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Lessons from *Valadez*: Batterers Treatment and Family Law

By Linda Schaumberg

Family law statutes in Wisconsin have specific provisions designed to assist families traumatized by domestic abuse.

Specifically, when a trial court finds that domestic abuse is occurring in a family in which custody and placement of children is in dispute, specific requirements exist for perpetrators to obtain batterers treatment.

Recently, the Wisconsin Court of Appeals addressed the concept of batterers' treatment programing and what constitutes acceptable treatment under the Wisconsin family code. This article addresses the recent case of *Valadez v. Valadez*¹ and the guidance that case gives on batterers treatment programing.

Trial Court Posture

The Waukesha County *Valadez* divorce involved a 16-year marriage with four minor children, two of whom had been diagnosed with autism. There were also claims of domestic abuse at the hands of Mr. Valadez against Ms. Valadez.

A five-day trial in this matter resulted in a finding that Mr. Valadez did indeed engage in a pattern of domestic abuse, and thus Wis. Stat. section 767.41(2)(d) applied. This section relates as follows:

Except as provided in subd. 4., if the court finds by a preponderance of the evidence that a party has engaged in a pattern or serious incident of interspousal battery, as described under s. 940.19 or 940.20 (1m), or domestic abuse, as defined in s. 813.12 (1) (am), pars. (am), (b), and (c) do not apply and there is a rebuttable presumption that it is detrimental to the child and contrary to the best interest of the child to award joint or sole legal custody to that party. The presumption under this subdivision may be rebutted only by a preponderance of evidence of all of the following:

a. The party who committed the battery or abuse has successfully completed treatment for batterers provided through a certified treatment program or by a certified treatment provider and is not abusing alcohol or any other drug.



b. It is in the best interest of the child for the party who committed the battery or abuse to be awarded joint or sole legal custody based on a consideration of the factors under sub. (5) (am).

Despite the specific finding that a pattern of domestic abuse existed, the court awarded the father sole legal custody of the four minor children. The court reached this finding despite the provisions of section 767.41(2) (d), because it found the presumption of sole custody to the nonoffending spouse had been overcome, and this award was in the best interests of the children.

The court found that, although Mr. Valadez did not complete the “required” treatment to overcome the presumption, he instead completed “equivalent treatment” from a “certified” treatment provider. The court opined this “equivalent treatment” was “expressly contemplated” in the language of Wis. Stat. section 767.41(2)(d)1. The family court then took judicial notice of the reduction of Mr. Valadez’s sentence in criminal court due to his participation in counseling as proof that he had “equivalent treatment.”²

Thus, in the family court’s eyes, he satisfied the burden set forth in Wis. Stat. section 767.41(2)(d)1a. The court then found that awarding sole custody to Mr. Valadez was in the best interests of the children, satisfying Wis. Stat. section 767.41(2)(d)1b. The court also awarded equally shared placement between the parties. Ms. Valadez appealed.

Court of Appeals Posture

The appeals court disagreed with the lower court’s contention that the statute can be stretched to include “equivalent treatment,” instead of the clear and specific directive by the legislature of what is necessary to overcome the presumption of sole custody when a party is found to have engaged in a pattern of domestic abuse.³

Section 767.41(2)(d)1 is clear that the presumption may be overcome if:

the party who committed the battery or abuse has successfully completed treatment for batterers provided through a certified treatment program or by a certified treatment provider.

The appellate interpretation of the statute resulted in, essentially, the plain reading of the statute and not an “expressly contemplated” alternative as the lower court held.

Although the court has sound discretion in custody and placement decisions, it is an abuse of that discretion to apply the wrong standard. Furthermore, taking judicial notice of counseling completed for a plea

deal in a criminal matter where there is no like burden of section 767.41(2)(d)1 does not meet the standard specified in the statute to overcome the presumption of sole custody to the nonoffending spouse.

The question then turned to physical placement and whether there was a correct application of Wis. Stat. section 767.41(5)(bm) due to the finding of domestic abuse.

Ms. Valadez asserted not only was the statute not applied, it was never discussed by the lower court.⁴ Mr. Valadez failed to address this, and was thus seen as conceding the failure to apply the statutory provision.

The appeals court found that the trial court had engaged in an erroneous exercise of discretion. Section 767.41(5)(bm) demands that, when a party has engaged in pattern of domestic abuse,

the safety and well-being of the child and the safety of the parent who was the victim of the ... abuse shall be the paramount concerns in determining legal custody and periods of physical placement.

Since the lower court did not specifically address this statutory provision and Mr. Valadez effectively conceded this argument, the appeals court declined to speculate the extent to which the erroneous custody decision played a part in the placement determination, and remanded.

Lessons for Family Matters with Domestic Violence

Valadez should be seen as one big practice tip when a divorce or paternity case involves domestic abuse. *Valadez* makes it clear that the circuit court can no longer presume that “counseling,” whether ordered by the criminal court incident to a domestic abuse-related charge or sought out by the offender, meets the threshold to overcome the presumption of sole custody to the nonoffending spouse when there is a pattern or serious incident of domestic abuse.

For those who practice as guardians ad litem, this practice tip also applies as clearly: It would be improper to propose that counseling outside of the specific “certified treatment” is sufficient to overcome the presumption of sole custody to the nonoffending spouse. The “certified treatment” must be through a licensed therapist certified by the Wisconsin Batterer Treatment Provider Association (WBTPA).⁵

The WBTPA was founded in 2000 by the State to ensure that proper counseling to address domestic abuse is made available for families where domestic abuse is present.⁶ Many practitioners have wrongly assumed that if the domestic abuse issues were



addressed in counseling or if anger issues were addressed, the counseling “counted” for overcoming the statutory presumption. There is now clarity that this is not true with the *Valadez* holding.

While many respected family law practitioners may have been quick to react negatively about the *Valadez* holding (thinking this holding steps on the proverbial toes of the Family Bench) when determining the best interests of the child, this holding gives clear direction to the courts as to what is expected of the party determined to be the primary aggressor when there is domestic abuse in the relationship.

Many lawyers have been frustrated in arguing the insufficiency of the counseling as it pertains to overcoming this presumption, as many courts – like the lower court here – saw the statute as more broad than it reads. Many felt the burden was often easily overcome with alternative or like treatment being essentially read into the wording of Wis. Stat. section 767.41(2)(d)1 under the reasoning that such alternative treatment was “expressly contemplated” by the legislature.

When a party takes part in anger management or other like counseling and represents he or she has overcome the presumption, there is significant reason for concern that the domestic abuse has not been properly addressed in the family.⁷

The legislature’s clear and intentional language of what treatment is necessary to flip the presumption of joint custody to one of sole custody when there is evidence of domestic abuse is not something that should be stretched into other areas of counseling. Instead, it should result in meaningful treatment for those who have engaged in domestic abuse.⁸

Conclusion

Valadez clarifies litigants and their attorneys that when domestic abuse is found, the determination of

placement has to be with a focus on what is safest for the nonoffending spouse and the children.⁹

So often practitioners, guardians ad litem, social workers, and even courts proceed as if there is a presumption of equally shared placement, and there is not. The legislature specifically speaks to the best interests of the child in Wis. Stat. 767.41(5)(bm) in noting the paramount concerns of safety.

Assuming the trial court can simply use its broad authority in family matters to side step the certified batterers treatment for abusers is a mistake. The specific language in the statute intentionally addresses the necessary treatment to change behavior and further healing in the family. Strict interpretation of the language was – and is – warranted.

About the Author

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Endnotes

- ¹ *Valadez v. Valadez*, 2020AP1006 (Dec. 29, 2021).
- ² *Valadez* at 9.
- ³ *Id.* at 21-22.
- ⁴ *Id.* at 24.
- ⁵ *Id.* at 21-23, note 4.
- ⁶ For a more complete understanding of the Wisconsin Batters Treatment Providers Association, see thewbtpa.wpcomstaging.com.
- ⁷ For a discussion on why anger management is insufficient to address domestic abuse, see the Wisconsin GAL guidebook at wicourts.gov/publications/guides/docs/galguidebook.pdf, p. 95.
- ⁸ For a list of certified treatment providers, see thewbtpa.wpcomstaging.com/certified-providers.
- ⁹ *Valadez* at 27.

Grants Available from the Family Law Section

The Family Law Section Board considers grant requests from outside organizations whose purpose is related to the practice of family law, child and families involved in the family court system in Wisconsin, or other services related to family law. For more information about grant application details, contact Section Coordinator Jane Corkery at jcorkery@wisbar.org



Family Law
Section



Take a Break from the ‘Bing!’ Interruptions, Personal Space, and Managing Client Messages

By Jennifer Van Kirk

Lawyers are frequently asked to text, make off-hours calls, and respond immediately to client or attorney emails. Family lawyers receive communications from clients, other lawyers, and the court by e-file, fax, email (personal or work), work phone, cellphone, text message, social media messages, drop-in meetings, in-person meetings, and written correspondence.

I suspect that most family lawyers have received a message from a client or another lawyer after “regular” work hours, perhaps in the middle of the night, with not the hope, but the *expectation* of a response before the start of business the next day.

With the advent of e-filing and remote hearings, exhibits are filed late by the opposing party and pulled through immediately before the hearing, resulting in a last-minute email notification of documents to review before court.

One of the more frequent interruptions during the workday are emails, and some lawyers have also started texting their clients. Texting or emailing without time restrictions impacts your productivity – and there is the ethical issue on the storage of text messages.

Interruptions Cost Us

Multitasking is an illusion.¹ Earl Miller, a neuroscientist at MIT and an expert on divided attention, states that our brains are not wired to multitask, “[w]hen people think they’re multitasking, they’re actually just switching from one task to another very rapidly. And every time they do, there’s a cognitive cost in doing so.”²

On average, an interruption takes 6-9 minutes to address.³ Additionally, it can take 4-5 minutes, after you are finished with the interruption, to resume your place with the work you were doing before the interruption.

Research shows that *even if* you do not answer the email or the text message, the interruption (the “bing!”) impedes focus.⁴ More concerning, the distraction is detrimental to cognitive performance.⁵ Research finds that trying to concentrate on a task with an unread email in your inbox can reduce your effective IQ by 10 points.⁶

All this points to this important fact: We sacrifice efficiency and concentration when we interrupt crucial

tasks with emails and messages. Doing the math on interruptions, it indicates that five interruptions can use an entire hour of your time.

Lawyers are paid for intelligent and critical thought. In the event you were in a critical point of a project, you may not be able to regain your thought process again due to interruptions.

Cost of Interruptions for Family Law

When parents – including lawyer-parents – focus on their digital world ahead of their children, there can be deep emotional consequences for children. Catherine Steiner-Adair, author of *The Big Disconnect: Protecting Childhood and Family Relationships in the Digital Age*, writes that, when parents focus on their digital world over the children around them, “we are behaving in ways that certainly tell children they don’t matter, they’re not interesting to us, they’re not as compelling as anybody, anything, any ping that may interrupt our time with them.”⁷

For her book, Steiner-Adair interviewed 1,000 children ages 4 to 18, asking them about their parents’ use of mobile devices. The language that came up repeatedly was “sad, mad, angry, and lonely.” Others recalled joyfully throwing their parent’s phone into the toilet, putting it in the oven or hiding it. One girl who said, “I feel like I’m just boring. I’m boring my dad because he will take any text, any call, anytime – even on the ski lift!”⁸

While you are helping other families through a divorce, you should mindfully consider the impact work interruptions make on your own family.

Protecting and Managing Your Cellphone Contact Information

One way to reduce unexpected interruptions is to limit communication methods.

Here’s a tip for lawyers who must call their clients from their cellphone, but who later regret it when it results in midnight text messages or calls. First, boundaries are your friends, and it is acceptable to choose not to accept text messages. Boundaries are “simply our lists of what’s OK and what’s not OK.”⁹ What may be “OK” for one lawyer and her life may not be “OK” for another lawyer in his life. If it is your boundary and how *you* choose to practice, it is OK to

ask clients or counsel not to call or text your cellphone, and it is OK to tell clients that expecting middle of the night responses is not acceptable.¹⁰

You can easily block your cellphone number from appearing on a display if you use your phone to call clients. To block your number when dialing clients, type *67 and then dial the number with area code: *67-123-456-7890. When you do this, the recipient sees “blocked caller” or “unknown caller” on their end. If this does not work for your specific cellphone provider, a simple online search can show you the correct method for your provider.

In my experience, clients are very respectful of personal time and personal phones when they are aware that you have work-life balance boundaries. Minimize your distractions, to the extent possible, for both personal and professional health and productivity.

Ethical Guidelines for Text and Social Media Storage

Text messages lead to interruptions, but they also lead to a concern of preserving and maintaining the client’s correspondence in the file. If you choose to have clients send you text messages, be aware of the storage requirements related to text messages that you send.

A related question is which text messages the lawyer should preserve in the client’s file. According to Dean Dietrich, Wisconsin lawyers should preserve all text messages received by and sent to the client, although there is no specific guidance on this requirement.¹¹ Dietrich says that a lawyer should preserve text messages that contain important information relating to the representation, whether the sender is the client or the lawyer.

There are multiple ways to save client text messages to the client’s file, because storage is recommended for ethics purposes.

They can be stored electronically and reproduced as part of the client’s electronic file. One option is to screen-shot the client’s message and forward it to be saved or printed to the client’s file.

A second option is for a lawyer to summarize any text message in an email or other format, and store that information as part of the client file (that is, memo to file). This (oh, joy) becomes a two-step process of receiving the text message and then creating a new message or message summary for the client file.

Another option, when using iMessage on an Apple device or related software, is to print the text message history and print or save it to the file.

Know that these same storage requirements likely

apply to any social media contact with a client, including through apps like Facebook Messenger.

The takeaway is that when lawyers choose to have texts or messages with clients that they should be aware of the requirement related to maintaining a copy in the client’s file, as part of all client-lawyer communications.

Conclusion: Interruptions Cost

Technology has many benefits and some challenges. For me, it is both a blessing and a curse that, most days, I can work from anywhere.

I have talked to many experienced lawyers who note the significant shift in practice about 20 years ago, with the easy accessibility of smartphones, email, cloud-based networks, and remote work accessibility. Before 20 years ago, I hear stories about how work stopped during vacations and lawyers came back to only a few letters or faxes. As all of us practicing know it is no longer the case that work stops building up during vacations, days off, or days in court.

The blessing is that you *can* work anywhere. I suspect all of us can think of calls or emails we made in nontraditional locations like a beach or at a ballgame that worked for us.

The curse is that ... you *can* work anywhere. Work is always accessible, and clients and other lawyers know that we are always accessible.¹² Because of this, truly “getting away” as lawyers did 20 years ago is now a rare occurrence.

As lawyers, we should be cognizant of the cost of email and text interruptions to both our professional and personal lives, and be aware of the requirements regarding maintaining client communications.

About the Author



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Endnotes

- 1 Daniel Levitin, *The Organized Mind*, Dutton Penguin Random House, 2014, p. 96.
- 2 *Id.* at 96.
- 3 Randy Pausch Lecture, “Time Management,” at [youtube.com/watch?v=oFugissqOTO](https://www.youtube.com/watch?v=oFugissqOTO).
- 4 Martha White, “Your Cell Phone is Killing Your Productivity, but Not for the Reason You Think,” Money.com, July 20, 2015.
- 5 Levitin, p. 97.
- 6 Levitin, *citing* study of Glenn Wilson of Gresham College, London.



- 7 Catherine Steiner-Adair, *The Big Disconnect: Protecting Childhood and Family Relationships in the Digital Age*, Harper Collins, 2013.
- 8 Patti Neighmond, “For the Children’s Sake, Put Down that Smartphone,” NPR.org, April 21, 2014.
- 9 Brené Brown, *Rising Strong*, Penguin Random House, 2015.
- 10 Clients benefit when they get a break from their divorce proceedings when they are with their children and on weekends. I deliberately declined to immediately forward messages from opposing counsel sent at 3 p.m. Dec. 23, or when I know a client is on vacation with the children. I have seen opposing parties that filed motions or sent messages repeatedly – immediately before a holiday. Clients need breaks as well.
- 11 Dean Dietrich, “Handling Clients’ Text Messages,” *Wisconsin Lawyer*, April 2016.
- 12 Lawyers can be the greatest offenders with expecting constant access, sending the “I know you are on vacation but ...” messages. My fervent hope is that lawyers give each other the benefit of rest from our stressful and often challenging jobs. A successful line I use with clients is: “Attorney Smith is on vacation and I do not expect to hear back this week.” Managing client expectations and also recognizing the legitimacy of lawyer time off is beneficial to clients and counsel both.

Be Cautious When Addressing Military Pensions in Divorce

By Rhonda Hazen

The twists and turns involved in dividing military pensions in divorce require careful planning when valuing the assets for purposes of property division, or when considering an offset of a maintenance claim based on pension benefits.

Federal pre-emption law impacts not only the value of pension assets, but also whether they are subject to division in a divorce.

Background Law

Issues arise when considering military pensions as marital assets, because federal law treats ordinary military retired pay different from military benefits paid as a result of a veteran’s disability.

Veterans who retire from the Armed Forces after serving for the requisite number of years are entitled to receive retirement pay in the form of a military pension. Those same veterans may also be entitled to disability pay.

However, to prevent double counting, a retired veteran must waive all or a portion of regular pension benefits to receive disability pay. For tax reasons, retirees often select the disability benefits in lieu of their regular pension.

The regular retirement benefits and the disability benefits are treated differently for divorce purposes.

In *McCarty v. McCarty*,¹ the U.S. Supreme Court concluded that state courts could not treat any portion of a veteran’s retirement pay as marital property subject to division in a divorce. Because state court orders attempting to award a portion of a military member’s pension essentially thwarted Congress’ intent that military pay actually go to the service member, the federal retirement statutes preempted state divorce law.

Congress then passed the Uniformed Services Former Spouses’ Protection Act (USFSPA), 10 U.S.C. §1408. Under USFSPA, state courts were authorized to treat “disposable retired pay” as a marital asset that could be divided.²

USFSPA did not, however, resolve all issues with dividing military pensions under state law. In USFSPA, Congress defined “disposable retired pay” to specifically exclude amounts that a service member would need to waive in order to receive disability benefits.³

In *Mansell v. Mansell*,⁴ the U.S. Supreme Court concluded that although state courts were no longer precluded from dividing military pensions, USFSPA did not provide that same grant of authority over military disability benefits.

In *Howell v. Howell*,⁵ the Court continued its analysis to conclude that federal laws involving military pay preempt state divorce law, except as specifically addressed by Congress. In *Howell*, the Arizona court entered a judgment dividing a veteran spouse’s retirement pension between the parties. Years after the divorce, and after both spouses were receiving their respective payments from the pension, the veteran spouse was determined to be partially disabled because of prior duty. He therefore waived a portion of his regular retirement pay to obtain the nontaxable disability benefit. His waiver reduced his former spouse’s portion of the benefit as well.

The Arizona court reasoned that the ex-wife had a vested interest in her portion of the non-waived portion of the retirement pay, and ordered the husband to indemnify her by paying her the difference. The U.S. Supreme Court reversed that decision, concluding that:

[r]egardless of their form, such reimbursement and indemnification orders displace the federal rule and stand as an obstacle to the



accomplishment and execution of the purposes and objectives of Congress. All such orders are thus preempted.⁶

The result was that the veteran's former spouse lost a portion of the property that the state court intended her to receive through the military pension.

Wisconsin Precedent in Contrary to *Howell*

In *Loveland v. Loveland*,⁷ the Wisconsin Court of Appeals rejected the pre-emption argument when it addressed the question of whether military disability benefits may be treated as property subject to division when a veteran spouse unilaterally converted pension benefits to disability benefits. The court's explanation would be contrary to *Howell*:

Had he not waived part of his retirement pension, that pension would have equaled the total he now receives in pension and disability benefits. Thomas's right ... to unilaterally and voluntarily convert part of his pension to disability benefits should not, and we hold that it does not, deprive Judith of her right under the judgment to that part of his pension received in the form of disability benefits.⁸

In *Nelson v. Arlt*,⁹ the Court of Appeals issued a nonpublished decision covering a situation nearly identical to *Howell*. In *Nelson*, the court's order on property division allocated to the wife an interest in the veteran spouse's retirement pay. Post judgment, the veteran spouse waived a portion of the retirement pay in order to take disability pay. This reduced his former spouse's benefit. The circuit court ordered husband to pay the wife's portion to her directly, even though a portion came from his disability pay. The appeals court skirted the issue of whether military retirement benefits waived after the judgment were subject to property division, and reversed the circuit court's order on the basis that property division is fixed and cannot be modified unless the judgment is reopened.

Both of these cases are contrary to *Howell*. Although courts focusing on the post-judgment equities of a particular case may want a different result, the pre-emption analysis precludes remedies that conflict with Congress' goal of ensuring that federal disability benefits go to the disabled veteran.

Addressing *Howell* in Wisconsin

Here are some practical points when addressing the *Howell* pre-emption issue in Wisconsin:

1) When negotiating the property division portion of a military divorce, the attorney for the nonmilitary spouse must advise the client that

accepting a percentage of the spouse's military retirement may not turn out to be the lifetime pension benefit they anticipate receiving.

2) When valuing military pensions for purposes of property division, value should take into account the possibility that the service member may waive some or all of retirement pay in order to receive disability benefits. The *Howell* Court stated:

John's military retirement pay at the time it came to Sandra was subject to later reduction (should John exercise a waiver to receive disability benefits to which he is entitled). The state court did not extinguish (and most likely would not have had the legal power to extinguish) that future contingency. The existence of that contingency meant the value of Sandra's share of military retirement pay was possibly worth less – perhaps less than Sandra and others thought – at the time of the divorce.¹⁰

3) When crafting maintenance agreements or asking for a maintenance award the attorney should keep in mind that the anticipated property division may not come to fruition, so either a "hold open" or a basis for modifying maintenance in the future should be clearly expressed in the final judgment. The *Howell* Court stated:

But we note that a family court, when it first determines the value of a family's assets, remains free to take account of the contingency that some military retirement pay might be waived, or, as the petitioner himself recognized take account of reductions in value when it calculates or recalculates the need for spousal support.¹¹

Conclusion: Be Mindful of This

A military pension may be the single most valuable asset in a divorce case. Through USFSPA, Congress ensured that spouses may receive interests in those pension assets in a divorce.

That is not the case with military disability pay. Practitioners should remain mindful of this risk when considering the value of a pension asset, when dividing the asset in divorce, and when crafting a maintenance award.

About the Author



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Endnotes

- 1 *McCarty v. McCarty*, 453 U.S. 210 (1981).
- 2 U.S.C. §1408(c)(1).
- 3 U.S.C. § 1408(a)(4)(A)(ii).
- 4 *Mansell v. Mansell*, 490 U.S. 581 (1989).
- 5 *Howell v. Howell*, 581 U.S. ___ (2017); 137 S. Ct. 1400 (2017).
- 6 *Howell* at 1406.
- 7 *Loveland v. Loveland*, 147 Wis.2d 605 (1988)
- 8 *Loveland* at 611-12.
- 9 *Nelson v. Arlt*, No. 2010AP428, 2011 WL 292212 (Wis. Ct. App. Feb. 1, 2011) (unpublished opinion not citable per Wis. Stat. § 809.23(3)).
- 10 *Howell* at 1405.
- 11 *Howell* at 1406.

Implicit Bias in Family Law Matters

By Rebecca Millenbach

Within the past decade, the term “implicit bias” has become a buzz word that headlines many articles, seminars, and news stories. The term “bias” is itself the subject of much debate. When many people think of the word “bias,” their thoughts immediately lean toward racial, gender, and sexual identification issues.

For some, the term itself presents a negative connotation replete with social unrest and a disturbance to norms of traditional existence. Others consider themselves “unbiased,” believing that being unbiased suggests that they are not racists, misogynists, or allies of the LGBTQ community.

The truth of the matter is that we all have bias – and that is not necessarily bad.

In fact, biases are innocuously present in everyday life in ways we do not even realize. These biases not only have an impact on how we live our life, they have an impact on how we make decisions in our everyday life.

Implicit bias encompasses much more than just racial, ethnic, and gender stereotypes.

The term implicit bias is said to derive from the 1995 research and writings of Anthony G. Greenwald and Mahzarin R. Banaji. In their article, “Implicit Social Cognition: Attitudes, Self-Esteem and Stereotypes,” Greenwald and Banaji argued that social behavior is ordinarily treated as being under conscious (if not always thoughtful) control.¹

However, considerable evidence now supports the view that social behavior often operates in an implicit or unconscious fashion. The identifying feature of implicit cognition is that past experience influences judgment in a fashion not introspectively known by the actor.

Think about why you chose to live in the neighborhood you live in. What went into that decision? Clearly you thought it was a nice neighborhood, but why? Is it because the people that live there look like you? Have the same or similar beliefs as you? All the factors that went into your decision is a form of bias.

Be Careful of Confirmation Bias

While there are many manifestations of implicit bias, confirmation bias – if not addressed properly – is likely to have an impact on a court proceeding in family court.

Confirmation bias is the tendency for individuals to look for information that supports, rather than rejects their views and expectations. Confirmation bias causes an individual to interpret evidence to confirm to existing beliefs, while rejecting or ignoring any conflicting data.

Our confirmation bias causes us to seek out information and answers that conform to our individual beliefs. An example of confirmation bias wildly present in current events is that of the COVID-19 vaccine. If you are in favor of vaccines, your confirmatory bias is going to cause you to seek out information that supports the efficacy and value of vaccines and reject any article or other information that debunks that belief.

Intuitive versus Deliberate Biases

One of the biggest challenges of dealing with bias is the fact that you are not going to know what bias an individual has. Many times, individuals are not even consciously aware of the bias they are internalizing.

So, in the context of a court decision, how do you ensure any implicit bias does not make its way into a judge’s decision?



According to Daniel Kahneman, the brain is governed by two decision-making processes that are always working at cross-purposes.²

The first process is level 1 – intuitive bias. Level 1 occurs largely beyond awareness, unconscious processing. It is revealed in quick, immediate snap judgments based on emotion, memory, and hard-wired rules of thumb. For instance, when you are stopped at a red light and the light turns green, you instinctively hit your gas pedal and start to go. This is an instinctive decision that has been formulated in your mind over a period of time, where you no longer need to think about this decision.

The second process is level 2 – deliberate bias. Level 2 processes within our awareness and control. They are deliberate processes used to check the facts. An example of level 2 process would be filling out a tax return.

Dealing with Biases in the Courtroom

When you walk into a courtroom, you can guarantee the judge you are appearing before has implicit bias. Perhaps she has many implicit biases. Even if you are unaware of what the biases may be, it is your objective to ensure that any decision made by the judge is intentional (level 2), as opposed to intuitive (level 1).

Intentional thought requires us to do more than just provide facts. By just providing facts, you are allowing judges to draw off their own life experiences and beliefs to formulate a judgment.

Since there is no way to know what biases the judge may have, it is important to provide context to your arguments forcing the judge to deliberately think about *your client's situation*, and draw the focus away from an internal instinct to react based on their own confirmation bias.

Judges need to be forced to look beyond their own point of view and to adjust their perspective. You need to take judges from level 1 – instinctively making a decision – to level 2 – where their decisions are intentional.

Take, for example, a child support hearing where the issue is imputation on your client, a stay-at-home mom. You are presenting this case to a female judge who you know also has young children. Intuitively the judge maybe questioning your client's decision to stay home, due to circumstances and choices made by the judges in her own life choice to work outside the home.

This intuitive thought can be processing in the judge's mind even though explicitly, the judge supports a stay-at-home parent. Simply presenting the facts of your case – that your client chose to stay home with the children and therefore cannot work outside the home

– will not be enough to take your judge from level 1 to level 2.

You must put more context into your client's decision to want to stay at home. Discuss some of the activities that your client does with the children, and correlate those activities with higher grades or better temperament of the kids. Attempt to tie positive exchanges or coparenting moments to the fact that your client has the time to provide thorough communication with the other parent. Give enough context to your argument, so that the court is forced to be intentional and deliberate about a decision as opposed to simply reactive.

Using Demonstrative Evidence

Another way to help have a more intentional decision is to give a judge something to focus on other than their own thoughts and beliefs.

This can be accomplished by the use of demonstrative evidence. Demonstrative evidence has no probative value, but rather serves to illustrate and enhance testimony. It plays no part in the actual fact pattern, but serves to assist the decision-maker in understanding the events of the case.

The use of demonstrative evidence can be a useful tool in bringing a decision-maker toward a more deliberate decision-making process. By providing a visual context for your argument, you are demonstrating to the judge what they must consider, as opposed to allowing the judge to rely on their own experiences and beliefs.

Examples of demonstrative evidence include:

- flip charts
- videos
- Google maps
- computer programs
- PowerPoint slides
- emails, deposition testimony, signed financial statements

Demonstrative evidence focuses the judge's attention away from simple oral testimony and gives a visual aide to focus on. This may force the judge to go beyond an intuitive bias and instead be more deliberate in their decision-making. It can force the judge to reevaluate based on visual cues that bring them to the level 2 decision-making.

Conclusion: Identify and Acknowledge Bias

The conundrum of implicit bias is going to continue to manifest in all areas of society. There may never be an answer on how to effectively eradicate implicit bias from society.

In fact, you could argue that implicit bias is something that is not to be eradicated, as it is part of who we are, but rather identified and acknowledged. As decision-makers and humans, judges will subconsciously insert their bias into their decisions if not properly addressed.

Attorneys can work toward a more intentional, less instinctual decision by drawing the judge's focus away from their inner thoughts. This can be accomplished by providing context or distractions, such as demonstrative evidence, which forces the judge to focus on your client's point of view.

About the Author



Rebecca Millenbach, Marquette 2001, is with Nelson Krueger & Millenbach, LLC, in Wauwautosa. She can be reached at rebecca@nkmfamilylaw.com.

Endnotes

- 1 Anthony G. Greenwald and Mahzarin R. Banaji, "Implicit Social Cognition: Attitudes, Self-Esteem, and Stereotypes," 102 *Psych. Rev.* 4-27 (1995).
- 2 Daniel Kahneman, *Thinking Fast and Slow*, New York: Farrar, Straus and Giroux, 2011.

How to Avoid Facilitating Domestic Violence as Counsel in a Family Law Case

By Alison H. S. Krueger

In a pending divorce or family law case when there is a history of domestic violence – including those with a temporary restraining order (TRO) or injunction – how can we as counsel avoid becoming an instrument causing the perpetuation of abuse?

When the abuser is the opposing party, communication and proposals can often serve as threats, intimidation tactics, and continued abuse against our clients.

Our Duty to Protect

As advocate counsel for the abused party, it is our duty to protect our clients from such abuse. Any failure to do so makes us part of the abusive behavior itself.

Wis. Stat. section 813.12(3)(a) allows for a respondent, when a TRO is granted, to communicate with the petitioner's attorney, and Wis. Stat. section 813.12(4) allows the same when an injunction is granted. Even though such communication is permitted, it does not require us as advocate counsel to allow our clients to be victims of continued abuse through such communication.

Communication and Your Client

As attorneys, we have an ethical obligation to communicate with our clients and keep them updated with case developments and proposals received in a case. SCR 20:1.4 Communication, requires attorneys to do the following:

(a) A lawyer shall:

- (1) promptly inform the client of any decision or circumstance with respect to which the client's informed consent, as defined in SCR 20:1.0(f), is required by these rules;
- (2) reasonably consult with the client about the means by which the client's objectives are to be accomplished;
- (3) keep the client reasonably informed about the status of the matter;
- (4) promptly comply with reasonable requests by the client for information; and
- (5) consult with the client about any relevant limitation on the lawyer's conduct when the lawyer knows that the client expects assistance not permitted by the Rules of Professional Conduct or other law. (b) A lawyer shall explain a matter to the extent reasonably necessary to permit the client to make informed decisions regarding the representation.

We are not, however, required by SCR 20:1.4 to blindly copy clients with all emails and communications received in a case.

In a case where communication from an opposing party or counsel serves as or is perceived as a perpetuation of abuse or harassment, we should

discuss with our clients our ethical obligations under SCR 20:1.4. We should seek authorization from our clients to edit and summarize communications from the opposing counsel or party, and to forego sending copies of all written communication from the opposing party or counsel to our clients.

Further, by advising the opposing party or counsel of a directive from the client to allow us to refrain from sending harassing, abusive, threatening, and inappropriate proposals and communication from them, that will hopefully serve to curb or quash such communication.

Separate Family Law Case from TRO

In family law cases where there is a history of abuse – whether or not there is a domestic abuse TRO or injunction and pending family law litigation, another way to protect our clients is to limit our direct representation to the issues in the pending divorce, paternity, or post-judgment action.

The family law case should not be used as a tool to gain advantage in the TRO or injunction case or vice versa. Consider having the client retain another attorney, within your firm or another firm, to represent the client in a TRO or injunction matter.

Set clear limits with an opposing party or counsel regarding the scope of our representation within a case. If we refuse to accept or allow discussions and negotiations that involve terms or dismissal of a TRO or injunction, our client will not be pressured to agree to modify or dismiss a TRO or injunction to gain terms in the pending family law case.

Consider the Options

It is imperative that we carefully consider whether a collaborative divorce model is appropriate based on what the client shared with you. Be mindful, when scheduling mediation or a settlement conference, that in doing so, we are not giving an opposing party the opportunity to perpetuate the abuse.

With technologies available now, considering scheduling mediation and settlement conferences only by Zoom, where parties are immediately sequestered in

separate ‘rooms,’ therefore, never having any contact whatsoever.

Ask for Attorney Fees

Lastly, consider requests for contributions of attorney fees when an opposing party engages in over trial, abuse of process, and other tactics serving only to harm your client. Safe harbor protections may further serve to limit abusive litigation strategies.

Representing a Client with History of Abuse

There are scenarios when we may be the attorney representing a party with a history of engaging in abuse. As advocate counsel, we have a duty to meet our ethical requirements to advocate for our client, but not become a means of perpetuating abuse.

When representing a client with a history of having engaged in abuse, do not allow your client to engage in abusive behavior such as stalling and delaying, exerting pressure to proceed too quickly, failing to respond to discovery, hiding assets, not paying support or following court orders, denying access to financial resources, and most importantly, engaging in abusive litigation.

Conclusion: Stay Mindful

Family law is an area of law ripe with high emotions, conflict, and stress. Sadly, there are also many cases in which there is also a history of abuse.

It is our job as legal counsel to best represent our clients within the confines of the law and our ethical duties without becoming tools to perpetuate abuse. It is possible to do so with a mindful approach to the case.

About the Author



Alison H. S. Krueger, U.W. 1999, is with Nelson Krueger & Millenbach, LLC, in Wauwautosa. She can be reached at alison@nkmfamilylaw.com.



A View from the Bench: Judge Kristine Snow

By Tiffany Highstrom

Dodge County Circuit Court Judge Kristine Snow talks with Tiffany Highstrom about her experiences with family law matters on the bench. She provides some of her views on custody and placement of children as well as financial issues.

About Judge Snow

- Undergraduate: UW-Madison, Business Major
- Law School: UW-Madison, 1992
- Years as a judge: 1.5
- Prior practice: private practice as a family law and bankruptcy law attorney for 13 years and another nine years as a civil litigation attorney. First employment was as a judicial clerk for the Wisconsin District II Court of Appeals.

Who had the most influence on your career and why?

My family. I grew up in an intact family. Both of my parents had successful working careers while my brother and I were growing up.

One circumstance which had a lasting affect on my life for many reasons was working with my grandparents at a farm market during the summer from the time I was in the sixth grade through my freshman year in college. I gained independence away from my parents and needed to make responsible decisions on my own at a young age. While it was “boring” to live in a strange town away from my parents and friends during the summer, it gave me the opportunity for relationships with my grandparents that I never would have had otherwise.

I draw upon those experiences in family law when some parties complain that they feel like they are sharing custody of their child with a grandparent or a stepparent, or arguing that a grandparent’s relationship with a child cuts into “their time” with the child.

A child has an unlimited capacity to love and be influenced by multiple people in their lives, whether it is a parent, grandparent, stepparent, teacher or coach. Positive relationships should be encouraged, and I strongly believe that dysfunction between the parents should not be a barrier to other positive relationships for the child. In fact, dysfunction between the parents

can make those other relationships even more important to the development of the child.

Do you require parenting plans? Do you find them helpful?

Our county does not require parents to file parenting plans. I think proposed parenting plans may be helpful to attorneys and mediators to identify the areas of agreement to be able to draft partial or full settlement agreements, but by the time the parties get to a trial I expect that they are able to present to me what they agree upon and their areas of dispute.

Do you consider placement problems as a reason for changing custody?

I do believe that placement disputes can have so much of an effect on the dynamics between the parents that it they impact the ability of the parents to make joint decisions. However, other than school-related decisions and, more rarely, health care, true custody issues are not all that prevalent.

Do you let a parent with minor children stay in a house for a number of years before selling it, if the house has to be sold, or do you normally order it sold immediately?

What sort of factors do you consider in making this determination? I will typically only order retention of house following divorce for more than six months if the parties stipulate. I could see scenarios if a child is in junior or senior in high school and it is desirable to have them finish school before selling, or if one of the parents has moved out of state so that the parties are not sharing placement. Especially with the market fluctuations that we are experiencing now, I think it is important that there is finality as to disposal of the home, which is often one of the largest asset/debt in the divorce.

The children are going through a disruption because of the divorce anyway, and finality is important for the parties and the children. Additionally, I have seen too many situations arise through unforeseen circumstances such as job loss, failure to timely pay the mortgage, and other issues that adversely affect both parties post-divorce.



Are vocational experts helpful in determining earning capacity?

Yes. Vocational expert testimony is the most effective way to provide admissible evidence regarding a person's earning capacity and the prevailing wage rates in the community. I especially have found vocational experts useful when a person claims a disability or proposes to change fields of work.

Do you have a general formula for setting maintenance?

I do not. However, I do create scenarios using TaxCalc or review TaxCalc submissions from attorneys, so that I have a general idea of ranges of

maintenance that may be appropriate, from a true 50/50 split or lesser amounts. I also compare the parties' budgets for necessities.

Do you ever sentence anyone to jail for nonpayment of child support?

Jail sentences, stayed and subject to purge conditions, are the typical sanction for findings of child support contempt in our county. If a person is making an effort to pay (but perhaps not the full amount) or has verifiable medical issues, I am not going to order an execution of the sentence. The threat of execution often results in payments being made.

A View from the Bench: Comm. Lisa Krueger

By Jolene Schneider

Winnebago County Circuit Court Commissioner Lisa Krueger speaks with Jolene Schneider about her experiences as a court commissioner for Winnebago County. They discuss Comm. Krueger's views on custody and placement of children as well as financial issues.

About Comm. Krueger

- Undergraduate: UW-Oshkosh, major in criminal justice and minor in sociology.
- Law School: Marquette 2003
- Years as a court commissioner: 9.5
- Prior practice: In private practice as a family law, estate planning, and small claims attorney, as well as probate and guardianship matters.

Did you work before going to law school? If so, what kind of work did you do?

I worked at Aid Association for Lutherans (now Thrivent) in the Beneficiary, Ownership & Assignment department. I processed beneficiary and ownership changes to life insurance policies. I worked there for approximately two years before going to law school.

What career would you have chosen had you not become a lawyer?

I love to read and always dreamed of owning a bookstore.



What is the most and least rewarding part of your job?

The most rewarding part of my job is helping people. And that help isn't just the decisions I make. I help people understand the law, so that even if they disagree with the decisions I make, they understand why I made the orders I did. The least rewarding thing is people's frustrations with the law. I didn't

create the two-year rule or the child support guidelines. But if litigants are frustrated with them, they will be dissatisfied with me.

Who had the most influence on your career?

Lisa Beth Vander Maazen has had the most influence on my career. Lisa Beth was the family court commissioner in Outagamie County for many years. I worked part time for her when I was in law school, and I practiced in front of her for many years. As a commissioner, she was a mentor of mine. Lisa Beth passed away several years ago. I think of her often, and am so thankful to have known her and learned so much from her.

Do you keep track of how many of your decisions are reviewed by judges?

No, I do not keep track of de novo reviews. They can be so random. And sometimes the de novo issues are resolved by the parties or are



withdrawn. It is often difficult to determine if a de novo was a procedural strategy or a disagreement with my order.

Do you require parents to file parenting plans? Are they helpful?

I do not require parenting plans be filed. Joint parenting plans can be helpful to attach to a marital settlement agreement when the parties agree. They can also be helpful if one party is not actively participating in the litigation and I am sending the case to the judge. However, I generally do not compare competing parenting plans at the commissioner level.

What temporary placement schedule works best in most cases?

I don't think there is a schedule that works best in most cases. Finding a placement schedule that works is so specific to the needs of the family. Some families struggle with too many exchanges, some don't. Some families live too far apart to have set schedules. What works really depends on the parents, the children, the geography of the family, etc.

How well does the mediation process for custody and placement disputes work in your county?

Family Court Services mediation in Winnebago County is a great program. It is a time and cost-efficient process that has such a huge impact on families. We have great communication between Family Court Services and family court so that we know the status of cases.

When making post-judgment placement modification decisions, what factors do you consider?

I do make post-judgment placement modification decisions. I seldom take testimony for post-judgment modifications. I hear argument from the attorneys or parties. I consider all statutory factors.

First, I start with the statutory presumption that the current schedule is in the children's best interests. If parties are within the first two years post-judgment, I determine if there has been a health, welfare, or safety issue for the children. If outside the first two years, I determine whether there has been a substantial change in circumstances warranting a modification. Then I review the statutory factors.

I don't expect perfection in family court. Some parents have unrealistic expectations of the other parent and litigate issues that do not require a change of placement.

Do you consider placement problems as a reason for changing custody?

The placement problems and communication issues between the parents have to be very significant for me to consider a change in custody. I have given parents numerous chances to prove to me they can co-parent before I would change custody. I have given parents numerous chances to show they wish to take an active role in the life of their child before I change custody. But I will not change custody simply because parents have placement problems.

What is your goal for the parties when you set temporary orders?

My goal in setting a temporary order is to get the parties through to a final hearing. Sometimes, they just need some parameters. I have often referred to the process as a two-step process – the first one being a temporary order to get them to the final hearing. The second step is the final orders, which are effective into the future.

How often do you deviate from child support percentage standards? What is the most compelling argument for deviation?

I deviate from child support guidelines regularly. The most common argument for deviation is sharing the cost of insurance premiums applicable to the children. I have also deviated if one party is providing all of the transportation for placement exchanges when there is a significant distance between the parties' homes.

How do you approach disputes regarding variable costs?

I try to help parties avoid disputes about variable expenses by asking them what they agree is considered a variable at the time of the original order. I think the more certainty they have at the beginning of the case, the less likely disputes will arise.

However, variable expenses change as children get older. When disputes arise, I review the language of their orders to see what they first agreed to. In Winnebago County, we have the Conflict Resolution Center to assist parties in mediating financial disputes as well. I refer the parties to the center often due to variable expenses. If they are unable to reach an agreement, I create orders to give them more certainty moving forward regarding what is included as a variable, how the expenses are shared, how the parties should communicate about the expenses, and terms for reimbursement.



Do you consider the parties' assets and debts in setting or modifying child support?

I do not generally consider assets or debts in setting child support orders. I start my analysis with DCF guidelines. Once I have the parties' incomes and placement schedule, I run them through the guidelines to establish a starting point for support.

I will always listen to any requests to deviate from guidelines. However, it would be very difficult to convince me to deviate for monthly expenses or debts such as credit cards or personal loans. I believe a parent's obligation to help support their children supersedes servicing their debts. Further, I would not expect a party to sell assets in order to meet a child support obligation.

One way that assets and debts become part of the analysis is when there is an argument about earning capacity or shirking. If a party claims they have little to no income, yet they are current in making significant debt payments each month, I might consider that in setting an earning capacity.

When determining temporary maintenance, do you have a general approach?

My general approach on setting temporary maintenance is a cash-flow analysis. I want the parties to have the ability to get to the final hearing with some financial structure. They would know their incomes, whether either is paying child support to the other, what debts each party is servicing, and then whether there is a maintenance obligation from one to the other.

In some cases, the mathematics work out clearly. In other cases, there is not enough income to provide either party with any type of financial stability. My evaluation focuses on ensuring each party has some funds available each month for the basics of shelter and food, even if the debts cannot be serviced.

For a post judgment, what factors lead to a modification, termination, or extension of maintenance?

The most common basis to modify maintenance post-judgment are changes in the employment and health of the payer. The request is frequently to reduce or eliminate maintenance based on retirement or an inability to work due to health problems. I first review the orders to determine if there was ever an agreement of the parties as to when the order could change. Then I consider the age of the payer, the reasonableness of the choice to retire, whether there is evidence of the health issues, whether the health issues are temporary or permanent, etc. I cannot think of a time in the past 9½ years that I've heard a request to extend maintenance.

What words of wisdom do you have for parties appearing before you?

Be respectful, both to the court and to the other parties and attorneys. It is much easier to get to the heart of the dispute when people are arguing their positions in a respectful manner and not yelling at each other.

What words of wisdom do you have for attorneys appearing before you?

Be prepared. Talk to the other side in advance. Give the court and the other party more than an hour to review documents you file, if possible. Present your case in an organized fashion. I am happy to say we don't have significant issues with attorneys in Winnebago County.

What are your hobbies?

My family really enjoys sports, so I spend a lot of time watching them play. Our son plays hockey and baseball. Our daughter plays softball, basketball, and rides horses. I also enjoy reading and running.

Are you married, and do you have children?

My husband and I have been married for 17 years. We have two children – our son is 14 and our daughter is 9.

Get Helpful Tips and Updates on the Family Law Elist

Join the Family Law Section elist to gain access to helpful tips and the latest updates in family law practice. As a section member, you have free access to the list.

To join, visit WisBar.org, then navigate to the drop-down menu under About Us and choose Memberships. Click on E-lists, then Available Lists, and then Subscribe. The Family Law elist is listed under Section/Division Lists. Once you join, you have access to the lists archives as well.

Questions? Contact Jane Corkery, section coordinator, at jcorkery@wisbar.org.



Chair's Column: Thank You to Our Volunteers

By Comm. Mark Fremgen

Many Family Law Section members may ask themselves (and others): “What exactly does the Family Law Section offer me?” Or “What exactly am I getting for my dues?”

Those are great questions. Apart from this *Wisconsin Journal of Family Law* – which is impressive in and of itself – there is no physical manifestation to assist you in recognizing the benefit for your dues to the State Bar of Wisconsin Family Law Section.

However, the benefits you receive are remarkable. Here are just a few examples of what you get as a member of our section.

Our section board. Our board is one of the most active in the State Bar. We meet four times per year, holding additional virtual meetings to address immediate needs and responses. The board addresses issues related to new legislation, grant requests, CLE programming, the Door County Workshop, diversity challenges, and recruitment. Each board member is on at least one and as many as four committees assigned to various family law related issues or section issues.

Legislation. Our board members are responsible for more than seven new laws in the past three years (four of which are pending final floor votes over the next two months). Several members have participated on the legislative council committee assigned to support and placement issues, which led to 11 legislative acts, some of which have been adopted. Each year our board members look at more ways to reshape the family laws in Wisconsin to better assist attorneys, parents, and children of Wisconsin.

CLE programming. The section board is involved with creating two CLE programs each year with State Bar of Wisconsin PINNACLE®, including an ethics presentation. We continue to put together the well-received Door County Family Law Workshop each August – completely in-house.

Grants. The section is dedicated to helping other Wisconsin organizations that focus primarily on issues related to the practice of family law, such as assisting funding of supervised placement facilities, and publishing the guardian ad litem handbook. Among the many financial grants authorized by the board over the last several years, we have supported young attorneys

to attend family law CLE programs, including the Door County Workshop. Further, we give back to the State Bar each year by sponsoring the Annual Meeting & Conference each June.

The Wisconsin Journal of Family Law (WJFL). The biggest contribution to the attorneys, judges, and commissioners dealing with family law is the quarterly publication of the WJFL. Recently, I had a motion to revise custody and consulted with a colleague, who said “I just read something along those lines in the WJFL” The impact the journal has on the practice of family law is profound.

We Need You

I encourage you, as a member of the section, to get involved with the section: seek election to our board; join the WJFL as a contributing editor or author; volunteer for CLE presentations; encourage others to join the section. The more that you become involved with the section, the more you will be surprised at how much you get back from the section for the small amount of dues that you pay.

Well-deserved Thanks

I want to thank all those who have made the *Wisconsin Journal of Family Law* a success over the past year. Thank you to these contributing authors:

Matthew Bell, Dan Bestul, James C.W. Bock, Comm. Barry Boline, Comm. Dolores Bomrad, Milford Dale, Kelly Dodd, Colin Drayton, Hon. Michael Dwyer (ret.), Suzanne Fischer Lorenz, Donna Ginzl, Emily Harriman, Gregg Herman, Margaret Hickey, Daniel Hoffman, Alexander Jones, David Karp, Christopher Krimmer, Rik Kluessendorf, Catherine LaFleur, Stephanie Malis, Jill Mueller, Judith O’Connell, Rebecca Oettinger, Michelle Perrault, Amber Peterson, Hon. Jason Rossell, Jolene Schneider, Carlton Stansbury, Paul Stenzel, Emily Tercilla, Hon. R. Michael Waterman, Graham Wiemer, and Krsten Wetzell.

Thank you, editorial board members James C.W. Bock, Tiffany Highstrom, David Karp, Dennis Milbrath, Rebecca Oettinger, Jolene Schneider, and Sarah Whiting. And thank you for all of the hard work and dedication of our section board.

And particular thanks to the editor-in-chief of the WJFL, Hon. Thomas Walsh. Without his hard work and dedication, the WJFL would still be a long-forgotten publication. Judge Walsh stepped forward and saved the publication from an inadvertent “almost-demise.” The WJFL under Judge Walsh has been a source of pride for our section and is a useful tool for research and thought with the Bar and judiciary.

About the Author



Mark Fremgen, John Marshall 1990, is a Dane County Circuit Court commissioner in Madison. He can be reached at Mark.Fremgen@wicourts.gov. His term as chair of the Family Law Section ends June 30, 2022.

Meet Your Board Member: Tiara M. Oates

Tiara M. Oates was a lifelong resident of Michigan. Because her whole family has degrees, practice, and knowledge in the medical field, she decided to branch off, and moved to Wisconsin for law school. She graduated from Marquette Law School in 2018.

Tiara practices family law with Becker, Hickey & Poster, S.C., in Milwaukee. She joined the firm in 2020. During the previous two years she was an associate at Maistelman & Associates, LLC, where she represented businesses, government, nonprofit organizations, and individuals throughout Wisconsin on a variety of issues including landlord/tenant, licensing, traffic, and municipal law.

Through her years as an attorney, she realized that family law was much more interesting than eviction cases. With family law she enjoys the greater degree of client contact, and wanted to make a difference in an individual client's life. After gaining some experience in family law, she decided to leave Maistelman & Associates, LLC, and joined a Milwaukee law firm known for their high-quality representation to individuals with complex family law legal matters during sensitive and difficult times. Four other attorneys practice family law at Becker, Hickey & Poster, S.C.: Margaret W. Hickey, Heather B. Poster, Dayna J. Lefebvre, and Emily A. Hall.

Tiara appreciates that her firm handles sophisticated cases. The firm has mentored her on how to handle virtually every aspect of a client's divorce or family dispute, no matter how simple or complicated. They help clients with matter's involving divorces and legal separations, involving high value assets, child custody disputes and child



support, trusts, and other asset issues as they relate to divorce, division of unusual assets (such as businesses, stock and pensions), post-judgment issues (such as modifications, enforcements, and contempt actions), interstate custody and relocation issues, paternity, stepparent adoption and grandparent visitation, and same-sex family law issues, including cohabitation disputes.

Becker, Hickey & Poster, S.C. also practices elder law, special needs planning, and estate planning. Tiara has learned these areas of law and enjoys working with these clients. She also finds it interesting how elder law and family law can intersect.

Tiara had her first blog published in the March 9, 2021, *InsideTrack* magazine, for the Family Law Section Board. She offered tips to new family law attorneys on how to locate mentors and on nurturing the mentor/mentee relationship. As a new family law attorney herself, she thought it was critical in finding mentors to develop and later succeed through her career.

Tiara has a bachelor's degree in business from Eastern Michigan University. She was also a Division I athlete who competed in long jump, triple jump, and the 100- and 200-meter dash.

On a personal level, Tiara enjoys international travel. She has traveled to Spain, Germany, United Kingdom, Ireland, Wales, France, Croatia, Switzerland, and Mexico. Tiara and her family make it a tradition to travel internationally annually. She is now planning a trip with her family to Greece or Australia. Tiara's remaining personal time is dedicated to reading, hiking, and cooking extravagant meals in the multiple cookbooks she has in her library.

Meet Your Board Member: Daniel Overbey

Law was not Daniel Overbey's first career. Prior to attending the University of Notre Dame Law School, Daniel was a sergeant with the Daytona Beach Police Department. During his 15 years of law enforcement, he served in a variety of roles, including detective and the head of a narcotics unit. He is likely one of the only attorneys in our Bar that was a certified hostage negotiator.



After graduating from law school, Daniel went to work in Chicago where he practiced white collar criminal defense and product liability defense. In 2002, when working for Schiff Hardin & Waite, he came to Wisconsin for the first time ever to take a deposition – and met his now wife-of-18 years, Kristine.

Daniel left his practice in Chicago and joined Eaton John Overbey Jackman, LLP, where he has been a partner for nearly two decades. Although the firm

is located in Wausau, Daniel has always lived in Vilas County and commutes to Wausau when necessary. He and Kristine live in the woods on the edge of the State Forest and enjoy hiking, kayaking, and snowshoeing.

Daniel practices primarily family law throughout Northern Wisconsin. He is a guardian ad litem, and finds that his law enforcement background and interview skills help him greatly in his work, especially when he is interviewing parents and their children.

In addition to his private practice, Daniel is a Vilas County court commissioner and also the vice chairman of the Vilas County Civil Service Commission. Daniel is currently running for Vilas County Circuit Court Judge for the newly created Branch Two.

Meet Your Board Member: Jared Potter

Jared grew up on a cranberry farm in central Wisconsin that has been in his family for four generations. Growing up on a family farm, Jared learned the importance of family collaboration and proper estate and business planning for any small business's survival.



As a child, Jared aspired to be an attorney so that he could assist other families in maintaining their small businesses for multiple generations, just as his family has done. He attended Marquette University and then went directly to Florida Coastal School of Law with a focus on studies on family law, business law, and estate planning.

Jared moved from Florida to Milwaukee in 2007, and hasn't looked back at that warm Floridian weather since. He started his practice at Affiliated Attorneys, LLC, in West Allis as a general practitioner, but quickly focused his practice on family law and estate planning. In December 2009, he joined Stafford Rosenbaum, LLP, in Milwaukee, where he is now a partner focused on family law,

trust and probate administration, estate planning, and taxation.

Jared is very active in family law organizations, serving in officer positions for the Collaborative Family Law Council of Wisconsin, Collaborative Foundation of Wisconsin, and the Divorce Cooperation Institute. Jared is currently the chair of the Collaborative Foundation of Wisconsin and is chair-elect of the State Bar Family Law Section. He has been an active member of the State Bar Family Law Section, serving on the board and several committees. He particularly enjoyed serving on the legislative committee, where he has provided testimony to State Assembly and Senate committees on family law related legislation.

Jared lives in Shorewood with his wife and two children. He enjoys traveling with his family, spending time atwater Beach in the summer, skiing in the winter, and playing with their Greater Swiss Mountain Dog, Wicket, at the Estabrook dog park.



Meet Your Board Member: Adam Benson

Adam Benson was born and raised in Burnett County, and practices with his brother, Ryan Benson, at Benson Law Office, Ltd. in Siren.

Following graduation from Marquette University Law School in 2001, Adam practiced labor and employment and criminal law at a small firm in Milwaukee. In 2003, Adam and his wife moved to Burnett County, where Adam went into practice with his father, George

Benson. His brother joined the firm in 2005. Adam focuses on family law, but also helps clients with real estate, probate, and criminal matters, and practices primarily in Burnett, Polk, and Washburn counties.

After graduating from the University of Minnesota in 1994 with a B.A. in history, Adam worked at a bank in Minneapolis, but always felt the pull of a legal career and practicing with his father.

Since graduating from Marquette and moving north, Adam has had the pleasure of serving on several boards in northwestern Wisconsin including Burnett Medical Center in Grantsburg, Diversified Services, Inc., in Siren, and the Catholic Charities



Bureau board of directors for the Superior Diocese. Adam currently serves on the State Bar of Wisconsin Family Law Section board and is on his second board membership at Diversified Service, Inc.

Adam believes that practicing family law is very challenging but enjoyable. Emotions always run high, but Adam believes being able to bring perspective to the issues and making sure clients understand the law makes going through

these matters easier and less stressful for them. Helping a client through a divorce or custody matter or serving as guardian ad litem for children going through those same issues and getting them to a good place is very rewarding.

On a personal level, Adam and his wife Mollie Grande Benson (Marquette 2003), reside in St. Paul, Minnesota. They have two children, ages 17 and 15, with the oldest scheduled to attend college this fall in Washington, D.C. Adam enjoys golfing and spending time with his family, which includes annual vacations to Florida as well as attending many family gatherings around Wisconsin.

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