

LEGAL UPDATE SUMMER 2011

From the Law Offices of

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Announcements

An article written by Russell I. Marnell and Scott R. Schwartz entitled “Issues Arising from Passage of the No Fault Divorce Law” was published in The Nassau Lawyer in May of 2011.

Another article written by Mr. Marnell and Mr. Schwartz was published in The New York Law Journal on March 16, 2011. The article was

entitled “Incarceration and Civil Contempt in Family Court Matters.”

Bruce W. Albert, Esq., counsel to the firm, was recently recognized for his six years of service as an officer, and most recently as President and Chairman of the Board of Masters, of the New York Family Law American Inn of Court. The Inn of Court is a national organization comprised of practicing lawyers and members of the judiciary and is dedicated to legal excellence, civility, professionalism and ethics. He will be assuming additional responsibility in a pupillage program to carry the mission of the Inn to local law school students. Both Mr. Marnell and Mr. Schwartz are active members of the Inn.

Mr. Albert recently instructed a group of lawyers at Hofstra Law School regarding matrimonial law and procedure who had volunteered to represent victims of domestic

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violence as part of a program administered by The Nassau County Coalition Against Domestic Violence.

In addition, he continues to teach an intensive trial methods course at Hofstra Law School specifically related to the negotiation and settlement of child custody disputes.

Mr. Albert successfully represented a client of the firm in contested litigation in the New York City Courts when the client was wrongfully charged with child neglect and the child was removed from the parents home without just cause.

The Law Offices of Russell I. Marnell, P.C. successfully obtained custody for a non-parent over the objection of the biological father. The client is the maternal aunt of the child in question and had been her caretaker since the death of the child’s mother almost two years prior. The father had sent

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-  The Passage of Same-Sex Marriage in New York
-  Legislative Changes Regarding Temporary Counsel Fees

the child to live with the child's aunt and had virtually no involvement with her during that period of time. The child's father unsuccessfully contested the custody petition.

The Passage of Same-Sex Marriage in New York

On June 24, 2011, New York passed legislation allowing same - sex couples to legally marry in New York state.

Same-sex couples were first legally permitted to marry on July 24, 2011.

New York is now the sixth state, and the most populous to pass legislation allowing same-sex couples to marry.

With the passage of this legislation, same-sex couples will now be afforded the exact rights in the state of New York that all heterosexual couples possess, including but not limited to the right to ultimately get divorced if they choose to do so. Same-sex couples can also sign prenuptial agreements in New York to the same extent as heterosexual couples.

That said, this new legislation only effects the couple's state - based rights. Same-sex marriages will be legally recognized in New York, but not by the Federal Government.

It has absolutely no impact whatsoever on rights afforded on a Federal Level. Thus, as long as the Federal Defense of Marriage Act remains in full force and effect (this Federal Act limits the definition of marriage to unions between a man and a woman), same-sex married couples will continue to be denied rights afforded to heterosexual married couples under Federal Law. In fact, there are over 1,000 rights that heterosexual couples are entitled to under Federal Law which will not be applicable to same - sex couples until the repeal of the Defense of Marriage Act.

For example, same-sex couples who are legally married in New York will not be able to file a joint Federal Income Tax Return. In addition, they will not be afforded the right to enjoy spousal Social Security Benefits, the unlimited marital deduction, unlimited spousal transfers, the ability to take unpaid leave under the Family and Medical Leave Act when one of the spouses is sick, or something as innocuous as the right to transfer fishing licenses between spouses.

Legislative Changes Regarding Temporary Counsel Fees

At least in theory, Courts in New York have always strived to maintain an even playing field with respect to counsel fee awards during the pendency of a divorce action.

Thus, even before the passage of this new legislation, the goal of the Courts in fashioning temporary counsel fee awards has been to insure that the non - monied spouse will have the financial ability to litigate the action on an equal footing with the monied spouse so as to ensure an equal playing field.

This standard and philosophy was codified in the new legislation which became effective on October 12, 2010 wherein "there shall be a rebuttable presumption that counsel fees shall be awarded to the less monied spouse." This statute additionally provides for timely awards of fees on a temporary basis aimed at providing the non - monied spouse with adequate representation from the commencement of the proceeding until its conclusion.

In the first major decision to be issued by the Courts subsequent to the passage of this new legislation, the Appellate Court overturned the trial Court's award of \$10,000.00 in temporary fees to the Husband and granted him a total of \$125,000.00 in interim fees which is the amount that he had requested in the first instance.

In making this decision, the Appellate Court considered that the Wife's financial resources far exceeded those of the Husband.

Prior to the passage of the above referenced legislation, and prior to this recent decision, trial Courts routinely referred interim requests for counsel fees to trial, frequently making it difficult for litigants with limited financial resources to pay their attorneys throughout the entirety of the divorce proceedings. This made things difficult for both the non-moneyed spouse, who lacked the financial resources to pay their attorney, and for the attorney who wanted to be compensated for their legal services.

Profile of The Firm

Russell I. Marnell is admitted to the bars of New York, California, Nevada, Florida, the United States Tax Court and Federal District Court. He has litigated over two hundred trials including those involving complex custody, equitable distribution, child support, maintenance, and all issues involving family law. Mr. Marnell is the past chairman of the Nassau County Bar Association Matrimonial Committee's Child Custody Sub-Committee. He is currently a member of The Matrimonial Committees of The Nassau and Suffolk County Bar Associations. Mr. Marnell is a member of the prestigious New York Family Law American Inns of Court, is a fellow of The American Academy of Matrimonial Lawyers, and is a Nassau County Family Court Law Guardian. He is also the current Chair of the Attorneys/Accountants Committee. Mr. Marnell has published numerous articles on various matrimonial and family law topics, is a frequent lecturer on these subjects, and has appeared on several television and radio programs. Mr. Marnell has obtained an MBA in accounting and has passed the CPA examination. Finally, he is "AV" rated by Martindale-Hubbell** (An AV rating shows that a lawyer has reached the height of professional excellence. He or she has usually practiced law for many years, and is recognized for the highest levels of skill and integrity.)

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Scott R. Schwartz, the firm's Senior Associate, is a 1992 graduate of The Hofstra University School of Law. He is currently a member of The Matrimonial Committees of The Nassau and Suffolk County Bar Associations as well as The Nassau County Bar Association Child Custody Sub-Committee. Mr. Schwartz is also a member of the prestigious New York Family Law American Inns of Court. He has drafted articles published in The New York Law Journal as well as other legal publications. Several

cases on which Mr. Schwartz has worked have been published in New York State case reporters. Mr. Schwartz concentrates in complex divorce, family law and custody matters, has argued cases before New York State's Appellate Division, and is admitted to both the New York State and District of Columbia Bars.

Susan P. Marnell, who is of counsel to the firm, concentrates on estate planning, drafting of wills, trusts and related documents, estate administration and guardianship matters. Her practice also includes counseling elderly clients and their families on Medicaid, Medicare, tax and legal issues, including the use of durable powers of attorney, living trusts, health care proxies and living wills and real estate matters. Mrs. Marnell holds a J.D. from Hofstra University and is a member of the Estate Planning and Elder Law sections of the New York State, Nassau County and Suffolk County Bar Associations. Mrs. Marnell has been appointed as a court evaluator and guardian ad litem in numerous guardianship and probate matters.

Bruce W. Albert, of counsel, has been engaged in the practice of family law in New York City, Long Island and Westchester as a sole practitioner and counsel to other firms for more than 35 years. He is an adjunct professor at Hofstra University Law School and regularly lectures at local professional organizations and schools, authors articles and has appeared on national television to speak on family matters. Mr. Albert is admitted to the United States District Court for the Eastern District of New York and is a Master, Executive Committee member, and secretary-treasurer of the prestigious national New York Family Law American Inns of Court, as well as its immediate past president. He is also a member of the Nassau County Bar Association and the Matrimonial and Ethics Committees, as well as the Speakers Bureau. Bruce W. Albert is a New York State Court appointed Arbitrator and has been appointed as a Referee and Neutral Evaluator in matrimonial cases.

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- Matrimonial, divorce, and all other family law matters
- Wills, estate planning, probate of wills and estate litigation

The Law Offices of Russell I. Marnell, P.C. is a fully staffed, computerized law firm which has capably met the legal needs of the Long Island community and New York City for more than 20 years. We welcome the opportunity to handle all of your legal problems. In the event we do not handle the type of law in question, we would be more than happy to refer your case to a qualified law firm to assure that your problems are handled properly and professionally.

The information in this newsletter is presented as general information and is not to be construed as legal advice to apply to any person or particular situation. Please keep in mind that the law is constantly changing and therefore you should always consult an attorney for legal advice based on the individual circumstances of your situation.

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