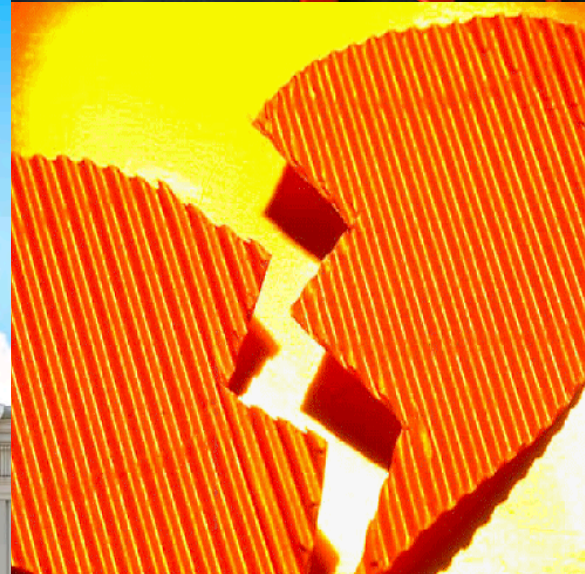


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Maryland Family Law in the 21st Century

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Developments in Family Law in 2015

By Lindsay Parvis and Heather R. Sweren

2015 has been an eventful year for family law. This article will address family law legislation and rules of civil procedure that went into effect in 2015, new rules going into effect in 2016, and appellate and attorney general opinions issued in 2015 through September 30. It would be far too ambitious to discuss every change in every law, rule, and opinion. This article touches on key changes that deserve further review.

2015 Family Law Legislation

The 2015 legislative session was an interesting one because of the extent of turnover, resulting in many new legislators. Because many elections were decided at the primary level, legislators came into session prepared to introduce many new bills.

The following are summaries of laws that went into effect on October 1, 2015 (unless otherwise indicated). These are summaries only – of course, read the entire statute.

FAMILY LAW:

Family Law §7-101 – Absolute Divorce Grounds – Mutual Consent

Allows divorce based upon “mutual consent” when the parties do not have minor children in common, the parties sign and submit a written agreement to the court resolving all issues regarding alimony and distribution of property, there is no pending action to set aside the agreement before the hearing, and both parties appear at the divorce hearing. Specifies that agreements pursuant to the mutual consent ground may be incorporated, but not merged, into the Judgment of Absolute Divorce and modified pursuant to Title 8.

Practice pointers: Counties are handling the filing of and presentation of divorces based on this ground differently. So, before you file, call the clerk’s office to find out if there is a special form for the Joint Request

for Uncontested Divorce Hearing (as in Montgomery County), if the agreement must be attached to the Complaint or can be submitted at the hearing, and whether a corroborating witness is required or not. Additionally, if unsure whether the opposing party will appear at the divorce hearing, serve him/her with a subpoena. This will provide you a stronger argument for a continuance if the opposing party fails to appear at the hearing.

Family Law §7-102 – Limited Divorce Grounds – Separation

Eliminates the requirements of voluntariness and no reasonable expectation of reconciliation in limited divorce ground of separation. Also eliminates conditions precedent to granting a limited divorce requiring good faith reconciliation efforts and cost of those efforts.

Family Law §7-101 – Application for Divorce – Residency Requirement

Reduces, from 1 year to 6 months, the residency requirement to file for divorce if the ground for divorce occurred outside of Maryland.

Family Law §10-301 et. seq. – UIFSA Revision

Brings UIFSA into compliance with the Hague Convention regarding recording and enforcing foreign support orders. **Effective July 1, 2015**

DOMESTIC VIOLENCE:

Family Law §4-506 & 4-507 – 2-Year Protective Order with Respondent’s Consent

Allows for a final protective order to be extended with respondent’s consent for an additional 1 or 2 years.

Family Law §4-506 – Additional Relief in Final Protective Order

Allows a court, when granting a final protective order, to “order any other relief that the judge determines is necessary to protect a person eligible for relief from abuse.”

Family Law §4-506 – Permanent Protective Orders – Conspiracy or Solicitation to Commit Murder

Expands the crimes entitling a court to issue a permanent final protective order, when the individual was convicted and sentenced to serve a term of imprisonment of at least 5 years and has served at least 12 months of the sentence, now to include “conspiracy or solicitation to commit murder”.

Family Law §4-504, 4-508.1 & Courts & Judicial Proceedings §3-1503 – Protective Order and Peace Order Petitions – Maryland Residents

Protective Orders: Allows the filing of a protective order petition in Maryland if the abuse allegedly occurred

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in Maryland or the person eligible for relief is a resident of Maryland, regardless of where the abuse allegedly occurred. And, declares that protective orders issued in Maryland shall be accorded full faith and credit by other states to the extent required by federal law.

Peace Orders: Allows the filing of a peace order petition in Maryland if the act allegedly occurred in Maryland or the petitioner is a resident of Maryland, regardless of where the act allegedly occurred.

Family Law §4-501 – Persons Eligible for Relief

Expands the definition of “person eligible for relief” to include “an individual who has had a sexual relationship with the respondent within 1 year before the filing of the petition”. Excludes ordering either party to participate in professionally supervised counseling or a domestic violence program as relief in a final protective order when the person eligible for relief falls in this new definition.

CINA/TPR/JUVENILE & GUARDIANSHIP:

If you practice in these areas, you may want to look at changes to the following statutes:

- **Courts & Judicial Proceedings §3-812 – Child Abuse & Neglect – Waiver of Reunification Efforts**

- **Family Law §5-701 – Centralized Confidential Database**
- **Criminal Procedure §10-105 & 10-106 – Transfer to Juvenile Court – Petition for Expungement**
- **Courts & Judicial Proceedings §3-816.1 & Family Law §5-525 – Information and Services for Foster Children and Former Foster Children**
- **Criminal Procedure §4-202 – Juveniles – Transfer Determinations – Confinement in Juvenile Facilities**
- **Estates & Trusts §13-704 & 13-705 – Guardianship of the Person – Attorney’s Fees**

2015 Rules of Civil Procedure & Professional Conduct

While this is not a comprehensive review of all changes to all rules that impact family law, below are highlights you will not want to miss.

LIMITED SCOPE REPRESENTATION / LIMITED APPEARANCES:

In September 2009, the Maryland Access to Justice Commission issued a White Paper recommending Limited Scope Representation as “an alternative mechanism for delivery of high quality legal services to well-prepared clients . . . a reduction in scope only, not in quality.” On July 1, 2015, new Rules of Procedure and Professional Conduct went into effect authorizing attorneys to enter limited scope representation in litigated matters. In particular, you should review the following rules before entering a limited appearance:

- 1-321(b) – Service of pleadings and papers other than original pleadings – Service after entry of Limited Appearance
- 1-324(b) – Notification of orders, rulings, and court-proceedings – Notification When attorney has entered Limited Appearance
- 2-131(b) – Appearance – Limited Appearance
Practice Pointer: Some jurisdictions may have protocols for limited scope appearances in family law cases. For example, Montgomery County Circuit Court details the bundles of tasks that an attorney must undertake when engaging in certain limited scope appearances and when to

request leave of court when deviating from the protocol. Before entering a limited appearance, contact the clerk's office about any local protocols.

- 2-132(a)(2) – Striking of attorney's appearance – By notice (Limited Appearance)
- 1.2 – Scope of Representation and Allocation of Authority Between Client and Lawyer, especially:
 - Section (c) and Comment [8] regarding Limited Appearance; and,
 - Comment [9] regarding Collaborative Law.

OTHER RULES:

- 2-510 – Subpoenas – deserves a re-reading as the rule has been re-written.
- 9-206 – Child support guidelines and 9-207 – Joint statement of marital and non-marital property Revised to require neutral identification of the parents/parties in lieu of gendered references.
- 9-301 through 9-309 – New rules regarding Domestic Violence cases Especially Rule 9-306: when a petitioner's appearance may be waived at a final protective order hearing due to lack of service on the respondent.
- 17-101, 17-502 through 17-507 – New rules regarding Collaborative Law Process, in particular:
 - 17-503: Informed Consent, contents of agreement
 - 17-504: Stay (of pending court action)
 - 17-505: Termination of collaborative law process; withdrawal of appearance
 - 17-506: Scope of representation

Rules of Civil Procedure & Professional Conduct - Effective January 1, 2016

- 5-803 – Hearsay Exceptions: Unavailability of Declarant Not Required
 - Specifically 5-803(b)(8)(A)(iv) regarding admissibility at a final protective order hearing of factual findings reported to a court in a child protective services or adult protective services report provided the parties have had a fair opportunity to review the report.

- 9-205.3 – Custody and Visitation-Related Assessments
 - A must read. Addresses the appointment of evaluators, the cost, required qualifications, court lists and selection of evaluators, mandatory tasks in an evaluation, contents of the order of appointment, form and dissemination of reports, depositions, court testimony, and fees.
- 16-738 – Permanent Retired Status
 - To enable an attorney whose conduct meets certain criteria to retire permanently from the practice of law with dignity and to ensure the protection of the public, without sanction.
- 15.1 – Admission to the Bar – Special Authorization for Military Spouse Attorneys
 - To allow the attorney spouse of an active duty service member, who resides in Maryland and is licensed to practice law in

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another state but not Maryland, to practice law in Maryland if she/he meets the requirements of Rule 15.1.

Appellate Opinions from January 1 through September 30, 2015

Falls Garden Condo. Ass'n. v. Falls Homeowners Ass'n, 441 Md. 290 (2015)

- Not a family law opinion, but noteworthy for its discussion of contracts.
- Letter of intent executed by parties was enforceable as a binding contract when the plain language of the letter demonstrated the parties intended to be bound and it expressed definite agreement on all materials terms.

Baker v. Baker, 221 Md. App. 399 (2015)

- A must read about the treatment of capital loss carry-forwards arising from a joint investment account in divorce.
- “[A] capital-loss carry-forward, when generated by a capital loss from the sale of marital property, is itself marital property . . .”
- So, a capital loss carry-forward can be allocated in an agreement and if not in an agreement, Treasury Regulations apply so that the carry-forward loss is allocated between the spouses in proportion to the extent to which their individual losses gave rise to the carry-forward.
- Waiver of an interest “in” an account is not a waiver of an interest that “relates to”, “arises from”, or results from activity in” the account. This means that if a capital loss carry-forward is not addressed in the parties’ agreement, the spouse who waived his/her interest in an account may use the loss to offset gains realized related to other property, as Ms. Baker did in this case.

Davis v. Wicomico Cnty. Bureau of Support Enforcement, 222 Md. App. 230 (2015)

- A party has no automatic right to blood or genetic testing.
- Father who signed an affidavit of parentage, and did not rescind it within the statutory 60 days, could not set aside the finding of paternity based on the affidavit except upon

showing of fraud, duress, or material mistake of fact and is not entitled to a blood test.

- Had parentage been established by judicial determination pursuant to FL §5-1038, the individual can initiate proceedings to set aside the declaration and request a blood or genetic test pursuant to FL §5-1029.
- “[A]ny resolution of such inequity is reserved solely for the General Assembly.”

Sublet v. State, 442 Md. 632 (2015)

- Not a family law opinion, but noteworthy for its discussion of authentication of evidence from a social networking website as condition precedent to admissibility.
- “[I]n order to authenticate evidence derived from a social networking website, the trial judge must determine that there is proof from which a reasonable juror could find that the evidence is what the proponent claims it to be.”
- The CA suggested 3 non-exclusive means of authentication of ownership of websites: (1) ask the purported creator if he/she created the profile and whether he/she added the posting in question; (2) search the computer of the person who allegedly created the profile; (3) obtain information directly from the social networking website.

Pulliam v. Pulliam, 222 Md. App. 578 (2015)

- Pursuant to the parties’ agreement, incorporated into a consent order, division of Law Enforcement Officers’ Pension System pension includes division of a voluntary Deferred Retirement Option Program benefit even if, at the time the parties entered into their agreement, the employee is not yet eligible to receive the benefit upon retirement.
- A reasonable person would intend the word “pension” to encompass whatever benefits are included in that pension under applicable law.

In re Andre J., 223 Md. App. 305 (2015)

- Parent’s appeal of a change in permanency plan in a CINA case.



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Wilson v. Wilson, 223 Md. App. 599 (2015)

- Discussion of the intersection between and division of military retired pay and military disability retirement benefits in divorce, and especially the impact of post-settlement changes of retired pay to disability retirement benefits.
- “Because nothing in the Judgment of Divorce or the Consent Order excludes disability retirement benefits, or even references any disability on the part of the appellant, we conclude that the appellee’s share of appellant’s ‘military pension fund’ includes his disability retirement benefits.”
- Appellant breached the parties’ contract when he failed to pay the former spouse her share of the retirement benefits not paid by DFAS to her directly, in part because the agreement did not require that DFAS pay the spouse’s benefits.
- Appellant filed a Petition for Writ of Cert, which was granted.

In re Dany G., 223 Md. App. 707, (2015)

- Special Immigrant Juvenile status case.
- “[T]he trial court must apply the state law definitions of ‘abuse,’ ‘neglect,’ ‘abandonment,’ ‘similar basis under state law,’ and ‘best interest of the child’ as we would in Maryland, without taking into account where the child lived at the time the abuse, neglect, or abandonment occurred.”

Friedetzky v. Hsia, 223 Md. App. 723, (2015)

- UCCJEA and UIFSA jurisdiction case.
- “[B]y affirmatively requesting genetic testing in his answer to Appellant’s custody petition, and by initiating discovery relating to matters of paternity and child support, Appellee triggered the UIFSA long-arm statute and waived the limited immunity otherwise afforded in a custody proceeding under the UCCJEA.”

Baker v. State, 223 Md. App. 750, (2015)

- Not a family law opinion, but noteworthy for its discussion of whether call records constitute inadmissible hearsay or are admissible as business records.

Atty. Griev. Comm'n v. Trye (2015)

- Not a family law opinion per se, but noteworthy for its discussion of how an attorney can get oneself disbarred for fraudulent conduct in one's own divorce.
- False representations on a loan modification request on real property and altering settlement documents (agreement and court order) without the knowledge or permission of the opposing party were but a few of the "disbarable" missteps.

Board of Trustees, Community College of Baltimore County v. Patient First Corporation (August 18, 2015)

- Not a family law opinion, but noteworthy for its detailed discussion of indemnification clauses.

Sieglein v. Schmidt (August 25, 2015)

- Father unsuccessful in attempt to deny parentage of and support obligation to child born during the marriage but conceived from donor sperm and donor egg.
- Estates & Trusts §1-206(b) applied to establish that both spouses were the legal parents of the minor child. "Artificial insemination" includes in vitro fertilization.

Conover v. Conover (August 26, 2015)

- Same-sex divorce case, concerning custody of a child conceived by artificial insemination and born before marriage and not adopted by the parent seeking custody/visitation.
- In this author's opinion, a condemnation of the state of the law on third party custody and access, especially in same-sex cases: "In conclusion, it must be said that this is a sad case; nor can Michelle's desire for access to Jaxon be questioned. However, the present state of Maryland case law leaves us no choice. The interplay between the State's paternity statutes and the marriage, divorce, and child access rights of same sex couples is aptly characterized as 'uncharted Maryland waters in an area where the Legislature is better suited to consider the competing legal and societal values . . .'"
- Concurring opinion: "I agree with the majority that *Janice M. v. Margaret* . . .

compels this conclusion and that we, as our State's intermediate appellate court, are not at liberty to hold otherwise. However, the General Assembly's intervening recognition of same-sex marriages . . . raises doubt about whether a divorcing same-sex spouse should begin the visitation analysis as a third party to her non-biological non-adopted child . . ."

July 24, 2015 Attorney General Opinion

Divorce – Whether Same-Sex Marital Infidelity Can Qualify as Adultery for Purposes of Family Law Provisions Governing Divorce

- "In our opinion, adultery, as that term is used in the Family Law Article, includes a spouse's extramarital sexual conduct with someone of the same sex."
- "[T]his conclusion is compelled not only by the broad purposes behind the concept of adultery in the family law context, but also by the respect and dignity owed to same-sex marriages as equal to opposite-sex marriages under State law."
- Contains detailed analysis and history of adultery in Maryland family law. ■

Biographies

Lindsay Parvis is a partner at Dragga, Hannon, Hessler, & Wills, LLP in Rockville, where her practice focuses on high conflict family matters, as an advocate for spouses/parents but also as court-appointed counsel for children. In her free time, she co-chairs the Legislative Committee of the MSBA's Family & Juvenile Law Section.

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