

# LEGAL UPDATE SUMMER 2004

*From the Law Offices of*

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*This issue includes an article on ways to prevent parental child abduction, and determining what constitutes child abuse or neglect.*



## ***Announcements***

- Mr. Marnell had two articles published in the Nassau Lawyer earlier this year. One concerned the equitable distribution of degrees and licenses in a divorce. The other discussed child neglect and abuse issues and is summarized in this issue.
- The Suffolk Lawyer published Mr. Marnell's article concerning parental child

abduction, also summarized in this issue.

- Earlier this year Russell Marnell was interviewed on CBS NewsRadio 88 and WALK-97 FM radio discussing examining relationships for the new year.
- Several local newspapers, including the Long Island Light are running a monthly family law column written by Russell Marnell.
- The Volunteer Lawyers Project of the Nassau County Bar Association honored Russell Marnell and Scott Schwartz for their pro bono work at their annual Volunteer Recognition Reception held in June.
- Scott Schwartz became a member of the American Family Law Inns of Court.

## ***Parental Child Abduction***

It's every parent's worst nightmare — Their child has been abducted. While abduction by a stranger is fairly uncommon, children are more likely to be abducted by their





own parent. Fortunately, custodial parents can take action to help prevent their spouse from abducting their child.

Oftentimes during the course of a divorce, children become pawns in their parents' attempt to manipulate their spouse to agree to their terms. In cases where visitation and custody may have never been an issue, they become just another bargaining chip. Sometimes a divorce becomes so acrimonious and child support and custody issues so unbearable, that in an effort to punish the uncooperative spouse, an unstable parent might resort to kidnapping a child and taking them to another state, or even another country.

There are ways to protect children from being wrongfully taken by a parent. The first step is to file for and obtain a valid custody order from a court establishing you as the custodial parent. The custody order should be registered with the FBI and can be legally enforced in any state to which a child has been abducted. Provisions of the custody order should include the following:

- Certain restraints prohibiting the non-custodial parent from picking up the children from school, daycare, camp and the like. Such an order should be on file with the various schools and daycare facilities.

## **Highlights of This Issue Include:**

-  Announcements
-  Parental Child Abduction
-  What Constitutes Child Abuse or Neglect?
-  Profile of Firm Members

- The custodial parent who has concerns about prospective child abduction should notify in writing the Department of State, airlines, cruise ships of their concerns and enclose a copy of the court order to each agency. Mailings should be done to ensure that the various agencies received copies of the court order.
- The custodial parent should ask the court to direct the non-custodial parent to surrender any passports of the child. They should be concerned if there is a dual nationality because there may be multiple passports.
- Require the posting of a bond or other collateral which would be forfeited in the event of an abduction.

When considering the likelihood of a child abduction, one must consider the following:

- Whether there have been prior threats both in terms of frequency, recency, and nature of the threat.
- Any prior attempts to remove a child from the state and/or country.
- Where there is dual citizenship of the parent and/or child of another country.
- Evaluate the non-custodial parent's ties to New York State as compared to another state or country. When doing so you should consider:
  - ownership of real estate in New York and other states and/or countries
  - employment and education and the likelihood of obtaining similar employment and education in another country
  - whether there are family and/or friends in New York State and/or family and friends in another country
  - whether the parent has the ability to speak any foreign language in another country

All abduction threats should be taken seriously. If your spouse threatens to take your child, inform the police and have them contact the other parent to advise them that they could be fined or imprisoned or both.

Other steps that can and should be taken are:

- Notify schools, daycare centers and babysitters of custody orders. Ask to be alerted immediately if the non-custodial parent makes any unscheduled visits to the school and instruct them to prevent the child from leaving the grounds without your permission.
- Teach your child how to use the telephone, including collect calls. Make sure they know your home phone number and cell phone number, including area codes. If he or she is uncomfortable or feels threatened during visitation with your spouse, tell your child to call you immediately.
- Keep lists of all the friends and relatives of the non-custodial parent so that if your child does not return from a planned visitation in a timely manner, you can begin making inquiries regarding his or her whereabouts.

## What Constitutes Child Abuse or Neglect?

Neglect petitions often revolve around the failure of the parent to exercise a minimum degree of care in supplying the child with food, clothing, shelter, education, medical care, or proper supervision. The minimum degree of care standard has been identified as requiring an objective evaluation of the parent's actions in light of what a reasonable and prudent parent would have done.

Improper medical care, leaving a child alone, and excessive corporal punishment are common types of child neglect. Below is a description of the types of neglect cases and how you can protect yourself from being implicated in a neglect petition.

### *Medical Neglect*

In medical neglect cases, it must be proven that the parents did not provide their children with adequate medical care and an objective standard is used to identify adequate care.

In some states, failure to provide a proper diet can be considered abuse or neglect. In the case of a child in Indianapolis, the parents of a four year old were charged with five counts of criminal neglect because they had allowed their child to reach 138 pounds, almost four times the average weight of a child that age. Obese children are at risk for serious health problems and child welfare officials were concerned that the child's parents were not addressing their child's medical condition. They repeatedly warned the parents of the danger of the child's morbid obesity and were found guilty of neglecting their son because they repeatedly ignored the medical advice about the risks to the child's health as a result of his weight.

### *Minimum Age at Which A Child Can be Left Alone*

Although New York State law does not designate a specific minimum age that a child may be left alone and without supervision, several states have criminalized a parent's failure to supervise their child. Others have abandonment statutes, which specifies that abandonment is committed when a parent, "knowingly leaves the child who is under the age of thirteen without supervision by a responsible person over the age of fourteen for twenty-four hours or more."

An Ohio court found a mother guilty of neglecting her six and eight-year-old sons based on lack of parental supervision. The two boys were home alone every day for about two hours, from the time they got home from school to the time she arrived home from work at around 5:15 p.m. The eight-year-old was left in charge of the younger boy who was six. Furthermore, on Wednesdays and Fridays the 5-year-old was left alone from 7 a.m. until 3:15

p.m., when his brother came home from school. The mother explained she left them home alone after school every day because she felt her budget did not allow any other alternatives and that she had contacted the police to determine if there was any age at which it was illegal to leave children alone and was told there was not. All along the mother argued that she did not feel she had done anything wrong because the boys were capable of staying home alone.

The court held that regardless of the maturity or intelligence of the children, the ages alone constituted evidence that showed these children, who were regularly left alone for extended periods of time, were put at undue risk to their health and safety.

The following common sense factors should determine when you should leave your child alone:

- the age and maturity of the child
- the frequency and time the child is left alone
- access to and the ability to use a telephone
- the proximity of a parent or suitable guardian in the event of an emergency
- the place the child is left alone

### ***Excessive Corporal Punishment***

The most commonly known form of abuse and neglect is related to excessive corporal punishment. The courts have expressed that although parents are entitled to use reasonable disciplinary methods, there are means that exceed the threshold and constitute evidence of impairment. Although New York State allows corporal punishment, parents should avoid hitting a child in the face or using any type of weapon (i.e. a belt, stick, etc.) to cause serious injury or scarring.

In conclusion, improper medical care, leaving a child alone, and excessive corporal punishment are common types of child neglect. Common sense factors should determine whether there has been neglect, such as: - the age and maturity of the children; - the frequency and time the child is left alone; - access to and ability to use a telephone; - the proximity of a parent or suitable guardian in the event of an emergency; - the place the child is left alone. Although New York State allows corporal punishment, parents should avoid hitting a child in the face since it creates the possibility of serious injury. Even so, it goes without saying that any type of corporal punishment would probably be considered excessive if it injures the child.

## ***Profile of The Firm***

— Russell I. Marnell is admitted to the bars of New York, California, Nevada, Florida, the United States Tax Court and Federal District Court. He has litigated over one hundred trials including those involving complex custody, equitable distribution child support and negligence/personal injury issues. Mr. Marnell is the past chairman of the Nassau County Bar Association Matrimonial Committee's Child Custody Sub-Committee. He is currently a member of The Matrimonial Committees of The Nassau and Suffolk County Bar Associations. Mr. Marnell is a member of the prestigious New York Family Law American Inns of Court, is a fellow with The American Academy of Matrimonial Lawyers, and is a Nassau County Family Court Law Guardian. He is also on the Publications Committee of the Nassau County Bar Association. Mr. Marnell has published numerous articles on various matrimonial and family law topics, and is a frequent lecturer on these subjects and personal injury law, and has appeared on several television and radio programs as well. Finally, Mr. Marnell has obtained an MBA in accounting and has passed the CPA examination.

— Susan P. Marnell, Esq., who is of counsel to the firm, concentrates on estate planning, drafting of wills, trusts and related documents, estate administration and guardianship matters. Her practice also includes counseling elderly clients and their families on Medicaid, Medicare, tax and legal issues, including the use of durable powers of attorney, living trusts, health care proxies and living wills and real estate matters. Mrs. Marnell holds a JD from Hofstra University and is a member of the Estate Planning and Elder Law sections of the New York State, Nassau County and Suffolk County Bar Associations. Mrs. Marnell has been appointed as a court evaluator and guardian ad litem in numerous guardianship and probate matters.

— Scott R. Schwartz is a 1992 graduate of The Hofstra University School of Law. He is currently a member of The Matrimonial Committees of The Nassau and Suffolk County Bar Associations as well as The Nassau County Bar Association Child Custody SubCommittee. He is also a member of the prestigious New York Family Law American Inns of Court. Mr. Schwartz has drafted articles published in The New York Law Journal as well as other legal publications. Several cases in which Mr. Schwartz has worked have been published in New York State case reporters. Mr. Schwartz handles personal injury matters, while he concentrates in complex divorce, family law and custody matters. Mr. Schwartz has argued cases before New York State's Appellate Division, and is admitted to both the New York State and District of Columbia Bars.

## *Law Offices of Russell I. Marnell, P.C.*

- Matrimonial, divorce, and all other family law matters
- Personal injury and auto accident litigation
- Elder law, estate planning, probate and estate litigation

The Law Offices of Russell I. Marnell, P.C. is a fully staffed, computerized law firm which has capably met the legal needs of the Long Island Community and New York City for over 18 years. We welcome the opportunity to handle all of your legal problems. In the event we do not handle the type of law in question, we would be more than happy to refer your case to a qualified law firm to assure that your problems are handled properly and professionally.

The information in this newsletter is presented as general information and is not to be construed as legal advice to apply to any person or particular situation. Please keep in mind that the law is constantly changing and therefore you should always consult an attorney for legal advice based on the individual circumstances of your situation.

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