ADVANCED PROPERTY ISSUES
IN FAMILY LAW

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In Memoriam

Right before tax day, when we always thought of our tax expert Mel, we lost him. It was truly unexpected, because so many of us thought he would live forever. He never seemed to age. Mel had that same smile and indomitable spirit over all the many years we knew him.

Mel was the Associate Editor of the Journal and truly a most faithful Board member. Over the 25 years we had the pleasure of working with him, he rarely missed a meeting. It was not unusual for him to fly to our mid-year meeting in some beautiful, but remote location just for the day; just so he could be with us. We were always glad he did; because not only did he contribute to the business of publishing the Journal, he brought wit and humor to the gathering. Mel always had a good joke to tell or a comment to lighten the mood. One Board member recalls that he showed up at a meeting with a service dog. She worried instantly
that he might have developed some serious health problem and so she asked him (hoping it wasn’t something really awful) “What does the service dog do for you?” He instantly said, “Whatever I ask him to do!” That was Mel!

So many of us relied on Mel’s incredible knowledge of tax law. A former Editor-in-Chief reminded us of the significant contribution Mel made to legal practice with the publication of his outstanding book, Divorce Taxation (in its 9th printing at the time of his death). Another former Editor-in-Chief referred to the book as his “bible” on the topic. We also remember his outstanding CLE presentations. An additional Board member commented on Mel’s enthusiasm for his work and his willingness to share it with us. He noted that, “No matter how many times he covered the same material, he was energized and energetic in his presentation. He loved questions and both in preparation and presentation loved to share knowledge and understanding.”

We all remember Mel’s willingness to contribute to the Journal. Another former Board member recounts that “In addition to his wise ideas for articles to be written by others, every time he was asked to write a tax article, he immediately accepted and submitted his article within a few days.” This same member also echoed a consistently heard accolade; he was as an inspiration. He was truly that for so many of our Journal Board members, for the Fellows of the Academy and all who knew and loved him.

One of our current Board members summed it up best when he said, “The truly great family lawyers possess that rare combination of trial skills, intellectual acuity and curiosity; and humor about life and the law. Over his career, Mel was all of those things and much more to his colleagues and our profession.” As members of the Journal Board who sought his advice and his wisdom, he will be truly missed and is irreplaceable.

Rest in peace, Mel, our good friend and colleague.

With gratitude for Mel and on behalf of the Board of the Journal of the American Academy of Matrimonial Lawyers,

Mary Kay Kisthardt
Executive Editor
About This Issue

Family law cases involving complicated property issues have become more common. In this volume we focus on several issues that arise in such cases. We feature articles on the division of business interests, various pension plans and executive compensation as well as unique property such as art and antiques. We also include articles on high income cases with a focus on the division of property and the imputation of income for child support purposes. Finally, we include a piece on the many aspects of a matrimonial case that an attorney must consider when representing a celebrity.

Our Issue Editors are Anne Berger and Sandy Dolowitz. Ms. Berger is Of Counsel to the Godson Legal Group in Boston and has been a fellow of the American Academy of Matrimonial Lawyers since 1987 and a Fellow of the International Academy of Matrimonial Lawyers since 1997. She currently serves as the USA delegate to the International Academy's Board of Managers and as the Massachusetts Delegate to the American Academy's Board of Governors. She is an officer of the AAML Foundation, a past president of the Massachusetts Chapter of AAML and of the Fourth District Court Bar Association. She currently also serves as a Trustee of the International Commission on Children and Family Relationships Trust. She has written and lectured extensively for professional groups and co-authored the chapter on Retirement Assets for the MCLE Domestic Relations Practice Series. Mr. Dolowitz is a partner at Dolowitz Hunnicutt in Salt Lake City. He serves on the Board of Governors of the Academy and is a Trustee for the AAML Foundation. He has also been recognized and accepted as a Diplomat in the American College of Family Trial Lawyers. He organized and served as the first President of the Mountain States Chapter of the AAML and also served for many years as a member and chair of the Domestic Tax Committee. He is a Fellow in the International Academy of Matrimonial Lawyers. He has reported on Utah Law for the Law in the Fifty States for over 30 years. He has served as the President of the Utah Section of Family Law and been honored as Lawyer of the Year. He has lectured for the Bar on many occasions and published nearly a dozen articles.

Our first article is entitled Problems with Asset Allocation in Divorce Where One Spouse Owns a Business and is written by Stephen Bravo and Michael Mattson. The authors discuss the many difficulties that are presented when dealing with complex property such as closely held companies, contingent future payments, options, hedge or private
funds. They point out that settlement of these cases is complicated by multiple evaluations done over a period of time. They contend that these factors can result in settlements that do not truly reflect the economic value of such property. Finally, they offer advice for addressing this problem. Stephen J. Bravo is President and founder of Apogee Business Valuations located in Framingham, Massachusetts. His firm performs business appraisals for purposes such as arbitration, estate and gift taxes, equitable distribution of marital assets in divorce cases, mergers and acquisitions, stock for services compensation, stock options, buy-sell agreements, shareholder disputes, purchases and sales of businesses, damage awards, and critiquing the opinion of other financial experts. He has served on the editorial boards of Business Valuation Review, published by the American Society of Appraisers and Business Appraisal Practice, published by the Institute of Business Appraisers. He is currently on the Panel of Experts of Financial Valuation and Litigation Expert. Michael J. Mattson is with Apogee Business Valuations and specializes in business and intellectual property valuations and consulting. Mr. Mattson has over 20 years of professional business valuation experience. He has authored numerous articles and taught many business valuation courses.

Gregory K. Brown contributes to our knowledge of the division of unique assets in his piece entitled, *What the Matrimonial Lawyer Needs to Know about Non-ERISA Plans, Executive Compensation, and Other Related Plans.* These plans are treated differently for tax purposes and the matrimonial lawyer who is confronted by a non-ERISA plan needs to appreciate the law applicable to such plans and the planning opportunities available to use these plans to negotiate a meaningful property settlement. Mr. Brown is a partner at Holland & Knight LLP. Mr. Brown has 37 years of experience in Employee Benefits and Executive Compensation, including extensive work with ESOPs and ERISA. He has authored and co-authored numerous articles; is a frequent speaker on ESOPs and all areas of employee benefits and executive compensation; and has represented clients as an expert witness on behalf of clients’ ESOP/Employee Benefits Plans both regionally and nationally. He has been a member of IPEBLA since 1995 and a former Steering Committee member.

Our next article written by David N. Hofstein, Ellen Goldberg Weiner, Charles J. Meyer, and Scott J.G. Finger is an update of two earlier articles on the same topic written in 2001 and 2008. In the current article, *Equitable Distribution Involving Large Marital Estates,* the authors focus on jurisdictions that utilize equitable distribution, but do not presume equal division. They focus on the question of whether as a marital estate increases in size, the percentage distribution in favor of
the dependent spouse should increase or should the producers of extraordinary wealth receive the majority of the marital estate? Also, they discuss what factors should be considered in equitable distribution in high income cases. The authors provide a comprehensive listing and description of the relevant cases in the Appendix. The authors practice together as the firm of Hofstein Weiner & Meyer, P.C., in Philadelphia, Pennsylvania. The firm concentrates its practice exclusively on complex domestic relations matters. Mr. Hofstein is the National Continuing Legal Education Chair of the American Academy of Matrimonial Lawyers, immediate Past President of the Academy’s Pennsylvania Chapter and Treasurer of its National Foundation. He is a frequent lecturer and prolific author on domestic relations issues. He was named the 2013 Best Family Lawyer in Family Law in Philadelphia by Best Lawyers. Ellen Goldberg Weiner focuses her practice on appellate matters and legal writing. She has authored or co-authored numerous articles on family law issues and is a frequent speaker on issues regarding Domestic Relations. Charles J. Meyer is the Co-Chair of the National Test Committee of the American Academy of Matrimonial Lawyers, and the First Vice-President of the Pennsylvania Chapter. He will serve as the President of the Chapter in 2015-2016. Scott J.G. Finger is a frequent co-author of publications addressing cutting edge family law issues. He received the American Academy of Matrimonial Lawyers’ Eric D. Turner Award while at Temple University’s Beasley School of Law.

In Earning Capacity and Imputing Income for Child Support Calculations: A Survey of Law and Outline of Practice Tips, David Griffin explores the emergence of the courts’ use of earning capacity in the support analysis. He reviews historical case law, compares statutory and child support guidelines, the treatment of earning capacity in different jurisdictions and examines emerging trends and the courts’ current treatment of earning capacity. Finally, he offers some practice tips for the practitioner who may be confronted with prosecuting or defending an earning capacity case. Mr. Griffin is a partner in the Westport, Connecticut law firm of Rutkin, Oldham & Griffin, L.L.C. and a Fellow of the American Academy of Matrimonial Lawyers. He has written articles for the ABA’s Family Advocate and has taught continuing legal education seminars on the Hague Convention and the Uniform Child Custody Jurisdiction and Enforcement Act.

Peter M. Walzer and his co-authors, Anthony D. Storm and Autumn Miley-Boland take us into the celebrity world with their fascinating piece entitled, Wealth, Fame and Fortune: Navigating the Treacherous Waters of High Stakes Family Law Litigation. In it they discuss questions of personal jurisdiction, support jurisdiction, custody jurisdiction, property jurisdiction, and jurisdiction over marital status.
that challenge attorneys from the inception of these cases. They focus on the fact that these cases frequently present complex property valuations, unique support questions and other novel issues of which the attorney must be mindful. They discuss the importance of security and confidentiality and clients who are sometimes challenging. Peter M. Walzer is a founding partner of Walzer and Melcher LLP in Los Angeles, California. He currently serves as a vice-president of the Academy. Peter was named Fellow of the Year by the AAML in 2010 and he was named Person of the Year by the Southern California Chapter of the AAML in 2009. Peter has written numerous articles on issues of interest to lawyers who represent the rich and famous. Anthony D. Storm is an associate at Walzer & Melcher. He was vice-president of a prominent Los Angeles based security company, a certified clerk for the United States Department of Justice Offices of the United States Attorneys in the Eastern District of California, a judicial extern, and the recipient of the Witkin Award for academic excellence in the field of mental disability law. Autumn Miley-Boland is an attorney in California. She was a congressional intern and a judicial fellow with the Supreme Court of California. She was also an extern for the United States Department of Justice Offices of the United States Attorneys in the Central District of California and a judicial extern for the California Court of Appeal, Second District.

Our student Comment also focuses on unique property issues in *What Is the Bottom Line? Valuing Art, Antiques, and Other Personal Property in a Divorce*, by Najmeh Mahmoudjafari. In the article she discusses the challenges in ensuring that a proper valuation is done. She provides a general overview of what standards and methodology appraisers typically use in providing valuation of personal property and concludes with examples of fine art and decorative art to demonstrate specific factors that are considered when valuing items such as paintings and rugs.

Finally, our issue concludes with an extensive annotated bibliography on Advanced Property Issues in Family Law authored by Nancy Levit, Curators’ and Edward D. Ellison Professor of Law at the University of Missouri-Kansas City School of Law and Travis McDonald, a member of the Journal staff at UMKC.

Mary Kay Kisthardt
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