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When There Is No License, Is There a Marriage?

Part Two of a Two-Part Article

By Martin E. Friedlander

In Part One of this artice, available at http://bit.ly/1OEHU0Q, we asked the question: What happens when your client says he was married before, but without a license, in a religious ceremony? Since he thought that the State did not recognize his marriage, and he got a religious divorce, he assumed he was free to marry once more. Is he right? We have previously discussed how New York and California would handle this question. Now, let's look at how some other states treat the issue.

New Jersey

The statutes of New Jersey provide that "No marriage … shall be valid unless the contracting parties shall have obtained a marriage license as required by section 37:1-2 of this Title, and unless, also, the marriage after license duly issued therefor, shall have been performed by or before any person, religious society, institution or organization authorized by section 37:1-13 of this Title to solemnize marriages; and failure in any case to comply with both prerequisites aforesaid, which shall always be construed as mandatory … shall render the purported marriage absolutely void." N.J. Stat.

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Diagnoses in Child Custody Evaluation Reports

By David A. Martindale

Thomas Szasz, best known for having written The Myth of Mental Illness, in 1961, observed, in a subsequent book (The Second Sin, 1973), that diagnoses "may be, and often are, swung as semantic blackjacks … " (p. 71). Szasz added that "the man who wields a blackjack is recognized by everyone as a thug, but the one who wields a psychiatric diagnosis is not" (p. 71). The diagnosis-blackjack should be removed from the arsenal of weapons used by litigants in custody disputes.

In his "Reference Guide on Mental Health Evidence," found in the Federal Judicial Center's Third Edition of the Reference Manual on Scientific Evidence, Paul S. Appelbaum opines: "A diagnosis of mental disorder per se will almost never settle the legal question in a case in which mental health evidence is presented" (p. 819). He explains that "the ultimate legal issue usually will turn on the impact of the mental disorder on the person's functional abilities" (p. 820). In order to clarify what is meant by the words "functional abilities," Appelbaum offers some examples. One of those is "skill as a parent" (p. 820).

The DSM-5 Cautionary Note

When two parents are involved in litigation concerning access to or custody of their children, and when one of the two parents carries the weight of a diagnostic label, it is not uncommon for the other to presume that his or her effectiveness as a parent will be deemed to be superior. Unfortunately, this belief is too often reinforced by mental health professionals, attorneys and judges who have either failed to read or have failed to consider the implications of a "Cautionary Statement for Forensic Use of DSM-5," appearing on page 25 of the most recent edition of the Diagnostic and Statistical Manual of Mental Disorders, Fifth Edition (the DSM-5).

In the cautionary statement, users of the DSM-5 are reminded that "the definition of mental disorder included in DSM-5 was developed to meet the needs of clinicians, public health professionals, and research investigators rather than all of the technical needs of the courts and legal professionals" (p. 25). Where litigation involves assertions regarding the mental/emotional health of one or

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more of the parties, the "technical needs" alluded to presumably include the obligation of triers of fact to focus their attention on specific psycho-legal issues that, more often than not, are statutorily defined or addressed in case law.

Also appearing in the DSM-5's cautionary statement is a reminder of "the risks and limitations of its use in forensic settings. When DSM-5 categories, criteria, and textual descriptions are employed for forensic purposes, there is a risk that diagnostic information will be misused or misunderstood. These dangers arise because of the imperfect fit between the questions of ultimate concern to the law and the information contained in a clinical diagnosis" (p. 25).

Most importantly, users of the DSM-5 are reminded that in forensic settings, "information about the individual's functional impairments and how these impairments affect the particular abilities in question" is needed. In the context of custody litigation, "the particular abilities in question" are the relative abilities of the competing parties to meet the needs of the children.

Among experienced evaluators, attorneys and judges, most would acknowledge that there are situations in which a parent who meets the criteria for one of the many diagnoses appearing in the DSM possesses parenting skills that are superior to those of a parent for whom there is no applicable diagnostic label. Yet many of the same experienced evaluators, attorneys, and judges are easily distracted by diagnostic labels.

With regard to evaluators, in the various mental health fields, many practitioners fail to negotiate the tricky therapeutic-to-forensic paradigm shift. Most (if not all) mental health practitioners who currently involve themselves in forensic matters were initially trained to gather the information needed in order to formulate a diagnosis and, as a layperson might put it, "figure out what's wrong" with people. In dealing with custody litigants, diagnostic labels are often more prejudicial than probative. Evaluators must not be led, by professional "habit," to provide information that they are accustomed to providing but that is, within the forensic context, likely to be a diversion.

Diagnoses As Short-Hand Descriptions

Those who feel that labels (at least the formal ones, such as those that appear in the DSM) contribute something to discussions of parenting effectiveness often point out that empirical research has been done on specific, identified disorders, and that a diagnostic label provides an indirect link to that research. Published empirical research on mental/emotional disorders does not relate to the specific people in matters before courts but, rather, to the diagnostic category in which they have been placed. The descriptors that apply to a particular diagnostic category do not describe any particular human being with reasonable precision. Thus, diagnosis is, in essence, a short-hand form of description. In a forensic context, there is no advantage to short-hand.

The manner in which diagnosis as short-hand can be misleading becomes apparent when consideration is given to the procedure employed in formulating opinions regarding diagnoses. A diagnosis of Narcissistic Personality Disorder is made if five criteria from a list of nine are met. A diagnosis of Avoidant Personality Disorder requires that four criteria from a list of seven be met. One is diagnosed with Obsessive-Compulsive Personality Disorder if four of eight criteria are met. One is deemed to be manifesting an Antisocial Personality Disorder if

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ADR: NJ's Experience Shows Its Value to Family Law Practice

By Laurence J. Cutler

In days gone by, alternate dispute resolution (ADR), or complementary dispute resolution (CDR), was a new-fangled idea to matrimonial lawyers. Steeped in tradition and resistant to change, divorce lawyers did not quickly embrace these winds of change. But the future was (and is) coming. New Jersey, for example, has now embedded ADR not only in its legal lexicon, but in its way of resolving matrimonial disputes; NJ Rules of Court provide that methods of CDR "… constitute an integral part of the judicial process, intended to enhance its quality and efficacy. Attorneys have a responsibility to become familiar with available CDR programs and inform their clients of them." R. 1:40-1.

New Jersey's extensive and well-defined experience is spread over several decades, and involves myriad statutes and rules. As such, New Jersey's experience is instructive to jurisdictions that may not yet have as comprehensive or well-developed ADR programs in place.

New Jersey's Journey

To trace the history in our example jurisdiction, we need to return to the 1970s. But first, let's define terms.

On one end of the spectrum of family law ADR is mediation, and on the other end is binding arbitration. In between is non-binding arbitration. Then, sort of off of the grid, but nonetheless a branch of mediation, is collaborative divorce.

"Mediation" is a "process in which a mediator facilitates communication and negotiation between parties to *assist them in reaching a voluntary agreement* regarding their dispute." N.J.S.A. 2A:23C-2. "Non-binding Arbitration" is a process by which each party and/or its counsel presents its case to a neutral third party, who then makes a *recommendation* for settlement of the issues presented. "Binding Arbitration" (or just "Arbitration") is a process "by which each party and/or its counsel presents its case to a neutral third party, who then *renders a specific award*." R. 1:40-2(a)(1). And, finally, "Collaborative Divorce" is a procedure intended to resolve the family law dispute *without intervention by a tribunal* provided that the individuals in the dispute sign a family collaborative law participation agreement and are represented by family collaborative lawyers. N.J.S.A. 2A:23D-3c.

Now, for the history. Like so many other areas of law, the evolution of ADR in New Jersey did not expand in a structured sort of way, but in a cumulative development. In the late 1970s, a process was started in Morris County called the "early settlement program" (ESP). It was to be (and continues in its original intent and current practice) a method of settlement of cases, outside of a judicial determination, whereby the parties and their attorneys met with a panel of well-qualified matrimonial lawyers (initially consisting of three members, but ultimately being reduced to two) who would hear the issues and positions of the parties, caucus between themselves and make a recommendation for settlement. If this sounds familiar, that's because it is: Morris County's ESP, the first institutionalized ADR in New Jersey, was something akin to non-binding arbitration.

The program was subsequently adopted in several other counties and was so successful that by the early 1980s, an ad-hoc committee of the New Jersey Supreme Court endorsed a proposal to have the Court adopt a rule recommending that each of New Jersey's 21 counties adopt such a program. (New Jersey is rather unique in that under the state constitution, the court adopts is own rules of governing the practice and procedure to be used in its system. It has several standing committees (usually comprised of judges, lawyers and court personnel) and such other ad-hoc committees as it may, from time to time, appoint to make recommendations for rule changes.) By the mid-1980s, pursuant to a recommendation by the Supreme Court Family Practice (standing) Committee, the court adopted a rule mandating that every county have such a program. It has been a huge success, and I dare say that the system of dispensing matrimonial justice would inevitably fall apart without it. (Anecdotally, and sadly, there is probably not a similar program throughout the rest of country.)

By the early 1990s, however, this was not enough. So the court went about making a series of changes that adopted mediation as a second method of ADR in matrimonial cases. Ultimately, the legislature in 2004 adopted the Uniform Mediation Act, N.J.S.A 2A:23C-1 *et seq*., and the court thereafter continued to fine-tune its rules on mediation, and in particular, mediation in matrimonial cases. Now, economic mediation is required in every unsettled matrimonial case. No result of any kind is mandated, but the parties are, nonetheless, required to participate in the process. The Administrative Office of the Courts (AOC) maintains a list of attorney-mediators who have completed specific training for this purpose. With the new cycle of rules effective Sept. 1, 2015, the court will even expand the program to cases involving domestic violence.

Arbitration of family law cases in New Jersey is, however, somewhat more complex. From the case law point of view, the New Jersey Supreme Court was essentially the first jurisdiction in the country to legitimize family law arbitration in its landmark decision of *Faherty v. Faherty*, 97 N.J. 99 (1984). That case encouraged the use of arbitration as a method of ADR as to economic issues in matrimonial cases. However, the case, while receiving notoriety throughout the country, was not

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Arbitration

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at all well-received in its own state — for arbitration did not catch on at all.

There are two statutes that now govern the arbitration process in all civil family law cases: 1) the Alternative Procedure for Dispute Resolution Act (APDRA), N.J.S.A. 2A:23A-1 *et seq*., adopted in 1987; and 2) the Uniform Arbitration Act (UA), N.J.S.A. 2A:23B-1 *et seq*., adopted in 2003. Arbitrations in matrimonial matters can take place under either of those legislative pronouncements. However, the process continued to enjoy only sporadic acceptance by attorneys and litigants — particularly in what are known in New Jersey as "*Sheridan*" cases — *Sheridan v. Sheridan*, 247 N.J. Super. 552 (Ch. Div. 1990) — in which a trial judge must report illegal conduct (such as tax evasion) of one or both of the parties to the appropriate authorities. (Most subscribe to the theory that an arbitrator is not so mandatorily required, thus accounting for some limited acceptance of this type of decision-making in these types of cases.)

It was not until the court's decision in *Fawzy v. Fawzy*, 199 N.J. 456 (2009), which extended *Faherty* to include (under specific parameters) custody and other child matters, that some interest in the arbitration process was generated by the court itself in its referral to its Family Practice Committee for the purpose of recommending to the court rules and procedures of arbitration in family matters and to devise forms of arbitration agreements. The Committee took that charge and, after much internal debate, made specific recommendations. However, those recommendations were hit with opposition not just from the matrimonial bar (acting, in part, in its own self-interests), but from civil arbitrators.

In response, the court did not adopt the rules and forms recommended by the Family Practice Committee but, instead, convened an ad-hoc committee named the Family Law Arbitration Committee (comprised of judges, matrimonial-arbitration attorneys and civil-arbitration attorneys), charging it with the responsibility of "messaging" the objections, and reporting to the court revised rules and forms without dissent. That effort resulted in recommendations to the court, which it adopted in July 2015, essentially without change.

Collaborative divorce has been, in part, a stepchild of family law ADR — an afterthought whose time is quickly approaching. It requires such an earnest effort on the part of all concerned, that the attorneys agree to withdraw if the matter cannot collectively be settled, after which point the matter must be tried.

Conclusion

Early Settlement Panels and mediation are ADR methods that are now (and probably will remain) part of our culture in New Jersey family law practice. Acceptance of arbitration and the collaborative process — both being absolutely voluntary — remains elusive. Many attorneys are skeptical of the collaborative process, as it limits the scope of their participation. Similarly, many are dubious of arbitration, since it limits the right of appeal. (This latter fear is not well-founded. Consider, for instance, that cognizable appeal from a judicial determination will lie (for the most part) only if the trial judge has abused his or her discretion — or, if you will, made a ruling in the outer fringes of the decision-making spectrum. If an arbitrator is chosen from the very experienced matrimonial lawyer or retired judge ranks, what are the chances that a decision will fall within those outer fringes? Isn't this fear of lack of appellate rights also obviated by a "reconsideration" procedure built into an arbitration agreement? And doesn't the ability to "choose" an arbitrator based on specific qualifications tailored to be concurrent with the fact pattern of the case override this concern?)

The lesson to be learned from the New Jersey experience is that adoption and acceptance of ADR in all of its forms is a long and arduous process, full of pitfalls, which requires us, as lawyers, to think outside of our parochial spheres in favor of the best interests of the litigating public.

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three of seven listed criteria are met. It should be clear that the day-to-day behaviors of an individual who has been diagnosed as anti-social because he meets criteria 1, 2, and 3 may be quite different from the behaviors of the person whose diagnosis was arrived at because he met criteria 5, 6, and 7. Diagnoses do not provide clarification; rather, they create the risk of obfuscation.

Just as diagnostic labels are unlikely to contribute to an understanding of the parenting strengths and deficiencies of litigants, so, too, are they unlikely to provide a clear picture of the needs of children with mental/emotional problems. In its Guidelines for Child Custody Evaluations in Family Law Proceedings, the American Psychological Association states: "The evaluation focuses upon parenting attributes, the child's psychological needs, and the resulting fit" (APA, 2010, p. 684). Diagnoses will not provide the needed specificity. If the objective is to consider parenting strengths and deficiencies in developing a parenting plan for a special needs child, detailed information concerning the child's behaviors is far more likely to be helpful than is a diagnostic label.

Guideline 10.01 of the American Psychological Association's Specialty Guidelines for Forensic Psychology urges psychologists: "Focus on Legally Relevant Factors." The guideline reads, in part: "Forensic examiners seek to assist the trier of fact to understand evidence or determine a fact in issue, and they provide information that is most relevant to the psycholegal issue." It goes on to state: "Forensic practitioners are encouraged to consider the problems that may arise by using a clinical

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Tax Considerations And Issues Relating to Divorce

By Sidney Kess

Divorce is a highly emotional activity. Nonetheless, finances play a big part of the process for many couples, and taxes impact financial decisions. Here are some tax issues that should be addressed in the course of a divorce.

Timing

Whether a divorce is final on the last day of the year is key to whether each taxpayer's filing status is married or single.

If the divorce is final by the last day of the year, then the taxpayer is treated as unmarried for the entire year (assuming the taxpayer has not remarried by the end of the year). Divorcing couples may want to decide in which year to get divorced. The couple may save money if they file jointly; or it may save them more to be divorced and each file as unmarried.

If the divorce has not been finalized by the end of the year, the taxpayer is married for tax purposes. The taxpayer can file a joint return with the spouse or a separate return (married filing separately). If the spouses live apart for the last six months of the year and maintain a household for a dependent child, the taxpayer may qualify to file as head of household.

Legal separation has the same tax effect as divorce. Thus, if a couple is legally separated on the last day of the year (*e.g.*, there is a decree of separation), then the taxpayer is treated as unmarried for the year. Merely living apart and considering themselves to be separated is not a legal separation for tax purposes.

Alimony

Payments to a former spouse are taxable to the recipient and deductible by the payor spouse only if all of the following conditions are met:

- Payments are made pursuant to a divorce decree or separation agreement;
- Payments are made in cash;
- The divorce decree or separation agreement does not designate the payments as nontaxable to the recipient and nondeductible by the payor;
- The spouses live apart;
- There is no liability to make payments after the death of the recipient-spouse;
- The payments are not support.

Voluntary payments, such as amounts paid prior to a final decree of divorce, are not treated as alimony (*see, e.g.*, Milbourn, TC Memo 2015-13). Payments do not have to be made to the former spouse as long as they are made elsewhere to benefit him or her. Thus, for example, paying health insurance premiums to cover the former spouse may be deductible alimony (assuming all the other conditions are met).

The IRS requires the payor spouse to report the Social Security number (SSN) of the recipient spouse to ensure that amounts deducted align with amounts reported as income. Nonetheless, the Treasury Inspector General of Tax Administration in 2014 found that there was a $2.3 billion gap between the amount of alimony deducted and the amount reported as income (TIGTA-2014-09). The report observed that currently there is no way to know whether the SSN reported is valid. The report makes recommendations to the IRS to help close the tax gap here.

Children

Having a child complicates the divorce process, including the tax consequences. There are two key issues that are raised: child support and the dependency exemption.

Payments to support a child are not taxable to the recipient-spouse or deductible by the payor spouse (Code Sec. 71(c)). These include payments labeled as child support, as well as payments construed as child support because they are related to a contingency involving the child. For example, a payment to a spouse is treated as child support, and not alimony, if the amount is reduced or eliminated when the child attains majority.

If there is a delinquency in both alimony and child support, payments are applied first toward child support before being applied toward alimony (*see e.g.*, Becker, TC Summary Opinion 2015-2). If a parent fails for some time to pay required child support, the IRS can apply a federal tax refund to the delinquency (Code Sec. 6402(e)). Past-due support for this purpose means a delinquency for which the IRS has been notified by a state in accordance with Section 464(c) of the Social Security Act.

Now, to the dependency exemption. Consideration must be given to the tax breaks that can ensue when parents break up. The dependency exemption for a child of the marriage can be claimed automatically by the custodial parent, who is the parent with physical custody for the greater part of the year (Reg. §1.152-4). Claiming the dependency exemption may also entitle the parent to claim the child tax credit (Code Sec. 24) and the earned income tax credit (Code Sec. 32).

However, the custodial parent can waive the dependency exemption to allow the noncustodial parent to claim it. This is done by having the custodial parent sign Form 8332, Release/Revocation of Release to Claim Exemption for Child, and attaching the signed form to the tax return of the noncustodial parent. The waiver can be annual or permanent. A divorce decree can require the custodial parent to sign the waiver, but the decree itself is not a waiver for tax purposes.

Which parent should receive the exemption? It depends on the financial status of each one. For example, it is usual for the higher-income parent to claim the exemption. However, if such parent is a high-income taxpayer subject to the phase-out for exemptions, then it makes more sense for the other parent to claim the

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Taxes and Divorce

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exemption. Financial negotiations during the divorce process must take this tax break into account.

Property Settlements

No gain or loss is recognized on the transfer of property incident to divorce (Code Sec. 1041). The recipient-spouse steps into the shoes of the transferor-spouse for basis purposes (Code Sec. 1041(b)). Thus, when the recipient-spouse sells the property, he or she recognizes gain or loss on the transaction at that time. As a result of this carryover basis rule, property settlements should factor in tax results. For example, stock worth $10,000 with a basis of $2,000, presents the recipient spouse with a potential gain of $8,000; the stock is not really worth $10,000 to this spouse.

The couple's marital home also often becomes a prime issue in divorce. Both spouses may continue to own the property even though only one is given possession of the residence. Sometimes, the spouse living in the home is directed or desires to sell the home when the couple's child has grown and is no longer living there. For purposes of the home sale exclusion, two special rules apply:

- A spouse who receives title to the home can treat the period of ownership by the other spouse as his/her own. This can help such spouse meet the two-out-of-five-year ownership test for the exclusion (Code Sec. 121(d)(3)(A)).
- A former spouse who continues to own the home occupied by the other spouse is treated as having used the home during the period that the other spouse uses it; again, this enables the former spouse to claim the home sale exclusion (Code Sec. 121(d)(3)(B)).

Legal Fees for Divorce

Generally, legal fees to obtain a divorce are not taxable. For example, a business owner whose ownership is at stake in a divorce settlement cannot deduct legal fees even though they relate to his/her business and, arguably, are for the conservation of income (*see, e.g.*, Melat, TC Memo 1993-247).

However, the spouse who obtains alimony may deduct the portion of legal fees related to the production or collection of income (Code Sec. 212(1)). The attorney handing the divorce for this spouse should itemize the services so that the spouse can deduct the applicable portion of the fees.

Retirement and Benefits

Benefits from qualified retirement plans, IRAs, and other employee benefit programs are important considerations during divorce. Divorcing spouses may want to change beneficiary designations to plans, as well as to life insurance policies, so that former spouses do not inherit benefits.

The divorce settlement may award retirement plan benefits accrued by the working spouse (the participant) to the other spouse (the alternate payee). As long as this is done by a qualified domestic relations order (QDRO), the participant is not taxed on benefits transferred to the alternate payee (Code Sec. 414(p)). And the early distribution penalty does not apply (Code Sec. 72(t)(2)(C)).

The QDRO cannot compel the distribution of benefits to the alternate payee; it merely awards them to this spouse. Benefits are payable on the earliest retirement date, even if the participant has not separated from service, which is (Code Sec. 414(p)(4)(B)):

- The date on which the participant is entitled to a distribution under the plan, or
- The later of the date the participant attains age 50, or the earliest date on which the participant could begin receiving benefits under the plan if the participant separated from service.

The alternate payee is not taxed if, when benefits are payable, they are rolled over or directly transferred to a qualified retirement plan or IRA of this spouse.

The IRS and the Department of Labor have sample language for a QDRO at http://1.usa.gov/1OF5CtM.

Funds in an IRA transferred to a former spouse incident to divorce are not taxable to the owner (Code Sec. 408(d)(6)). The transfer is also exempt from the 10% early distribution penalty (Code Sec. 72(t)). However, if an IRA owner uses funds from the account to pay alimony, child support, or anything else related to the divorce, the funds are taxable and not exempt from the early distribution penalty (*see, e.g.*, Bunney, 114 TC 259 (2000)). (There may be an offsetting alimony deduction where applicable.) The IRA owner must transfer the interest in the IRA, and not the funds themselves, in order to escape tax on the transfer.

Medical Considerations

If a spouse is covered under the other spouse's employer's health plan and the employer is subject to COBRA, the spouse may opt to continue on the plan for up to 36 months (29 USC Sec. 1161). The Department of Labor has FAQs on COBRA at http://1.usa.gov/1Pjp4IS.

Medical FSAs

Usually, an employee commits to contributions for the year. However, upon divorce, the employee can change his/her contributions for the balance of the year (Reg. §1.125-4(c)(2)(i)).

Miscellaneous Issues

Divorce can impact other tax-related matters. For instance, if a couple opts to receive on an advance basis the premium tax credit (Code Sec. 36B) for health insurance purchased through a government Marketplace, they should notify the Marketplace about the change in status. This changes the taxpayer's advance payment amount.

And what happens if the IRS audits a joint return filed prior to divorce and finds that taxes are owed? The divorce can address this issue by providing which spouse is liable for any deficiency or whether the amount should be split between them.

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Religious Marriage

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§ 37:1-10. Furthermore, "Before a marriage can be lawfully performed in this State, the persons intending to be married … shall obtain a marriage … license from the licensing officer and deliver it to the person who is to officiate." NJ Stat. § 37:1-2. Statutorily, alimony and attorneys' fees may apply to a void marriage. The Statute states that pending any matrimonial action, the court "may make such order as to the alimony or maintenance of the parties." 2006 Bill Text NJ A.B. 3787.2006 Bill Text NJ A.B. 3787. The Statute continues, "The Court may order one party to pay a retainer on behalf of the other for expert and legal services when the respective financial circumstances of the parties make the award reasonable and just." *Id*.

The case of *Blikshteyn v. Shakarov*, 2007 N.J. Super. Unpub. LEXIS 584, examines the validity of a religious marriage, alone, in New Jersey. In that case, the husband filed a motion based on his sworn statement that the parties took part in a religious marriage ceremony, performed by a rabbi in New York State, but did not obtain a marriage license. The court ruled that "In New Jersey, a legal marriage requires a marriage license." *Id*. at 8. Thus, it can be easily inferred that if a religious marriage ceremony takes place in New Jersey without a marriage license, the marriage would be void.

In *Parkinson v. J. & S. Tool Co.*, 64 N.J. 159 — a case determining whether a woman purportedly married to a deceased was entitled to death benefits — a husband and wife had legally divorced and then, 11 years later, attempted to remarry. The priest misinformed them that they were still married in the eyes of God; the couple accepted that explanation, and did not obtain a new marriage license. Even though this marriage should have been void, the court ruled that "[t]he terms 'wife' and 'widow' as used in the statute include *de facto* widows where good faith coalesces … a *de facto* relationship of man and wife continuing unbroken over an extended period of years having had its genesis in a ceremonial marriage." *Id*. at 162, citing 59 N.J. 196. Furthermore, "It is … enough of an injustice that such a deceit may embitter a widow and tarnish whatever memories … she has without the exacerbation of denying her dependency benefits." *Id*. at 167. The court referred to the statute regarding dependency: "The term 'dependents' shall apply to and include any or all of the following … namely, husband, wife." N.J. Stat. § 34:15-13. This is evidence of the fact that the court considered "good faith" as a main factor to establish a void marriage as valid. In that case, the decedent's wife had the same rights as if she was legally married, and therefore was entitled to benefits.

In *Callaghan v. Leonard*, 152 N.J. Super. 95 (Ch. Div. 1977), a New Jersey court dealt with the question of spousal support in a void marriage. There, the plaintiff wife sought an annulment after learning that her husband's previous marriage had not been dissolved, and filed a motion for award of alimony. The court ruled that the language of the statute, N.J.S.A. 2A:34-23, using the word, "any," clearly provided "that in all actions brought for annulment, an award of alimony (maintenance) is proper." *Id*. at 97, 98, citing *Richards v. Richards*, 139 N.J .Super. 207,211-212 (civ. Div. 1976). But, more importantly, the court specifically stated that the legislature's purpose in enacting the amendment to N.J.S.A. 2A:34-23 was to remedy the "historical accident" that denied alimony in annulment proceedings or actions to declare a void marriage.

(We will not go into discussion of these issues here, but in New Jersey, maintenance, counsel fees and equitable distribution may be awarded in a void marriage.)

Oregon

In Oregon, a religious marriage completed without of a marriage license is void. The statute states, "All persons wishing to enter into a marriage contract shall obtain a marriage license … directed to any person or religious organization or congregation authorized by ORS 106.120 to solemnize marriages." ORS § 106.041(1).

Regarding the issue of spousal support or attorneys' fees applying to a void marriage, the statute states, "Whenever the court renders a judgment of marital annulment, dissolution or separation, the court may provide in the judgment … for spousal support." ORS § 107.105(d). Regarding attorneys' fees, the statute also says that "[t]he court may provide in the judgment … for a reasonable attorney fees and costs." ORS § 107.105(j). Void marriage is included in the "marital annulment" term in the statute, as acknowledged in the case of *Denis v. Denis*, 153 Ore. App. 655 (1998). There, the marriage was void because the husband's divorce of his previous wife was not recognized. The court stated, "A marriage may be declared void in an annulment proceeding." *Id*. at 659. The court further ruled that, although the marriage was void, the wife would still have received an award of support because "[e]quity may require support for a party who has sought the benefit of marriage even though the marriage is later declared void." *Id*. at 660. It can be argued that the court also allowed the allocation of attorneys' fees, which "[u]nder ORS 107.105(d), may be included under any support order.

Texas

Texas law states, "A man and a woman desiring to enter into a ceremonial marriage must obtain a marriage license from the county clerk." Tex. Fam. Code § 2.001. Accordingly, for any marriage to be valid, the parties must obtain a marriage

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Religious Marriage

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license. Furthermore, the statute states that "An order for maintenance is not authorized between unmarried cohabitants under any circumstances." 2001 Bill Text TX H.B. 691. Therefore a couple who marries only through a religious ceremony is considered unmarried according to the Tex. Fam. Code, and as such, cannot be awarded maintenance.

Since Texas is a more conservative state, it wants to incentivize marriage and its stability. That is why, when a married spouse lives with someone else, even if they are married religiously, the State penalizes that spouse by removing alimony (maintenance) to discourage extramarital affairs. When an unmarried couple lives together, whether or not they are religiously married, they are not afforded any rights of marriage.

On the issue of maintenance, it appears that a first-time couple with no previous hindrance who married with only a religious marriage would not be deemed to be married, and the parties would not be entitled to receive any benefits. The statute states, "The issue of a marriage declared void or voided by annulment shall be treated in the same manner as the issue of a valid marriage." Tex. Estates Code § 201.055. Although this may initially seem like stating that all proceedings relating to a regular divorce or annulment of a valid marriage should apply here, such as alimony, it does not. It merely means that the filing of the papers and the proceeding of annulment of a void marriage, in the narrow sense, is similar to that of a valid marriage's dissolution.

Thus, in Texas, the award of spousal support is not granted in marriages entered into without marriage licenses.

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Diagnoses

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diagnosis in some forensic contexts, and consider and qualify their opinions and testimony appropriately."

Context Matters

Often lost in discussions of diagnoses are inquiries regarding the context in which they were developed and the purpose for which they were recorded. Eligibility for health insurance reimbursement is dependent upon the assignment by the treatment provider of a diagnosis that represents a "covered condition." Though empirical data are not available, discussions with treatment providers strongly suggest that some treatment providers, wishing to assist their patients in securing insurance reimbursement, enter diagnoses with little, if any, concern for descriptive accuracy. It is inadvisable for evaluators, attorneys, and judges to rely on diagnostic labels appearing in treatment records.

Participants in child custody litigation should also be highly skeptical of diagnoses that are arrived at simply on the basis of psychological test data.

One of many cautionary lessons can be found in R. L. Halon's analysis of data gathered using the Millon Multiaxial Clinical Inventory-III (MCMI-III) [Halon, R. L. (2001). The Millon Clinical Multiaxial Inventory-III: The normal quartet in child custody cases. *Am J Forensic Psychol.*, 19(1), 57-75.] Custody litigants trying to report what Halon referred to as "their good qualities" may obtain high scores on the Millon's histrionic, narcissistic and compulsive scales.

Unfortunately, fondness for diagnostic labels leads some mental health professionals to insert diagnostic terms in their reports in ways that are incontrovertibly inaccurate. An evaluator, commenting on the behavior of a four-year-old child during an observational session, states that the child "dysregulated." This term suggests that the child is experiencing Disruptive Mood Dysregulation Disorder (DSM-5, # 296.99). The disorder is characterized by "[s]evere recurrent temper outbursts manifested verbally (*e.g.*, verbal rages) and/or behaviorally (*e.g.*, physical aggression toward people or property) that are grossly out of proportion in intensity or duration to the situation or provocation" (DSM-5, p. 156). In the information furnished in the DSM-5, of greatest importance is the statement that "[t]he diagnosis should not be made for the first time before age 6 years or after age 18." It is likely that a thoughtful reader of the evaluator's report would wish to know what was transpiring at the time that the presumably problematic behavior occurred, would like a clear description of the child's behavior, and would be interested in knowing what actions were taken by the parent in responding to the child's behavior.

Conclusion

We are not aided in our endeavors to protect children as effectively as possible from parental deficiencies by assigning diagnostic labels to those deficiencies for which we happen to have labels. The evaluative task is descriptive in nature. Evaluators are most helpful when they assess the needs of the children; assess the parenting strengths and deficiencies in each parent as those strengths and deficiencies relate to the needs of the children whose custodial placement is in dispute; describe those strengths and deficiencies; and, articulate the ways in which they relate to each parent's ability to meet the needs of the children.

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