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Ex Parte Orders: Use With Caution in Emergencies Only

By Jennifer Van Kirk

Within my practice, I have noticed an increase in ex parte or "emergency" filings for matters that are emergencies often only to the requesting party. In this article, I distinguish between ex parte motions and orders, which are by definition *without* notice, and emergency motions and orders, which are *with* notice and a hearing.

These filings against my client led me to consider: what is the statutory authority for an ex parte order and when should they be used?[1]

As will be discussed in this article, ex parte orders should be used with caution in emergency situations only, because on their face they violate Wis. Stat. sections 801.14 and 801.15.

This article focuses on ex parte motions and orders. With respect to "emergency" hearings, the court retains inherent control over its calendar and scheduling. In other words, if the parties follow notice and motion requirement statutes, the court can schedule matters at its discretion. The term "emergency" can be overused in family law or misapplied to situations where a party's own actions (or inactions) have created a timing issue or where a party *really* wants something addressed now. However, emergency hearings should be distinguished from ex parte motions and orders, and the terms should not be used interchangeably.

Pursuant to *Black's Law Dictionary*, an ex parte motion is "[a] motion that is made in a court with no notice being given to the party opposing." A search of Wisconsin case law resulted in only two cases used the term "ex parte order," one criminal law case and one unpublished family law case.[2] A search of Wisconsin statutes for related terms resulted in only injunctions statutes which do not require notice prior to a temporary order. In other words, both Wisconsin case and statutory law has scant or no authority for ex parte orders. Moreover, existing Wisconsin law on ex parte orders is that if an order is entered that does not comply with notice statutes, it is a *void* order.

The concerns with ex parte orders are: (1) lack of due process and (2) a failure to follow the requirements of Wis. Stat. section 801.14. There is no statutory support for an ex parte order, without due process and without complying with section 801.14, and therefore the use of ex parte orders for modifying or instituting orders has limited legal authority, under truly exigent circumstances and if a prompt, evidentiary hearing is scheduled after the ex parte order.

More on Wis. Stat. Section 801.14

With respect to Wis. Stat. section 801.14, the statute states:

> Every order required by its terms to be served, every pleading unless the court otherwise orders because of numerous defendants, every paper relating to discovery required to be served upon a party unless the court otherwise orders, *every written motion other than one which may be heard* ex parte, and every written notice, appearance, demand, offer of judgment, undertaking, and similar paper *shall be served upon each of the parties*. No service need be made on parties in default for failure to appear except that pleadings asserting new or additional claims for relief against them shall be served upon them in the manner provided for service of summons in s. 801.11 (emphasis added).

The interesting language in this statute suggests that elsewhere in the Wisconsin statutes there is authority that states which motions "may be heard ex parte." However, the words "ex parte" with respect to motions or orders do not appear elsewhere in Wisconsin statutes.

Temporary injunctions are permitted without notice. The statutory language related to injunctions states that "[n]otice need not be given" for a temporary injunction. However, other than the injunction statutes, this "notice need not be given" language does not appear elsewhere in Wisconsin statutes. This leads to the question of which motions may be heard ex parte under section 801.14, because Wisconsin statutes do not provide other motions may be heard without notice.

Also problematic for ex parte motions are the statutory service requirements set forth in Wis. Stat. section 801.15, which provide:

> 801.15 (4) A written motion, *other than one which may be heard ex parte*, and notice of the hearing thereof shall be served not later than 5 days before the time specified for the hearing, *unless a different period is fixed by statute or by order of the court. Such an order may for cause shown be made on ex parte motion*. When a motion is supported by affidavit, the affidavit shall be served with the motion; and opposing affidavits may be served not later than one day before the hearing, unless the court permits them to be served at some other time. All written motions shall be heard on notice unless a statute or rule permits the motion to be heard ex parte (emphasis added).

This statute indicates that an ex parte motion may be filed and granted related to requesting a different time for service. However, this statute underscores that again motions and orders, other than *specifically* provided by statute, must follow notice and service procedures.

Case Law: *Willson*

Two Wisconsin cases discuss ex parte orders, one criminal case and one unpublished family law case.

The criminal case, *In re Saenz*, is discussed below, because the decision was grounded in due process. The family law decision, *Willson v. Willson*,[3] was grounded in section 801.14. The Court of Appeals in *Willson* did not address due process grounds because it reversed and remanded, with specific instructions, based upon section 801.14 alone.

The only family law case on ex parte orders, *Willson*, is both unpublished and not citable, because it is per curium. While the facts underlying *Willson* are muddled, it appears to be a case where one (or both?) parties sought delay based on the time frames of the related decisions and where were multiple legal strategies employed.[4] The parties had a daughter in 2001 in California, and the parties and their daughter lived primarily in Spain from November 2003 until September 2004. In September 2004, mother returned to the United States with the parties' daughter and father remained in Spain. The term "kidnapped" was used by father (and later by mother). Father filed a petition in Spain under The Hague Convention and obtained a Spanish order for custody and placement that required the child's return to Spain. In March 2005, father filed a Petition for Return of Child in Eau Claire County. In June 2005, the circuit court granted the father's motion to return the child to Spain.[5]

Then, in March 2007, mother filed a pro se "emergency motion for nunc pro tunc order to vacate" the June 2005 Order to return the child to Spain. While it was titled an emergency motion, it appears to be an ex parte motion and order. Therefore, the term "emergency" seems to be a misnomer by mother.[6]

Mother's motion was accompanied by a letter from her stating there was a subject matter jurisdiction flaw in the Wisconsin case decided almost two years prior, and that California had jurisdiction and Wisconsin never had jurisdiction.[7] Mother attached documents to her affidavit showing she filed for divorce in California in *June 2004*. She also attached a *March 2007* order from the California court stating the court was accepting the divorce filing and mother would have until *April 2007* to serve [father]." This does beg the question about why the June 2004 California divorce filing was not mentioned in the 2005 Wisconsin placement proceedings, but sadly, this answer is not explained. Also, the ability to serve a divorce for three

years is also a California mystery.[8] Later in its decision, the Wisconsin Court of Appeals explained that father had not been served with the California pleadings.

In 2007, the circuit court granted mother's emergency motion ex parte. In that ex parte order, the circuit court vacated its own June 2, 2005, order to return the child to Spain and dismissed the Wisconsin proceeding.[9] Neither father nor his Wisconsin counsel were given notice of the emergency/ex parte motion by mother or the circuit court. The circuit court mailed a copy of the ex parte order to father's address in Spain after it was entered, but the letter was returned as undeliverable. Neither the circuit court nor mother mailed a copy of the paperwork to father's Wisconsin counsel.

In 2007, a month after the ex parte order vacating the 2005 Order to return the child to Spain, father filed a motion stating he received notice of the ex parte order *after* its entry, and he had yet to be served with a copy of any pleading or the ex parte order. In his supporting affidavit, father stated he had never been served with any of the pleadings in the California action and that mother had not advised the California court of the Spanish court order. The Wisconsin circuit court denied father's motion to vacate the ex parte order *without a hearing*. Father appealed.

In his appeal, father challenged the 2007 ex parte order vacating the circuit court's own 2005 order under section 801.14 and due process grounds. The Court of Appeals agreed and reversed the circuit court's order in a July 2008 decision. The Court of Appeals did not address father's due process arguments, because it decided that the procedure followed by the circuit court did not comply with section 801.14 and therefore, it reversed and remanded.[10]

The *Willson* court held that an order issued on a motion that does not comply with section 801.14 is *void*.[11] The court rejected mother's argument that a jurisdictional motion was subject to different rules, finding that mother's motion was subject to Wis. Stat. sections 801.14 (1) and 801.15(4) "in the same way as any other motion." The *Willson* court held that because the ex parte order was entered based upon a motion that did not conform to section 801.14, the ex parte order was void.[12]

The warning from the *Willson* case is that if motions and orders do not comply with sections 801.14 and 801.15, the resulting orders are void.

There is a limited sliver of opportunity, discussed below, in Wisconsin case law based on exigent matters with potential substantial harm. However, if a party does not follow the service and notice requirements of sections 801.14 and 801.15, the party should provide tread cautiously to avoid obtaining a void order or leading a circuit court astray.

Due Process and *Saenz*

The other concern regarding ex parte motions and orders relates to depriving a party of due process. Article 5 of the U.S. Constitution states that no person shall be "deprived of life, liberty, or property, without due process of law." The decision in *In re Saenz* discussed due process and that ex parte orders may be permitted in some exigent circumstances in the face of substantial harm.[13] This concept is also implicitly supported by statute and also by one Wisconsin case.

With respect to the statutory support, the temporary injunction statutes all provide that "notice need not be given" for cases where specific statutory grounds are met. Notice need not be given to the respondent before issuing a temporary restraining order under Wis. Stat. section 813.12(3)(b). The statute provides for specific requirements on what information must be in the temporary restraining order petition.[14]

Importantly, the temporary restraining order statute in Wis. Stat. section 813.12(3)(C) provides *specific* time frames on when the hearing shall be held and the time for service. The result for failure to have a timely hearing or to serve results in the dismissal of the temporary restraining order, which has frustrated counsel and courts alike, without a doubt. However, in the lone sections of the Wisconsin statutes that permit no notice of orders, the orders are specifically temporary and with stringent requirements on times for hearings and service.

With respect to Wisconsin case law related to ex parte orders and due process, the case *In re Saenz* is instructive. In *Saenz*, an inmate refused to eat and lost 24 pounds in an alarmingly short period, leading to the Department of Corrections to seek an involuntary feeding tube order for him.

The circuit court's ex parte order was, on its face, an indefinite or permanent order. No court proceedings were conducted until three weeks after entry of the ex parte order, and then only because Saenz contacted the circuit court with requests for an independent medical examination and an evidentiary hearing. The Court of Appeals found that the circuit court erred by entering "an indefinite, ostensibly permanent ex parte order" to involuntarily feed and hydrate Saenz. The Court of Appeals' decision was based primarily on due process grounds:

> Therefore, the only dispute we need to resolve in this case involves what procedural steps must be taken, either administratively or in proceedings before the circuit court, in order to provide Saenz the due process guaranteed him

> under the Fourteenth Amendment before his liberty interest is infringed upon.[15]

The Court of Appeals concluded that a court may enter a temporary ex parte order, provided the Department establishes by way of affidavit that exigent circumstances exist requiring immediate involuntary treatment in order to avoid serious harm to or the death of an inmate. The duration of any ex parte order to forcibly feed and hydrate an inmate, however, should be only for as long as reasonably necessary to allow the court to conduct a hearing:

> In so concluding, [the court] perceive[s] the present circumstances to be analogous to others where a temporary infringement upon a person's liberty is permitted under emergency circumstances that require prompt intervention by government actors in order to avoid serious harm to the person or others.[16]

The Court of Appeals declined, as an error correcting court, to say when the initial hearing after the ex parte order must be held. However, it did dictate that it should be as soon as "reasonably possible," which did not happen in *Saenz*.

The court also noted that Saenz should have been granted an evidentiary hearing when he disputed some of the Department's allegations. The court indicated that to be heard in a meaningful manner, Saenz must be allowed to be present at the hearing, to present evidence and testimony including his own, to cross-examine the Department's witnesses, and to compel witnesses' testimony. Interestingly the appeals court was supportive of the circuit court. The decision stated:

> [i]n closing, we note that, although we reverse and remand, we do not criticize the circuit court's initial handling of this action. We find the court's actions understandable given the lack of guidance in Wisconsin statutes or case law on the issues presented, and given the absence of any Department policy or regulation addressing Saenz's due process rights in view of the Department's intended actions.[17]

In other words, even the Court of Appeals recognized the lack of statutory or case law guidance on ex parte orders, which should cause counsel to pause before utilizing them.

The due process analysis provided by *Saenz* is that, if an ex parte order is entered, it cannot be permanent, it must be with exigent circumstances, the order must be followed by a reasonably prompt hearing, and the hearing must be evidentiary in nature.

In family law cases, the *only* statutes that specifically bypass or delay due process are the statutes related to injunctions, where potential serious harm can befall a party or child. Even in those cases of harassment, abuse, or child abuse, there are specific service, timing, and hearing provisions. If even in situations of violence, such as abuse restraining orders, there are requirements following the entry of an ex parte order, it logically follows that in family law situations where the situation may be less exigent in nature, notice, timing, and service provisions are similarly required when an ex parte order is granted.

Conclusion

Because of the requirements of due process and Wis. Stat. section 801.14, courts and lawyers should be cautious of ex parte motions and orders. In particular, there should be:

- considerations related to the exigent nature of the circumstances;
- prompt service of any motion and order; and
- a reasonably timed evidentiary hearing after signing the order to offer an opportunity to be heard.

Under a literal interpretation of section 801.14 and its related case law, if an order is entered without a properly timed motion, the order is void. However, in the event of an emergency, ex parte orders may survive a due process challenge in exigent circumstances.

If your client seeks to file an ex parte motion, consider whether the circumstances are truly exigent with significant harm or instead something your client really wants to handle quickly.

If you are recipient of an ex parte order request, consider an whether to file a request for attorneys' fees for overtrial or filing a Wis. Stat. section 802.05 motion if there was no emergency, if the order is treated as permanent, and if a reasonably prompt evidentiary hearing is not scheduled.

Additionally, if the court grants an ex parte order without scheduling a reasonably prompt hearing, a motion to the court regarding due process and section 801.14 may be necessary if opposing counsel attempts to mislead the circuit court into an ex parte order contrary to statute.

While ex parte orders may have their purpose when "emergency circumstances that require prompt intervention by government actors in order to avoid serious harm," they should be avoided for nonemergency matters that will not result in serious harm. Ex parte orders should not be utilized to bypass statutory requirements regarding notice and service or to obtain quick attention from a court, and a quick reaction from opposing counsel to routine family law matters.

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Endnotes

1 Thank you to Comm. Barry Boline for his insight and assistance as I researched and considered the law on this topic.

2 A Westlaw search of Wisconsin case law using the term "ex parte" did not provide additional relevant responses.

3 *Willson v. Willson,* 2008 WI App 135, 313 Wis. 2d 831 (Ct. App. 2008).

4 After looking more into the CCAP records, briefing, and decision, it appears mother either intentionally or unintentionally often took legally unsupported positions, which were initially successful until further review in both California and Wisconsin circuit courts and appellate courts.

5 *See* CCAP record.

6 Additionally, with this case pending for years with multiple appeals, the question is whether this was *truly* an emergency with no option for notice.

7 My experience is that subject matter jurisdiction cases are hotly contested, with detailed legal arguments on both sides, not decided solely on letters or an ex parte motion.

8 An additional review indicates that this California Order allowing until 2007 to serve a 2004 divorce filing was later vacated, which father raised in his pleadings related to the Wisconsin circuit court case in *Willson* when he sought to vacate the 2007 ex parte order.

9 Interestingly enough, the Willson's 2004 Wisconsin divorce (which was dismissed for lack of jurisdiction) is not on CCAP and also all proceedings related to this 2007 emergency, ex parte motion are not in the CCAP record.

10 The Court of Appeals discussed Wis. Stat. section 807.03, which provides the ability to vacate orders entered *without* notice *without* providing notice. This statute also states that if an order is entered with notice, then notice is needed to modify or vacate the order.

11 2008 WI App 135, ¶ 16, citing *Stein v. Illinois State Assistance Comm'n,* 194 Wis. 2d 775, 783, 535 N.W.2d 101 (Ct. App.1995).

12 *Willson,* 2008 WI App 135, ¶ 16, citing *Stein*, 194 Wis. 2d at 783, 535 N.W.2d 101. The Court of Appeals also noted that the requirement of notice and opportunity to be heard applies to sua sponte issues or motions. 2008 WI App 135, ¶ 13. "When the circuit court raises an issue on its own motion, the court must still give the parties notice and an opportunity to be heard. This avoids or reduces any unfairness to counsel and any appearance that the court is 'usurping the function of counsel.' Even analyzing the motion here as if it were the court's own motion, the court erred in vacating the June 2, 2005, order without notice and a hearing." *Id.* at ¶ 13, citing *Larry v. Harris*, 2007 WI App 132, 301 Wis. 2d 243, *review granted* 2007 WI App 134, 305 Wis. 2d 126 and *State v. Holmes*, 106 Wis. 2d 31, 315 N.W.2d 703 (1982).

13 *In re Saenz*, 2007 WI App 25, 299 Wis. 2d 486, 728 N.W.2d 765 (Ct. App. 2007).

14 Wis. Stat. § 813.12(5). There are similar provisions related to child abuse restraining orders in Wis. Stat. sections 813.122, 813.123, and 813.125.

15 *In re: Saenz*, 2007 WI App 25, ¶ 14, 299 Wis. 2d 486 (Ct. App. 2007).

16 *See, e.g.,* Wis. Stat. §§ 51.15 and 51.20(2) (allowing immediate, temporary detention of an individual in a mental health facility for up to seventy-two hours until a probable cause hearing is held); Wis. Stat. § 55.06 (similar provision for "[emergency] protective placement" of an individual); *In re: Saenz*, 2007 WI App 25, ¶ 23.

17 *Saenz* at ¶ 35.

The Initial Divorce Client Interview: A New Approach

By Allan R. Koritzinsky and Kenneth H. Waldron

Most potential divorcees and divorce-related professionals define divorce as a legal event dominated by the distribution of property, debt, future income (where and when applicable), and time and control of the family minor children (also where and when applicable).

Because distribution is by definition a Zero Sum Game, spouses – nearly always already dominated by ill feelings toward one another – find themselves positioned as adversaries in disputes. Efforts by divorce lawyers, mediators, and court-connected classes and services go to great lengths to encourage collaborative and cooperative negotiations to resolve the distribution challenges, but these efforts all have an uphill battle. Even well-intentioned lawyers often regress – along with their clients – to competitive tactics in the *distribution battle*.

We posit that there are two challenges that must be addressed at the outset of any meaningful discussion about divorce and the initial client interview. We briefly discuss both in this article before introducing our Five Step Life-changing Event Planning Model.

Simply stated, by way of introduction, a new approach for handling any divorce is needed, starting with:

- the definition of divorce itself, which is currently mis-defined; and
- the importance of the initial client interview, which is often misunderstood.

Definition of Divorce: A Life-changing Event

While a divorce has the necessary ingredients of a legal event, we define divorce as primarily a l*ife-changing event*.

Some life-changing events are unwanted and come without warning (e.g., loss of a job, serious health issue), and some are chosen with anticipated rewards (e.g., marriage, giving birth, etc.). What they have in common is that people are on one life path and then – sometimes suddenly – are on a different path. In divorce, spouses who had been on the life path of a marriage are now faced with a different life path: heading to a divorce. This is a life-changing event!

Emotions: Where Spouses Become Adversaries Unless Things Change

Because distribution is always a Zero Sum Game, spouses who are almost always dominated by ill feelings toward one another at the time find themselves positioned as adversaries in disputes. This is a basic principle of Game Theory.[1]

Because most life-changing events are initially dominated by strong emotions, these emotions must be understood and at least contained. This allows everyone to focus on the Non-zero Sum Game of planning, dominated by cooperation and collaboration – and not by emotions.

A divorce is a unique life experience because emotions usually overshadow all other considerations, at least initially.

Emotions at play. There are Primary and Secondary Emotions at play. All need to be addressed:

Problematic emotions (cognitive disturbances, real emotional obstacles):[2]

- blaming
- distrusting
- taking things personally
- thinking inferentially

Challenging feelings (defense mechanisms, cover-ups):[3]

- guilt
- shame
- anger
- trauma triggers
- distorted perceptions
- sadness of loss of the marriage and the dream
- sadness of anticipated loss in the future
- fear
- blaming
- distrusting
- insecurity

Problematic emotions can, at the time of the divorce, take the form of spouses feeling disgust for one another. An escalation of already destructive emotional patterns in the marriage can also occur.

Worse yet, but only slightly under the surface, are the various **challenging feelings.** The exposure of the "failure" of the marriage often creates shame, which can also compound the emotional challenges at play. Lawyers, sometimes positioning their clients for advantages in future disputes, can inadvertently add to the emotional intensity. All this distracts the spouses from focusing on the divorce as a life-changing event.

A refocus is needed. Putting the focus on divorce as a life-changing event with planning and collaboration can at least reduce the impact of interfering emotions. Focusing on or at least containing the strong emotions at play can diminish their negative impact on the outcomes.

*This refocus starts with the **Initial Client Interview**. These principles also provide the perfect segue to introduce our **Five Step Life-Changing Event Planning Model**, discussed later in this article.*

The Initial Client Interview

Note: This section involves two event settings and three sets of questions.

If the lawyer views a divorce predominantly or perhaps solely as a legal event, the questions asked of the client will channel the client into the Zero Sum Game of distribution. Unfortunately, this means that the spouses are in a legal event where they are adversaries in disputes, grasping at maintaining a meaningful role in their children's lives and at gaining as good an economic outcome as possible.

Teamwork is required between the lawyer and the client. They need to work together as a team, where the primary focus is on the divorce as a life-changing event. The goal is to find the appropriate balance between these two events- where it is first a life-changing event and second a legal event.

First, let's discuss the definition of divorce as a legal event.

Initial Client Interview questions asked if divorce is framed as a legal event: If the lawyer views the divorce as first and foremost a legal event, here are a sample of questions likely to be asked at the initial client interview:

- spouse names and years of marriage
- ages
- jobs and incomes
- number and ages of any children
- health and special needs
- size of the marital/divisible and nonmarital/nondivisible estate
- whether there is a pre- or post-marital agreement
- whether there is any spousal abuse
- distribution issues regarding children[4]
- physical custody and placement
- child support
- distribution issues regarding financials[4]
- property division
- child support
- spousal support
- any other miscellaneous distribution outcomes or legal positions of import[5]

Next, let's discuss the definition of divorce as a life-changing event.

Initial Client Interview Questions Asked if Divorce is Framed as a Life-changing Event

There are three areas of inquiry in our model:

- Inquiry #1 involves the **emotional obstacles** to making a good plan for the future.
- Inquiry #2 involves a **focus on long-term goals,** helping set the stage for goal-based planning.
- Inquiry #3 involves informing the parties of the **requirements of the legal event,** but avoiding taking premature positions before addressing the live-changing event planning process.

Inquiry #1: Emotional Obstacles

- There are several options for how we negotiate with your spouse and attorney. The most effective and efficient way is to negotiate in four-way meetings. In that way, everyone has the same information at the same time. You and I would meet and prepare for each four-way meeting to work together and to make sure that what is important to you gets addressed. That allows for ideas to come up and be modified to work best for both spouses and avoids misunderstandings, jumping to false conclusions and making decisions with incomplete information. However, it can also be emotionally challenging for spouses to be face to face. Describe for me what the emotional climate is currently like between you and your spouse?
- Most of the feelings that you describe are about the past. Will you be able to set them aside and focus on your future (and, if applicable, the future of your children)?
- Do you think it would be helpful to meet with a counselor once or twice, so that you can focus on planning for the future instead of fighting about the past?
- Do you fear that your spouse's emotions will get in the way of our planning for your futures?
- Are there some rules that you might suggest for you and your spouse in order to stay focused on planning for a good future for both of you (and, if applicable, for your children)?
- Inquiry #2: Focus on Long-term Goals
- What financial condition would you like to be 5 to 10 years from now? How about your spouse?
- What kind of work would you like to be doing before retirement?
- What is your thinking about retirement – yours and your spouse's?
- Regarding the children:
  - Number and ages of the children Number and ages of the children
  - Personalities, current schools, activities, special needs?
  - Relationships with each parent? Relationships with other family members, neighbors and friends?
  - What are your goals for your children? What are your spouse's goals for your children?
  - What are some of your goals for your children regarding holiday experiences? How about the goals of your spouse for holidays?
  - Is academic success of the children important to you? How about your spouse?
  - What would you like your children's experience to be like now that their parents will be living separately?
  - When your children are grown, what would you like to hear them say about their experience with separated parents?
  - What kind of parental involvement of both parents would you like to have, separate from any custody schedule?
  - What type of relationship would you like your children to have with each of their parents in the future?

- Is owning a residence important to you? How about your spouse?
- In the long term, what do you think a healthy relationship with your ex-spouse would be like?
- Is it important to you to someday lookback and be proud of how you and your spouse handled your divorce?
- What obstacles, if any, are there to reaching your goals?

Inquiry #3: Requirements of the Legal Event

- spouses and years of marriage
- ages and jobs
- incomes
- number and ages of children
- health and special needs
- details regarding the marital/divisible and nonmarital/nondivisible estate
- is there a pre- or post-marital agreement
- whether there is any spousal abuse
- explaining the distribution issues re: children[6]
- custody
- physical custody/placement
- child support
- explaining the distribution issues regarding financials[6]
- property division
- child support
- spousal support
- any other miscellaneous outcomes or legal positions of import

The questions above are just examples. There are plenty of other questions that could and should be asked.

However, this is what we mean by the teamwork referred to above. The client and the lawyer need to work together as a team, to find the appropriate balance between these two events- where it is a legal event versus a life-changing event.

If legal questions are important at the moment, the focus should be on specific legal questions.

If life-changing questions are important at the moment, asking about future family and financial goals for both of the spouses and the children should be the focus. This will involve a discussion of noncompetitive goals and about the competitive distribution of what the clients have to distribute at the present time.

Summary: The initial client interview is when divorce is viewed first and foremost as a life-changing event:

- If the lawyer views a divorce as first and foremost a life-changing event, where there is cooperative planning for the spouse's and their children's futures, the questions emphasized in the initial client interview will be quite different from those usually asked in the context of a legal event, as described above.
- The discussion of the current situation will be similar, but the purpose will be substantially different.
- The questions asked if addressing a life-changing event will be for the purpose of understanding the family's starting point regarding family and financial goals. This will be more like a conversation- not developing arguments for and against desired outcomes in the legal event.

Caveat: This is a new way of thinking about divorce!

Here are a few more examples:

- **If divorce is treated as a legal event:** *"What is your position about a physical custody schedule for the children?" "What is your position about what to with the house or about your getting a part-time job outside the house?"*
- **If divorce is treated as a life-changing event:** *"The two of you are likely to need some flexibility with one another and perhaps the involvement of other caregivers taking care of the children. Are there grandparents involved now, or other relatives or neighbors who help or could help?" "What do you believe is needed so you can handle the finances and sharing the children while living in two homes?"*

Summary: The differences regarding the two divorce events are profound:

(1) They will generate very different types of questions if the focus is on divorce as a life-changing event versus if the focus is on divorce as a legal event. If the former, the discussion will be about the financial and family goals. If the latter, the discussion will be about legal outcomes.

(2) Most clients entering a divorce are likely to be dependent on their lawyers to shape the process going forward. The shape and focus of the initial interview can guide them into a healthy focus on cooperative planning for themselves and, when applicable, for their children.

The Five-step Life-changing Event Planning Model

Step 1: Isolating the current strong emotions: Starting here is the first step. It is critically important to address the current strong emotions, which if not isolated from divorce planning, will likely continue during and after the divorce. It is also critical that these emotions be controlled- at least to the point of not interfering with the tasks of planning.

The key for professionals is to recognize that while the problematic emotions will appear to dominate a divorce, the real emotional obstacles are the challenging feelings at play.

Resolving the emotions takes more time than can be done early in a divorce, but emotions can be addressed and hopefully set aside, once recognized and once the planning process begins. In fact, planning for the future can often help resolve at least some of those troubling emotions. For example, a long-term plan for both parents to be actively involved in the children's lives with parental communication and flexibility, independent of where the children sleep, undermines the feelings of potential loss and exclusion from at least parts of the children's lives.

Planning is a better salve for these emotions rather than competing for limited supplies of money and time with the children.

Step 2: Detailing the current situation: Spouses should identify everything about their current situation. (This step involves a task to be addressed in both divorce as a life-changing event *and* divorce as a legal event.) This includes the obvious, such as listing current assets, debt, income, and child-related issues. However, it might also include factors not necessarily included in the legal event, such as parenting strengths and weaknesses, support systems (e.g., grandparents), potential skills, insufficient income for the family, and so on.

Later discussions in the planning process will inevitably add additional information regarding the current situation.

Step 3: Identifying the long-term family and financial goals: Long-term goals inevitably include desired lifestyle issues, both in terms of the children and financially related goals. "Long-term" can be defined by the spouses in a way that makes sense to them. For example, one set of spouses might set a "long-term" date of when the children are adults. Recognizing that even adult children benefit from help from their parents at times, they might even set the "long-term" much further in the future. For example, they might be grandparents at some point and want to include planning, such as identifying how grandparenting together might best work.

Long-term goals are not about distribution. They involve a discussion of noncompetitive financial and family goals.

Thus, the relevant question is *not* "Do you want to both have custodial time with the children?"

The relevant question *is* "When your children are grown, what would you like to hear them say about their experience of your divorce?"

The question is *not* "Do you want to retain the house?"

The question *is* "What lifestyle would you like to be living 5 or 10 years down the road?"

The optimal form of discussions for a life-changing event are joint meetings, where and when they are appropriate.

This models and teaches skills for the collaborative life necessary to reach long-term goals together. As our Game Theory book points out, it also makes good use of the conscious and unconscious knowledge of the spouses in planning.[7]

Step 4: Making a plan and steps to reach long-term goals: The applicable task is planning the steps to go from the current situation to reaching long-term goals. Those steps are not the legal agreements – at least not yet. As an example of planning, if opportunities for a child to participate in extra-curricular activities is a long-term goal of both parents, planning will involve how to jointly choose the activities and how to pay for them.

This fourth step will inevitably include a discussion identifying likely obstacles to reaching their goals and making a plan to overcome them. This is the only step in which the past can and should be addressed, particularly as it might identify obstacles to achieving goals.

For example, one parent might bring up that the other parent seems to have limited control over ending the workday, which can interfere with the care of children. This is not blame, but rather a potential obstacle that needs planning to reach a goal.

Step 5: Making a plan regarding the legal tasks for distribution. Once the planning tasks are complete, then and only then do the spouses consider the legal event: distribution planning. It is important to point out that lawyers can be extraordinarily helpful in this planning process, particularly if they can help the spouses focus on the life-changing event first – not on the legal event. They can also be especially helpful in

drafting the legal agreements that are, in effect, the first step in the long term plan.

Don't Forget the Lawyers

Given the complexity involved in many divorces, lawyers almost become a necessity in order to draft the legal agreements to support the spouses' life-changing event plan. Perhaps even more importantly, lawyers can explain how having a good plan to reach long-term goals is far superior to the simple distribution plan required in the legal event.

Spouses representing themselves, without lawyers, are unlikely to know (or appreciate) this important and valuable insight and information.

Spouses are not likely to focus on divorce as a life-changing event UNLESS their lawyers guide them in that direction, starting with the questions asked at the Initial Client Interview.

Conclusion: Imagining the Future

Most divorce lawyers and divorce mediators enter their professions believing they are in a serious service profession. That is, they want to help people going through a difficult time.

Lawyers can help clients shift their focus from being absorbed by the legal event by first helping them navigate a significant life-changing event. Better yet, this can be a much more satisfying role and one that will ultimately make their lawyer skills much more effective and put to much better use.

The future for divorce could be very different.

Having clients who spread the word that their divorce lawyers were incredibly helpful, rather than simply vicious fighters – this is your authors' fondest hope. For this reason, we want to prompt an attitudinal change and reverse the trend of the do-it-yourself divorce.

Reestablishing a valuable place and new role for the divorce lawyer – this is a significant component in understanding what a divorce really means: primarily a life-changing event.

Imagine a future when most ex-spouses continue to work with one another post-divorce, to accomplish important long-term goals for each of them and for their children. Your authors reach their goal when this becomes the norm, not the exception.

We invite you to view our journal articles and professional publications on marriageanddivorce.org.

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Endnotes

1 Too complex to cover here, Game Theory is discussed in our book *Game Theory and the Transformation of Family Law,* Unhooked Media, 2015.

2 *See* also chapter 2 in Kenneth H. Waldron, *Planning a Sensible Divorce: Avoid the Toxic Dance of a Messy Divorce,* Austin Macauley, 2024 (available on marriageanddivorce.org).

3 *See also Planning a Sensible Divorce,* p. 152.

4 We recommend that discussion of this "distribution issue" not take place during the Initial Client Interview, or at least not too early in the discussion during the initial client interview.

5 We recommend that discussion of these miscellaneous "distribution issues" not take place during the Initial Client Interview, or at least not too early in the discussion during the initial client interview.

6 We recommend that this "distribution issue" discussion be described but opinions be deferred – or at least not discussed too early in the discussion during the initial client interview.

7 *See Planning a Sensible Divorce.*

Where to Find the *Wisconsin Journal of Family Law* on Wisbar.org

Looking for back issues of WJFL? State Bar Family Law Section members have access to electronic copies of WJFL via PDFs located on the section's webpage on Wisbar.org.

To locate them from the Wisbar.org home page, log into Wisbar.org then go to **For Members – Sections, Divisions, Committees – Sections**. Scroll down and click on **Family Law.** Look for **News/Wisconsin Journal of Family Law**.

There you will find:

- **News:** articles published in the Family Law Section Blog;
- **Wisconsin Journal of Family Law:** electronic copies of the *Wisconsin Journal of Family Law* starting with January 2000; and
- **WJFL Indexes:** author and topic indexes from 1981 through 2024.

Islamic Marriage Contracts and Divorce in Wisconsin

By Kellen O'Brien

Wisconsin has well-developed case law regarding the enforcement of premarital agreements at the time of divorce, but what if the agreement was entered under Islamic law?

Wisconsin does not have any published cases regarding the enforceability of Islamic marriage contracts. Trial courts in other states have struggled with this issue on first impression, often leading to reversals by appellate courts. If a party seeks to enforce an Islamic marriage contract in a Wisconsin divorce, the court and attorneys will face a novel legal issue that is complicated by a clash of cultures, customs, and laws.

This article provides a primer on Islamic marriage contracts and suggests an approach for determining whether an Islamic marriage contract can be enforced in a Wisconsin divorce.

Islamic Marriage, Divorce, and the Mahr

Islamic laws regarding marriage and divorce are significantly different from those in our judicial system.

An Islamic marriage is a contract. Islamic law does not recognize the concept of marital property, and at the time of divorce, a wife does not have a right to a portion of her husband's property. Furthermore, maintenance and child support are limited under Islamic law and based on the goodwill of the husband rather than a wife's legal rights. Prior to an Islamic marriage, the bride's family negotiates her financial rights in the event of a divorce, which are included in the Islamic marriage contract. An Islamic marriage contract might also include terms regarding the wife's right to divorce, which are absolute for the husband but are limited and contractual for the wife.[1]

The substantive term in an Islamic marriage contract is a Mahr, which provides economic consideration to the wife. A Mahr might include an apartment, gold, jewelry, a Holy Koran, and other ceremonial items. It is not the same thing as a dowry, which is a gift at the time of marriage. A wife is entitled to the Mahr during the marriage, but she traditionally enforces it at the time of divorce or her husband's death. The Mahr might provide a wife's only economic resources at the time of divorce.[2]

The Mahr in Wisconsin

An Islamic wife's rights at the time of divorce improve significantly if the parties divorce in Wisconsin. The parties would have the rights provided by Wisconsin law. The issue that arises is how the Mahr impacts the parties' rights and obligations.

A husband might seek to enforce the Mahr as a premarital agreement resolving the issues of property division and maintenance. A wife might seek to enforce the Mahr as a separate contractual debt owed to her by the husband in addition to her rights to property division and maintenance.

The latter approach is advocated for by Professor Nathan Oman, who argues that Mahrs are not premarital agreements because marital property does not exist in Islamic law, and thus spouses cannot bargain away marital property as they can under the laws of Wisconsin and other states.[3]

Oman's approach could provide significant financial benefits to the wife, but it runs contrary to the concept of an equitable division of property. It also ignores the possibility that a Mahr was not executed according to fundamental principles of American law.

An Illustrative Case

A Washington case, *Obaidi v. Qayoum*,[4] illustrates how entering a Mahr according to Islamic law and customs creates complications when attempting to enforce a Mahr in a U.S. court.

The husband was 26 years old and a U.S. citizen, and the wife was 19 years old and from Canada. The parties married according to traditional Afghan customs, in part because the husband's mother wanted him to maintain his cultural ties to Afghanistan.

The husband learned about the details of the Islamic marriage ceremony, which included signing the Islamic marriage contract 15 minutes before the ceremony began. He chose his uncle to represent him in Mahr negotiations.

The ceremony was conducted in Farsi, and the Islamic marriage contract was written in Farsi, a language that the husband did not know how to read or speak. The Mahr required the husband to pay his wife $20,000. The wife filed for divorce after 13 months of

marriage, and the trial court granted the wife's request to have the Mahr enforced while also granting her attorney's fees.

The Washington Court of Appeals reversed the trial court, finding that the Mahr did not satisfy Washington's requirements for a valid contract because the parties did not have a "meeting of the minds" as to the essential terms of the contract.

While every case involving a Mahr is not so easily resolved using principles learned in law school, *Obaidi* highlights some of the issues that might arise when a party seeks to enforce an Islamic marriage contract in an American divorce.

Neutral Principles of Law and Enforcing the Mahr

American courts have developed an analytical approach to determining whether a Mahr is enforceable at the time of divorce. This starts with a Supreme Court holding that an American court may enforce a religious contract so long as it does so by using "neutral principles of law" rather than religious doctrine.[5]

American courts have consistently used this neutral principles of law approach when interpreting Mahrs by applying the domiciliary state's contract and family law.[6] A court can enforce a Mahr if it satisfies the state's standards.[7]

While case law indicates a consensus with using the "neutral principles of law" approach, courts have reached a variety of outcomes when interpreting Mahrs. This is due to differences in state law, the circumstances of parties, the terms of the Mahr, and the novelty of the issues presented. Here are some examples:

- A husband argued that the Mahr demonstrated the parties' intent to maintain separate property and for the husband to pay the wife only the amount specified in the Mahr, but the court rejected this argument because the Mahr did not comply with Louisiana's community property laws.[8]
- A wife sought to enforce a $25,000 Mahr as a premarital agreement after filing for divorce a week after the Islamic marriage ceremony.[9] The Arizona Court of Appeals affirmed the trial court's holding that held that the Mahr was a premarital agreement and enforced its terms.
- The wives in two separate Maryland divorce cases asked the trial court to enforce their respective Mahrs, and the trial court determined that the Mahrs were separate contractual obligations owed by the husbands and not premarital agreements.[10] One husband was ordered to pay $492,750 and the other husband was ordered to pay $225,000. In a consolidated appeal, the Maryland Court of Special Appeals vacated and remanded the trial court decisions with instructions to apply Maryland's heightened standard for premarital agreements and determine if the Mahrs were "fair and equitable in procurement and result."
- A husband argued that the Mahr established the wife's maximum financial recovery in the divorce, and the wife argued that it established the minimum amount she could recover.[11] The trial court awarded the wife an $11,772 Mahr payment and her equity in the marital residence without ordering an equitable distribution. The Florida Court of Appeals reversed and remanded the trial court's decision because the Mahr did not "unambiguously express a desire to waive equitable distribution" as required by Florida law regarding premarital agreements, and finding that the Mahr provided temporary maintenance.

While case law from other jurisdictions does not suggest a specific outcome, it provides a potential approach for Wisconsin attorneys and courts to use if a party seeks to enforce a Mahr in a Wisconsin divorce. American courts have consistently decided whether to enforce a Mahr based on neutral principles of law, using applicable state law. Wisconsin attorneys and courts should use the same approach and rely on the familiar principles of Wisconsin law.

Applying Wisconsin Law

Using the neutral principles of law approach, courts and attorneys can find guidance in the family code, specifically, Wis. Stat. section 767.61(3)(L), which allows courts to deviate from the presumption of an equal division of property based on:

> Any written agreement made by the parties before or during the marriage concerning any arrangement for property distribution; such agreements shall be binding upon the court except that no such agreement shall be binding where the terms of the agreement are inequitable as to either party. The court shall presume any such agreement to be equitable as to both parties.

While there is not uniform agreement in other states that a Mahr is a premarital agreement, Wis. Stat. section 767.61(3)(L) is broadly written to include *any* written agreement before or during the marriage. This strongly suggests that a Mahr is a premarital agreement that a court can consider when dividing marital property. If a court agrees, the statute includes a presumption that a premarital agreement is equitable.

The court would also need to consider a Mahr when determining maintenance, although the maintenance statute does not include a presumption that a premarital agreement is equitable.[12]

From there, the issue is whether the party opposing enforcement of a Mahr can show that the Mahr is inequitable, which requires a *Button* analysis. Under *Button*, a premarital agreement is inequitable if it does not satisfy each of the following requirements:

- each spouse has made a fair and reasonable financial disclosure to the other spouse;
- each spouse has entered into the agreement voluntarily and freely; and
- the substantive terms of the agreement are fair to each spouse at the time of execution, and if there has been a significant change of circumstances since execution, at the time of divorce.[13]

When analyzing whether a Mahr is equitable in its procurement, differences between Islamic customs and Wisconsin law make it difficult to satisfy the *Button* test. Mahrs are often negotiated by family members without the formalities of attorneys and written financial disclosures. The parties might feel pressured by their families to sign the Mahr even if they do not understand its terms, let alone their financial rights absent a premarital agreement.

If the parties married in a country that does not provide equal rights to women, can the wife freely and voluntarily enter a Mahr as we understand those terms? Does this change if the wife wants to enforce a Mahr?

When analyzing whether the substantive terms of a Mahr are fair, there are unique considerations because fairness differs by culture. Enforcing a Mahr could achieve an equitable result, or it could result in a substantially unequal division of the parties' property. If a Mahr meets the standards of an Islamic marriage contract, does that satisfy the third prong of *Button* even if the agreement would be considered egregious in a Wisconsin marriage? If one or both of the parties immigrated to Wisconsin, the party opposing enforcement might argue that circumstances have changed such that it would be unfair to enforce a Mahr. Would this argument hold up if the parties intended to move to the United States at the time of marriage? Answering these questions depends on the circumstances of the parties and the terms of the Mahr.

However, the customs of Islamic marriages clearly do not align easily with the requirements of enforcing premarital agreements in Wisconsin divorces.

The goal of this article is to provide Wisconsin courts and attorneys with an analytical framework when they need to analyze the enforceability of a Mahr in the future. The neutral principles of law approach provides a roadmap for determining whether a Mahr is enforceable according to Wisconsin's family law.

Rather than attempting to untangle a clash of customs and laws, courts and attorneys can focus on whether the enforcement of a Mahr is inequitable to one of the parties. In the final analysis, a novel issue can be resolved with familiar principles.

The author thanks Attys. Jennifer Van Kirk and Gregg Herman for their assistance with preparing this article.

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Endnotes

1 Nathan B. Oman, "How to Judge Shari'a Contracts: A Guide to Islamic Marriage Agreements in American Courts," 1 UTAH L. REV. 287, 301-307 (2011).
2 Oman at 302, 306.
3 Oman at 331.
4 *Obaidi v. Qayoum,* 226 P.3d 787, ¶3 (Wash. Ct. App. 2010).
5 *Jones v. Wolf,* 443 U.S. 595, 602-03, 99 S.Ct. 3020 (1979).
6 *See, e.g., Akileh v. Elchahal,* 666 So. 2d 246, 248 (Fla. Dist. Ct. App. 1996); *Obaidi,* 226 P.3d at ¶ 17.
7 *Odatalla v. Odatalla,* 810 A.2d 93, 98 (N.J. Super. Ct. Ch. Div. 2002).
8 *Shaheen v. Khan,* 142 So. 3d 257, 260-61 (La. Ct. App. 2014).
9 *Alulddin v. Alfartousi,* 532 P.3d 1172, at ¶¶ 3-4, (Ariz. Ct. App. 2023).
10 *Nouri v. Dadgar,* 226 A.3d 797, 805-07 (Md. Ct. Spec. App. 2020).
11 *Parbeen v. Bari,* 337 So. 3d 343, 344 (Fla. Dist. Ct. App. 2022).
12 Wis. Stat. § 767.56(1c)(h).
13 *Button v. Button,* 131 Wis. 2d 84, 99, 388 N.W.2d 546 (1986).

Where Did All the Published Cases Go?

By Colin A. Drayton

Each spring the Academy of Matrimonial Lawyers holds its annual seminar, which includes a panel discussion about published (and citable) appellate decisions. For several years now, the running joke has been that there are none. The lament is that family law caselaw development is dead and there is no "new" law.

Is this sentiment true? How did we get here? Can anything be done? Is the Court of Appeals underestimating practitioners' appetite for published and citable cases? These are the questions with which this article grapples.

Levels of Review

It is important to understand the different tiers of the appellate system and how each tier operates.

Any litigant has an automatic right for their matter to be reviewed by the Wisconsin Court of Appeals.[1] For this reason, much of our caselaw comes from the court of appeals. These include frequently cited cases such as *Metz v. Keener,* 215 Wis.2d 626 (Ct. App. 1997); *Raz v. Brown,* 213 Wis.2d 296, 305 (Ct. App. 1997); *Koepsell's Olde Popcorn Wagons, Inc. v. Koepsell's Festival Popcorn Wagons, Ltd.*, 2004 WI App 129; *Derr v. Derr,* 2005 WI App 63; *Wright v. Wright,* 2008 WI App. 21; and *Tierney v. Berger,* 2012 WI App. 91 – among countless others.

In contrast, a litigant wishing to have their matter reviewed by the Wisconsin Supreme Court must file a petition for review seeking the Court's permission to have their appeal heard.[2] The Court has specific requirements to be considered before it will grant review.[3] The Court grants a small fraction of petitions for review.[4] Petitions for review are exceedingly rare – and family matters before the Court are even rarer.

Because they are rare, everyone takes note when there is a decision by the Wisconsin Supreme Court. These decisions are seminal in shaping the law and are often cited. These includes many chestnut cases such as *Bahr v. Bahr,* 107 Wis.2d 72 (1982); *Button v. Button,* 131 Wis.2d 84 (1986); *LaRocque v. LaRocque,* 139 Wis.2d 23 (1987); *Hefty v. Hefty,* 172 Wis.2d 124 (1992); *Kenyon v. Kenyon,* 2004 WI 147; *Frisch v. Henrichs,* 2007 WI 102; and *May v. May,* 2012 WI 35 – among others.

Based on the foregoing reasons, the majority of appeals rarely go further than the four districts of the Court of Appeals. By extension, the four districts of the Court of Appeals should (and do) publish more cases than the Wisconsin Supreme Court. For example, the four districts of the Court of Appeals issue perhaps 100 decisions signed by three judges.[5] In contrast, the Wisconsin Supreme Court issued 45 opinions in civil cases during the 2021-22 term and 29 such opinions during the 2022-23 term and 13 such opinions during the 2023-24 term.[6]

Statistics

Mark Twain once quipped that facts are stubborn, but statistics are more pliable. Indeed, as will be shown, Twain was absolutely correct.

Like a gristmill, the appeal process begins with many cases filed that are winnowed down over time.[7]

Of the thousands of cases filed, only about half of those are civil cases. Keep in mind that family cases are a small subset of civil cases. A considerable number of civil cases are terminated short of actual briefing or decision by a variety of ways: including voluntary dismissal, dismissal, stipulation, summary disposition, or other means.[8]

Only a few hundred civil cases are briefed to the Court of Appeals. Perhaps about 100 of those civil cases result in a three-judge signed opinion – which may be cited as persuasive authority. Ultimately, only a few dozen civil cases are recommended for publication. Again, remember that family cases are a small subset of these civil numbers.

Further, only a small portion of these civil cases advance from the Court of Appeals to the Supreme Court. The few civil cases that do advance to the Supreme Court are guaranteed to be published once decided by the Court. In the last few terms, the Wisconsin Supreme Court issued 13 to 45 civil case decisions each term.

Chart 1 highlights the winnowing of grist in the metaphoric gristmill:

Chart 1: Court of Appeals Cases: 2001-23

Year	Total filed	Civil filed	Civil briefed	Per curium decisions*	Total filed	Total filed	Total filed
2001	3,421	1,862	932	576	453	284*	22%
2002	3,342	1,854	874	523	408	306*	26%
2003	3,453	1,902	717	447	366	247*	23%
2004	3,296	1,711	777	449	349	172	24%
2005	3,056	1,710	734	449	444	228	22%
2006	3,078	1,668	769	535	480	253	23%
2007	2,841	1,454	747	538	428	136	18%
2008	3,102	1,578	640	538	345	176*	17%
2009	3,067	1,629	572	502	332	169*	17%
2010	3,035	1,577	663	577	341	113	16%
2011	2,870	1,592	694	546	328	111.5**	14%
2012	2,689	1,516	672	528	317	86	13%
2013	2,758	1,438	727	544	318	98	14%
2014	2,849	1,575	591	550	287	72	12%
2015	2,560	1,315	550	506	210	61	10%
2016	2,426	1,201	479	471	183	49	11%
2017	2,440	1,203	480	478	187	51	9%
2018	2,377	1,117	445	388	189	42	8%
2019	2,318	977	402	375	167	35	8%
2020	2,059	1,006	431	320	157	44	12%
2021	2,156	1,042	382	386	160	49	13%
2022	2,116	1,161	383	270	109	34	9%
2023	2,360	1,351	382	378	100	41	9%

* Note: includes both civil and criminal cases
** Note: this author has no idea how there can be one-half a decision

This chart does not include summary dispositions – of which there were 801 such decisions from all four districts of the Court of Appeals in 2023. Further, there are other forms of disposition (voluntary dismissal, dismissal, stipulation, and "other") that are not included in this chart.

The data in Chart 1 does show a trend toward fewer appeals generally and fewer published decisions both generally and as a percentage of total civil and criminal cases. For example, in the first period (i.e., 2001-11) the average was 60% for publication of all types of cases, which dropped to 45% for the second period (i.e., 2012-23). Of note is that the rules changed in January 2009 to allow the citation of unpublished decisions as persuasive authority, which appears to have led to some reduction in the number of published cases.

Of the civil cases described above, only a small portion of these cases are family cases. Gregg Herman's compilation of family cases is helpful to understand the changes in family cases over the past decade. Interestingly, the number of published cases has remained fairly consistent during most years summarized in Chart 2, at about one to two per year. Only one year, in 2015, were there four published decisions. Also of note, in the earlier years, 2014-16, there were more unpublished but citable cases, which trailed off significantly in more recent years.

Chart 2: Family Cases by Any Appellate Court: 2014-23

Year	Total family cases – either citable or published	Not published – but citable – family decisions	Published family decisions
2014	11	9	2
2015	13	9	4
2016	10	9	1
2017	6	4	2
2018	7	5	2
2019	6	4	2
2020	5	5	0
2021	9	7	2
2022	7	5	2
2023	4	3	1
Total	**78**	**60**	**18**

What is interesting to note is that the 18 published cases tend to be somewhat outliers in terms of the family bar's reliance on those decisions compared to the decisions cited earlier in this article. For example, the cases published from 2014-23 included cases ranging from post-judgment contempt, post-judgment modification of custody, and issues surrounding the grandparent visitation statute.[9]

The more intriguing question is why there are so few published family cases in recent memory?

To answer that it is helpful to note that the above charts only take a snapshot of a fairly recent modern time period. In that recent period of 10-20 years, we can see a noticeable, though somewhat subtle, reduction in both unpublished citable cases and published cases – both civil generally but also family specifically.

What is missing, however, are statistics that illustrate a trend from say 1980 (shortly after most of the modern family law code came into being) to present. What would those statistics tell us? Because of the work of Carlton Stansbury, we do not have to guess. His tabulation in Chart 3 shows us the following:

Chart 3: Supreme Court and Court of Appeals Cases: 1980-2013[10]

Year	**Court of Appeals Unpublished**	**Wisconsin Supreme Court**	**Court of Appeals Published**	**Totals**
1980	NA	1	3	4
1981	NA	4	5	9
1982	NA	8	10	18
1983	NA	6	18	24
1984	NA	9	13	22
1985	NA	6	17	23
1986	NA	7	18	25
1987	NA	7	26	33
1988	NA	9	24	33
1989	NA	6	26	32

Year	Court of Appeals Unpublished	Wisconsin Supreme Court	Court of Appeals Published	Totals
1990	NA	4	26	30
1991	NA	8	19	27
1992	NA	4	23	27
1993	NA	1	34	35
1994	NA	2	21	23
1995	NA	3	16	19
1996	NA	3	16	19
1997	NA	1	18	19
1998	NA	2	12	14
1999	NA	1	14	15
2000	NA	2	12	14
2001	NA	1	10	11
2002	NA	0	14	14
2003	NA	5	8	13
2004	NA	5	12	17
2005	NA	1	19	20
2006	NA	1	11	12
2007	NA	2	9	11
2008	NA	1	4	5
2009	2	1	9	12
2010	10	0	6	16
2011	9	2	4	15
2012	8	1	4	13
2013	14	3	3	20

This longer-view shows us that that are shifts in the total number of published family law cases. There are declines for published Court of Appeals cases from the mid-1980s to present. There are declines in the total Court of Appeals and Wisconsin Supreme Court cases from the mid-1980s to present.

But perhaps more important than *quantitative data* is *qualitative value*. Less numbers and more meaning. This is because the "golden age" of family law development took place mostly throughout the 1980s and 1990s – tapering off in the early 2000s. Indeed, a January 2025 WJFL article, "The Five Family Law Cases that Everyone Should Know," largely anchors itself in this time period as well. It was during this time that many of the seminal cases were decided.

Indeed, the enforceability of prenuptial agreements were all decided during that era.[11] So too were many of the oft-uttered cases on maintenance.[12] Ditto for child support.[13] Ditto for property division.[14] Ditto for contempt powers.[15] So too for marital waste.[16]

Perhaps, as Francis Fukuyama once imagined, we are at the end of history and there is nothing more to see here?[17]

State of Things Now

The decline in published decisions is part of a broader trend that warrants consideration. It is surely due to various macro factors that are not changing anytime soon but is perhaps also due to a desire to conserve judicial resources (time) or out of a misplaced notion that family law is settled and there is nothing more to add.

With that in mind, here are some possible reasons why there are less published decisions or citable decisions (in comparison to the 1980s or 1990s):

Changes in practice. Several of the attorneys interviewed for this article indicated that in the past, say the 1990s, it was common to have 4-5 trials per year. These trials, they pointed out, are defined as a full day or more trial or evidentiary hearing consisting of witnesses and exhibits. These same lawyers in recent years estimate they have 0-1 trials per year.

They attribute this change to the explosion in the use of mediation (to break negotiation deadlock) and the retention of joint experts for appraisals (to reduce having dueling experts with esoteric disputes on the finer points of valuation). Further, the use of mediation not only resolves many cases entirely, but also for the cases that go to trial narrows the dispute down to one or two issues.

Accordingly, if most cases settle that resolves a huge swathe of potential appeals, and further the cases that do go to trial may not involve issues that economically warrant an expensive appeal. The time to appeal (with waiting perhaps a year for a Court of Appeals decision) weigh on this as well.

Costs of appeal. Those interviewed for this article also highlighted that the cost-consciousness of clients seems to have increased as well. Their perspective is that many of those aforementioned 4-5 trials per year resulted in an appeal by one or both parties. The cost of the appeal was outweighed by the significance of the issues being appealed.

One of those interviewed even hired an extra associate just to focus on appeals in the 1990s. Those litigants were able to afford both a trial and an appeal. Today, the costs of a divorce are significant and many parties bristle when told an appeal could cost perhaps a further $10,000-$20,000. Again, for the trials about 1-2 issues, the cost of an appeal may not be deemed a prudent investment.

Pro se parties. It is no surprise that the number of pro se, or self-represented, parties has increased. Further, sometimes a previously represented party will attempt an appeal without representation. Across the board this creates significant challenges for them to navigate the appellate process and increases the likelihood of that party either missing an appellate deadline or making a lackluster showing of their case on appeal. These cases are amongst the slew of cases that may be dismissed outright or subject to a summary disposition (thus making it to neither an unpublished but citable case, nor a published case).

Perception. This last part is undoubtedly the most important point of this article. One attorney opined that family law is "settled." Period. Full stop. So too have judges on various panels – and judges on the courts of appeals during various presentations – made suggestions of this sort that since family law is settled, the courts have nothing more to add.

Is Family Law Settled?

It is true that practitioners cite many of the cases mentioned in this article. It is also true that there are unanswered questions with which practitioners need clarity. For example, are past major cases still good law (when it seems like sometimes trial court judges gently chip away at the edges of those decisions)?

Take another example: How do we handle decision-making authority for parents who have disputes about vaccines (from routine flu shot vaccines to COVID vaccines)? With the transfer of wealth through various generations by trusts, is the law settled on the treatment of trust interests for child support and maintenance? Is there past precedent that can be reaffirmed or meaningfully distinguished through a slightly different fact pattern?

These are a few of the many questions that practitioners believe are not settled and which they could benefit from appellate guidance.

It is also true that many per curium decisions do an excellent job of applying settled law to a fact pattern different from previously published cases. Has any reader of this article ever found a good case to cite only to be foiled because it is a per curium case? An easy "fix" for the appeals court could be to make those decisions unpublished but citable (or to recommend them for publication) so that family law practitioners can cite to those decisions.

All of this is a way of saying that new published (but at least unpublished but citable) cases do add value to our practice – they reinforce and remind us of the state of the law and add guidance to the law by analyzing new fact patterns. Further, courts do themselves a disservice by publishing many per curium decisions that cannot be cited at all.

Let's Take Some Modest Steps

A dearth of new law leaves practitioners (and courts) somewhat adrift. What follows is argument and court decisions making the best of the void in which practitioners sometimes find themselves.

To be fair, to take a somewhat contrarian view, is the current balance of per curium decisions versus citable decisions versus published decisions actually a good thing?

There are merits in having a few qualitatively unique published cases that chart new ground, compared to a larger quantitative number of published decisions that only drown out the novel cases.

Further, it has been said that certain cases are not inherently worthy of publication because they involve bad fact patterns or have a result that is so obvious that it makes little sense to divert appellate resources to publish a decision that will be of little use or guidance to most practitioners.

Overall, there does appear to be a longer-term trend toward fewer citable family cases and few published family cases. The reasons why this has occurred are myriad.

Looking ahead, it is incumbent upon the family law bar and appellate courts to consider the implications of each appellate case and decision. The next appellate brief filed perhaps should contain a request for oral argument or a stronger statement advocating publication of the decision. Appellate courts could also consider making a per curium decision a citable decision.

Such modest steps would yield a modest uptick in cases that practitioners can rely on (and cite to) and help family law's continued development.

Author's note: I would like to thank Attys. Carlton D. Stansbury, Denis Millbrath, and Gregg Herman for their time, thoughts, and perspective relating to this article.

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Endnotes

1 Wis. Stat. § 808.03.
2 Wis. Stat. § 808.10.
3 Wis. Stat. § 809.62(1r).
4 Wisconsin Supreme Court, 2023-24 Annual Statistical Report, page 4 (noting 291 civil case petitions for review were filed in 2023-24, of which 7 were granted).
5 See *infra* table on Court of Appeals decisions from 2001-23.
6 2023-2024 Annual Statistical Report, p. 3.
7 *See, generally*, Wisconsin Court System, Court of Appeals Statistics, wicourts.gov/other/appeals/statistical.jsp.
8 *See* Wisconsin Court System, Court of Appeals Annual Report: 2023.
9 *See Becker v. Becker*, 2014 WI App. 76; *Glidewell v. Glidewell,* 2015 WI App. 64, *Michels v. Lyons*, 2019 WI 57.
10 Data derived from *Family Law Case Notes and Quotes*, Vols. 1-3, State Bar of Wisconsin PINNACLE®, 1980-2013.
11 *See, e.g., Button v. Button*, 131 Wis.2d 84 (1986); *Warren v. Warren,* 147 Wis.2d 704, 709 (Ct. App. 1988); *Greenwald v. Greenwald,* 154 Wis.2d 767 (Ct. App. 1990); *Gardner v. Gardner,* 190 Wis. 2d 216, 235, 527 N.W.2d 701 (Ct. App. 1994).
12 *See, e.g., LaRocque v. LaRocque,* 139 Wis.2d 23 (1987); *Hommel v. Hommel,* 162 Wis.2d 782 (1991); *Hefty v. Hefty,* 172 Wis.2d 124 (1992); *Johnson v. Johnson,* 225 Wis. 2d 513, 516, 593 N.W.2d 827 (Ct. App. 1999).
13 *Ondrasek v. Tennyson,* 158 Wis. 2d 690 (1990); Prosser v. Cook, 185 Wis.2d 745 (Ct. App. 1994); *Mary L.O. v. Tommy R.B.*, 199 Wis.2d 186 (1996); *Luciani v. Montemurro-Luciani,* 199 Wis.2d 280, 294 (1996).
14 *See, e.g., Holbrook v. Holbrook,* 103 Wis. 2d 327 (Ct. App. 1981) (this was allegedly once the Wisconsin case most-cited in other jurisdictions); *Metz v. Keener,* 215 Wis.2d 626, 637, 573 N.W.2d 865 (Ct. App. 1997).
15 *City of Wisconsin Dells v. Dells Fireworks, Inc.,* 197 Wis.2d 1 (Ct. App. 1995); *Benn v. Benn,* 230 Wis.2d 301, (Ct. App. 1999); *Frisch v. Henrichs,* 2007 WI 102.
16 *Derr v. Derr,* 2005 WI App 63.
17 Francis Fukuyama, *The End of History and the Last Man,* Free Press, 1992.

GAL and Represented Clients: A Response

By Gregory S. Mager

I am fortunate to have known Gregg Herman for around 30 years. Mr. Herman is quick to offer his opinions, which are often insightful and witty. In this instance, however, Mr. Herman relies on logical fallacies to respond to my article, "Why You Should Say 'No' When a Guardian ad Litem Asks to Communicate Directly with Your Client," published in the October 2024 *Wisconsin Journal of Family Law* (WJFL).

Mr. Herman responded to my article in "GAL and Represented Clients," published in the January 2025 WJFL.

Ignoring for now Mr. Herman's repeated use of *argumentum ad hominem* fallacies, perhaps the most significant logical fallacy Mr. Herman employs is a straw man fallacy to try to establish that the point of my original article was, in his words, to "win" a custody and placement case, a concept that he wishes to dispel.

However, neither this concept nor these words are found anywhere in my original article. The reason is obvious. They are nowhere in my original article because that was not the point of my original article.

What is a straw man fallacy?

> The "straw man" fallacy consists in refuting an unfairly weak, stupid, or ridiculous version of your opponent's idea (either his *conclusion* or his *argument*) instead of the more reasonable idea he actually holds. You first set up a "straw man," or scarecrow, then knock it down, since a straw man is easy to knock down.[1]

How does one employ a straw man fallacy?

> The straw man fallacy is committed when (a) A's summary of B's argument is not a fair representation but instead is a weakened, exaggerated, or distorted version of B's original argument; (b) A attacks only this unfairly summarized version of B's argument (instead of B's original argument); and (c) A concludes that B's *original argument* has been refuted. Not a fair fight.[2]

Employing a straw man fallacy to critique an argument demonstrates an inability or unwillingness (or both) to address the real argument head on.

Mr. Herman claims cost as a "practical" reason to avoid involving a party's attorney in meetings with a guardian ad litem (GAL). Mr. Herman's reference only to meetings ignores that, in today's world, meetings are but a small portion of the potential communications between a party and a GAL. Emails are ubiquitous, and a party's attorney must read emails exchanged between a client and a GAL. There is no cost savings to excluding the attorney from those communications.

Attorneys need to know what happens during a meeting between their clients and a GAL. That information comes to the attorney either by being present during the meeting or through post-meeting communications about the meeting that must occur among the client, attorney, and GAL. Mr. Herman's cost argument assumes that the cost for the attorney to attend a meeting with a GAL will be higher than the costs incurred for post-meeting communications. That might or might not be true in some instances, but that cannot be true in all instances.

Mr. Herman's argument also ignores the tangible and intangible costs of miscommunication and misunderstanding between a party and a GAL, which an attorney can assist in avoiding by being present. Parties are generally lay people who do not always understand the concepts being discussed by and among lawyers in a family law case. Having their attorney present to help parties understand those concepts as communication is occurring can help avoid miscommunication and misunderstandings about these concepts and why they are being raised and discussed. The point of having a GAL is to advocate for the best interests of children. Miscommunication and misunderstandings between a party and a GAL in no way serve or help determine the best interests of children.

Mr. Herman makes a series of assertions that are inconsistent with each other. He asserts that a court will most likely rely on a GAL's opinion because the GAL is neutral (which is wrong as a matter of law) and, although he does not write it, presumably because the court assumes that the GAL knows best. But then he contradicts himself when he asserts that determining what is best for children requires "expertise" about topics that attorneys are not taught in law school and are not inherent to the practice of law.

Obviously, in Wisconsin, GALs are attorneys, not experts in the areas of "child development, psychology, social work, or other disciplines." While GALs are required to attend continuing legal education pertinent to these subjects, no amount of continuing legal education is going to transform a GAL into an expert in these areas. Perhaps Mr. Herman really meant to argue that attorneys should not be GALs. Nonetheless, his argument is that GALs are unqualified to determine a child's best interests because they lack the expertise in the areas he identifies as necessary for determining a child's best interests; but courts treat them as experts by blindly adopting their recommendations to avoid trials – so attorneys should just ignore their duties to advocate for and advise their clients by allowing clients to have direct communications with GALs without the attorney's presence. I could not disagree more with these premises and conclusions.

Mr. Herman then argues that the presence of an attorney could hurt the client's chances of securing a "favorable" or "positive" recommendation from the GAL. Mr. Herman does not explain the difference he sees between a "favorable" or "positive" recommendation and "winning a custody and placement case." Mr. Herman then attempts to establish, without any evidence, a negative correlation between a client's preference for their advocate and advisor to participate in communications with a GAL and the client's ability to parent. He writes that an attorney will not be present during a client's parenting time. It is unclear what point Mr. Herman is trying to make. Neither the court nor the GAL will be present during a party's parenting time either.

Mr. Herman then attempts to establish that a client who prefers to have their attorney participate in communications with a GAL wants to fight or is too insecure to be an effective parent. This is very

confusing, because there is no connection whatsoever between a party's parenting ability or willingness to resolve a case and that party's desire to have their attorney participate in communications with a GAL.

Being involved in legal proceedings in family court is not the same as raising children. Wanting the assistance of an attorney in those proceedings does not reflect anything about a person's parenting skills. Nor is wanting the assistance of counsel a reflection of a desire to fight. It reflects one's desire to have an advocate and advisor who has the education, training, and skill to assist one navigate what, to a lay person, can be a very difficult, unusual, and confusing process.

Mr. Herman cites another article from the same volume of the WJFL in which my original article was published and makes the point that the other article does not mention money or winning a battle. Neither does my original article.

Mr. Herman believes that parties who want the benefit of the presence of their attorneys are treating the GAL as an opponent. He does not explain how or why that is true. He never explains why a GAL must communicate with a party outside the presence of the party's attorney or how doing so benefits children. Nor does Mr. Herman ever explain how or why an attorney being present when the client communicates with a GAL necessarily involves conflict. Perhaps his experience is different from mine, but in my experience, attorneys cannot effectively work with GALs by being absent or uninvolved, and that prevents rather than promotes settlement.

After having opined that the best result in a custody and placement case is a tie, Mr. Herman proclaims that he knows my approach to cases (he clearly does not) so he can establish that his approach is better because he does not believe in wins and losses in this area. But he does. As he wrote, for Mr. Herman, a win is what he describes as a tie.

To establish the supposed superiority of his approach to mine, however, Mr. Herman repeatedly ascribes things to me that do not appear in my original article. The reason he does so is clear.

The thoughtful exchange of ideas, even those that one might find uncomfortable or challenging, is valuable and needed for the benefit and improvement of the practice of family law, which improves results for children in family cases. Relying on logical fallacies to distort, suppress, and discourage such exchanges contributes nothing positive to such efforts and, in fact, harms such efforts.

About the Author

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Endnotes

1 Peter Kreeft, *Socratic Logic: A Logic Text Using Socratic Method, Platonic Questions, and Aristotelian Principles*, edition 3.1, St. Augustine Press, 2010, p. 79.

2 Paul Herrick, *Introduction to Logic,* Oxford Univ. Press 2013, p. 620.

A View from the Bench: Judge Patricia Baker

By Judge Thomas Walsh

Portage County Circuit Court Judge Patricia Baker shares some of her thoughts and experiences presiding over family court in Stevens Point.

About Judge Baker

- Undergraduate: University of Minnesota
- Law School: U.W.
- Prior practice: Prosecutor and private practice.
- Years on the bench: Over 4 years

Tell us about your education.

I attended the University of Minnesota for my undergrad and the U.W. Law School. So when Goldy plays Bucky in any variety of sports I am naturally very conflicted. My husband is a Badger and accuses me of not being a true Badger, as I was at UW-Madison only three years.

What did you do before law school?

Law school was truly a second career for me – I had an earlier interesting career in marketing. My last position in marketing was with Universal Studios in Florida, where I helped open the theme park. I could have stayed in that field, but a move home to Wisconsin caused me to rethink that work. I really felt a calling to do something that was more meaningful to more people.

At the time I attended law school, my husband and I were trying to start a family, but we were struggling. About a month after I started my first year, I learned that I was pregnant. My son was born in June right after the completion of my first year. I joke with my son now that if he wanted to attend law school, he could probably skip the first year as it would all come back to him (just like riding a bike)!

After he was born, I struggled with the decision to return to school and stayed home for a year. I had a chance encounter with a Catholic sister who unknowingly convinced me to return to law school. I was at Mass when this Sister spoke about her work at Milwaukee County Children's Court as a prosecutor. Her words resonated with me, and so I talked with her afterward. She put me in touch with Atty. Henry Plum, who convinced me to go back to school and seek work as a guardian ad litem (GAL). Long story short – that is exactly what I did, and I took dozens if not hundreds guardian ad litem cases before going to the bench.

How often have you been asked to review the family court commissioner's decisions?

Too often. I have known our family court commissioner for nearly 30 years. I have always respected her judgment on cases completely. I don't believe that I have overturned her decision more than once. I have found Wis. Stat. section 767.17(2) to be very helpful (with the 20-day rule), as requests for de novo reviews come in frequently outside of the time limits.

What does the phrase "regularly occurring, meaningful periods of placement with each parent and that maximizes the amount of time the child may spend with each parent, taking into account geographic separation and accommodations for different households" mean to you? What do you find that most parents who appear before you believe this phrase means?

I am finding that more and more parents are divorcing without attorneys and with that are seeking equal periods of placement. It seems that there is an inherent idea that fairness consists of equal periods of time. I can't recall the last time I saw the old standby "every other weekend and Wednesday night." I feel strongly that parents will figure things out if they communicate and talk with one another frequently after the final divorce. I make a point to tell every divorcing parent with children that this is the day their roles change from husband and wife to that of co-parents. I also remind them that they are their children's most important teachers and to always treat one another with respect. I have no idea if that little talk ever gets remembered but it feels like very important advice to me.

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

Usually these have already been filed with the family court commissioner, and she has already addressed custody and placement. I have not had to intervene too many times, but on those cases that I have, I find the parenting plans to be very helpful as to how a parent is thinking about placement and problem-solving in general.

At what age do you believe a child is capable of expressing preference about placement?

Each child is different, every child has unique needs. I rely heavily on the guardian ad litem for information and guidance. On occasion we have a GAL who just doesn't have much to say or hasn't met with the child in person and it infuriates me.

How do you go about getting a child's preference?

The guardian ad litem's recommendation.

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

In our county, we have several people who perform this service for us and it generally works very well.

How could the mediation process work better?

Having trained and experienced mediators meeting with people one-on-one per a court order seems to work very well for our county.

What can attorneys do to make the mediation process more productive?

Tell their clients to go with an open mind, and with a positive and respectful attitude. Encourage their clients to engage in the mediation process with good faith. When I used to do mediation, it seemed that many represented litigants would show up and say, "well, my attorney told me not to agree to anything." That is not helpful to anyone.

How useful is the opinion of an independent psychologist in a custody case?

If we had psychologists involved in our cases I would find it very useful, but north of Madison there are very few professionals providing this service any longer.

Do you allow a psychologist or other professional to express an ultimate fact conclusion with respect to custody and placement?

This has not come up for me – but if it did, I would listen carefully to someone with

appropriate credentials opine on custody and placement.

Do you think the historical preference in favor of the mother in placement cases exists anymore?

No.

Do you find vocational experts to be helpful in determining earning capacity?

Yes, this is an expert opinion that I feel is very helpful in determining maintenance and duration of maintenance. I appreciate these reports and testimony.

Have you ever sentenced anyone to jail for nonpayment of child support?

I have, but it is so frustrating. What good is sending them to jail for nonpayment if they are unemployable? Sometimes it is simply a wake-up call and necessary for those that just don't see a need to support their children.

Do you have a general formula for setting maintenance?

I look at Wis. Stat. section 767.56(1c) and each of the factors, starting with a general goal of 20 years. I have ordered maintenance for less long-term marriages, and I have ordered no maintenance for longer marriages. Every case is unique, and an argument can be made for or against most of the factors.

As a practical matter, exclusive of situations where there is a medical need, how many years must parties be married before maintenance is considered?

When they say their vows, it still says "till death do you part." So, I don't think there is a floor but one must be able to tie any decision to one of the factors in the statute.

If a maintenance candidate has never worked during the marriage, but gets a job during the divorce, will the maintenance award be affected?

As Professor Church taught us to say, "It depends. …" (U.W. law joke there).

Have you ever awarded maintenance to a man?

Yes.

When one spouse has put the other spouse through professional school, would you consider that as a factor in awarding maintenance?

Yes.

What problems do you see with the laws on maintenance at the present time?

I am not sure it's a problem, but it seems that younger couples getting divorced just don't see the necessity of maintenance as older couples do. They waive maintenance routinely, as there seems to be an expectation of being able to take care of oneself.

Do you ever award a contribution by one party to the attorney fees of the other?

Only in a contempt situation or an enforcement action pursuant to Wis. Stat. section 767.471.

What is the ratio of cases assigned to you that involve pro se parties?

Way too many. We have a shortage of family law attorneys. It seems that they are all retiring with very few attorneys coming up behind them. Anyone interested in practicing in family law please consider Portage County. It's a great place to live and work!

What do lawyers do that bothers you the most?

What bothers me the most is lawyers who do not attempt foster a positive relationship between the soon-to-be ex-spouses.

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

As stated above, I always tell divorcing parents this is the day that they go from being husband and wife to that of co-parents. If I can see that they have been cooperative and respectful with one another in reaching an agreement, I acknowledge that. I typically will encourage them to communicate with one another and that they need to keep a unified front in raising their children. I always remind them to remember that they are their children's first and most important teachers.

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

I went through my own divorce – I get what works and what doesn't. I am happy to talk with the attorneys in chambers about where the case is going and how best to not damage what relationship there is. I try very hard to empower attorneys to help their clients reach agreements with one another.

Tell us about your family.

My first marriage was 14 years, and the second one is still going strong at 12 years. I had an excellent relationship with my former spouse while my children were growing up even though I would not describe us as close friends. We both wanted our children to thrive so put difficult feelings aside for the benefit of our children. I have two sons, now 30 and 32 years of age.

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