

About This Issue

NOTE FROM THE ISSUE EDITORS:

As with other instances in which we have served together as Issue Editors, it has been a pleasure collaborating with each other, with the authors of these excellent articles, with our Executive Editor, Mary Kay Kisthardt and with our Co-Editors in Chief, Steve Peskind and Dana Prescott. We have frequently commented on the parallel between the topics covered in this volume, which reflect the trend toward a modernization of family law dispute resolution (and away from traditional litigation), and the “modernization” our Journal is experiencing in its own right, as we transition from traditional print versions to a hybrid of digital and print delivery of the Journal. These changes have been managed with excellence by our Executive Editor and Co-Editors in Chief. We wish to draw attention to their fine efforts in this regard, as these “modernizing” changes invariably present challenges. The process has gone smoothly due in significant measure to the thoughtful leadership provided by these three committed, intelligent and determined individuals. Andrew Soshnick and David Griffin.

As most family law attorneys know, dispute resolution mechanisms such as arbitration, and mediation are no longer described as “alternative.” These types of dispute resolution processes, along with negotiation are now the methods extensively used to resolve family law cases. In this issue we have assembled an impressive set of articles by experts in the field. The articles include a description of skills that attorneys can pass on to clients to help them to shape future co-parenting relationships and address property issues in the dissolution. Other articles focus on negotiation, arbitration, and early dispute resolution. Many states are now requiring continuing legal education that focuses on implicit bias. One of our mediation articles captures some of the key components of that type of training. We also have two additional articles, one on the Hague Convention on Child Abduction and its questionable application to indigenous peoples and also an extensive report on the Uniform Parentage Act of 2017 which was compiled by the AAML Legislative Committee.

Our Issue Editors are David Griffin and Drew Soshnick. Mr. Griffin is a partner at Rutkin, Oldham & Griffin in Westport, CT. He represents clients in divorce, custody, relocation and income and asset distribution cases, including alimony and support issues arising from complicated compensation structures and high net worth families. He has been active in the Academy for many years and was named National Fellow of the Year in 2016. Mr. Soshnick is a partner in the Indianapolis office

of Faegre Drinker Biddle & Reath LLP where he concentrates his practice in complex matrimonial cases. He is a Fellow of both the American Academy and the International Academy of Family Lawyers. He writes and speaks extensively on divorce financial and valuation issues.

Our first article is from the AAML 2023-2024 Legislation Committee and is entitled, *A Report on the Uniform Parentage Act (UPA 2017): Developments in State Law Regarding the Rights of Children*. The report summarizes the status of the adoption of the UPA by states and highlights the challenging issues raised by determining who has legal rights with respect to children. The committee urges fellows to support state-level efforts to advocate for measures that protect children's relationships with those with whom they have established a bond as required by the UPA. In doing so, the committee hopes to protect children by ensuring stability in their relationships and preventing chronic litigation which harms them.

Next, we feature *Family Law Arbitration—A Guide for Providing Sound Counsel* to Litigants by Amy J. Amundsen and Carolyn Moran Zack. The article discusses what lawyers need to know to propose arbitration to their clients and opposing lawyers, including trends and research in favor of arbitration, the laws applicable to arbitration, the cases or issues that are appropriate for arbitration, and its advantages and disadvantages as well as describing the arbitration process. The essential components of an arbitration agreement are discussed along with the techniques that can be used, including final-offer arbitration, mediation-arbitration, single-issue arbitration, and a panel of arbitrators. It also includes considerations for child-related awards and distinguishes private judging. Finally, the authors advocate for family law-specific legislation or rules to provide more reliability in the process and to protect the interests of family law participants. Amy J. Amundsen of Amundsen Legal Consulting advises lawyers on case strategies and office management and provides alternative dispute resolution services as a trained Collaborative Family Lawyer. She is a certified Family Law Arbitrator and Tennessee Supreme Court Rule 31 Family Law Mediator. She is also a Diplomate in the American College of Family Trial Lawyers, a Fellow in the International Academy of Family Lawyers and the AAML, serving as co-chair of the AAML Arbitration committee and on the CLE, Legislation, Collaborative Law and Mediation committees. Ms. Amundsen received the Justice Joseph W. Henry Award, recognizing the year's most outstanding article published in the Tennessee Bar Journal (2016) and was awarded the Memphis Bar Association's highest honor, the Judge Jerome Turner's Lawyer's Lawyer Award (2018), and also was the recipient of the Marion Griffin-Francis Loring Award (2007) from the Association of Women Attorneys. Ms. Zack is a partner with the law firm of Momjian Anderer, LLC, practicing family law in Philadelphia and the surrounding counties. She is a Fellow of the AAML, co-chair of the Pennsylvania Chapter's Programming Committee, and a member of the national Legislative, Arbitration, and

Test Committees. She serves as the Chair of the Domestic Relations Procedural Rules Committee of the Pennsylvania Supreme Court and is the Second Vice Chair of the Pennsylvania Bar Association Family Law Section, and past-Chair of the Family Law Section of the Philadelphia Bar Association. She is a member of an interdisciplinary group of judges, psychologists and lawyers who meet to discuss ways to improve the resolution of custody issues. She is certified as an arbitrator, mediator, and parenting coordinator. Ms. Zack served for eight years (2009-2016) as a Family Court Hearing Officer in Chester County, as well as Chief Law Clerk for the Honorable Berle M. Schiller in the Pennsylvania Superior Court (1998-1999).

A consideration of the Hague Convention's application to specific groups is the subject of *Did the Hague Convention on the Civil Aspects of International Child Abduction Recognize Indigenous Groups and Culture?* and is authored by Timothy Fadgen, Guy Charlton, and Dana E. Prescott. The authors argue that when requiring recourse in and between adversarial systems without explicit recognition of the independent standing of Indigenous populations courts and policymakers should look behind the Convention to determine if privileges and bias which already permeate adversarial systems should be considered when reviewing Convention petitions. The article contains a brief discussion of the Convention and then reviews the demographic and definitional struggles associated with Indigenous populations. It explores the Convention's deployment of judicial systems and implications for epistemic injustice before considering the recent New Zealand opinion, *Mercer v. Mercer*, which considers these principles and suggests that courts are already beginning to consider cultural and human right considerations in determining a child's best interests. Tim Fadgen (PhD, JD) is a Senior Lecturer in Politics and International Relations and Public Policy at the University of Auckland - Waipapa Taumata Rau, and Associate Director of the Public Policy Institute. He is an active member of the Maine (USA) bar and is a past member of the bar of American Samoa, where he was an Assistant Attorney General and of the High Court of (Western) Samoa, where he was a Fulbright Fellow and special assistant to the Attorney General. Guy Charlton, PhD in Law, JD, MA is an Associate Professor - School of Law, University of New England, Sydney, Australia. His research interest includes comparative indigenous law, corporate law, constitutional and human rights law, and property law. Prior to his position at the University of New England he was a Senior Lecturer in Law at AUT, Auckland, New Zealand. He has also worked or taught units at Curtin University Law School in Perth, Western Australia and City University of Hong Kong, Auckland University and National Chengchi University, Taipei, Taiwan. Dana E. Prescott, PhD, LMSW, JD, is a partner at Prescott, Jamieson, & Murphy Law Group in Saco, Maine and is licensed in both Maine and Massachusetts. He is a fellow of both the AAML and IAFL and is the

Co-editor of the Journal. He also serves and an adjunct professor at the Boston College School of Social Work.

Our next article is authored by Barbara Glesner Fines who is the Rubey M. Hulen Professor of Law and Dean Emerita of the University of Missouri - Kansas City School of Law. The article is entitled *Biases and Mediation Practice*. Professor Glesner Fines is an expert on professional ethics, legal education and the professional identity formation of law students. She has authored numerous articles and books on these subjects and is a fellow in the Holloran Center for Ethical Leadership. Most recently she has conducted numerous webinars on the elimination of explicit and implicit bias, diversity, inclusion and cultural competency. The article explores the meaning of bias and the ethical duties of both attorneys and mediators to understand how decisions and judgments are affected by bias, focusing particularly on cognitive biases that are especially significant in the mediation process. It explores the biases that affect perception and valuation that distort decision-making and also how biases affect how individuals judge others including their motivations and intentions. It also addresses biases that impact interpersonal communication and most importantly provides suggestions for recognizing these biases and mitigating their detrimental effects in mediation.

In *Redefining Resolution: How Early Dispute Resolution (EDR) Is Re-Shaping Modern Family Law Practice*, Susan Guthrie critically analyzes the challenges and opportunities for early dispute resolution processes. The article critically examines the transformative role of EDR in modern family law practice, arguing that the adoption of EDR methodologies—notably mediation, collaborative law, and cooperative practice—represents a pivotal shift toward more empathetic, efficient, and client-centered legal processes. She provides practical insights for practitioners hoping to underscore the importance of integrating these approaches to better meet the complex needs of families in dispute. She addresses ethical considerations surrounding EDR implementation, emphasizing the importance of informed consent and appropriate screening. Finally, she focuses on the transformative potential of EDR in reshaping the landscape of family law practice and offers guidance for practitioners seeking to integrate EDR into their work. Ms. Guthrie is the Chair of the ABA Section of Dispute Resolution and a highly respected attorney and mediator specializing in family law. With over 30 years of experience, Susan has built a distinguished practice dedicated to helping families navigate the complexities of divorce and separation with dignity and efficiency. As a leader in the field, she has been at the forefront of integrating Online Dispute Resolution (ODR) into family law, offering innovative solutions for her clients. Recognized for her contributions to the profession, Susan's role as Chair of the ABA Dispute Resolution Section underscores her commitment to advancing best practices in family law mediation and dispute resolution. Susan

is licensed to practice in Connecticut and California and resides in Chicago, Illinois. She works worldwide with legal and dispute resolution professionals to support their practice development and business growth through coaching and strategic planning.

Turning to negotiation, the most frequently used method of dispute resolution, Kathryn Murphy and Ally Caskey provide practical tips in their article entitled, *Negotiation Strategies and Techniques*. From understanding the psychology of negotiation to leveraging dispute resolution strategies, they explore how lawyers can navigate the delicate balance between advocacy and compromise. The article begins with a discussion of the win-win approach to negotiation, which represents mutual gains for the parties involved. They then highlight the elements that form the basic structure of a negotiation and finally delve into strategies and techniques including whether and when to make the first offer, making concessions and counteroffers, evaluating options, handling impasses, and managing time pressures. Finally, they address the role of emotions and the pivotal question of whether parties should negotiate or go directly to trial. Ms. Murphy is a partner at Goranson Bain Ausley in Dallas, Texas. She was named 2019 “Lawyer of the Year” in Dallas by Best Lawyers in America in family law. In 2021, Kathryn was the recipient of one of the most coveted awards in Texas family law, the Sam Emison Award. Kathryn is Board Certified in Family Law by the Texas Board of Legal Specialization. She is a fellow of the International Academy of Family Lawyers, and the AAML, having served as the president of the Texas chapter. She is a diplomate of the American College of Family Trial Lawyers, a past chair of the Family Law Council of the State Bar of Texas and a past member of the State Bar of Texas Board of Directors. Ms. Caskey also practices at Goranson Bain Ausley. She was named a 2023 “Texas Rising Stars” by Thomson Reuters. She is a graduate of Southern Methodist University’s Dedman School of Law, where she served as the President of the Family Law Association and was named to the Dean’s List. Her passion for family law was sparked by her work as an attorney ad litem for children in the foster care system at the W.W. Caruth, Jr. Child Advocacy Clinic. Ally’s dedication to family law was further honed during her internship with Justice Debra Lehrmann of the Texas Supreme Court.

Our next article also focuses on practical considerations, this time in mediation. It is entitled, *Why Do Mediations Fail? Perspectives, Concerns, and Advice from Mediators* and is authored by Lisa Ann Sharpe and William B. Reingold, Jr. While recognizing the many benefits of mediation to resolve family law matters, the authors acknowledge that many mediations fail. Hoping to glean some insight into why this happens they interviewed various mediators from across the country asking their perspectives on attorneys representing clients in mediation and what strategies or techniques were successful or hindered resolution. This article consolidates these mediators’ opinions

and offers advice on how best to represent family law clients in mediation. Lisa Ann Sharpe and William B. Reingold, Jr., are practicing family law attorneys at the law firm Lasher Holzapfel Sperry & Ebberson, PLLC, in Seattle, Washington. Ms. Sharpe has been a fellow of the AAML since 2011 and is currently the President of the AAML Chapter in Washington. She focuses on complex family law cases and representation of high net worth clients. Her clientele spans the globe, including the U.S., Asia, Europe, and Canada, reflecting her extensive expertise and international reach. She is deeply committed to the mediation of divorce cases, advocating it as a preferable alternative to litigation. Over her 33 years of practice, she has successfully mediated hundreds of cases, providing her clients with a less adversarial and more cost-effective means of resolving their disputes. Lisa's dedication to mediation is also evident in her volunteer work as a neutral mediator with the King County Bar Association, where she serves as a volunteer settlement conference attorney. William Reingold received his JD from Wake Forest University in 2019 and clerked at the North Carolina Court of Appeals until 2020 when he joined the firm. In his spare time, Mr. Reingold writes for law journals and serves as a moot court coach at the University of Washington.

Expanding Disagreement Resolution Skills for Attorneys: Helping Shape Future Co-parenting Relationships and Addressing Property, Debt, and Distribution of Future Income is written by Kenneth H. Waldron, Allan R. Koritzinsky and Eileen McCarten. In it, the authors posit that the majority of marriages that end in divorce do so because the spouses lack skills to successfully resolve the disagreements that inevitably arise from differences, but that those skills can be taught at the time of divorce. The authors identify ten disagreement resolution skills that hopefully can be modeled and if possible, taught by attorneys, to facilitate their clients' improved co-parenting relationships. These same skills also can be helpful in assisting parties to reach optimal financial agreements and to prepare them for better future financial decisions they are likely to face if, and when, they have children. Ken Waldron, Ph.D., has had numerous publications. Among them, he has co-authored four books with Allan Koritzinsky: *GAME THEORY AND THE TRANSFORMATION OF FAMILY LAW: CHANGE THE RULES- CHANGE THE GAME*, *WINNING STRATEGIES IN DIVORCE: THE ART AND SCIENCE OF USING GAME THEORY PRINCIPLES AND SKILLS IN NEGOTIATIONS AND MEDIATION*, *THE ROAD TO A SUCCESSFUL MARRIAGE IS UNPAVED: SEVEN SKILLS FOR MAKING MARRIAGE WORK*, and *PLANNING A SENSIBLE DIVORCE: AVOID THE TOXIC DANCE OF A MESSY DIVORCE*. His forty-year practice was almost exclusively with family law cases, typically in high-conflict co-parenting situations. He has spoken to groups of attorneys, mental health professionals, mediators, judges, and commissioners nationwide, has been appointed as an expert by courts in numerous jurisdictions, and has provided specialty programs for high-conflict parents. Allan Koritzinsky is a retired partner with Foley & Lardner LLP, where he was Chair of the

law firm's Family Law Team. He was a Lecturer at the University of Wisconsin Law School and also the co-author of two additional books, *TAX STRATEGIES IN DIVORCE* and *THE DIVORCE PRACTICE HANDBOOK*, as well as the co-author of Wisconsin's Family Law Case Notes & Quotes. He was a Fellow of the American Academy of Matrimonial Lawyers, a Diplomate in the American College of Family Trial Lawyers, a member of the AAML national Board of Governors, the National Chair of the AAML Arbitration Committee, and Past President of the AAML Wisconsin chapter. His nearly 60-year law practice was primarily family law transactional and ADR work. He has spoken on divorce-related and ADR topics to groups of attorneys, mental health professionals, mediators, judges and commissioners nationwide. The Waldron-Koritzinsky website can be found at marriageanddivorce.org. Eileen McCarten, MS, LCPC, is a mediator and certified EFT therapist in private practice and founder of Family Matters-PACT which provides a continuum of quality educational, mediation and counseling services. Eileen has extensive experience providing mediation and co-parenting training in Wisconsin and Illinois and serves as a mental health coach and child specialist in the collaborative law process.

We also feature a book review of *FAIR SHAKE: WOMEN & THE FIGHT TO BUILD A JUST ECONOMY* by Naomi Cahn, June Carbone, and Nancy Levit. It is entitled *Will Women Ever Reach Pay Equity?* The author is Theresa M Beiner, a Professor in Constitutional Law at the University of Arkansas at Little Rock Bowen School of Law. Prof. Beiner was the first permanent female Dean at the Bowen School of Law. During her five years as Dean, she helped find and start the law school's Veterans Legal Services Clinic and Pro Bono Services Center as well as successfully sought approval and funding of the Center for Racial Justice and Criminal Justice Reform at the school. A graduate of the University of Virginia (BA) and the Northwestern University Pritzker School of Law, Professor Beiner teaches and researches in the areas of Employment Discrimination, diversity in the judiciary, Constitutional Law, and Civil Procedure. The Bowen School of Law has awarded Professor Beiner its faculty excellence awards for scholarship and teaching.

We also have two student Comments that focus on dispute resolution of family law matters. The first entitled, *Collaborative Divorce: The Ethical Concerns of Conscious Uncoupling* is authored by Audrey Doering. The other written by Taylor Marshall is entitled *Trauma-Informed Mediation: A Path to Healing and Resolution*.

As usual our issue concludes with an excellent extensive bibliography of articles on dispute resolution of family law matters by Allen Rostron, Associate Dean for Students and the William R. Jacques Constitutional Law Scholar and Professor of Law, University of Missouri-Kansas City School of Law.

Mary Kay Kisthardt
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