

**Ohio Association of
Domestic Relations Judges**

A newsletter to inform and to share
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**A Commitment to Change
Altering the status quo of domestic violence**

Having worked extensively for the past five years on domestic violence issues, Judge Michael Brigner has learned more than a thing or two about the problem.

Several Ohio judges with DV expertise, Brigner included, have been sharing their knowledge with judges, magistrates and lawyers around the country.

"I'm convinced that one of the keys to reducing domestic violence in this country is a commitment by judges to change things," Brigner says.

"Every community that has managed to reduced its DV homicide rates and incidents can point to at least one judge in that community who's taken a leadership role by saying, "This community isn't going to tolerate this as the status quo!"

Brigner acknowledges that judges want to be competent in whatever they do. But if they are to competently handle DV cases, more education is needed about the dynamics of DV and legal mechanisms used by judicial systems around the country.

Applauding the Ohio Judicial College's novel approach to DV enlightenment, Brigner says last year the college held three free symposiums, funded by private grants, in Cleveland, Columbus and Cincinnati.

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The method was multi-jurisdictional, resulting in an audience comprised of DR, juvenile, appellate and municipal judges. And, instead of a series of lecturers, a team teaching format generated group participation.

On the national level, Brigner and others have teamed with the San Francisco-based Family Violence Prevention Fund to teach around the country.

"They decided to do a similar symposium, using a national faculty. It's also team teaching and multi-jurisdictional, but each seminar lasts three days instead of one. Half the attendees are invited and the rest attend by open invitation."

Brigner presented at the first symposium, held in Santa Fe. The second, set for this fall, will be in Charleston, and the third in San Francisco.

"It was exciting. We came up with a whole range of interests," he says.

"Even judges who were at first skeptical about learning new DV ideas became committed to making changes to how things were handled in their courts. We've since heard from people in their communities who say that things have indeed changed."

Pro se pros and cons

Pro se is here to stay, says Judge Katherine Lias. That's why, within the last year, programs have been launched in her court for pro se litigants.

"Both the city prosecutor's office and the clerk of courts have liaisons that help the pro se fill out the initial paperwork and get it to the judge. There's also a liaison in our Choices domestic violence shelter, which is going to start working with Legal Aid," she says.

Lay liaisons are on hand to help pro se litigants complete paperwork, but Lias says it borders on practicing law without a license.

"It may also give the pro se person a false sense of security, in domestic violence at any rate, because the ex parte order is easy to get since there's no one standing there opposing it," she says. "They're also not in touch with what may happen if, at the second hearing, they come in without a lawyer and the opponent has one."

Lias cautions pro se litigants about the pitfalls, advising them to have an attorney present.

"I maintain a list of attorneys who do DV work and I try to hook up the pro

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se with an attorney," she says.

In domestic cases, the court has a pro se program through Legal Aid. "The rest of them, my poor bailiff tries to help guide as much as she can," she chuckles.

For pro se dissolution, someone reads every separation agreement and prepares a checklist. If deficiencies are found, the pro se (or attorney, if any) is notified by mail, having the opportunity to remedy the problem before the hearing.

"With divorces, my bailiff will tell them what's wrong with their decree. But often, that may result in continuances until they get it right, or get an attorney who helps them get it right," she says.

Lias says the emphasis should be on getting legal representation for the pro se.

"The thrust ought to be better funding for legal aid and more pro bono work by attorneys," she says. "We need to do everything we can to both aid the person who is a user of our court services, and preserve the law as a profession."

In the loop Child Support Revisions Bill

Senator Merle Kearns reintroduced the Child Support Revisions Bill on August 31. S.B. 180 includes a parenting time adjustment (PTA) and recodifies certain chapters into the new O.R.C. §3119.

It updates the current schedules and adopts a PTA starting at two to five overnights with a 4 percent adjustment, and ending with 181 overnights and a 40 percent adjustment.

Now at 614 pages, substantial changes in the bill were not part of the originally proposed legislation.

"This bill's provisions have a profound judicial impact on all our courts," cautions Judge Judith Nicely.

Nicely says association concerns about the PTA include:

- advocating "trading days for dollars" litigation;
- proposed adjustments have no empirical basis;
- only a minority of states implement similar PTA's;
- greater litigation expenses result from mandating more calculations

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- to an existing, complex child support worksheet; and
- the PTA affords little or no relief to a great majority of existing non-residential parents.

"We believe 'trading dollars for days' is *not* in the best interest of children," Nicely says, noting that the bill is a "Band-Aid remedy" for a problem that needs more study and focus.

"The bill could be studied by the new Child Support Guidelines Advisory Council and the Ohio Focus on Family Law and Children Committee," Nicely says.

To become a part of the legislative committee, call Judge Russell Steiner at (740) 349-6227 or send an e-mail to steiner@alltel.net.

The OADRJ will discuss this bill at the Nov. 30 Annual Meeting in Columbus.

Order in the Court *Pensions dilemma*

When it comes to property settlement issues, the division of pensions is one of the trickiest issues judges must decide.

With that in mind, the Association also wants to collaborate with the Ohio State Bar Association to propose legislation to allow the issuance of a Qualified Domestic Relations Order (QDRO) to Ohio State Pension Funds.

A QDRO requires a pension plan to set up two different plans--one for the employee and one for the employee's ex-spouse. If that's not an option, the court must look for other alternative, such as state pension.

"One way is to trade that off against other assets, but sometimes there aren't as many assets or as much as there are in pension," says Judge Michael Brigner. "Another way is to keep continuing jurisdiction over the issue, which really isn't a solution. The third is to require the employee to pay to the ex-spouse their legal share of the pension whenever it becomes available."

The latter case often leads to a stalking-order scenario, requiring the non-employee ex-spouse to track the other spouse until retirement and then try to collect what is owed.

"The current inability to issue a QDRO makes their lives and our jobs more difficult." Brigner says.

The Court of Appeals disagreed with one decision he wrote advising that

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state pensions accept QDRO orders. Three appellate Court cases are pending on the same issue.

"I'm no predictor of the wisdom of Appellate Courts but should any of those go in the opposite direction, it might wind up on the plate of the Supreme Court," he says.

"Even if the decision is upheld, courts don't legislate. So, we'd just be telling state pension plans that they have to do something, without giving them guidance as to how to do it."

It's still an issue that needs the attention of the General Assembly, Brigner says.

Judicial Reform
ABA Annual Meeting Highlights

Community involvement generates fresh ideas and broader support for reform. It also bolsters public trust in the legal system.

Considering the rising rate of state and local justice reform incentives that enlist the aid of non-lawyers, public involvement was touted as a new trend in justice reform at the ABA's annual meeting, held August 5-11 in Atlanta.

The Model Code of Judicial Conduct was also amended, setting contribution limits and disclosure standards on campaigning judges. Also, judges cannot appoint a lawyer to perform a service for the court if the attorney contributed in excess of a certain amount to that judge's campaign.

The House of Delegates also called for more study on a proposal to allow lawyers to form multidisciplinary practices (firms owned jointly by lawyers and other professionals, such as accountants, social workers and health care providers).