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# Book Review

## **New York Family Court Practice (Merril Sobie, Editor-in-Chief)**

**Reviewed by Norman B. Lichtenstein\***

Professor Merrill Sobie of Pace University School of Law has undertaken to produce a one volume desk book intended to guide the practitioner through the intricacies of Family Court practice in New York. The work, *New York Family Court Practice*,<sup>1</sup> written by Professor Sobie and five other contributors, is an ambitious attempt to cram a world of information and commentary between the bounds of two hard covers.<sup>2</sup> In its fifteen chapters the book runs the gamut of Family Court jurisdiction and largely succeeds in making understandable the scope and the workings of this critically important court.

Sobie begins his work with a succinct, but useful overview of the history, organization and jurisdiction of the Family Court. In this first brief chapter he touches on such issues as privacy and confidentiality of records. Surprisingly, the rules protecting the privacy of Family Court litigants are not as hard and fast as some may think and much depends on judges exercising their discretion under the statute.

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1. *NEW YORK FAMILY COURT PRACTICE* (Merril Sobie ed., 1996).

2. The five co-authors are Cheryl J. Bradley, a private family law practitioner and Adjunct Professor at Pace Law School; Michael Dowd, a practitioner specializing in spousal abuse cases; Andrew J. Schatkin a practitioner from Long Island; Alan D. Scheinkman, a family law practitioner and prolific author on family court matters; and Gary Solomon, Director of Training for the Juvenile Rights Division of the Legal Aid Society in New York City.

The role that discretion plays in the Family court is described by Gary Solomon in his excellent chapter on child neglect and abuse proceedings, Article 10 of the Family Court Act. He notes that lawyers practicing before the Family Court must not only understand the statutory framework, but be aware that Family Court is “. . . a forum in which bureaucratic and judicial decision making can be largely subjective, . . .”<sup>3</sup> Solomon makes the point that the personal predilections of the decision makers with respect to the care of children are often evident in the dispositions which are made, observing that “[w]henever a caseworker decides to remove a child or allow the child to remain at home, or a judge endorses that decision, personal views concerning child rearing, as well as subjective or biased impressions of the parent, can contaminate the decision making process.”<sup>4</sup> As Solomon notes, the consequences of such subjectivity are substantial when liberty issues are implicated.

Solomon’s chapter thoroughly covers both substantive and procedural issues respecting child neglect and abuse proceedings. He spends some time in the chapter dealing with the troublesome issue of the role of counsel in representing various interests in these proceedings. In particular, he focuses on the difficult role of the law guardian for children and the perambulations which he or she must follow in trying to determine the appropriate advocacy in a given case. Is the law guardian an advocate for the wishes of the child or an advisor to the court as to the “best interests of the child”? Solomon notes that the age and maturity level of the child involved becomes critical to the lawyer’s approach. In dissecting these issues Solomon is occasionally repetitious, but always usefully analytic, providing a well thought out guide for the assigned law guardian. Like the other authors, Solomon provides a handy “Practice Checklist” and a series of forms which can be adopted for use in a variety of proceedings.<sup>5</sup>

Four chapters in this volume have been contributed by Cheryl Bradley, a former Family Court Judge, who is today a practitioner in the field and an Adjunct Professor at Pace Uni-

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3. Gary Solomon, *Child Neglect and Abuse Proceedings*, in *NEW YORK FAMILY COURT PRACTICE*, § 2.2 at 23 (Merril Sobie ed., 1996).

4. *Id.* at 24.

5. *Id.* at 129.

versity School of Law. Professor Bradley's chapters cover foster care, termination of parental rights, adoption and the rights of putative fathers. Each of her chapters is well written and concise.

In reviewing foster care Professor Bradley discusses the procedures for voluntary placement and the provisions for judicial review of such placements. Professor Bradley is a strong writer and she makes clear the rationale for the statutory scheme which is designed with solicitude for the mother who is agreeing to placement of her child in foster care. Bradley also covers foster care review proceedings. Although her subsections are very brief, she does provide the core information necessary to proceed in this area.

In her chapter entitled *Termination of Parental Rights*,<sup>6</sup> Professor Bradley reviews the procedures involved in both voluntary termination and judicial termination. Her discussion of voluntary termination elaborates the statutory provisions covering all of the requisite issues, but provides limited analysis. Professor Bradley provides a much more extensive set of subsections in her treatment of judicial termination of parental rights. Here she places the problem in historical context and includes a more elaborate exposition of the statutory framework. She thoroughly discusses the various elements which can support judicial termination ranging from abandonment to permanent neglect. She does not discuss the right to counsel in parental termination cases provided for under the Family Court Act in New York, but this is covered in a later chapter by Professor Sobie.<sup>7</sup> Overall, this chapter provides the needed information and guidance for a practitioner who must deal with this serious issue.

In her chapter on adoption,<sup>8</sup> Professor Bradley lays out the procedures to be followed in both agency and private placement adoptions. Additionally, she discusses some of the vexing questions in the realm of adoption such as the question of who can

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6. Cheryl Bradley, *Termination of Parental Rights*, in *NEW YORK FAMILY COURT PRACTICE*, § 4 at 189 (Merril Sobie ed., 1996).

7. Merril Sobie, *The Role of Counsel in Family Court*, in *NEW YORK FAMILY COURT PRACTICE*, § 14 at 780 (Merril Sobie ed., 1996).

8. Cheryl Bradley, *Adoption*, in *NEW YORK FAMILY COURT PRACTICE*, § 5 at 270 (Merril Sobie ed., 1996).

adopt, the circumstances when consent is required and the revocation of consent once given. Her fourth chapter entitled *Rights of Putative Fathers*<sup>9</sup> is very brief. It contains a summary of the leading United States Supreme Court cases dealing with this issue and highlights the rights of the non-marital father with respect to his offspring. Although her discussion is not extensive and might have included more commentary she covers the major issues, providing what one needs to know. As in her chapter on termination of parental rights, Professor Bradley includes a lengthy practice check list and a useful set of forms.<sup>10</sup>

A solid chapter on Paternity Proceedings is contributed by Andrew J. Schatkin.<sup>11</sup> This chapter is clear and well organized with a blueprint to proceed in bringing paternity actions. Schatkin includes a section dealing with the complexities of genetic testing and DNA. There may be more here than the practitioner needs to know or can absorb, but for someone who really wants to understand how genetic testing works the detail provided is a good beginning and there are notes referring to scientific works in this field.

Two excellent chapters, one on Child Support the other on Custody and Visitation are contributed by Alan Scheinkman, a Westchester family law practitioner and Adjunct Professor of Law at Pace. Scheinkman begins his chapter on Child Support<sup>12</sup> with a smoothly written exposition of the public policy undergirding the child support statutes. He notes that "[t]he obligation of parents to support their children is one of the oldest and firmest pillars of New York family law."<sup>13</sup> He goes on to describe the increased efforts on the state and federal levels to insure that parents meet their obligations to support their children. This activity is motivated by a concern for the support of family values and a desire to provide relief for taxpayers by reducing the sums which must be paid for public assistance. Scheinkman describes in detail the ways in which child support

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9. Cheryl Bradley, *Rights of Putative Fathers*, in *NEW YORK FAMILY COURT PRACTICE*, § 6 at 351 (Merril Sobie ed., 1996).

10. *Id.* at 405.

11. Andrew J. Schatkin, *Paternity Proceedings*, in *NEW YORK FAMILY COURT PRACTICE*, § 7 at 361 (Merril Sobie ed., 1996).

12. Alan D. Scheinkman, *Child Support*, in *NEW YORK FAMILY COURT PRACTICE*, § 8 at 420 (Merril Sobie ed., 1996).

13. *Id.* at 421.

proceedings can be brought and describes how not only parents, but social services officials, the Commissioner of Mental Health, a guardian or other person acting on behalf of a child and even a person representing a charitable entity can bring a support proceeding on behalf of a child. Scheinkman includes a lengthy section on the calculation of child support. This and the follow up sections are clearly written and should provide an excellent guide for the practitioner when seeking to determine the appropriate level of support in each case. Scheinkman provides a good collection of forms including a very useful example of a financial disclosure affidavit.<sup>14</sup>

This chapter does not discuss the issues of interstate support, which are covered briefly in a subsequent chapter by Professor Sobie.<sup>15</sup> In less than ten pages, Sobie illuminates the complexities of the determination and collection of child support across state lines. He makes clear the workings of the Uniform Support of Dependents Law in New York State and the impact of the federal Full Faith and Credit for Child Support Orders Act enacted by Congress in 1994. While this material might best have been included as part of the basic chapter on child support it works as it is. It is easy to follow and effectively explains the basic procedures for interstate collection of child support.

Scheinkman has also contributed a smoothly written chapter on Child Custody and Visitation which touches all the bases.<sup>16</sup> He begins with an overview of the variety of child custody arrangements. He describes the growing trend toward joint custody in New York as a provision in negotiated settlements. He notes that while the courts do not frequently direct joint custody, they will approve an agreement when it is clear that the divorcing spouses demonstrate that they can cooperate in the interest of their children.

Scheinkman does a particularly effective job of reviewing the "totality of the circumstances" which contribute to a determination of the "best interests of the child." He does this by

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14. *Id.* at 491.

15. Merrill Sobie, *Interstate Support*, in *NEW YORK FAMILY COURT PRACTICE*, § 9 at 533 (Merril Sobie, ed., 1996).

16. Alan D. Scheinkman, *Custody and Visitation*, in *NEW YORK FAMILY COURT PRACTICE*, § 10 at 545 (Merril Sobie ed., 1996).

devoting separate sections to such topics as stability for the child, home environment, day care arrangement by the primary caretaker, substance abuse, mental health of the parents, physical health of the parents, and conduct constituting abuse or neglect of the child. His breakout and discussion of the issues in this fashion should facilitate the practitioner in developing an advocacy strategy in disputed custody cases.

Scheinkman discusses some important issues pertaining to visitation including the right to visitation, the basis for denial of visitation and restricted visitation. While he has covered the basic information, these areas could have been developed more fully. In particular, the section which discusses limited visitation could have been more complete with some focus on abusive behavior of the non-custodial parent as a basis for supervised visitation. Nevertheless, the coverage of this chapter is excellent and navigates the shoals of child custody issues in ways that should prove of great practical use.

Considerable public attention has been focused in recent years on the issue of domestic violence. A knowledge of the procedures and remedies which are available to combat this blight is essential for the family law practitioner. Michael Dowd, a prominent lawyer in this field and Executive Director of the Pace University Battered Women's Justice Center, has written a useful and analytic chapter for this volume which effectively describes the ins and outs of family offense proceedings.<sup>17</sup> Dowd provides an historical perspective of the societal attitudes which for too long were characterized by a "look the other way—keep the family together" at all costs psychology. Prosecutors regarded domestic violence cases as less significant than other matters with which they had to deal and thus such cases did not receive the attention which was warranted by the harm being done. Times have changed and there is a new awareness of the seriousness and pervasiveness of domestic violence.

Dowd describes the impact of the New York State Family and Domestic Intervention act of 1994.<sup>18</sup> He describes the "comprehensive approach" of the act and its thrust, which is directed at increasing sanctions for domestic violence, making more seri-

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17. Michael Dowd, *Family Offense Proceedings: Domestic Violence*, in *NEW YORK FAMILY COURT PRACTICE*, §13 at 730 (Merril Sobie ed., 1996).

18. *See* L. 1994, Ch. 222.

ous the disobedience of court orders, requiring training for court personnel and law enforcement officials and providing new services to victims.<sup>19</sup> Dowd further discusses the culture of domestic violence and the world of the abusers and the abused which he knows so well. Yet, the chapter does not drift away from the practical aims of the book and moves ahead to describe the procedures and standards required to initiate and prosecute domestic violence offenses in the Family Court. Dowd includes sections on remedies from obtaining orders of protection to transferring of a Family Court matter to criminal court. He further includes useful sections on hearings and the use of expert testimony. Dowd's chapter provides both context and a guide to the family court practitioner who finds himself or herself confronted with a domestic violence matter.

In addition to the introductory chapter and his chapter dealing with interstate child support, Professor Sobie has written four other chapters covering Juvenile Delinquency Proceedings, Persons in Need of Supervision Proceedings, The Role of Counsel in Family Court and Appeals. Sobie's discussion of juvenile delinquency is carefully organized and crafted.<sup>20</sup> He takes the reader painstakingly through the steps from pre-petition proceedings to post-dispositional procedures including motions and appeals. His exposition is clear and detailed, providing a guide to juvenile delinquency proceedings which should make them understandable even for those who have no prior exposure to this area. Particularly helpful is a chart which sets out all of the available dispositions in juvenile delinquency proceedings, including statutory references and a commentary. Sobie is precise throughout in his treatment of the process. In clear language he defines exactly who is a juvenile delinquent under the law and the distinction between juvenile delinquents and juvenile offenders, who may be prosecuted for certain crimes as though they were adults. Sobie reminds us that "[j]uvenile delinquency proceedings are highly adversarial. A person's liberty is at stake and a multitude of procedural and substantive measures must be complied with."<sup>21</sup> This chapter

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19. DOWD, *supra* note 17, at 731-32.

20. Merrill Sobie, *Juvenile Delinquency Proceedings*, in *NEW YORK FAMILY COURT PRACTICE*, § 11 at 622 (Merrill Sobie ed., 1996).

21. *Id.* at 622.

goes along way to providing the basic background needed to insure that these standards are met.

The intricacies of "PINS" or Persons in Need of Supervision proceedings are explained by Professor Sobie in a short chapter following his treatment of juvenile delinquency.<sup>22</sup> PINS, Sobie tells us, is a "status offense" and that "[t]he specific conduct encompassed by the definition includes truancy. . . , incorrigible conduct, ungovernability, or disobedient activity amounting to conduct beyond the lawful control of a parent or other lawful authority."<sup>23</sup>

In his characteristically thorough manner, Sobie takes the reader through the intricacies of processing PINS children in the Family Court. Sobie tells us that the persons who may initiate a petition are many and include parents, police officers and certain authorized agencies. He further describes the procedures by which a PINS proceeding may be begun. Sobie makes clear that "habitual" conduct is necessary to constitute a PINS offense and that thus a single act will not suffice.<sup>24</sup> This chapter details all the necessary steps which a lawyer involved in a PINS proceeding would need to know. He covers the rainbow: preliminary court procedures, fact finding and its rules, dispositional hearings and post dispositional procedures. The material builds logically from beginning to end which adds to its value as a practical guide.

Professor Sobie concludes his volume with two very brief chapters. One discusses the role of the attorney in Family Court and in particular the role of law guardians appointed to represent children in various proceedings.<sup>25</sup> Sobie refers the reader to the statutory provisions requiring the appointment of counsel for children, and describes the process by which such appointments are made.<sup>26</sup> Similarly he sets out the numerous proceed-

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22. Merrill Sobie, *Persons in Need of Supervision Proceedings*, in NEW YORK FAMILY COURT PRACTICE § 12 at 688 (Merril Sobie ed., 1996).

23. *Id.* at 691.

24. Sobie also notes that possession of marijuana, in violation of the Penal Law, is a PINS offense and requires only one incident. *Id.*

25. Merrill Sobie, *The Role of Counsel in Family Court*, in NEW YORK FAMILY COURT PRACTICE, § 14 at 780 (Merril Sobie ed., 1996).

26. There is a list of mandated cases where "independent counsel is not available" including juvenile delinquency, PINS, and termination of parental rights among others. See N.Y. FAM. CT. ACT § 249 (McKinney Supp. 1997).

ings in which counsel must be appointed for adults who are indigent, not a requirement when counsel is appointed for children.<sup>27</sup> The most interesting and significant contribution of this chapter is a discussion of the role of the law guardian in the representation of his or her minor client. The much discussed question, also explored in Solomon's chapter on child abuse, is the tension between the role of the lawyer for a child as an advocate of the child's wishes and the role of the lawyer as an advisor to the court and protector of the best interests of his or her minor client. Sobie discusses this often vexing issue, referring to ethical considerations which require lawyers to protect the best interests of their clients and, when representing children to be cognizant of their special circumstances. Sobie writes that "[p]erhaps the best solution for this dilemma is to deviate from the child's wishes only when absolutely necessary because of a substantial and imminent danger and, even then, advocate a position which is closest to the child's desire, but protects against the imminent danger."<sup>28</sup> This solution will, of course, require considerable professional skill and acumen, but in his brief analysis Sobie provides some valuable thoughts to help light the way.

The final chapter in this work discusses appeals from Family Court orders.<sup>29</sup> Sobie relates how to initiate, perfect and obtain stays on appeal from Family Court orders. In addition to discussing the mechanics and time requirements for Family Court appeals Sobie provides a thoughtful discussion of the difficulties attendant to making the decision to appeal or not. This involves explaining and carefully working out the possibilities with one's client. Of course, as Sobie notes, there are particular problems attendant to making the decision to appeal when a lawyer is representing children, particularly when the minor client is very young and may not understand the circumstances.

Sobie's advice is that ". . . a law guardian should, when in doubt, exercise the child's right to appeal."<sup>30</sup> This chapter does

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27. There is a long list, including custody proceedings, termination of parental rights, certain foster care matters, paternity proceedings for the respondent and a number of other categories. *See id.* § 262.

28. Sobie, *supra* note 25, at 787.

29. Merril Sobie, *Appeals*, in *NEW YORK FAMILY COURT PRACTICE*, § 15 at 794 (Merril Sobie ed., 1996).

30. *Id.* at 797.

not provide any guidance on the handling of the substantive issues presented in Family Court appeals. However, given the limitations of a one volume work this may be a subject for another book.

*New York Family Court Practice* is a splendid achievement. In this one volume, Professor Sobie and his colleagues have managed to provide a wealth of information together with a thoughtful analysis of the problems of lawyering in Family Court. The addition of practice check lists and forms adds to the utility of this work. There is a well done index and table of cases and a useful table of statutes keying provisions of the Family Court Act and other key statutes to the sections in the book. There are only a few quibbles.

It would have helped if the chapters had been presented in the order in which the subject topics appear in the Family Court Act. This could have contributed to a greater ease of use. However, this is not a great disability and the user can certainly locate what he or she needs without great difficulty. Readers may note a difference in style among the contributing authors. Some chapters are more similar to a treatise and straightforward, while others contain more commentary and analysis. I did not find this to be very distracting; it is what should be expected in any work with a number of contributors.

The Family Court is, as Professor Sobie notes in his foreword, a “. . . unique judicial tribunal . . .” which “. . . affects greatly the lives of the parties and the non-party individuals, including children, in actions ranging from adoption to intra-family violence.”<sup>31</sup> It is safe to say that, because of the considerable impact on the lives of the men, women and children who pass through its portals, the Family Court may be the most important lower court in New York and one which has been a mystery to many lawyers. Sobie's *New York Family Court Practice* makes a significant contribution to the understanding of the jurisdiction and processes of this court. It will surely be of great value to the new lawyer who is beginning his or her journey through the court, but it should also provide a handy guide to any lawyer as a starting point for his or her efforts in a Family Court proceeding. West lists this book at \$105. Is it worth the

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31. *Id.*

price? I suggest that for any lawyer who plans to go anywhere near the Family Court it may be a real bargain.