

# FROM DETECTIVE TO DIVORCE LAWYER, John J. Grimes Has Followed His Own Path

BY MARIANNE A. CAMPOLONGO

PHOTO BY DANIEL BAITCH

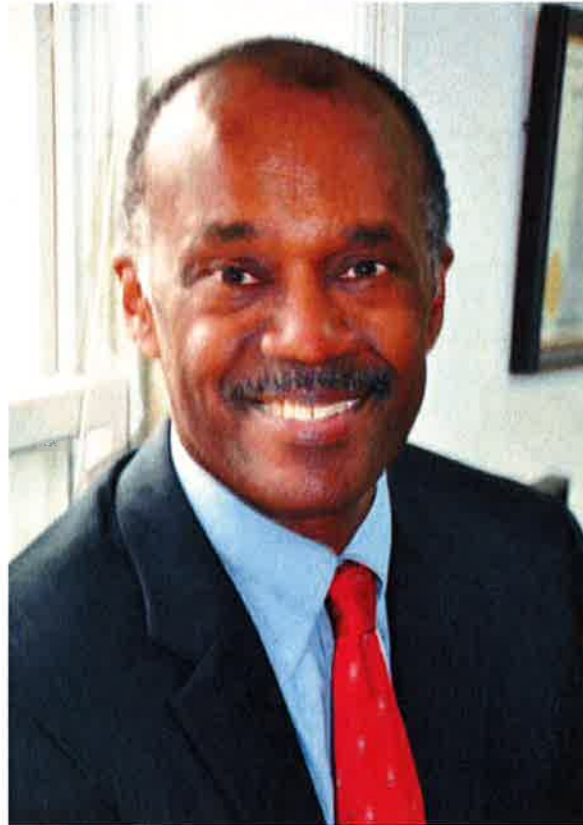
“After having people shooting at me, the pressure of my job doesn’t really bother me,” says Chappaqua divorce lawyer John J. Grimes.

Grimes began his career as a New York City police officer in the 1960’s, a time of racial turmoil and antiwar protests. He took his assignments in stride, first as a beat cop in the south Bronx, and later, responding to riots in Harlem and protests at Columbia as part of the department’s tactical squad. As an African-American police officer raised in Harlem, a part-time college student and member of Omega Psi Phi, a national black fraternity, Grimes says he knew the territory. Recognizing people from his old neighborhood or brothers from his fraternity helped to diffuse tensions. “If you have a certain mindset and deal with people a certain way, even when there is hostility, you will still be able to communicate,” he says.

Grimes earned eight citations during his first seven-year stint with the NYPD. At a time when, according to the *New York Times*, only 3% of police officers had a college degree, Grimes worked his way through John Jay College of Criminal Justice, earning a B.A. and a Master’s in Public Administration. Along the way, he became a detective. Assigned to the Queens DA’s Office, he worked closely with the FBI on bank robbery cases. Even though becoming an FBI agent had been a lifelong dream, he was initially reluctant to attend law school, a requirement for the job. Ironically, his eventual decision to attend law school would lead him to leave law enforcement.

## On to Harvard

After winning a scholarship to Harvard Law School at age 30, he



resigned from the force under protest when the police department denied his request for an unpaid leave of absence on the ground that educational leaves could only last one year. Grimes contended the denial was racially motivated, citing white officers who had secured longer leaves. The Queens DA and other prominent public figures rallied to Grimes’ cause while local and national publications followed the ensuing brouhaha (those stories and letters of support fill three of Grimes’ scrapbooks). A year later, a new Police Commissioner, Patrick V. Murphy, set higher educational requirements for incoming officers and those seeking promotion, establishing automatic leaves for officers pursuing higher degrees. He also reinstated Grimes.

Grimes believes that race also kept him from being assigned to the forensics lab, another childhood

dream. “You had to know someone to be invited.” An invitation finally came, “a month before I left for law school.” Nevertheless, he speaks of his time with the NYPD with a sense of fondness and nostalgia. He witnessed some of the key events of the 1960’s. “I was assigned to the security details for JFK, LBJ and the Pope—and I got to be at Shea Stadium for the first Beatles concert,” he said. “I really had a nice experience. I looked forward to working each day.”

## TWA: Up, up and away

Grimes began his legal career at the prestigious New York law firm Shea & Gould. He later served as General Attorney and Vice President (Worldwide Security) at Trans World Airlines, and as Assistant Deputy Commissioner, Legal Matters and General Counsel, of the Civilian Complaint Review Board with the NYPD. With TWA, he travelled the world. He recalled one particular trip to the Pacific Rim as head of security, accompanying Time, Inc. executives to Hanoi, Manila, Hong Kong, Beijing, and Taiwan.

Working for TWA gave him carte blanche to travel for pleasure too: “I went to Europe every weekend,” he said. A photography buff since high school, “Traveling, I used to carry more lenses than clothes,” he said. Flight attendants clued him in to bargains on camera equipment and the Lladro figurines he enjoys collecting.

He and Barbara Zimet, former TWA Associate General Counsel and Corporate Secretary, founded Grimes & Zimet in 1989 when his son John J. Grimes, Jr., 23, was only three. Working first from his Armonk home and then his Chappaqua office gave him time

with his young son, a bonus since his wife was commuting to lower Manhattan. It also facilitated trips to watch his stepson Derrick Phelps play basketball at UNC Chapel Hill. Derrick, 37, is now a professional basketball player in Romania. Linda Phelps, Grimes' wife of 26 years, eventually left her job in Manhattan and is currently his "office manager, legal assistant and 24/7 companion."

Grimes quickly took to the practice of matrimonial law and now lectures on the subject. "My police training is very helpful because I dealt with the human aspect—people and conflict. When I was in uniform, I got involved in a lot of family disputes," he said.

Despite years of trial experience, Grimes champions efforts to settle divorce disputes amicably. He becomes particularly animated when discussing collaborative mediation, where both sides retain attorneys but pledge to work with each other and with professionals, such as mental health workers and financial advisors, to find common

ground and avoid the courtroom. Grimes explains that, unlike traditional mediation, it is an "interdisciplinary approach [aimed at smoothing] the transition from a nuclear family to two separate units. It focuses on the parties' needs rather than 'positions.' Lawyers are no longer gladiators; they are working as a team." As an added inducement to cooperate, if they end up in court, the parties must retain different attorneys and other professionals than those they have used in the collaborative process.

Nine years ago, Grimes was elected to the Byram Hills School Board. Concerned that Armonk students had limited experience with successful minority professionals, he worked to see the schools hire teachers of color. A recent book drive for poor Jamaican children spurred him to a project still in the offing: gathering a panel of Jamaican lawyers, judges and businessmen "to give [students] a different perspective."

"Mostly everyone I grew up with went to jail or got hooked on drugs so I

have zero tolerance for drugs," he says. Since his early days in the NYPD, Grimes has lectured youths about the dangers of drugs, a community service he continues today, aided by the first-hand accounts of recovering addicts, one of whom "took her false teeth out at the end and said, 'Look what drugs did to me.'"

He owes his success to "hard work and personality," his father, who worked in a law book factory and encouraged him to go to law school, and his mother, "who made sure I studied."

Grimes believes his relaxed, low-key attitude is the reason he looks far younger than his 70 years. Outdoor pursuits include golf and gardening. A perfect evening? "A little reading—especially books on World War II, and a little TV. His favorite show? "CSI of course," he says with a smile.

MARIANNE A. CAMPOLONGO is a freelance writer and photographer for various publications and websites, including Inside Chappaqua. She recently launched a new website to showcase her passion for photography: [www.campyphotos.com](http://www.campyphotos.com)

**Le Jardin du Roi**  
**French Bistro**



**New  
Breakfast Items  
Added to Our  
Menu!**

**95 King Street**  
**Chappaqua, NY 10514**

**Tel: 914-238-1368**  
**Fax: 914-238-4864**  
**Hours: 8am to Midnight**

**share**  
**great fitness**

swim lessons . massage . yoga . tennis . membership

personal training . sports programs . fitness classes . cafe

**club  
fit**

**give a giftcard**

**www.clubfit.com**

Briarcliff . North State Rd . (914) 250-2772

# Family Law Review

A publication of the Family Law Section of the New York State Bar Association

## Notes and Comments

Elliot D. Samuelson, Editor

### Counsel Fees...Finally Recognized by the Courts to Be a Priority *Pendente Lite*

*The fundamentals of justice are that no one shall suffer wrong  
and that the public good be served.*

Cicero

On February 8, 2011, the Appellate Division, Second Department, issued its blockbuster decision in *Witter v. Daire*<sup>1</sup> which has served notice, in a loud and clear voice to all judges sitting in the Supreme Court who handle matrimonial litigation, that the day to deny or render inadequate *pendente lite* awards for counsel fees is now over, and that the awards must be made in responsible sums, to make certain the playing field is indeed made level.

In *Witter, supra*, the Appellate Division reversed an order of a Supreme Court Justice in Westchester County who only awarded the sum of \$10,000 as an interim counsel fee where \$125,000 in total<sup>2</sup> was requested and the entire \$125,000 was awarded. In reaching this determination, the Appellate Court cited both *Prichep v. Prichep*<sup>3</sup> and *Penavic v. Penavic*<sup>4</sup> and reflected their classic holdings that “an award of interim counsel fees insures that the non-monied spouse will be able to litigate the action, and to do so on equal footing with the monied spouse.” It went on to reflect that courts “should normally exercise their discretion to grant such relief made

by the non-monied spouse.” It is to be remembered that both *Prichep* and *Penavic* were decided months before the Domestic Relations Law was amended to provide a new § 237(a), effective October 12, 2010, which provides in part:

There shall be rebuttable presumption that counsel fees shall be awarded to the less monied spouse. In exercising the court’s discretion, the court shall seek to assure that each party shall be adequately represented and that where fees and expenses are to be awarded, they shall be awarded on a timely basis, *pendente lite*, so as to enable adequate representation from the commencement of the proceeding. Applications for the award of fees and expenses may be made at any time or times prior to final judgment. Both parties to the action or proceedings and their respective attorneys, shall file an affidavit with the court detailing the finan-

## Inside

The Child Support Lottery.....4  
(Robert S. Grossman)

Divorces, Cyberspace and Discovery: Writing on a Wall  
May Not Be Private After All .....6  
(Amy L. Reiss, Lisa Zeiderman and Danielle Jacobs)

Devastating Parental Behaviors That Impact Children  
During the Separation and Divorce Process .....10  
(Roger Pierangelo, Ph.D. and George Giuliani, J.D., Psy. D.)

Recent Legislation, Decisions and Trends .....16  
(Wendy B. Samuelson)

E-mail to the Editor.....22



cial agreement between the party and the attorney. Such affidavit shall include the amount of any retainer, the amounts paid and still owing thereunder, the hourly amount charged by the attorney, the amounts paid, or to be paid, any experts, and any additional costs, disbursements or expenses. Any applications for fees and expenses may be maintained by the attorney for either spouse in his own name in the same proceeding. Payment of any retainer fees to the attorney for the petitioning party shall not preclude any awards of fees and expenses to an applicant which would otherwise be allowed under this section.

This new section adopts the philosophy of the *Prichep* and *Penavic* Courts. In reality, the new legislation placed their holdings in the statutory language quoted above.

In reaching its extraordinary decision, the *Witter* Court noted that the resources available to the wife far exceeded those of the husband and his requests totaling \$125,000 for interim fees was "reasonable under the circumstances," again citing *Prichep* and *Penavic, supra*. Although the decision did not include any financial information concerning the parties, in reviewing the record on appeal, it was ascertained that the wife had assets of approximately \$11,000,000 and income derived from such assets of approximately \$400,000. By contrast, the husband had negligible assets and earned income of approximately \$85,000. It is important to recognize that the *Witter* husband also had joined a cause of action seeking to set aside a prenuptial agreement that the parties had executed before their marriage and both the lower and appellate courts reflected that he was not entitled to legal fees with respect to that cause of action.

The lower court bifurcated the case and remarked that the action to set aside the prenuptial should be tried first, since failure to do so would result in the parties dividing marital property according to the prenuptial terms. Despite such direction, the appellate court went on to hold that it is evident from the record that the legal fees incurred by the husband or those he will immediately incur in litigating matters other than with respect to the validity of the prenuptial agreement (i.e., equitable distribution considerations), amounted to at least \$125,000.

What is most remarkable about this decision is that while the Appellate Division acknowledged that the trial court remarked that the bifurcation of these issues compelled the court to limit the counsel fee award, and that it might potentially be relevant in determining the propriety and amount of a final award of counsel fees, such facts *did not warrant the denial of the requested amounts*

*of interim counsel fees* [emphasis supplied] in this case, again citing *Prichep*. The court expressed its reasoning in the following language:

Although the Supreme Court, in limiting its award of interim counsel fees to the husband, deemed the litigation of such other matters to be unnecessary or premature, we note that such considerations, while potentially relevant in determining the propriety and amount of a final award of counsel fees, did not warrant the denial of the requested amounts of interim counsel fees in this case (*see Prichep v. Prichep*, 52 AD3d at 64-65). *Witter, supra*.

This result is truly a defining moment in applications for interim counsel fees, especially based on such facts. It is the first time that a reported case has awarded such a substantial interim counsel fee where it was acknowledged that necessity for such legal services might not even be required, and it contrasts sharply with the frequent decisions of the lower courts that routinely refer these matters to the trial court or make insignificant or inadequate awards. Moreover, the acknowledgment of the *Witter* court, that there should be serious consideration to the estimated services anticipated in fashioning such an award, is monumental in its scope.

Surprisingly, the Appellate Division did not note the recent amendment to the Domestic Relations Law § 237(a) which is cited above, in its decision, nor did it reflect on the still numerous lower courts' decisions that routinely refer such applications to the trial courts, or make a paltry award.

What a wonderful departure from the status quo. Now an impecunious spouse who is involved in substantial litigation involving valuations of marital properties, such as closely held businesses, professional practices and licenses, will be able to compete with a spouse who has already retained top flight counsel. No longer will a spouse without assets be relegated to retain less capable or inexperienced counsel. In the past, without the money to hire a comparable attorney that would match the qualifications of the other spouse's representation, severe prejudice would befall the poorer spouse. The playing field should never be returned to such a disparate condition.

The *Witter* decision also serves notice that even if a large sum of legal fees is requested, the amount of the request should not deter the lower court from granting such award, providing the supporting papers give sufficient factual predicate to determine that the amount requested is reasonable under all of the financial circumstances of the parties, and the motion is supported by financial documentation and not hyperbolic rhetoric.

In polling a substantial number of matrimonial practitioners, it was determined that only a fraction of the motions made for *pendente lite* fees in cases involving protracted litigation resulted in adequate or timely awards. In one anecdotal reference, an application for \$50,000 was requested for interim counsel fees because the husband was engaged in a cash business, failed to report his true income on his tax returns, but nevertheless had annual expenditures of over \$300,000 a year. It was clear that the litigation was complex and would span at least a year in duration. As such it would require a forensic accountant and expert testimony as well as the investigation of business records by the expert to ferret out fraudulent transactions and arrive at the husband's true worth of his business and his income. The motion papers reflected all of these financial facts. Yet, the court awarded but \$10,000 and referred the balance of the application to the trial court.

These anecdotal references are commonplace, but all that should now change with the *Witter* imprimatur. I say this because the statutory pronouncement resolves any doubt of such result. Consider the statute's presumption that legal fees should be awarded to the less monied spouse, and must be made on a "timely basis" (see statutory reference above).

What is even more important, DRL §237(d) contains four points that the court must consider in determining interim motions: (1) the nature of the marital property involved; (2) the difficulties involved, if any, in identify-

ing and evaluating the marital property; (3) the services rendered and an estimate of the time involved; and (4) the applicant's financial status. These four points must be exhaustively detailed in the supporting affidavits, and bolstered with financial documentation. Doing so should insure a successful result.

In the weeks to come, we will monitor the lower courts' decisions and report them to our readers.

### Endnotes

1. 2011 NY Slip Op. 01018 (2d Dept, Feb. 8, 2011).
2. The sum of \$100,000 was initially requested by the husband with the lower court awarding only \$10,000. Thereafter, the husband moved for leave to reargue and sought an additional \$25,000 in counsel fees, bring the total amount to \$125,000. The court, upon granting leave then adhered to its initial award of \$10,000.
3. 52 AD3d 61 (2d Dept 2008).
4. 60 AD3d 1026 (2d Dept 1009).

Elliot D. Samuelson is the senior partner in the Garden City matrimonial law firm of Samuelson, Hause & Samuelson, LLP and is a past president of the American Academy of Matrimonial Lawyers, New York Chapter and is included in "The Best Lawyers of America" and the "Bar Registry of Preeminent Lawyers in America." He has appeared on both national and regional television and radio programs, including *Larry King Live*. Mr. Samuelson can be reached at (516) 294-6666 or [esamuelson@samuelsonhause.net](mailto:esamuelson@samuelsonhause.net).

## FAMILY LAW SECTION

Visit us on the Web at  
[www.nysba.org/Family](http://www.nysba.org/Family)

917 N.Y.S.2d 870  
Supreme Court, Appellate Division,  
Second Department, New York.

Sidney Waldon WITTER, respondent,

v.

Mourad DAIRE, appellant.

Feb. 8, 2011.

#### Attorneys and Law Firms

Grimes & Zimet, Chappaqua, N.Y. (John J. Grimes of counsel), for appellant.

Bodnar & Milone, LLP, White Plains, N.Y. (David Elbaum of counsel), for respondent.

#### Opinion

\*719 In an action for a divorce and ancillary relief, the defendant appeals, as limited by his brief, from (1) so much of an order of the Supreme Court, Westchester County (Tolbert, J.), dated April 23, 2009, as granted his motion for an award of interim counsel fees in the sum of \$100,000 to the extent of awarding him interim counsel fees in the sum of only \$10,000, and (2) so much of an order of the same court entered August 5, 2009, as, upon reargument, adhered to the original determination, and denied that branch of his motion which was for an additional award of interim counsel fees in the sum of \$25,000.

ORDERED that the appeal from the order dated April 23, 2009, is dismissed, as that order was superseded by the order entered August 5, 2009, made upon reargument; and it is further,

ORDERED that the order entered August 5, 2009, is reversed insofar as appealed from, on the facts and in the exercise of discretion, upon reargument, the determination in the order dated April 23, 2009, granting the defendant's motion for an award of interim counsel fees in the sum of \$100,000 to the extent of awarding him interim counsel fees in the sum of only \$10,000 is vacated, the defendant's motion for an award

of interim counsel fees in the sum of \$100,000 is granted, and that branch of the defendant's motion which was for an additional award of interim counsel fees in the sum of \$25,000 is granted; and it is further,

ORDERED that one bill of costs is awarded to the defendant.

“An award of interim counsel fees ensures that the nonmonied spouse will be able to litigate the action, and do so on equal footing with the monied spouse” \*\*871 (*Prichep v. Prichep*, 52 A.D.3d 61, 65, 858 N.Y.S.2d 667). Courts “should normally exercise their discretion to grant such a request made by the nonmonied spouse” (*id.* at 65, 858 N.Y.S.2d 667).

\*720 Here, the resources available to the wife far exceed those available to the husband, and the husband's requests for awards of interim counsel fees in amounts totaling \$125,000 are reasonable under the circumstances (*see Penavic v. Penavic*, 60 A.D.3d 1026, 1028–1029, 877 N.Y.S.2d 118; *Prichep v. Prichep*, 52 A.D.3d at 66–67, 858 N.Y.S.2d 667). Although the husband is not entitled to counsel fees for work performed in connection with his challenge to the validity of the parties' prenuptial agreement (*see Kessler v. Kessler*, 33 A.D.3d 42, 49–50, 818 N.Y.S.2d 571; *Anonymous v. Anonymous*, 258 A.D.2d 547, 685 N.Y.S.2d 294; *Lamborn v. Lamborn*, 56 A.D.2d 623, 391 N.Y.S.2d 679), it is evident from the record that the legal fees he has incurred, or will imminently incur, in litigating matters other than the validity of the prenuptial agreement amount to at least \$125,000. Although the Supreme Court, in limiting its award of interim counsel fees to the husband, deemed the litigation of such other matters to be unnecessary or premature, we note that such considerations, while potentially relevant in determining the propriety and amount of a final award of counsel fees, did not warrant the denial of the requested amounts of interim counsel fees in this case (*see Prichep v. Prichep*, 52 A.D.3d at 64–65, 858 N.Y.S.2d 667).

PRUDENTI, P.J., RIVERA, LOTT and MILLER, JJ., concur.

#### Parallel Citations

81 A.D.3d 719, 2011 N.Y. Slip Op. 01018

916 N.Y.S.2d 524  
Supreme Court, Appellate Division,  
Second Department, New York.

Sidney Waldon WITTER, respondent,  
v.  
Mourad DAIRE, appellant.

Feb. 8, 2011.

**Attorneys and Law Firms**

Grimes & Zimet, Chappaqua, N.Y. (John J. Grimes of counsel), for appellant.

Bodnar & Milone, LLP, White Plains, N.Y. (David Elbaum of counsel), for respondent.

**Opinion**

\*720 In an action for a divorce and ancillary relief, the defendant \*721 appeals, as limited by his brief, from so much of an order of the Supreme Court, Westchester County (Tolbert, J.), entered November 30, 2009, as granted that

branch of the plaintiff's motion which was for an award of an attorney's fee pursuant to 22 NYCRR 130-1.1.

ORDERED that the order is reversed insofar as appealed from, on the facts and in the exercise of discretion, with costs, and that branch of the plaintiff's motion which was for an award of an attorney's fee pursuant to 22 NYCRR 130-1.1 is denied.

It is not clear from the record that the failure of the defendant's counsel to turn over certain documents to the plaintiff's counsel was "frivolous" within the meaning of 22 NYCRR 130-1.1(c). Indeed, the Supreme Court did not find that either the defendant or his attorney acted purposefully, but rather characterized the conduct in question as an "error." Accordingly, under the circumstances of this case, the award of an attorney's fee in the sum of \$7,713.75 to the plaintiff pursuant to 22 NYCRR part 130 was not warranted.

PRUDENTI, P.J., RIVERA, LOTT and MILLER, JJ., concur.

**Parallel Citations**

81 A.D.3d 720, 2011 N.Y. Slip Op. 01019

End of Document

© 2011 Thomson Reuters. No claim to original U.S. Government Works.