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THE FAMILY LAWYER

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Family Law Section

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Quote of the Month

"Romance is
everything."

- Gertrude Stein

THE HONORABLE GAIL S. TUSAN SPEAKS AT FAMILY LAW BREAKFAST

By Jon Hedgepeth

Judge Gail S. Tusan, who has returned to the Family Court, and who certainly needs no introduction, addressed an enthusiastic, standing room only crowd at the monthly Family Law Section breakfast in February.

The Judge told the crowd that she requested to come back to the Family Court after a much needed change following her first tenure, saying "we are devoted to our cause." Judge Tusan added, "even though we may not agree on what the outcome should be or the process should be to get there, we all work well together."

Judge Tusan's staff was far less apprehensive in getting back into the Family Court this time. The transition from Judge Shoob to her has been smooth, but the Judge observed that, even though

her office has set out a four-week calendar, there has been difficulty in getting people to come down and finalize matters. She said, "I'm not complaining about the cases that have been resolved by agreement, but Jennifer has spent a lot of time on the phone with attorneys and is perplexed as to why there has been so much energy spent on getting off the calendar. If the case is not ready, let's not commit to putting it on the calendar until it's ready."

Having said that, Judge Tusan was extremely grateful to be invited back to speak. She stated that there have been some emergencies that have come up. In particular, some involve citizens that are fourteen years old. Judge Tusan read an

excerpt from a five page selection as part of a Complaint to Intervene filed by two teenagers wanting the Judge to be aware of their selection. Essentially, the child author, whom the Judge nicknamed "I call the shots" wrote, clearly through an attorney, a diatribe telling the Judge of his absolute statutory right to select his parental custodian, "which is controlling, unless [Judge Tusan] has the audacity to do her judgment thing." The child "respectfully demanded" that the Judge honor his selection, and warned the Judge that, if he did not get his way, it would not be pleasant, and that he would not hesitate to take the Judge and his parents up on appeal. While this statement and interpretive reading by the Judge

was thoroughly entertaining in its sheer audacity, the Judge was concerned about the way this was presented to the Court.

The child ended up choosing both parents, so a selection was not really made, but the manner in which it was presented and its adversarial tone made Judge Tusan uncomfortable. Judge Tusan said that "custody cases are contentious enough without encouraging children to take up their sword and jump into the fray." No sooner was the ink dry on the Order, based on this kid's selection, that the Judge's law clerk submitted to the Judge another written selection from another child, being the third selection from the same child. Certainly this is not what the Georgia

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TUSAN, continued from page 1

legislature contemplated when giving a fourteen year old the right to decide which parent to live with. Judge Tusan stated that “very often, the selection is simply dumped into the Court’s lap, and no one wants to challenge the fitness of the other parent.”

After this and several other election demands, the Judge felt compelled to pull out the statute and try to do some research to clarify to herself whether she was missing the point and what was her role to be in such a case. After reading the statute, law review articles and a few cases, which merely recited the law without giving much insight or expansion, the Judge used the speaking opportunity as a forum for all present to discuss and receive suggestions as to how a child should be heard. The Judge felt this is important, especially when a teenager has made a selection but remains indecisive.

The fourteen year-old election statute is over forty years old. It is one of the oldest laws in the country that mandates that a child of a certain age gets to decide. The cases all made clear that, when the existing child custody statute was amended in 1962, making the decision of a fourteen year-old controlling, the concern was not so much that the child should have the right to decide, but rather may have been intended to make the judges listen to the child. She added “there is no question that the child has valuable input, and can benefit from the process in being heard.”

Study after study has proven, according to the Judge, that a child as young as twelve is capable of making a choice, so the question is not whether the child has the tools to make a choice, but rather, for Judge Tusan, why has the child made the choice and how does she reconcile the choice of the child with her overriding obligation to do what is in the child’s best interests. She said that “affidavits are not necessarily helpful, and Guardian reports, with all due respect, and with all they do for the Court, are not necessarily determinative to me when trying to make a decision when custody is selected. I need to talk to the child and interact with the child.” Perhaps because she has raised four teenagers that she is comfortable speaking with them, but Judge Tusan encourages us to help her and the other judges to figure out the best way to address the election. The Judge came to understand the importance of keeping a record of the conversation with the child for the purposes of appeal, but she does not believe the child should be subject to cross examination stating, “we certainly don’t want to increase inadvertently the child’s stress over fear of reprisal from speaking out.”

The Judge believes the child should articulate his/her thoughts on how things will be after the divorce. We as attorneys should tell the children and the parents that the Court is looking for the positives of the selection as opposed to the negatives. Have them write down in their own words what they are thinking. She is bothered by an affidavit simply stating “this is what I select.” The Judge suggested that we have our client and the other spouse, with the children, and discuss the children’s concerns, what the expectations, what will happen, and so forth.

The bottom line is to minimize the drama surrounding the election so that it does not need to be a secret. Judge Tusan suggests asking the child if he/she wants to speak with the Judge.

The floor was opened up for a lively and informative discussion, but my tape ran out.

The Following Attorneys have taken Pro Bono Cases this past month:

GAL:

Bruce Steinfeld
Patti Glover Charlton
Jessie Altman
Mary Ann Oakley
Julye Johns
Angela Riccetti
Charles Medlin
Debbie Gold

Divorce:

Sheri Donaldson
Brenda Godfrey

THANK YOU

Please contact Dan Bloom at AVL
if you can help next month.

WHAT’S COMING UP...

April 13 - Family Law Section Breakfast -
Representative Stephanie Stuckey Benfield, Esq. will
discuss “Hot Topics in the Legislature”

May 11 - Family Law Section Breakfast -
Justice Harold D. Melton, the newest member of the
Georgia Supreme Court

THE COLLABORATIVE LAW INSTITUTE OF GEORGIA

Proudly congratulates the newest
collaborative professionals:

Suzanne Baker, Atlanta, Mental Health Professional
Noreen Banks-Ware, Lithonia, Attorney
Lori Barkus, Miami, FL, Attorney
Sally Cobb Cannon, Atlanta, Attorney
Gary P. Graham, Atlanta, Attorney
Arlene Silver Koslow, Atlanta, Attorney
Pia Koslow, Atlanta, Attorney
Andrew McConaghie, Roswell, Mental Health Professional
Tracy McConaghie, Roswell, Mental Health Professional
Seth Murphy, Atlanta, Financial
Danna Wolfe, Marietta, Attorney
Stephen Worrall, Marietta, Attorney

MESSAGE FROM THE CHAIR

Has Spring sprung? Maybe not quite yet, but, as you all know, we are in the throws of "March Madness." No, I am not talking about basketball! I am talking about the opportunity and the challenge that has been presented to all members of the Section to participate in Pro Bono March Madness. I am sure everyone has received several requests to attend one Pro Bono CLE this month, and I am again making that request of all Section Members. When considering a seminar, don't forget the *One Child, One Lawyer* program. The last training seminar for this wonderful opportunity is March 31 - the last day of "March Madness."

Once again we had a great turnout for our breakfast meeting. For those of you who missed it, we received invaluable pearls of wisdom from Dr. Nancy McGarrah. Dr. McGarrah is a forensic psychologist with Cliff Valley Psychologists who has truly "seen it all" when it comes to custodial evaluations and the impact of divorce on children. Unfortunately, we had a relatively short period of time to interact with Dr. McGarrah this morning. During the time she was with us, we learned that most psychologists don't understand why her practice focuses on forensic psychology, because most psychologists don't want to work with attorneys. For this, we have only ourselves to blame.

As we continue our practice in the area of "Family Law," we will continue to see something new every day, especially when it comes to children and the impact of divorce on their lives. Can any of us ever say we have "seen it all"? Just when I think I have, the phone rings again or another client tells me another story about something new and different. When dealing with issues involving children, whether it is something new or something old for the practitioner, it is definitely something new for the child. These issues make it incumbent on the Family Law practitioner to work closely with mental health professionals.

So, why do most psychologists not want to work with attorneys? To begin to explore that question, make your reservations now to attend the *Family Law Institute and Georgia Psychological Association Joint Conference* at the Hilton Sandestin Beach Resort. This conference has been coordinated by our own Shiel Edlin and Dr. Nancy McGarrah, and promises to be a truly unique experience.

See you at the beach!

Kurt A. Kegel
Section Chair

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Family Law Section Breakfast
Speaker: Rep. Stephanie Stuckey Benfield
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