand for a jury trial.

In September 2023, the Court had a specially set hearing on the husband's motion to enforce the prenuptial agreement. The wife did not object to the trial court hearing and deciding the motion, despite her jury demand, and actually subpoenaed witnesses to the hearing. The husband testified that the romantic partner started after he was married to the wife. However, other witnesses testified that his relationship with the romantic partner predated the marriage to the wife, and the wife testified that she would not have signed the prenuptial agreement had she known about the husband's relationship with the romantic partner.

The Court entered an order granting the husband's motion to enforce the prenuptial agreement, finding that the parties started a romantic relationship when they were both married to each other, the husband was open with the wife about his financial conditions, the wife had reviewed the prenuptial agreement with counsel, and, in the prenuptial agreement, both agreed the cause of the separation of the parties would be irrelevant and inadmissible in any divorce proceeding. Still, the wife claimed that the agreement was a product of a non-disclosure of a material fact, and that the husband had failed to disclose his romantic relationship which was sufficient to justify setting aside the prenuptial agreement. The wife appeals and the Court of Appeals affirms.

The wife contends that the Trial Court erred by finding that the husband's romantic relationship at the time the prenuptial agreement was executed did not constitute a material fact sufficient to warrant setting aside the agreement. The controlling case is *Scherer v. Scherer*, which established a three-part test to be employed by the Trial Court: 1) was the agreement obtained through fraud, duress or mistake, or misrepresentation or non-disclosure of material facts; 2) was the agreement unconscionable; and 3) have the facts and circumstances changed since the agreement was executed so as to make the enforceability unfair and unreasonable. In the party's alimony waiver provision, the prenuptial agreement stated that matters of conduct, fault evidence, and causes of separation would be irrelevant and inadmissible in any divorce action. The stated goal of this provision was to avoid litigation of these issues. The Appellate Courts have found no authority, either binding or persuasive, indicating the Trial Court abused its discretion by declining to set aside a prenuptial agreement on the basis of the husband's undisclosed romantic relationship. Here, the Trial Court correctly applied its analysis of the facts, satisfying the first prong of *Scherer* test that the husband had fully and fairly disclosed his assets to the wife before executing the prenuptial agreement.

The wife next argues that the Trial Court erred by construing the language in the prenuptial agreement indicating the parties waived consideration of conduct, fault evidence, and the causes of separation to apply to both marital and premarital conduct. The wife's argument that the prenuptial agreement deems only marital conduct irrelevant and inadmissible runs counter to the plain language of the agreement. The qualifier "marital" appears nowhere in the conduct waiver provision. In addition, when the wife was asked at her deposition whether she considered it any better or worse for infidelity to occur in a premarital versus marital context, she testified that it is all the same. Even assuming that the prenuptial agreement had a qualified conduct waiver provision to apply only to marital conduct to the exclusion a premarital conduct, there was other evidence in the record, particularly the fact the party's relationship itself began with infidelity. Therefore, the Trial Court did not err in enforcing the prenuptial agreement.

Finally, the wife contends the Trial Court erred by not allowing the jury to determine the enforceability of the prenuptial agreement. However, it is doubtful the wife is entitled to a jury trial in the issue of enforceability of a prenuptial agreement. But even assuming the wife had such a right, she waived it by failing to object to, and actively participating in, the Trial Court's hearing the motion to enforce.

VAGUE/IMPERMISSABLE MODIFICATION

Albers v. Albers; **Nos. A25A0317, A25A0318** (July 2, 2025)

The parties divorced in March 2024 and had one minor child. Under the final judgement, the husband was to convey to the marital residence to the wife by quitclaim deed, and to pay $2,490.00 per month for child support which included a deviation of $789.64 for extraordinary educational expenses - representing the husband's pro rata share of the $951.33 monthly tuition. The decree, parenting plan, and worksheets are silent as to how the tuition was to be paid. In May 2024, the wife filed a contempt alleging the husband underpaid his child support by $53.00, removed certain items from the marital home after the divorce, failed to sign the quitclaim deed, and failed to pay the April 2024 school tuition. The husband answered stating the items taken from the home were not furniture and furnishings and the tuition was included in his monthly child support obligation. The husband also stated he offset the $53.00 because school expenses he was not obligated to pay were charged to his credit card without authorization. After the hearing, the husband was found in contempt; was given credit for $53.53 for the incidental charges, but was instructed to pay the full child support amount in the future; was ordered to return the items on Exhibit "A" within ten days; was ordered to immediately execute the quitclaim deed to the marital residence; and was ordered to pay the minor child's tuition; and the wife was awarded $2,000.00 in attorney's fees. the court also entered an amended final judgment and decree of divorce which included a corrected Child Support Worksheet. The new worksheet changed the $789.61 originally designated for extraordinary educational expenses to a $790.00 non-specific deviation. Both cases were appealed, and both cases are reversed and remanded.

The husband argues the Trial Court erred by holding him in contempt regarding the personal items, quitclaim deed, and tuition. Here, the Trial Court expressly found the husband in willful contempt, but the order is ambiguous as to the sanctionable conduct on which the Court's finding was based. Certain directives,

such as the order to return items or to pay tuition directly to the school, could be construed as methods of purging contempt. They could also be interpreted as clarifications of the husband's existing duties under the original decree. Because of these conflicts, the Trial Court's order lacks sufficient details to enable meaningful appellate review. When the Trial Court makes a contempt ruling, the findings of facts and inclusions of law are generally not required, but it is necessary that a contempt order contain sufficient facts that show the party is in contempt of court. Therefore, it is vacated and remanded for clarification on the basis for the contempt.

The husband next argues that the Trial Court erred by awarding the wife's attorney's fees without a statutory basis or making findings of facts. Here, the Trial Court's order states the husband shall pay fees to the wife in the amount of $2,000.00, but the order neither includes the statutory basis for the award or any factual findings to support it. Accordingly, the award of attorney's fees is vacated and remanded for an explanation of the statutory basis of the award and the entry of any findings necessary to support it.

The husband also argues the Trial Court erred by entering an amended divorce decree and corrected child support worksheet. The divorce decree expressly required the husband to pay support in the amount of $2,400.00 per month beginning April 1, 2024 and included an upward deviation for extraordinary educational expenses. The Trial Court's imposition of a $790.00 non-specific deviation in place of the extraordinary educational expenses, which effectively increased the husband's child support obligation by $951.33 per month (the husband's pro rata share of educational expenses), substantively and impermissibly modified rather than clarified the divorce decree. Therefore, the amended decree is reversed.

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