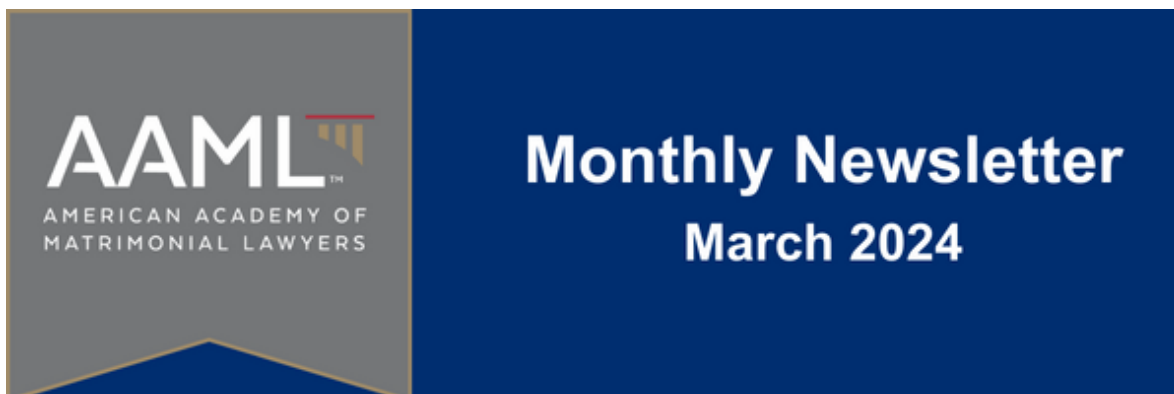


American Academy of Matrimonial Lawyers - March 2024

Monthly Newsletter

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PRESIDENT'S MESSAGE



J. Benjamin Stevens
AAML President

Those familiar with me know my deep appreciation for artist, musician and American poet, John Mellencamp – not just his music, which like fine wine has gotten better over the years, but also his general outlook on life. With this in mind, I share the following thoughts with you this month.

"It's what you do and not what you say. If you're not part of the future, then get out of the way."
- Mellencamp

I believe the NFLC can transform the Academy, increasing visibility and attracting qualified applicants. The goal is to showcase our excellent CLEs for attorneys who are not yet Fellows and provide networking with other professionals and our Executive Committee, amidst Nashville's rich social scene.

Please take a moment to spread the word about the NFLC before the **March 29 early bird deadline**. This can be an email to colleagues, social media post or quick mention to other family law attorneys. Your help driving large attendance is greatly appreciated as we look forward to having a large, vibrant crowd in Nashville.

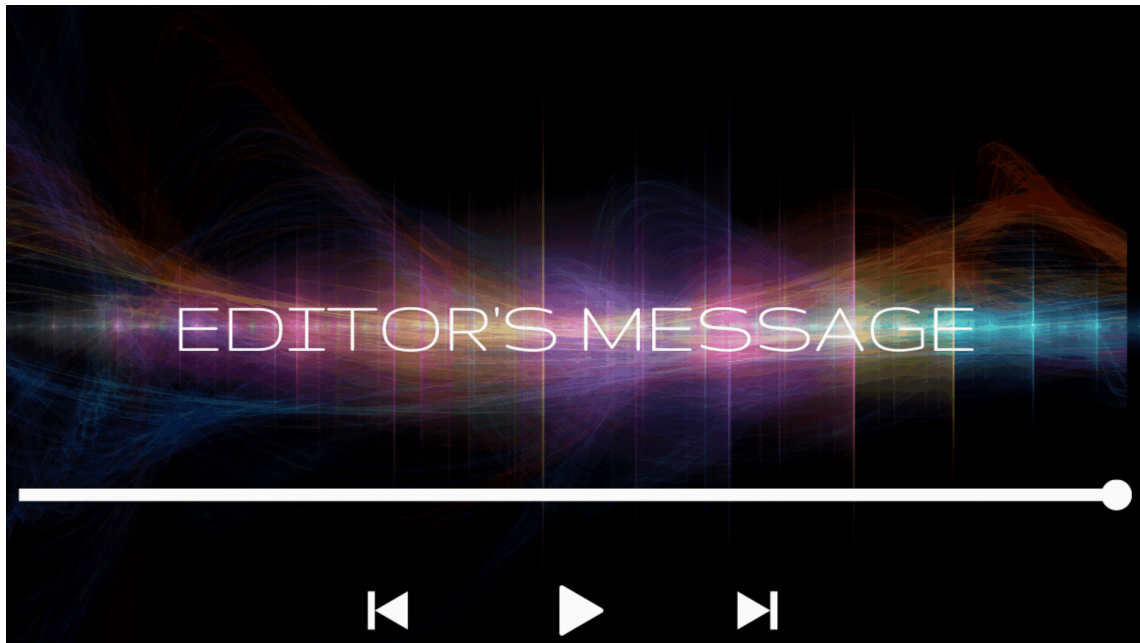
"Moments of time shared together. Moments of time between friends." - Mellencamp

could one want? How about insights on case preparation from [Linda Dunikoski](#) (prosecutor of Ahmaud Arbery's murderers) or learning how to use laughter to improve your mindset and better serve your clients from [Craig Shoemaker](#) (award-winning comedian, actor, writer, and speaker)? And of course, quality time with esteemed colleagues and friends.

As Spring's renewal blossoms across the country, I hope this season brings health, happiness, and prosperity to you, your loved ones and your practice. If you cannot join us in Mexico, please know that you will be missed. I look forward to seeing many of you in the coming months during my upcoming Chapter visits.

The Academy's inaugural [National Family Law Conference](#) (NFLC) takes place May 15 – 17 in Nashville, TN. Chairs Lisa Spencer, Elisha Roy and Chris Melcher have assembled an impressive slate of CLE sessions and keynotes from legal tech leader Jack Newton and our own Steven Peskind.

I look forward to seeing many at next week's [Midyear Meeting](#) at the Fairmont Mayakoba in beautiful Playa del Carmen, Mexico. Warm weather, sun, sand, pools and natural beauty – what more



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from Newsletter Editor
[Rod Firoozye](#)

THE EDITOR'S NOTE

March 2024

By [Rod Firoozye](#), AAML Newsletter Editor

As family lawyers, whether you prepare a prenuptial agreement or not, you always need to understand issues that could arise regarding their enforcement.

This month, we have several articles from fellow experts regarding the preparation, negotiation, and enforcement of prenuptial agreements.

Our guest article this month is from Michael Gouriet, an IAFL Fellow and partner at a small UK firm called Withers. I asked Michael if a prenuptial agreement prepared in the US could be enforced in a court in the UK, and he provided a brilliant analysis regarding this question.

I also asked former AAML President and celebrity lawyer, Peter M. Walzer, about the preparation of prenuptial agreements for counsel who may realize their clients may be

relocating. As always, Peter was generous enough to share his wisdom.

Additionally, for those of you planning on attending our [Mid-Year Meeting](#) in Playa del Carmen, we have some amazing classes set up. It will be a great time to enjoy the sun and pick up some great tips.

For the rest of us, we will continue to carry on ...

This Month's Videos & Webinars:

- Please take a look our [previous webinars](#) – New webinars coming soon!

This Month's Articles:

- [Peter M. Walzer Article](#): Prenups on the Go: Exploring Their Enforceability Across Borders.
- [Guest Article - Michael Gouriet, IAFL](#): Does a US pre-nuptial agreement hold water when it crosses the Atlantic to England?.
- [Tanya E. Prioste Article](#): Rethinking the Prenup Creation Process: The Collaborative Prenup.
- [Martin E. Friedlander](#): Prenuptial Agreements & Arbitration within Religious Context.
- [Steven N. Peskind Article](#): Time Travel: Prenups and Identity.
- [Mark E. Sullivan](#): Seven Myths about Military Pension Division
- [AAML Foundation Update](#).



UPCOMING NATIONAL EVENTS/MEETINGS

[2024 AAML Midyear Meeting](#)

[March 11-15, 2024 | Playa del Carmen, Mexico](#)

[AAML National Family Law Conference](#)

[May 16-18, 2024 | Nashville, Tennessee](#)

[AAML Arbitration Training Institute](#)

[June 6-7, 2024 | Chicago, IL](#)

[Click to View More Upcoming Events](#)





2024 AAML Midyear Meeting

Last Chance to Join Us!

It's last-minute, but still time to join us! Experience high-quality Continuing Legal Education (CLE), networking opportunities and leisure activities in the breathtaking setting of the Fairmont Mayakoba in Playa del Carmen, Mexico, during the 2024 AAML Midyear Meeting. Enjoy beachfront luxury, engage in beach activities, spa indulgence and participate in the golf tournament on the El Camaleón Mayakoba LIV Golf Course.

New for 2024! What's included for every registrant:

- Monday Evening Welcome Reception;
- full breakfasts Tuesday, Thursday and Friday;
- Opening Dinner/Entertainment Tuesday Evening;
- Beach Reception/Dinner Friday.
- For Seminar Attendees: CLE/CPE credit hours.

We hope to see you there!

[FIND OUT MORE AND REGISTER](#)



AAML National Family Law Conference

This inaugural AAML [National Family Law Conference](#) is a unique opportunity for non-Fellows to attend AAML-quality CLE and learn more about our organization and fast-track their practice. It is specifically planned to attract attorneys who are not yet Fellows but who should be good candidates to apply to the Academy now or in the future. This

Please [share the information](#) about this first-of-its-kind conference with your friends, colleagues, local and state bars, etc.

REGISTER



Save your seat for the [2024 AAML Arbitration Training Institute](#), June 6-7, 2024, in Chicago. Hurry - it's already filling up! With family law arbitration trending as an increasingly viable ADR process nationwide, and as the only professional training family law arbitration institute in the country, AAML offers its Fellows an opportunity to receive their AAML Arbitrator certification. **Seats are limited, so don't wait to register.**

REGISTER TODAY



**Prenups on the Go:
Exploring Their**

Why is this so? No one knows where they will divorce or die, and the law of the state where the

issues, such as spousal support.

Enforceability Across Borders

By [Peter M. Walzer](#)

Often, our premarital agreement clients have extraordinary wealth. They may own homes in other states and countries. We can never predict whether they will file for divorce while they are spending the winter at their Swiss chalet or die in their flat in London. It may happen on a boat in Monaco or their Tuscany villa. Can the prenup be enforced legally, and which law will be applicable?

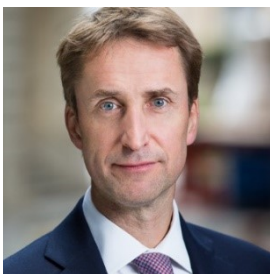
Our clients expect that their premarital agreement will be enforceable at both divorce and death. We cannot guarantee enforceability and must inform the client of that fact in our engagement letters.

marriage ends will be the controlling law.

We include a choice of law clause in our premarital agreements to select the state law that will control the agreement. We should carefully draft that clause to ensure that it applies to both the procedural law (the validity of the agreement) and the substantive law that applies to disputed issues. In theory, the substantive law will be the law of the agreement. Still, there are often issues of interpretation relating to the state's family laws. There is no guarantee that a Kansas judge will apply California law to an agreement. Even if they do, they may not apply it correctly. A judge may choose not to apply California law because of public policy

The state may be a "second look" state, allowing a court to consider whether a premarital agreement has become unconscionable or unfair. The state may have higher standards for validity, or it may not enforce limitations on spousal support. Whether a court enforces a choice of law clause may depend on how long they lived in the state where the agreement was signed and the parties' nexus with the new jurisdiction. Some lawyers add more protection by including a forum selection clause in their agreements, as in *DeLorean v. DeLorean* (1986) 211 N.J.Super. 432, 511 A.2d 1257.

[Read More.](#)



Does a US pre-nuptial agreement hold water when it crosses the Atlantic to England?

By [Michael Gouriet](#),
Partner, Withers LLP

In that case, the Supreme Court (which rarely features family law cases) held that *"the Court should give effect to a nuptial agreement that is entered into freely by each party with a full appreciation of its implications unless in the circumstances prevailing it would not be fair to hold the parties to their agreement."*

In a more recent case (*MN v AN* [2023] EWHC 613) Mr Justice Moor

(which remains on the horizon), they are not legally binding here in England and Wales. If our courts have jurisdiction in respect of the divorce, then the Judge is the final arbiter when it comes to determining the financial outcome between divorcing spouses. An agreement (whether reached before the marriage, during it, or after separation) cannot oust the court's jurisdiction to determine what is fair.

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In short, quite likely if it is properly entered into, effective in the state in which it was contracted, and the terms are fair.

The time when it was common parlance to suggest that "*pre-nups are not worth the paper they are written on*" has long gone. The English family courts have been taking pre- and post-nuptial agreements much more seriously since the 2010 landmark decision of *Radmacher (formerly Granatino) v Granatino* [2010] UKSC 42.

could not have been clearer of his view:

"These agreements are intended to give certainty. Those signing them need to know that the law in this country will provide that certainty. Litigants cannot expect to be released from the terms that they signed up to just because they don't now like what they agreed."

Although nuptial agreements now carry substantial weight and can be upheld, in the absence of legislation reform



Rethinking the Prenup Creation Process: The Collaborative Prenup

By [Tanya E. Prioste](#) | Santa Clara County | tprioste@lakinspears.com

(Originally printed in ACFLS Family Law Specialist - Winter 2024, NO. 1)

It's time to change the default model for creating a premarital agreement. For too long, premarital agreements have been created using an adversarial model, mirroring the traditional litigation model. While the beginning of a marriage and the end of a marriage are not the same, attorneys have approached the process similarly. This article argues that attorneys can and should do better for their clients who are

This is a kick to the lazy practice of "but that's the way we've always done it" and allows for a fresh take on negotiating and preparing premarital agreements.

What's the Traditional Model? The traditional model for creating a premarital agreement is similar to the traditional model of creating a divorce agreement, in which communication is through the attorneys and the attorneys are acting as mouth pieces for the parties. The party who primarily wants the agreement meets exclusively with his or her attorney. The communication about the prenup is by his or her attorney, acting as a proxy for his or her client. While the engaged parties surely talk about the prenup in passing,

process.

That is, even though both parties would be signing the agreement and living through its provisions, the purpose and goals of the agreement are created by and directed by the initiator of the process, communicated to and through the lawyers. The closest ally of each party becomes not their intended spouse but rather that party's own attorney.

[Read More.](#)

entering into a marital relationship, using their professional role to support the relationship and the parties' communication and at the same time providing legal support and advice to the client.

perhaps over their morning coffee, the conversation is likely not a thorough or knowledge-based conversation. Goal development is unilateral—based only on the initiator of the



Prenuptial Agreements and Arbitration within Religious Context

By [Martin E. Friedlander, Esq.](#)

As we are in February with Valentine's Day just passing, there are many engagements and weddings that will take place. It is an excellent opportunity for us to evaluate the importance of a Prenuptial Agreement prior to the marriage. In comparison to life insurance, the prenuptial ensures a more amicable break up if necessary, while at the same time, no one hopes to use it.

The correlation of arbitration in this matter is something that is new. I have worked in different aspects of arbitration and mediation, including those that deal with religious and cultural requirements for both a religious divorce and the

upbringing of the children, especially in the Orthodox Jewish community. I have drafted a prenuptial agreement that is, in fact, an arbitration agreement within those parameters.

This Prenuptial basis is for Orthodox religious disputes in that the parties designate a panel of arbitrators that they empower at the time of the prenuptial agreement. Since the parties are in a good relationship and no one is seeking an advantage over the other, the selection of arbitrators is generally the most prudent for the parties.

The prenuptial agreement not only acts as it states a prenuptial agreement and can be modified to fit the parties' needs at that time but also acts as an arbitration agreement. For those who require a religious divorce, that aspect will be subject to the arbitration panel. For

Orthodox Jews, the arbitration panel is generally a Rabbinical Court.

Obviously, the arbitration agreement incorporates issues that the parties wish to have resolved and acts on the subject matter that is permitted by law to be arbitrated and not against public policy on issues not arbitrated. The panel acts as a mediator.

[Read More.](#)



Time Travel: Prenups and Identity

By [Steven N. Peskind](#)

It's curious and amazing how two random unconnected events can converge to provide a new way of thinking. I have been involved in a case where the parties signed a prenup roughly 35 years ago. The consequences of enforcement involve millions of dollars. At the same time, I'm reading David Edmonds' mind-blowing biography of the late philosopher, Derek Parfit.

Among many other things, Parfit addressed the question of identity. Am I the same person I was when I was a child? And will I be the same person 20 years from now? Not really.

Parit theorized that identity isn't static; rather it is a continuum of psychological states. Our psychological state in our 20s isn't the same as in our 50s. Parit's thoughts on identity led me to question longstanding public policy favoring enforcement of premarital agreements. While I appreciate notions of freedom of contract in a commercial sense, contracts governing intimate relationships are different.

Typical mercantile contracts cover a single or a series of related transactions. Premarital agreements, on the other hand, may span a lifetime. And at least according to Parit, the parties

who execute the document today may be different persons at the time of enforcement. Parit even questioned whether a person who commits a crime today and doesn't get caught until many years later should suffer the same sentence as one caught red handed because a "different" person may have committed the crime years ago. Interesting stuff.

[Read More.](#)



Seven Myths about Military Pension Division

by [Mark E. Sullivan*](#)

Dividing military retired pay under the Uniformed Services Former Spouses' Protection Act (USFSPA), 10 U.S.C. §1408, can be a daunting task. Clients and lawyers are often confused and mystified by the rules, some of which appear to be contradictory or counter-intuitive. Here are some of the myths which might be

sample language for each clause, is located in the [Silent Partner](#) infoletter, *Guidance for Lawyers: Military Pension Division*.

Myth #2 – [Payments from the retired pay center](#)^[1] [begin as soon as the pension division order is processed and the servicemember has retired.](#)

Response: When the servicemember's pension is in *pay status* and the government is paying him or her each month, the

several meanings in the military context. Knowledge of each one is essential for attorneys who handle divorce cases.

[Read More.](#)

heard in the field of military pension division.

* * *

Myth #1 – There's no standard method for dividing military retired pay; you can word the clauses any way you want, as long as it's clear what the court is dividing.

Response: The easiest way to get a *rejection letter* from the retired pay center is to *wing it* when wording the pension division order. This is not a class in “creative writing.” There are four accepted methods of wording the clause for dividing a military pension. They are all explained and illustrated in the rules for “Former Spouse Payments from Retired Pay,” Ch. 29, Vol. 7B, Dep’t of Defense Fin. Mgt. Regulation; each one is found at Section 6.0, “Court Orders.” A more extensive explanation, with

retired pay center will take up to 90 days to process a court order dividing retired pay.^[2] The client who is a servicemember/retiree will want a clause which says that payments to the former spouse will begin when the retired pay

center starts to garnish the pension and transmit the money to the ex-spouse’s bank account. *Payments beginning as soon as the former spouse is entitled to a share of the pension* is how the ex-spouse would want the clause to read, regardless of when the government starts its electronic fund transfers to the ex-spouse.

* * *

Myth #3 – There's only ONE meaning for “disability” in terms of a military retiree.

Response: “Disability” has



AAML Foundation’s President Update

Harmony At Home's Children 1st Program is the only program in Monterey County, CA that supports families experiencing the trauma of separation or divorce with a special focus on the health and wellbeing of the children. A majority of the families served are severely disadvantaged economically or reside in communities that have been historically marginalized, so these

The program is proven to lessen the negative impacts of trauma. To achieve this, Children 1st provides co-parenting education and support delivered as individual and group sessions, both virtually and in the community. The organization is doing amazing work in communities and school districts that really need counseling for K-12 children who suffer trauma from parents divorcing, as well as a result of DV and related issues. They also have an anti-bullying

program in grades K-12 and a program for 14-post-secondary schools to support teen mothers and fathers.

[Read More.](#)

families receive services
free of charge.



Editor:
[Rod Firoozye](#)



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