

LEGAL UPDATE WINTER 2010

From the Law Offices of

Russell I. Marnell, P.C.

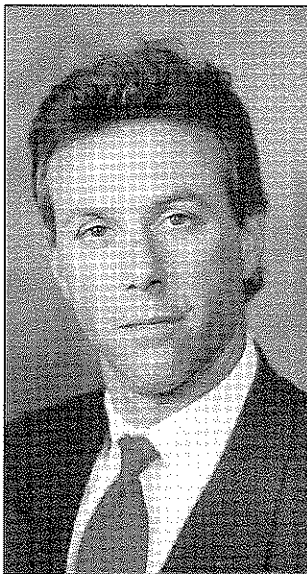
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Announcements

Mr. Marnell was successful in convincing the Family Court to incarcerate a deadbeat dad for a period of six months as a result of his wilful failure to pay child support to the Mother on behalf of the parties' two children. Thus, not only did the Court rule in favor of the Mother so as to find that the ex-husband failed to pay support, but they also deter-

mined that this failure to pay child support was wilful, warranting his incarceration.

In a separate matter, Mr. Schwartz successfully convinced the Supreme Court to hold a non-compliant husband in Contempt of Court without the necessity for a hearing. Thus, the Court found that the Husband had wilfully failed to comply with various Court Orders and held him in Contempt of Court solely on the basis of Mr. Schwartz's written motion papers.

Changes to New York's Child Support Statute

The New York State Legislature initially adopted the Child Support Standards Act approximately 20 years ago. At that time, the statute imposed a cap on combined parental

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income for child support purposes in the amount of \$80,000.00. This means that it was mandatory for the court to base child support on the initial \$80,000.00 of combined parental income, while it was discretionary on the part of the Court whether all or any portion of combined parental income in excess of \$80,000.00 would be considered for child support purposes.






This \$80,000.00 cap remained in place since the enactment of the statute.

Many critics of the statute argued that it was time for a change in that a cap of \$80,000.00 was acceptable in the early 1990's, but that it was no longer appropriate some 20 years later.

The New York State Legislature, possibly in response to these critics, finally enacted a modification to this statute.

Thus, commencing on January 31, 2010, the cap on combined parental income will be increased to

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-  Pre-Nuptial Agreements
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\$130,000.00. However, the child support percentages have not been altered and will remain at 17 percent for one child, 25 percent for two children, 29 percent for three children and so on.

In addition, the newly amended statute provides for an adjustment of the \$130,00.00 cap every two years to reflect changes in the Consumer Price Index.

Pre-Nuptial Agreements

A prenuptial agreement is a contract setting forth the financial rights and obligations between two parties in contemplation of marriage. A couple may opt to execute a prenuptial agreement to protect their interests in the event of divorce, separation or annulment, i.e. where one party may have substantial assets earned prior to the marriage and/or where both parties have children from prior relationships. A prenuptial agreement can also be used for estate planning purposes.

The prenuptial agreement must be in writing and signed by both parties. It must also be acknowledged or proven in the manner required to entitle a deed to be recorded. It may only be amended or revoked after the parties' marriage by a written agreement signed by the parties.

A prenuptial agreement may include provisions for the ownership, division or distribution of separate or marital property, the increase in value/appreciation of such property, provisions for the amount and duration of maintenance, estate provisions pertaining to the rights of the parties to inherit from the other, or other terms and conditions of marriage relationship. Provisions for the custody, care, education and maintenance of any child of the parties may also be included.

The prenuptial agreement will typically be honored by the Court so long as such terms and conditions contained in the agreement were fair and reasonable at the time of agreement, and are not unconscionable at the time of final judgment.

Courts Indicate Willingness to Increase Interim Awards of Counsel Fees

Courts from this state have always strived to award counsel fees to the more needy spouse during the pen-

dency of matrimonial litigation for the purpose of maintaining a level playing field and to ensure that one spouse does not have an unfair advantage over the other. The goal of such an interim counsel fee award was to ensure that the more needy spouse did not have to go through the divorce litigation unrepresented due to an inability to pay for counsel while the other spouse continued to receive competent representation.

Recently, Courts have expanded this idea and principle so as to ensure that a level playing field is truly maintained.

In the initial case, the Court established that the realities of contentious matrimonial litigation requires a regular infusion of funds, and more frequent interim counsel fee awards would prevent the accumulation of bills. The Court went on to state that an award of interim counsel fees ensures that the non - monied spouse will be able to litigate the action, and do so on equal footing with the monied spouse. Such an award is appropriate according to the Court to prevent the more affluent spouse from wearing down or financially punishing the opposition by recalcitrance, or by prolonging the litigation. Thus, according to the Court, in order to ensure that the parties will have equal access to skilled representation, the Domestic Relations Law authorizes awards of interim counsel fees to the non - moneyed spouse during the course of the litigation. Because of the importance of such awards to the fundamental fairness of the proceedings, an application for interim counsel fees by the non - moneyed spouse should not be denied - or deferred until after the trial, which functions as a denial - without good cause, articulated by the Court in a written decision.

In the second case, the Court reiterated the well established maxim that the more affluent spouse should pay for the legal expenses of the needier one. The Court in that instance went on to hold that to defer a determination of legal fees to conclusion of the trial would have the effect of undermining a non - moneyed spouse's ability to carry on or defend the action or proceeding as in the Court's discretion, justice requires, having regard to the circumstances of the case and of the respective parties. Finally, the Court asserted that the maxim of a level playing field and litigation parity flow from the statutory intent of the Domestic Relations Law, and can only be realized with a timely and appropriate award of legal fees, and that such awards are important to the fundamental fairness of the proceedings.

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 was a Nassau County Family Court Law Guardian. He is currently Chairman of the Attorneys/Accountants Committee of the Nassau Bar Association. 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 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 and Nassau 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. 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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