

About This Issue

This volume of the journal is devoted to real property issues in family law. We have two excellent articles on the topic as well as an extensive bibliography. The issue also contains submissions on a number of timely topics, including those related to the division of military pensions, The Uniform Cohabitants Economic Remedies Act and a review of safe haven legislation throughout the country. It also includes an excellent piece, of interest to many experienced family law attorneys, on the ethical risk of relying too much on that experience. The issue concludes with four well researched comments by our student editors.

Our issue editors are Christine Albano and Julie Auerbach. Christy Albano is an established Texas Board Certified Family law attorney and a graduate of UMKC School of Law. She has been published in several national publications and received numerous awards for her commitment to the community and the profession. Julie A. Auerbach is a partner at Astor Weiss Kaplan & Mandel, LLP in Philadelphia, Pennsylvania. Ms. Auerbach is a frequent contributor to various legal publications and has lectured extensively on family law matters. She co-chairs the Diversity and Inclusion Task force of the Pennsylvania Bar Association Family Law Section. As an active member of the AAML Legislation Committee, she has prepared a toolkit for use by AAML fellows in opposing 50/50 custody presumption legislation in state legislatures.

Our first article which is by Ms. Auerbach is entitled, *The Challenge of Dividing “Hybrid” Real Estate*. In it she first offers a brief lexicon of relevant terms and then discusses the approaches used by “dual property” states to divide the marital from the non-marital portions of the real estate. Part III describes the various equitable considerations used by all property states to divide the real estate between the spouses and Part IV compares the outcomes of the various approaches and considerations, noting the different results that occur. In the final section she suggests how these approaches and considerations may be used to advance a particular position, regardless of the law of any given state.

Our other article related to real property issues is written by Julie Cheslik and is entitled *Tenancy by the Entirety Property and Transfers to Trusts*. The article focuses on the ways that states treat very differently: the protections of non-debtor spouses in tenancy by the entireties states, and how protections can be lost when property is transferred to a trust. Julie M. Cheslik is an Associate Professor of Law at the Univer-

sity of Missouri-Kansas City School of Law, where she teaches Property, Land Use, and Estates and Trusts. Her book, MISSOURI LEGAL RESEARCH, with co-author Wanda Temm, is in its fourth edition. Professor Cheslik is the emeritus Editor-in-Chief of *The Urban Lawyer*, the national Journal of State and Local Government Law, published by the ABA Section of State and Local Government Law. In her capacity as the co-director of the emphasis in Urban, Land Use, and Environmental Law at UMKC School of Law, she advises law students interested in careers in land use, real estate development, and state and local government law.

Dean Emerita Barbara Glesner Fines, an expert on professional responsibility, contributes *The Ethical Risk of Experience*. She asserts that while practice may make perfect, in law practice experience and specialization can actually increase some types of errors – leading to an increased risk of malpractice claims, disciplinary complaints, or client dissatisfaction. The article initially examines the increased risks of malpractice and disciplinary complaints in family law. This section also analyzes the overall increased risk of sanction and discipline that attorneys face because of the unique nature of family law practice. She then examines the risks of errors that result from a reliance on experience and routine. She then highlights the concern that significant experience in law practice can present even challenges for wellbeing. Finally, the article provides some advice for attorneys to manage these risks. Barbara Glesner Fines is the Rubey M. Hulen Professor and Dean Emerita at the University of Missouri Kansas City School of Law. She received her Juris Doctorate from the University of Wisconsin at Madison and her Master of Law from Yale Law School. She teaches a variety of courses from classroom to clinic to community including Professional Responsibility, Family Violence, and Ethical Issues in Family Representation. She co-directs the law school's family law emphasis program, which includes multiple clinics, international and interdisciplinary coursework. She is the author of *ETHICAL ISSUES IN FAMILY REPRESENTATION* (2010) as well as numerous articles addressing issues at the intersection of professional responsibility and family law. She is a frequent presenter at national conferences on ethics and family law topics.

Next, we have *Military Pension Division: A Review of Cases Following Howell v. Howell* by Kristopher Hilscher. In it he points out that military divorce is a unique segment of family law and divorce in general. A state may treat military retired pay as community or marital property subject to division and divide the retired pay pursuant to the Uniformed Services Former Spouses' Protection Act. The guidance this article offers is valuable because dividing retired pay between those who served in the military and their spouses requires knowledge of

rules, federal law, state law, decisions of courts at various levels, and a familiarity with military service and military retirement. Mr. Hilscher regularly serves as a co-counsel on military divorce cases and military pension division, assisting attorneys nationwide in drafting military pension division orders and consulting on military divorce issues. He is the co-chair of the military committee of the ABA family law section, and an appointed member of the ABA Standing Committee on Legal Assistance for Military Personnel. Mr. Hilscher is a board-certified specialist in family law, practicing in Raleigh, NC. He regularly speaks at CLE presentations on military family law and is the author of several publications on the military family law.

In 2016, the Joint Editorial Boards on Uniform Family Law and Trusts and Estates Law of the Uniform Law Commission recommended the creation of a study committee to explore the feasibility and appropriateness of a drafting project on the economic rights of unmarried cohabitants. Laura Morgan offers a synopsis of the proposed uniform act in her article entitled, *The Uniform Cohabitants' Economic Remedies Act (2021)*. She explains that the Act offers a statutory framework for cohabitants' remedies that is consistent with the common law in most states but does more than provide a "restatement." By recognizing contractual and equitable claims arising from contributions to the cohabitants' relationship, the Act rejects the minority view that such claims will either resurrect common law marriage or destroy the institution of marriage. Ms. Morgan owns and operates Family Law Consulting, providing research and writing services to family law attorneys nationwide. She is a member of the Board of Editors for the Journal and can be reached at goddess@famlawconsult.com.

Our final article discusses a topic that has become more relevant since the Supreme Court's *Dobbs* decision. In *More Than Just a Baby in a Box: A Critical Analysis of Safe Haven Legislation to Balance the Rights of Surrendered Children and Biological Parents*, Liisa Speaker discusses the history of these laws and provides an explanation of the difference between the state enactments. She also proposes recommendations to balance the goal of protecting the lives of newborns with the rights of biological parents in the care, custody, and control of their children. These recommendations call for federal legislation providing minimum standards for all states, including allowing a surrender to occur at least up to 30 days from birth, allowing the infant to be surrendered directly to the hospital even before the mother and baby are discharged, and requiring DNA evidence if a state allows a parent to request custody after surrender. The article includes an appendix with an extensive look at current statistics regarding the surrender of such children. Ms. Speaker is an appellate attorney specializing in family law

appeals. She has worked on safe haven appeals in the State of Michigan, including arguing a safe haven appeal in the Michigan Supreme Court, and answering a petition for writ of certiorari in the U.S. Supreme Court. She is working with a group of Michigan attorneys to improve Michigan's Safe Delivery of Newborns Law. She is also participating in the National Safe Haven Alliance's Infant Abandonment Prevention Advisory Task Force, a multidisciplinary group that is drafting federal legislation to provide minimum standards for safe haven legislation. Ms Speaker is an officer of the State Bar of Michigan's Family Law Section and a fellow of the Academy. While Ms Speaker enjoys working on all kinds of family law appeals, she has found her passion in adoption and custody-related appeals. She authored a book in 2021 entitled, *KIDS CAUGHT IN THE MIDDLE: HOW FAMILIES ARE HARMED WHEN JUDGES DON'T FOLLOW THE LAW*.

We also include the following student authored Comments: *Access to Freedom: Can Technology Improve Access to Justice for Survivors of Domestic Abuse?* By Michelle Egbert; *The Deviant Woman v. The Struggling Mother: Differences in the Legal Treatment of Similarly Situated Women Struggling with Addiction* by Michaela Holcomb; *Revisiting Grandparent Rights Across the United States* by Melanie Mears; and *To Vax or Not to Vax: How the COVID-19 Pandemic Is Compelling a Reconsideration of Minors' Rights* by Jarom Petersen.

Our issue concludes with another excellent annotated bibliography by Associate Dean Allen Rostron, the William R. Jacques Constitutional Law Scholar, and Professor of Law at the University of Missouri-Kansas City School of Law.

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