Family Law Update

During its 2003 session, the General Assembly enacted several significant new laws that are of interest to family mediators, including laws relating to marital settlements and parent education seminars.

Agreements for Modification of Support

Probably the most important new law addresses the enforceability of divorce settlement agreements that contain provisions for the future modification of child support. The legislation (HB 2386) was a response to the Riggins v. O'Brien decision, in which the Supreme Court declared "specifying future changes in the amount of child support is inappropriate..." 263 Va. 444, 448 (2002).

The new law adds the following language to a statute (Virginia Code § 20-109.1) that permits a court to incorporate the parties' settlement agreement into a decree:

> Provisions in such agreements for the modification of child support shall be valid and enforceable. Unless otherwise provided for in such agreement or decree incorporating such agreement, such future modifications shall not require a subsequent court decree. This section shall be subject to the provisions of § 20-108.

This law should give parents some comfort that they can mediate and reach enforceable agreements that provide for specific future changes in child support, such as a reduction when one of several children reach the age of majority.

However, the new legislation indicates that agreements for future modification of child support "shall be subject" to another statute that allows a court to revise and alter child support decrees (§ 20-108). Thus, a court is not necessarily bound to follow the parties' mediated child support arrangement if the court concludes that the circumstances of the parents and needs of the child require a different amount of child support.

The statute is also intended to give some protection when parents fail to return to court to have earlier decrees modified to reflect the adjustments to child support called for in incorporated settlement agreements. Sometimes, even after complying in good faith, the paying party finds himself in arrears under a child support order that was not so modified. The 2003 legislation states that such future modifications, which are called for in agreements incorporated into earlier decrees, shall not require a subsequent court decree.

Mediators, nonetheless, should caution parties to consult counsel to determine whether the modification arrangements are otherwise unenforceable.

Marital Agreements

In 2002, the Virginia Supreme Court had ruled that an oral property settlement agreement

between divorcing spouses was not enforceable under Virginia Code § 20-155, which requires marital agreements to be in writing and executed by the parties. Flanary v. Milton, 263 Va. 20 (2002). In response to this decision, the General Assembly amended the statute by adding two exceptions to the requirement that marital agreements be signed and in writing. Under HB 2303, if the terms of a marital agreement are either "(i) contained in a court order endorsed by counsel or the parties or (ii) recorded and transcribed by a court reporter and affirmed by the parties on the record personally, the agreement is not required to be in writing and is considered to be executed."

Required Parent Education Classes

This General Assembly extended and expanded the requirement that parents, in child custody and visitation cases, attend parent education seminars. When first enacted in 2000, the parent education law was scheduled to expire at the end of June, 2003. The new legislation (HB 2128) makes this requirement permanent and now requires parties in *child support* cases to attend the seminars. Effective July 1, 2003, both sections 16.1-278.15 and 20-103 are amended to require that:

> The parties to any petition where a child whose custody, visitation, or support is at issue for an original decision, whether contested or by agreement, shall show proof that they have attended within the 12 months prior to their court appearance or that they shall attend within 45 days thereafter an educational seminar or other like program conducted by a qualified person or organization approved by the court.

In addition to extending the requirement to child support cases, the statute now appears to require parties to attend the class even if they are in agreement as long as "custody, visitation or support" is "at issue for an original decision." However, it also appears that, if a court had previously decided the matter at issue, the parties will not necessarily be required to attend the seminar (such as when the parties are returning to court and seeking modification of an earlier decree).

The statute has also been broadened to apply not only to parents, but to any party in the proceeding, including the natural or adoptive parents or parties "with a legitimate interest" under Virginia Code § 20-124.1 (which includes grandparents, stepparents and other relatives who have intervened or are otherwise properly before the court).

Of particular interest to mediators is the new requirement that parties attend the seminar "whenever possible, before participating in mediation or alternative dispute resolution to address custody, visitation or support."

A court may exempt parties from attending these seminars "for good cause shown or if there is no program reasonably available."

The statute also clarifies the General Assembly's expectations for the seminars. The seminar must be conducted by a qualified person or organization approved by the court. It must address the effects of separation or divorce on children, parenting responsibilities, options for

conflict resolution and financial responsibilities. The seminars must be at least four hours in length. The fee to be charged each party is based on each party's ability to pay, but may not exceed $50. The court, in its discretion, may also require completion of additional programs.

The statute also addresses confidentiality and excludes parties' statements from being used as evidence in subsequent proceedings, except "statements or admissions by a party admitting criminal activity or child abuse or neglect."

Fees for Custody Cases

In the past, Juvenile & Domestic Relations Courts did not charge a fee to parties filing a petition for custody or visitation. That will change in July, 2003, when a new Virginia Code section (§16.1-69.48.5) goes into effect and requires a $25 fee. Because such cases are opened for each child, the petitioning parent will incur a $25 fee for each child for whom custody or visitation is to be adjudicated. There is still no fee for a child support or spousal support case.

Other Legislation

A number of other bills passed, including the following two new laws. In HB 2545 [amending § 20-124.2], both circuit and JDR courts have now been given express authority to "order an independent mental health or psychological evaluation to assist the court in its determination of the best interests of the child" in cases where custody and visitation are issues.

Previously, a criminal statute (§ 18.2-49.1) had made it a class 6 felony when a person wrongfully withholds a child outside the Commonwealth and in violation of a court order from the child's "custodial parent." HB 2440 broadens that statute so that it is now a felony to so withhold the child "from either of a child's parents or other legal guardian."

Bills Not Passed

As usual, many other bills relating to family law were introduced but not passed by the General Assembly. Among the more notable bills that did not become law this session were several bills relating to joint custody (e.g., HB 2127), covenant marriage (HB 2793) and the child support guidelines (e.g., SB 1312). The legislature also did not enact two bills (HB 1965 and 1966), one of which would have eliminated state funding for custody, visitation and support mediation and one of which would have limited eligibility for such services to only indigent parties.