AMERICAN ACADEMY OF MATRIMONIAL LAWYERS

OFFICERS & BOARD MEMBERS

Officers
President Alton Abramowitz
President-Elect Maria Cognetti
First Vice President James McLaren
Vice Presidents Joslin Davis
Sarah Eldrich
Madeline Marzano-Lesnevich
Susan Myres
John Slowiaczek
Peter Walzer
Treasurer Cary Mogerman
Secretary Elizabeth Lindsey
Immediate Past President Kenneth Altshuler
Past President Linda Lea Viken
Counsel Edward Snyder
Parliamentarian Lee Rosenberg

GOVERNORS AT LARGE:
Melissa Avery
Daniel Bray
Deborah Tate
Brent Cashatt
Nancy Kellman
David Levy

CHAPTER DELEGATES:
Alabama L. Stephen Wright, Jr.
Arizona Laura Belleau
California – Northern Chapter Ronald Granberg
California – Southern Chapter Harold Stanton
Colorado Denise Mills
Connecticut Thomas Parrino
Florida Thomas Sasser
Georgia Kurt Kegel
Illinois William Scott
Kansas Jerold Bressel
Kentucky Steven Kriegshaber
Maryland Susan Elgin
Massachusetts Anne Berger
Michigan Richard Roane
Minnesota Brian Sobol
Missouri Fred (Rick) Van Pelt
Mountain States David Dolowitz
New Jersey Dale Console
New York Christopher Mattingly
North Carolina Michael Stutman
Ohio J. Wade Harrison
Oregon Carl Murway
Pennsylvania Robert McCann
Mary Doherty
South Carolina J. Mark Taylor
Texas Brian Webb
Virginia Peter Buchbauer
Washington David Starks
Wisconsin Gregg Herman

iii
Journal of the American Academy of Matrimonial Lawyers

Volume 25 2013 Number 2

This issue is devoted to:

CHILDREN’S INTERESTS

CONTENTS

The American Academy of Matrimonial Lawyers Child Custody Evaluation Standards.......................... 251

Articles:

The AAML Child Custody Evaluation Standards: Bridging Two Worlds
by Sacha M. Coupet ............................................. 295

Best Interests of the Child – A Legislative Journey Still in Motion
by Erin Bajackson .................................................. 311

Deconstructing Custody Evaluation Reports
by David A. Martindale and Jonathon W. Gould........ 357

Evidentiary Opportunities: Applicability of the Hearsay Rules in Child Custody Proceedings
by Steven N. Peskind............................................. 375

Bombs and Babies: The Intercountry Adoption of Afghanistan’s and Iraq’s War Orphans
by Alice Richards................................................ 399

Emerging Issues in Relocation Cases
by Philip M. Stahl.................................................. 425
The Mental Health Privilege in Divorce and Custody Cases
by Ike Vanden Eykel and Emily Miskel .................. 453

Limiting the Prerogatives of Legal Parents: Judicial Skepticism of the American Law Institute’s Treatment of De Facto Parents
by Robin Fretwell Wilson ................................. 477

Bibliography:

Children’s Interests: An Annotated Bibliography, 2010-2012
by Nancy Levit ............................................. 533
Board of Editors

Executive Editor
Professor Mary Kay Kisthardt
University of Missouri-Kansas City
School of Law
5100 Rockhill Road
Kansas City, MO 64110-2499
(816) 235-2373
kisthardtm@umkc.edu

Editor in Chief
David Levy
Chicago, IL
dlevy@bergerschatz.com

Issue Editors
Barbara Ellen Handschu
New York, NY
Handschu@dobrishlaw.com
Steven Peskind
St. Charles, IL
Steven@peskindlaw.com

Associate Editor
Melvyn B. Frumkes
Miami, FL
mel@frumkes.com

Editorial Board
Anne Berger
Lynnfield, MA
aberger@bostonllp.com
Gary Debele
Minneapolis, MN
gary.debele@wdblsw.com
Mary Anne Decaria
Reno, NV
decaria@silverman-decaria.com
David S. Dolowitz
Salt Lake City, UT
sandy@dolowitzhunnicutt.com
Anne Marie Jackson
Washington, DC
amjackson@ainbanklaw.com

Editorial Associate
Professor Nancy Levit
University of Missouri-Kansas City
School of Law
levitn@umkc.edu

Editorial Assistants
Erin Bajackson
Travis McDonald
Najmeh Mahmoudjafari
Blake Sherer
John Sill
Amanda Tamayo
About This Issue

The American Academy of Matrimonial Lawyers is proud to present another effort by the Academy to serve the best interests of children. The Journal is proud to publish the Academy’s Child Custody Evaluation Standards. It is the hope of the Academy that these Standards will aid professionals in understanding the necessary training, skill and experience required in conducting custody evaluations. It is also hoped that courts will utilize these Standards in their selection of custody evaluators. The standards set by this committee are not intended to supersede the ethical precepts of the professions that are involved in conducting evaluations; rather they are an adjunct, intended to provide the court with a uniform means of assessing the quality of a custody evaluation submitted to the court.

In an accompanying piece entitled, The AAML Child Custody Evaluation Standards: Bridging Two Worlds, the Reporter for the Standards, Professor Sacha M. Coupet details the work of the Standards committee in developing a shared understanding of what constitutes “best practices” in the conduct of child custody evaluations, building on the body of guidelines and standards that have been developed within specific disciplinary domains. Professor Coupet, who serves as the Director of Research at the Civitas ChildLaw Center at the Loyola University School of Law in Chicago drew on her own dual disciplinary background in psychology and law to assist the members of the committee in facing the unique challenges of translating mental health practices into relevant, and most importantly, reliable material for legal practitioners. Professor Coupet received her PhD in Psychology from the University of Michigan. Upon graduation from the University of Pennsylvania Law School, Professor Coupet served as a law clerk to the Honorable Theodore A. McKee of the U.S. Court of Appeals for the Third Circuit in Philadelphia, and then as a law clerk to the Honorable Joseph A. Greenaway, Jr. of the U.S. District Court for the District of New Jersey. Her research focuses on policy and practice issues in child and family welfare, particularly kinship care. Her approach aims to incorporate empirical inquiry into legal discourse with a particular emphasis on the use of social science research in the development of law and policy.

Our Issue Editors are Steven Peskind of Chicago and Barbara Handschu of New York City. Mr. Peskind has written a multitude of articles that have appeared in various scholarly publications, including bar journals and law reviews. His first book, A Family Lawyer’s
EVIDENCE HANDBOOK, is scheduled to be published by the ABA Family Law Section Publishers. Ms. Handschu is a long time member of the Journal Editorial Board and previously served as the Editor in Chief. She is a past President of the Academy and is also a Founding Diplomate of the American College of Family Trial Lawyers. She served for many years as the Academy Representative to the Joint Editorial Board of the National Conference of Commissioners for Uniform State Laws.

In an article entitled, Best Interests of the Child – A Legislative Journey Still in Motion, Erin Bajackson addresses the most prevalent surges of legislation fueled by the evolution of the “best interests of the child” standard, which continue to inspire and divide legislatures today. Ms. Bajackson is a 2013 graduate of the UMKC School of Law where she serves as a staff member of the Journal.

In keeping with our examination of custody evaluations, the Journal is pleased to present the views of two prominent psychologists. In Deconstructing Custody Evaluation Reports, David A. Martindale and Jonathon W. Gould address the ways in which attorneys can analyze the work done by evaluators, particularly when that work has led to the development of opinions and recommendations with which a client is displeased. They suggest a method for examining reports prepared by custody evaluators, so that a decision to challenge or to accept a report can be made in an informed manner. Dr. Martindale who practices in St. Petersburg, FL also served as the Reporter for the Association of Family and Conciliation Courts’ Model Standards of Practice for Child Custody Evaluation and, with his co-author, Jonathan W. Gould, is the author of The Art and Science of Child Custody Evaluations. Dr. Gould, whose practice is also limited to forensic psychology, resides in Charlottesville, VA. In addition to the book he has written with Dr. Martindale, his other most recent book is Conducting Scientifically Crafted Child Custody Evaluations. He is also an associate editor of the Journal of Child Custody.

Our next article is entitled, Evidentiary Opportunities: Applicability of the Hearsay Rules in Child Custody Proceedings and is written by Steven N. Peskind. This article focuses on the fundamentals of the hearsay evidence rule for lawyers involved in custody litigation. The author believes that trial advocacy, like any other endeavor, benefits from a periodic review of the fundamentals and therefore provides a refresher on the hearsay evidence rules from a family law perspective. Mr. Peskind is the principle of the Peskind Law firm in St. Charles, IL and a member of the Editorial Board of the Journal. He is an elected member of the American Law Institute and the American Bar Foundation. He also serves on the faculty of the Family Law Trial Advocacy Institute.
Our next article focuses on children in a different land. In *Bombs and Babies: The Intercountry Adoption of Afghanistan’s and Iraq’s War Orphans*, Alice Richards recognizes the ever-increasing human rights crisis facing Afghanistan’s and Iraq’s war orphans and explores the potential intercountry adoption of these children. Ms. Richards is a recent graduate of The Dickinson School of Law of the Pennsylvania State University. During law school, Ms. Richards served as a Senior Editor of the *Penn State International Law Review* and was also selected to represent the law school at the National Trial Team competition. She is now an associate with Cognetti & Associates located in Camp Hill, Pennsylvania.

Another valuable view from the discipline of psychology is provided by Philip Stahl in his article entitled, *Emerging Issues in Relocation Cases*. The article includes a brief history of judicial approaches to relocation cases, legal considerations in relocation matters, psychological research relevant to relocation, and relevant research from international jurisdictions, including special issues in international cases. It concludes with a discussion of critical issues for various practitioners who are involved in a relocation matter. Dr. Stahl is a licensed psychologist living in Maricopa County, Arizona. Specializing in relocation, domestic violence, and high conflict matters, Dr. Stahl conducts child custody evaluations and serves as a consultant to attorneys and expert witness throughout North America. Dr. Stahl has written numerous articles on a range of issues associated with high conflict parents of divorce and is the author of *Conducting Child Custody Evaluations: From Basic to Complex Issues*. He has co-edited the book, *Relocation Issues in Child Custody Disputes* and is the author of *Parenting After Divorce, 2nd Edition*. He is also the co-author of the soon to be published book, *Work Product Review, Case Consultation, and Expert Testimony in Child Custody Litigation*.

Our next article is entitled, *The Mental Health Privilege in Divorce and Custody Cases* by Ike Vanden Eykel and Emily Miskel. This article covers the psychotherapist privilege in litigation, as well as other laws relating to the disclosure of mental health records. The topic is especially relevant to family law practitioners because the mental health of a party can often be an extremely important issue in a child custody case, and the records of that party’s mental health treatment may contain the best available information. However, federal law and the laws of every state recognize a psychotherapist privilege that can be asserted by a patient to prevent discovery of these records. Further, specialized federal laws regarding medical records, like HIPAA, govern the process for obtaining these records. This article summarizes these laws and the
various interests relating to mental health records, from policies favoring confidentiality to policies favoring release of the records to protect the best interests of a child. Mr. Vanden Eykel is a shareholder with KoonsFuller in Dallas, TX. He is a Fellow of both the American Academy of Matrimonial Lawyers and the International Academy of Matrimonial Lawyers and is a Diplomate in the American College of Family Trial Lawyers. He is the immediate Past President of the Dallas Bar Association and also serves on the board of directors of the State Bar of Texas. Mr. Vanden Eykel is the co-author of LONE STAR DIVORCE: THE NEW EDITION. Ms. Miskel is an associate with KoonsFuller and was voted the 2010-2011 Young Lawyer of the Year by the Collin County Young Lawyers Association. She is trained in alternative dispute resolution methods, including mediation, arbitration, and collaborative law and her articles on arbitration have been published in Industry Today and the Texas Journal of Oil, Gas & Energy Law.

Our final article is written by a prominent family law scholar, Robin Fretwell Wilson and is entitled, Limiting the Prerogatives of Legal Parents: Judicial Skepticism of the American Law Institute’s Treatment of De Facto Parents. In her article Professor Wilson argues that the ALI’s thinned-out test for parenthood overrides the judgments of legal parents without sufficient consideration for the risks to children. She criticizes The ALI Principles’ reliance on “caretaking chores” for assessing legally protected relationships. She surveys how courts in the United States have received the ALI’s recommendations about de facto parents, finding that they reject the approach twice as often as they accept it. Ultimately, the article concludes that when society takes love and parental judgments into account and not mere time in residence doing chores for a child, we can be more confident that the upside for children of conferring parental rights on live-in partners will be significant and that the inherent risks of such an approach will be greatly reduced. Professor Wilson teaches at the Washington and Lee University School of Law. A specialist in Family Law and Health Law, her research and teaching interests also include Insurance and Biomedical Ethics. Professor Wilson is the co-editor of four volumes: HEALTH LAW AND BIOETHICS: CASES IN CONTEXT, SAME-SEX MARRIAGE AND RELIGIOUS LIBERTY: EMERGING CONFLICTS and the author of RECONCEIVING THE FAMILY: CRITIQUE ON THE AMERICAN LAW INSTITUTE’S PRINCIPLES OF FAMILY LAW DISSOLUTION. She is also the co-author of HANDBOOK OF CHILDREN, CULTURE & VIOLENCE. Her articles have appeared in the Cornell Law Review, the Emory Law Journal, the North Carolina Law Review, and the San Diego Law Review, as well as in numerous peer-reviewed journals.
Our issue concludes with an excellent resource entitled, *Children’s Interests: An Annotated Bibliography, 2010-2012* complied by Professor Nancy Levit of the University of Missouri-Kansas City School of Law. Professor Levit is also the co-author of *The Happy Lawyer*.

**Mary Kay Kisthardt**  
**Executive Editor**  
**Kansas City, Missouri**