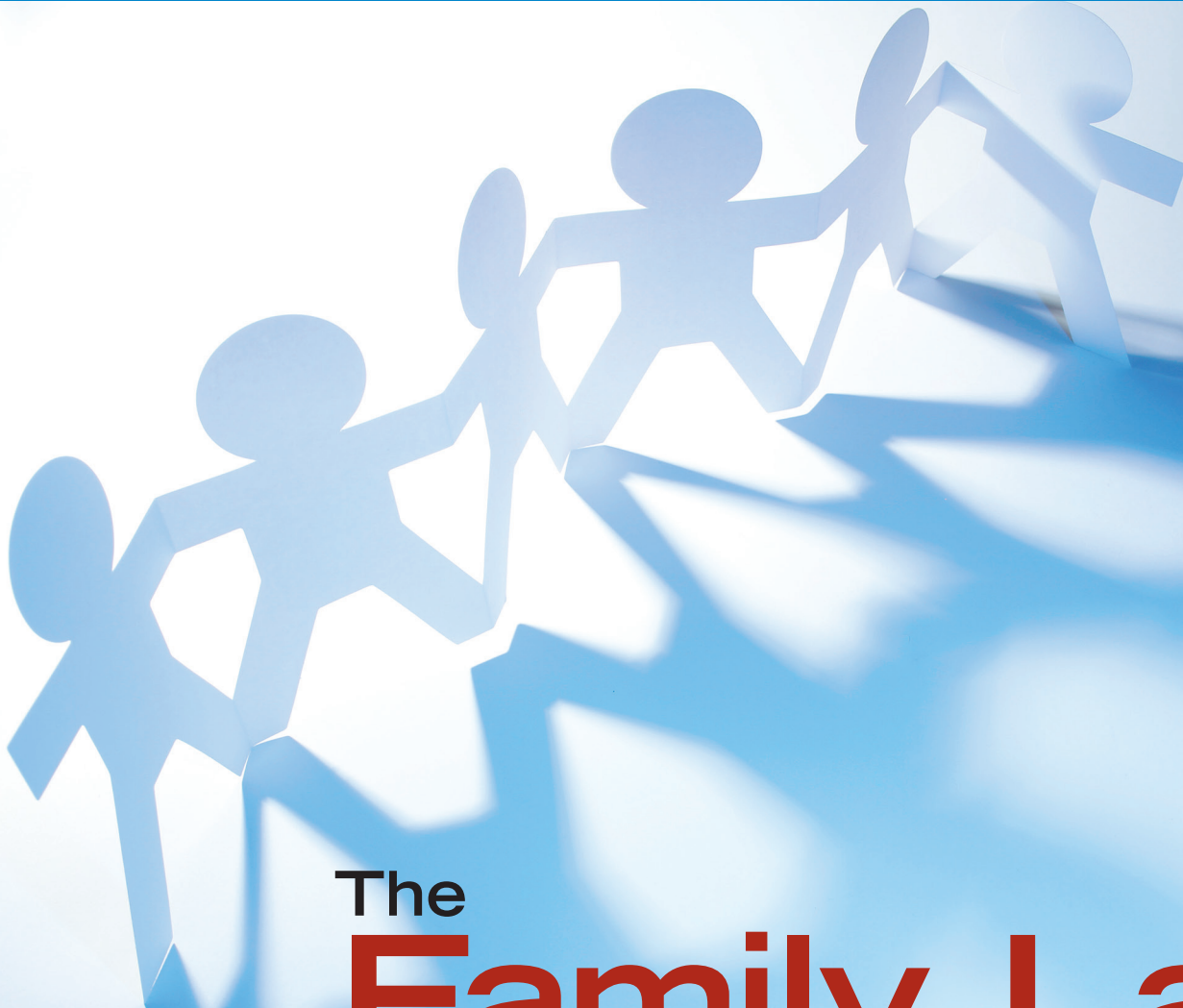


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# The Bencher®

THE MAGAZINE OF THE AMERICAN INNS OF COURT®



## The **Family Law** Issue

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## FROM THE PRESIDENT

The Honorable William C. Koch, Jr.

I live in Nashville, Tennessee—Music City U.S.A. We have a competent and thriving family practice bar here. We are also home to songwriters and performers who, for many decades, have “celebrated” family law in song. Two of my traditional favorites are Kitty Wells’ 1962 song “Will Your Lawyer Talk To God?” and Jerry Reed’s 1982 hit “She Got the Goldmine (I Got the Shaft).” More recently, one of my law school’s graduates, Charlie Sizemore, performed a 2011 bluegrass chart topper called “No Lawyers in Heaven.”

These songs and others reflect the emotional strain triggered when families fall apart and are faced with disclosure of the most intimate aspects of their lives. Adults and children alike are at their lowest point. These songs are not about happy endings.

Attorneys practicing family law serve in a wide variety of roles. The shift toward cooperation and diminished adversarial conflict emphasizes the roles of counselor, mediator, and problem solver. Everything attorneys do affects the welfare of their clients and other family members. Great personal satisfaction can be found in helping the parties get on with their lives and by helping parents build a constructive working relationship for the sake of the children.

At the same time, family law can be an emotional battle zone. Divorce cases can involve the most emotional and sometimes difficult clients. When emotions run high, clients may blame their attorney or opposing counsel for their own problems or may expect their attorney to engage in conduct inconsistent with ethical and professional standards. Clients with unreasonable expectations may resort to filing disciplinary complaints or professional negligence actions when the outcome is not to their liking. As a result, attorneys practicing family law now make up one of the largest groups subject to disciplinary complaints and malpractice suits.

Attorneys practicing family law also face a quagmire of conflicting ethical demands. The Rules of Professional Conduct require lawyers in an adversarial system to be zealous advocates on behalf of their clients. This adversary system has come into question because of its often negative effects on children, families, and the public’s confidence in the judicial system. In many jurisdictions today, judges hearing family law cases will not countenance the type of adversarial advocacy commonplace in other legal proceedings.

The Bounds of Advocacy Goals for Family Lawyers adopted by the American Academy of Matrimonial Lawyers and many courts instruct family law practitioners to temper their zealous advocacy with higher standards of candor, fairness, and good faith and fair dealing with opposing counsel. Recognizing that lawyers often shape the behavior of their clients, many courts hold attorneys strictly responsible for policing their clients’ conduct. Courts in family law cases are also imposing higher standards regarding evidence gathering and communications with opposing counsel and the court.

Neil Sedaka told us that “Breaking Up Is Hard To Do.” While that is certainly the case for adults and children involved in a family law proceeding, when speaking of attorneys practicing family law, it might more accurate to say that “breaking up is hard to do right.” What can lawyers do to manage the stress involved in handling family law cases, to maintain the balance between their personal and professional lives, and to build and maintain competence in their chosen field? Join an existing American Inn of Court focused on family law or start a new family law Inn of Court.

The Family Law Inn Alliance currently includes 23 Inns of Court in 12 states. The members of these Inns are attorneys and judges committed to promoting excellence, civility, and professionalism in the practice of family law. Each Inn provides opportunities for continuing education in the substantive and procedural competencies required to practice family law effectively and for finding experienced and well-respected family lawyers willing to serve as professional mentors.

This issue of *The Bench* explores the importance, the challenges, and the rewards of practicing family law. Of all the services attorneys provide, few are more important than helping families to reorganize following a separation or divorce and to recognize that the difficult and sometimes painful procedure is a pathway to a new life. I hope you will find helpful information, inspiration, and confirmation in this issue. ♦

William C. Koch, Jr.



Law Librarian Holly Lakatos and long-time Schwartz-Levi Inn member, Presiding Justice Vance Raye, both from the California Court of Appeal, Third Appellate District, in front of the photograph of late Presiding Justice Annette Abbott Adams, one of the women trailblazers featured in the April talk.

### Milton L. Schwartz-David F. Levi American Inn of Court

In April 2018, four Northern California Inns came together for an evening mixer at the historic California Court of Appeal, Third Appellate District, in Sacramento, to hear a lively talk from the court’s librarian, Holly Lakatos, about women trailblazers who shaped the region. From suffragist lawyers to pioneering judges, these women navigated a male-dominated world, overcoming legal and cultural barriers simply to work in their chosen profession. These luminaries include the first woman to speak about women’s rights in a California public forum, Laura deForce Gordon, whose 1868 speech entitled, “The Elective Franchise: Who Shall Vote,” jumpstarted the state’s suffrage movement. Two years later, she testified in front of the California Legislature, calling for lawmakers to create a “true democracy” where “white and black, red and yellow, of both sexes, can exercise their civil rights.” They also include the first African American woman lawyer in California, Virginia Stephens Coker, who passed the bar examination in 1929 and spent 27 years as a distinguished lawyer in public service for the State Office of Legislative Counsel in Sacramento. She compiled all the state’s codes, indexed all bills pending before the legislature, and rendered legal opinions about those bills. As Lakatos recounted these and other stories about influential female figures in California’s history, more than 70 lawyers, judges, and law students from the Schwartz/Levi Inn in Davis, California; the Anthony M. Kennedy Inn in Sacramento, California; the Consuelo M. Callahan Inn in Stockton, California; and the Wray Ladine Inn in Modesto, California were inspired to make the most of their role in the legal profession. ♦

### Ewing T. Kerr American Inn of Court

The Ewing T. Kerr American Inn of Court in Cheyenne, Wyoming, is offering mediation to parties who are seeking a divorce in the First Judicial District Court in Cheyenne. Because of the volume of divorce cases, the court requires parties to mediate their divorce before they go to trial. Many parties can’t afford a lawyer or mediator, so the Inn set out to provide this valuable service. Mediation is provided at no cost to parties who are self-represented due to limited finances and to parties represented by a lawyer who cannot afford a mediator. Around 30 Inn members have volunteered for the project, many of whom are experienced in divorce mediation. Less-experienced attorneys are paired with more experienced attorneys, allowing for mentorship and training within the Inn. The Inn has already provided two training sessions for volunteers and plans to hold additional training sessions. ♦

### IN THIS ISSUE...

#### Feature Articles

- **William C. Koch, Jr. Welcomed as President of the American Inns of Court**  
By Jennifer J. Salopek ..... 18
- **Practicing Professionalism Does Not Conflict With Zealous Advocacy**  
By Victoria E. Paone, Esquire ..... 20
- **Tax Cuts and Jobs Act: The New Federal Divorce Law**  
By Regina Snow Mandl, Esquire ..... 22
- **The American Inns of Court and the Collaborative Process: Shared Ideals of Professionalism and Civility**  
By Joryn Jenkins, Esquire ..... 25
- **Helping Families in Challenging Situations Find Healthy Solutions**  
By Theresa E. Viera, Esquire ..... 28
- **Why Family Law Inns are Special**  
By Judge Keven M.P. O’Grady ..... 31

#### Columns

- **Ethics: Federal Court Finds Representative Plaintiff Has Conflict of Interest**  
By Francis G.X. Pileggi, Esquire ..... 19
- **Technology: Can You Believe It, People Still Text While Driving? Do You Do It?**  
By Richard K. Herrmann, Esquire ..... 34

#### Regular Features

- *Inn the News* ..... 3
- *Program Spotlight* ..... 35

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## Benjamin Franklin American Inn of Court

**I**ntellectual property attorneys in the Greater Philadelphia area don't throw stones, they throw axes.

In May, the Benjamin Franklin American Inn of Court in Philadelphia, Pennsylvania for intellectual property attorneys capped its 2017–2018 program year with a social event at Urban Axes, a new venue for competitive ax throwing. Inn members enjoyed a round-robin tournament much like a game of darts, but using thrown axes.

Throughout the Inn's program year, substantive programs have covered a variety of intellectual property-focused topics in a theme of "intersections" with other areas of law.

The areas of law "intersections" with intellectual property law included bankruptcy, antitrust, cannabis law, and international law. Finally, the Inn's annual ethics meeting featured presentations by the U.S. Patent and Trademark Office's Office of Enrollment and Discipline Director, William R. Covey, and representatives from Philadelphia Volunteer Lawyers for the Arts, who emphasized



*Franklin Inn members who participated in the ax throwing event included, from left to right, Jessica Watkins, Esq.; Matthew Herd, Esq.; Peter Kraybill, Esq.; Brad Brown; Stephen Stanton, Esq.; Stewart Wiener, Esq.; and Michelle Streifthau-Livizos.*

how intellectual property attorneys can carry out pro bono service and maintain professional ethics.

Inn members finished the program year in proverbial fashion, by burying their hatchets—in targets on the wall. ♦

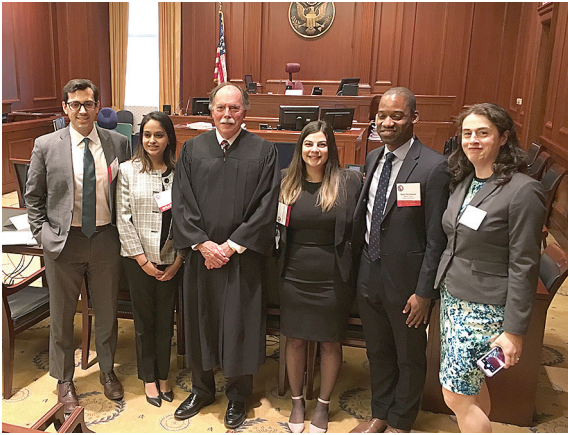
## Judge William Wieland American Inn of Court

**T**he Judge William Wieland American Inn of Court in Orlando, Florida is pleased to announce that Judge Neal P. Pitts was awarded the Frierson-Colling Professionalism Award by the Workers Compensation Section of the Florida Bar at its annual Workers' Compensation Forum on April 13, 2018. The award, named for two of the most influential members of the Florida Workers Compensation Bar, is given annually to an attorney who has exhibited professionalism, ethics, and service to the workers' compensation community over his or her career. Pitts is the first Judge of Compensation Claims to receive this award. Pitts, a Judge of Compensation Claims in Jacksonville and Orlando since 2008, is a founding member of the Wieland Inn, where he is the immediate past president, as well as the E. Robert Williams Inn in Jacksonville. He was also instrumental in the founding of the Tampa Bay Workers' Compensation and Disability



*At the awards presentation, from left to right, are Judge Margaret Kerr; Judge Ralph Humphries, president, Williams Inn; Judge Margaret Sojourner, Wieland Inn; Judge Neal P. Pitts, Judge Jeff Jacobs, Chief Judge David Langham, Pensacola Inn; and Judge Greg Johnsen.*

Inn. Pitts has exhibited the highest standards of ethics, professionalism, and service to the workers' compensation community for more than 30 years. The three workers' compensation Inns in Florida likely would not exist today if not for the efforts of Pitts. ♦



Presenters at the Conner Inn's April program included, from left to right, Matthew Wilk, Siri Rao, Judge Richard Linn, Venus Allahyarzadeh, Ryan Parchment, and Anne Li.

### Honorable William C. Conner American Inn of Court

The Honorable William C. Conner American Inn of Court in New York City, held a jury deliberation program with high school jurors on April 11, 2018. The program involved a mock closing argument about trade secret law related issues from the recently settled *Waymo v. Uber* case before a group of high school students selected by the Inner-City Scholarship Fund. The invited students arrived early and received a tour of the courthouse and listened to career oriented remarks made by our judicial members, courthouse central staff, and the U.S. Marshals. The students served as jurors in the courtroom, heard closing arguments, and deliberated in the jury room. Their deliberation was broadcast into the courtroom for the benefit of the presenters and participants. Following the deliberation and delivery of the verdict, the students were asked about their impressions of the case and the process. The program concluded with a reception. ♦

### Gus J. Solomon American Inn of Court

The members of the Gus J. Solomon Inn of Court in Portland, Oregon, enjoyed another year of entertaining and educational programs. This year's theme was "I Fought the Law and the Law Won—A Year of Music and the Law." Presentations varied widely, from subjects including Impeachment, private prisons, DNA evidence, gender discrimination, and presidential pardons, among others. The common theme among them was that they had to be linked to some form of music. The result: Hillary Clinton rapping to a rewrite of "I'm Not Giving Away my Shot" (from the musical "Hamilton"); Richard Simmons leading his fellow presenters in some dancing to the oldies; and, a federal magistrate "arresting" a pupillage group member for marijuana intoxication.

Inn members also demonstrated their commitment to public service by picking up litter along Portland's waterfront and the surrounding area. They also removed invasive plants and other debris.

Another highlight of the year included, Francis J. Troy III, Inn president, and Sonia Montalbano Inn president-elect, attending the American Inns of Court Celebration of Excellence at the Supreme Court of the United States in Washington D.C. last fall. ♦

### Q. Todd Dickinson American Inn of Court

The Q. Todd Dickinson American Inn of Court in Pittsburgh, Pennsylvania was pleased to welcome Professor J.B. Ruhl of Vanderbilt University Law School to present "The Ever-Changing World of Legal Technology and Resources and the Ethical/Practical Implications" as the concluding speaker for its programming year on June 11, 2018. Ruhl not only delved in cutting-edge technology specifically of interest to intellectual property attorneys, but also covered questions such as when artificial intelligence crosses the automa-

tion line such that the AI is practicing law. The group explored duties to clients, how to level the playing field to eliminate barriers of entry into litigation and many unanswered questions about how the use of technology can impact determinations of liability. Following the discussion, Ruhl joined Inn members for dinner. It was a great opportunity to discuss not only the use of technology in the members respective practices, but also how lawyers can avoid pitfalls relating to ethical obligations when implementing new technology into their practices. ♦

## Gerald T. Bennett Cooperative Learning and James C. Adkins, Jr. American Inns of Court

The Gerald T. Bennett Cooperative Learning American Inn of Court and the James C. Adkins, Jr. American Inn of Court in Gainesville, Florida, along with the Eighth Judicial Circuit Bar Association, sponsored the fourth annual “The Amaze-Inn Race”. Modeled after the popular television show, teams of attorneys, law students, and members of the judiciary “raced” around downtown Gainesville competing in a series of challenges.

The challenges included speed legal research at the public library, a CrossFit-style physical competition, a food challenge to identify flavors of gelato, and singing at a historic opera house among other mental and physical obstacles. Many of the groups created custom costumes for the event. The event raised funds and toys for underprivileged children in Alachua County and



Members of the Bennett Inn who competed in “The Amaze-Inn Race” included, from left to right, Adam Lee, Alison Franklin, Katherine Mockler, Mikaela Nordman, and Peg O’Connor.

concluded with a social where team members shared their experiences. ♦

## Lloyd Lochridge American Inn of Court

The members of the Lloyd Lochridge Inn of Court in Austin, Texas have long supported Volunteer Legal Services of Central Texas (VLS), an organization that connects indigent clients with volunteer attorneys to assist on civil and family matters. VLS also holds several walk-in legal clinics every month at local schools so that people can speak with a volunteer attorney about their legal matters. Clients seek attorney advice on a wide range of issues, from debt, landlord-tenant, and contract disputes, to divorce and child-custody matters. For many years, Lochridge Inn members have volunteered at VLS clinics at least once each Inn year and it’s become a tradition for pupillage teams to attend together.

Based upon members’ requests for additional opportunities for socializing and mentoring, the Lochridge Inn expanded its partnership with VLS in 2017 and 2018 and now has a standing date at the Martin Middle School VLS clinic on the last Monday of every month—in addition to the pupillage teams attending on other nights. Attendance is optional, but the opportunity for mentoring and community service—plus refreshments at U.S. Magistrate Judge Andy Austin’s nearby house afterwards—has been a strong draw each month.

The arrangement has provided benefits all around. Rather than being grouped with their usual teams, members from across different teams all participate together. First-timers and more junior lawyers often partner up with a more seasoned attorney to observe a round or two of client intake and advice-giving. The clinic nights have been particularly popular with Lochridge’s law-student members, with one or two consistently joining a rotating group of Masters, Barristers, and Associates each month. Judge Austin notes, it’s too rare that “young lawyers have the chance to work side-by-side with experienced attorneys to provide hands-on advice to live clients with real problems. And it’s a great opportunity to make that happen in an Inn setting.”

VLS and its clients have seen the benefits as well. Most Lochridge members have doubled their commitment to service this year, while some have become regular clinic attendees. This translates to more volunteer hours dedicated to solving more VLS client problems. “VLS deeply appreciates the gift of time and expertise Lochridge Inn members put into action at our more than 100 legal advice clinics in Austin,” said Priscilla Cortez, VLS’s executive director. “We simply could not improve access to justice without their partnership.” ♦

## Ruth Bader Ginsburg American Inn of Court

One of the highlights for members of the Ruth Bader Ginsburg American Inn of Court in Oklahoma City, Oklahoma, is its “red carpet” closing banquet. The annual banquet recognizes a community service project and Inn members who exemplify and foster the goals of the Ginsburg Inn. This year, the Inn honored the Emergency Responders Assistance Program (ERAP). ERAP provides assistance to law enforcement, firefighters, EMSA, or the loved one of a first responder in the form of training, education, and psychological assistance through structured seminars. Oklahoma City police officers and firefighters attended the banquet and inspired the members with their personal stories about incidents encountered on the job and the role of E.R.A.P. in their recovery. The Ginsburg Inn exceeded its donation goal that night and continued a seven year tradition of service to the community.

Prior to the banquet, Ginsburg Inn members nominate an outstanding Barrister, Master of the Bench, Associate, judge, committee chair, program, program team leader, and third year law student members from Oklahoma University and Oklahoma City University for several awards. Two awards are named after individuals who contributed time and expertise to improving the legal profession: the John Shipp Award for Professionalism and the Donald Deason Community Service Award. The final recipients are selected based their ability to demonstrate not only civility and professionalism, but also friendliness and an unwavering participation in the Ginsburg Inn.

The Ruth Bader Ginsburg Academy Awards has taken our closing banquet to new heights. The Awards are hosted by members who write a script full of levity and good humor but still extol the virtues of the recipients. Next year, the Ginsburg Inn’s goal is to produce a video that highlights not only the winners but all of the members who have contributed throughout the year. ♦

## J. Clifford Cheatwood American Inn of Court

This year, the J. Clifford Cheatwood American Inn of Court in Tampa, Florida, placed third overall in the 2018 Justice Games, which took place at Stetson University College of Law in May. This year’s Justice Games included several highly competitive events including



Tug-O-War, Cornhole Bag Toss, Dunk the Judge, Legal Trivia, and a Frisby Golf Challenge. Cheatwood Inn members placed in the top of multiple categories to receive enough points for the bronze medal. The annual event brought together all eight Inns in the Tampa Bay area including the C. H. Ferguson-M. E. White Inn; J. Clifford Cheatwood Inn; Tampa Bay Inn; Stann Givens Family Law Inn; Herbert G. Goldberg-Ronald K. Cacciatore Criminal Law Inn; Bruce R. Jacob-Chris W. Altenbernd Criminal Appellate Inn, Wm. Reece Smith, Jr. Litigation Inn, and Thomas E. Penick, Jr. Elder Law Inn. The event benefited several local charities including Lockhart Elementary School, Shriners Hospital for Children, and Bay Area Legal Services. Lockhart Elementary even sent their students to participate in a drumline and enjoy a BBQ during the event. The Justice Games were a great end to another successful Inn year. ♦

## Justice Marie L. Garibaldi American Inn of Court for ADR

On May 10, 2018, the Justice Marie L. Garibaldi American Inn of Court for ADR in Basking Ridge, New Jersey, and the Pepperdine/Straus American Inn of Court for Dispute Resolution in Malibu, California, conducted a joint meeting via the Internet. The program, “Mixing Modes: An Interactive Discussion about Our Growing Experience with Interplay between Mediation, Evaluation, and Arbitration” was presented by Laura Kaster, Esquire, Garibaldi Inn; Thomas J. Stipanowich, William H. Webster Chair in Dispute Resolution and Professor of Law at Pepperdine University, and Associate Dean of the Straus Institute for Dispute Resolution; and Professor Veronique Fraser, University of Sherbrooke (Canada). The discussion focused on the practical, legal, and ethical issues associated with dispute resolution processes and how they are affected by different cultures and legal traditions.

Inspired by the Garibaldi Inn, the Pepperdine/Straus Inn was founded by an organizing committee that included Stipanowich and Steven Brawer, Esquire, who are, respectively, an honorary member and a California-relocated member, of the Garibaldi Inn. Brawer is now a member of the Pepperdine/Straus Institute Inn as well. The two Inns look forward to further collaboration and joint meetings. ♦

## Citrus-Hernando American Inn of Court

This past spring, the Citrus-Hernando American Inn of Court in Citrus and Hernando Counties, Florida, as part of its community outreach program, volunteered to “Cook For Kids” at the New Beginnings Youth Shelter in Brooksville. The “Cook for Kids” program is organized by Youth and Family Alternatives, Inc., a private not-for-profit agency committed to working with families, communities and the state to establish, maintain, and enhance a nurturing and safe environment for children. “Cook for Kids” not only provides a meal, but also relieves shelter staff of the time for meal preparation and allows more direct supervision with the youth. The youth benefit from seeing community volunteers who care enough to prepare a meal for them and the program saves in food costs. Everyone had a good time, the kids were very friendly and courteous, and the food was great too! Inn members who participated included Judge Richard Tombrink, Jr.; Judge Mark J. Yerman; Ruby McGeehan, Esquire; Dale Merrill, Esquire; Beth Antrim, Esquire; Tonya Williams, Esquire; Erin C. Daly, Esquire; and Brittani Melvin. Special thanks goes to Ruby, who took the lead and “handed out” directions to those who were not very familiar with a kitchen, and to Erin, who initially suggested the idea of “Cook for Kids” to the Inn. ♦



Members of the Citrus-Hernando Inn who participated in the “Cook for Kids” program at the New Beginnings Youth Shelter in Brooksville, Florida.



Members of the 22nd Judicial District Inn who presented “State v. Goldie Locks” are, from left to right, Christie L. Tournet, Esq.; Richard C. Badeaux, Esq.; Laura M. Borchert, Esq.; and Whitney H. Germany, Esq.

## 22nd Judicial District American Inn of Court

The 2017–2018 Inn year for the 22nd Judicial District American Inn of Court, in Covington, Louisiana, was filled with fairytale magic, good fellowship, and interesting programs.

Once upon a time three Arizona Bankruptcy Inn leaders decided to attend the 2017 American Inns of Court Leadership Summit held in Houston, Texas. While there, they saw a program presentation by the Garland R. Walker Inn the night before the summit. Let’s just say that “Star Laws: The Legal Frontier”—held on May the 4th (get it?)—blew them away and expanded their understanding of what could be achieved at an Inn meeting.

The summit was both fun and informative. To anyone who has wondered if it is worth it to attend a leadership summit, wonder no more! The national organization has terrific ideas and resources to help with administrative matters, as well as leadership, membership, and programming.

Totally galvanized and bursting with ideas, the Inn leaders returned, determined to bring the energy and commitment experienced at the summit to the new Inn year. As a result, the program theme for this year was “Fairytales”, which included original programs that combined fun, familiar themes, and legal issues presented in unique ways.

“State v. Goldie Locks,” was a skit about the criminal pretrial conference of defendant Goldie Locks, who was charged with aggravated burglary of an inhabited dwelling.

In “3 Little Pigs-Insurance Law, Construction Law and Emergency Legislation,” Inn members followed the three little pigs as they learned about the New Home Warranty Act, the law on homeowner’s insurance, and emergency or disaster provisions in Louisiana law.

In “A Midsummer Day’s Nightmare at Bashful & Sleazy, APLC,” a series of vignettes on the life of Snow White, a third year associate at Bashful & Sleazy, APLCS (i.e. “B&S”) presented various types of sexual harassment and the implications of such behavior on the workplace environment, other co-workers, and the person who experienced the harassment.

...And the Inn lived happily ever after. THE END. ♦



## Judge Abner V. McCall American Inn of Court

As part of its community outreach program, the Judge Abner V. McCall American Inn of Court in Waco, Texas, decided to raise money to support a local Lake Air Little League baseball team. Member began fundraising in January with the hope of reaching a \$500 goal by the end of March. At the first meeting, “baseball caps” were passed around for cash donations and a PayPal link was provided for online donations. Inn members expressed great excitement about the opportunity to help a local team and within a month, more than exceeded their goal, which provided extra money to support additional needs of the team.

In early April, the Inn learned they would be sponsoring a team in the Lake Air Little League’s Challenger Division, which allows children with cognitive and physical disabilities the opportunity to play in a competitive Little League program. The Inn’s donation was extremely beneficial and appreciated. In the past, the program generally had around 115 kids play each year, which formed about eight teams. However, this year, the program had over 170 kids sign up, creating 12 teams. Thus, not only was the program excited for the McCall Inn’s involvement, but also the donations could not have come at a better time.

The McCall Inn hopes to continue its relationship and involvement with the Lake Air Challenger Division in the coming years. The Inn also hopes to become involved with other programs in Waco that provide children with disabilities the opportunity to participate in sports. This fall, the Inn is looking into sponsoring and volunteering with a program called No Limitations, which includes basketball, football, and soccer. ♦



Mentor-a-Student participants who received 2018 Calvert Inn scholarships are, from left to right, Daniel Limas, Paola Rodriguez, Judge Orlinda L. Naranjo, and Tha Nung.

## Robert W. Calvert American Inn of Court

Each month, as part of its mentoring program, the Robert W. Calvert American Inn of Court in Austin, Texas, organizes the Larry York Mentoring Lunch as a joint event with other Inns of Court in central Texas. Each luncheon has a topic and the speaker’s role is to engage the audience and facilitate a free exchange of ideas. Named for its original founder, Larry York, the luncheons are now organized by members of the Calvert Inn, the Barbara Jordan Inn, and the Lloyd Lochridge Inn. Topics of discussion have included the challenges and expectations of in-house counsel; “If I had one do-over, it would be...”; and “Tips and Tricks from the Court’s Staff Attorneys”.

The Calvert Inn has also completed the fifth year of its Mentor-a-Student (MAS) program at Travis High School. Founded by long-time member, Judge Orlinda L. Naranjo, the program partners Inn members with the school’s criminal justice class. Judge Raul A. Gonzalez helps lead the project. Inn members meet with students once a month to discuss topics designed to inspire and encourage students to pursue careers in the justice system.

The program culminates with a mock trial on dating violence. Inn members coach student attorneys and witnesses and Naranjo presides over the trial with middle school students serving as jurors. Student attorneys present opening arguments, examine and cross-examine witnesses, handle evidence, make objections, and present closing arguments. Then, the jury renders a verdict. After the trial, Naranjo and the staff of Safe Place, a local family violence shelter program, treat participants to a presentation and in-depth discussion of dating violence.

The Mentor-a-Student program serves students from economically disadvantaged families many of whom are undocumented or Dreamers. In 2018, the Inn funded three scholarships for students who are the first of their families to attend college. ♦

## Daniel Webster-Batchelder American Inn of Court

**O**n May 2, 2018, members of the Daniel Webster-Batchelder American Inn of Court in Manchester, New Hampshire and the Arthur J. Gajarsa American Inn of Court in Concord, New Hampshire, gathered for their second annual joint meeting. The two Inns could not be more different in terms of the practice areas of their members. The Webster-Batchelder Inn is a general practice Inn and includes attorneys from both sides of the aisle who practice in, among other areas, family law, criminal law, civil litigation, employment law, and business matters. The Gajarsa Inn focuses on intellectual property law and includes private practitioners, judges, and patent examiners. In true Inns of Court spirit, however, the two Inns seamlessly merged for a presentation on starting your own law firm. Members of both Inns “broke bread” together and participated in lively discussion during the presentation. ♦

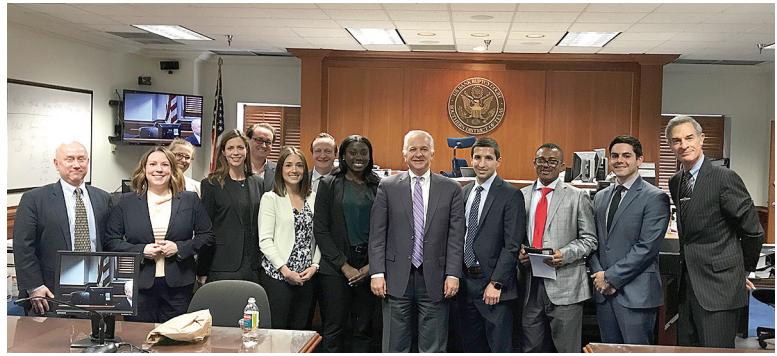
## Judge John M. Scheb American Inn of Court

**T**he Judge John M. Scheb American Inn of Court in Sarasota, Florida, presented attorney Theodore “Ted” Eastmore with its 2018 Judge John M. Scheb Professionalism Award in a ceremony on May 8.

The award is given annually to a Sarasota County attorney who exemplifies professionalism in his or her day-to-day practice. The recipient is selected by vote of the Inn’s Masters of the Bench members.

Eastmore, a founding member of the Inn, is described by the Inn’s president, Judge Phyllis Galen as exemplifying professionalism in his day-to-day practice and a true role model for the Sarasota legal community.

The Scheb Inn was founded in 1991 with one of its stated goals being to promote excellence in legal advocacy at the trial and appellate court levels. ♦



Participants in the Walker Inn’s April Chamber Chat included, from left to right, J. James Cooper, Esq.; Sarah Callahan, Esq.; Meredith Burke; David Nachtigall, Esq.; Krisina Zuniga, Esq.; Don P. Thomas II, Esq.; Morgan Walls; U.S. Magistrate Judge Andrew M. Edison; Misha Paltiyevich, Cyril Westcott-Omwirhiren, and U.S. District Bankruptcy Judge Jeff Bohm.

## Garland Walker American Inn of Court

**O**n April 3, 2018, the Garland R. Walker American Inn of Court in Houston, Texas presented, “Administrative Agencies: Boon or Bane? Examining the Benefits and Burdens of Federal, State, and Local Administrative Agencies.” The presentation consisted of four segments designed to explore the role and reach of administrative agencies.

The first two segments traced the history of administrative agencies dating back to Ancient Rome and the evolution of such agencies in the United States; and featured fictionalized accounts of litigants discussing the issues involved in *Public Citizen v. Young*—inherent authority of the U.S. Food and Drug Administration—and *Negusie v. Holder*—review of the persecution bar in an asylum case in Immigration Court. The third segment provided a brief comment on cases to watch and focused on cases wending through the appellate process that may profoundly affect federal agencies wielding legislative, enforcement, and judicial powers. The last segment was a lively panel discussion with two law school professors who specialize in administrative law. The moderator brought legal issues into focus and the panel of experts provided scholarly commentary, espoused divergent views, and speculated on future appellate review results.

The program was a collaborative effort of educating the Inn on the history of administrative agencies, examining the role and reach of these agencies, and raising uncertain issues to be addressed by courts in the near future.

On April 20, 2018, Judge Jeff Bohm hosted a chambers chat in his courtroom with a group comprised of members of the Walker Inn, federal law clerks, and recently-appointed Magistrate Judge Andrew Edison. Chambers chats are informal, small-group lunchtime gatherings of Inn members and members of the judiciary, hosted in a local judge’s courtroom or chambers, where Inn members have an opportunity to discuss a wide range of topics with a judge. Among other topics, Edison explained the process for selection of magistrate judges, his experiences in the application process, the initial training that new judges receive, and the transition between practice and service on the bench. Judge Edison also answered questions, and offered advice, based on his experience in practice, both as a young lawyer and later as a partner at a large law firm, and as the founder of his own law firm, about professional growth and development in the practice of law. ♦

## Arizona Bankruptcy American Inn of Court

A critical part of the American Inns of Court experience is judicial engagement and community outreach. The Arizona Bankruptcy American Inn of Court (ABAIC) is fortunate that a number of current and former bankruptcy judges actively participate in its programs and events as members or guests. The Inn recognized that despite the active bankruptcy bench in Arizona, many practitioners, especially younger lawyers, often do not have the chance to meet and interact with judges serving on the Bankruptcy Appellate Panel (the BAP). When the Arizona Bankruptcy Inn learned that the BAP would be in Phoenix, it reached out to BAP clerk, Susan M. Spraul, to propose the idea of a “mix and mingle” event the night before arguments. The BAP panel agreed to an informal social event and the idea of a BAPPY Hour was born! The event was organized by the Inn and co-hosted with the



*Chief Judge Daniel P. Collins, second from the left, with three generations of his law clerks.*

Arizona Consumer Bankruptcy Counsel. Through the coordinated effort of many, the BAPPY Hour provided both the bench and bar with a night to remember. ♦

## Vassar B. Carlton American Inn of Court

The Vassar B. Carlton American Inn of Court in Melbourne, Florida, hosted its annual banquet on June 7, 2018 to present awards, introduce new members, and celebrate another year of excellent mentoring and programs.

Rather than having a guest speaker, as has been tradition, Inn leaders invited members to present their most memorable mentoring experiences and how the Inn was instrumental in that process. Comments were made about the mission and vision of the Inn, followed by members who spoke about their mentors and the impact of their mentoring experiences.

Lou Wilson, Esquire received the Member of the Year Award, Scott A. Blaue, Esquire received the Mentor of the Year, and Team 3 and captain Kurt Russell received the Best Presentation Award for their program on “Racism in Criminal Law”. The Presenter of the Year Award was given to Jack Kirschenbaum, Esquire, who gave an inspiring speech on our First Amendment rights. The “Hammy Award”, presented to the member who had the most colorful and entertaining performance of the year, went to Grant P. Dearborn, Esquire. Robert M. Moletteire, Esquire gave an encore of his version of the song “Imagine”, which included revised lyrics about a world of attorneys without sanctions (imagine...it’s easy if you try).



*At the Carlton Inn’s awards presentation, from left to right, are Scarlett G. Davidson, Esq., Inn mentoring chair; Scott A. Blaue, Esq., Mentor of the Year Award recipient; and Judge David E. Silverman, Inn president.*

The team captains and mentors were thanked for the role they played throughout the year. Special recognition was also given to the Team 1 presentation on the role of an attorney ad litem, which resulted in more than 20 attorneys volunteering to represent a dependent child in court. This program is also being considered as the Inn’s special project of the year.

Finally, the Inn membership thanked and congratulated Judge David E. Silverman for his wonderful efforts as Inn president for the past two years. ♦

## James S. Bowman American Inn of Court

On June 26, 2018, six members of the James S. Bowman American Inn of Court volunteered during lunch service at the Bethesda Mission in Harrisburg, Pennsylvania. The Bethesda Mission, through its separate men's and women's shelters and youth center, has provided shelter, food, clothing, and fellowship to poor or homeless men, women, and children for more than 100 years. In addition to many other outreach programs, the mission shelters approximately 150 people per night and serves more than 11,500 meals per month.



Members of the Bowman Inn on the steps of the Bethesda Mission are, from left to right, Martin Toth, Esq., Inn administrator; Delene Lantz-Johnson, Esq.; Mary Beth Hamilton, Esq.; Crystal D. Fox, Jim Hoppenjans, Esq.; and John H. Pietrzak, Esq., Inn president.

The Bethesda Mission relies on volunteers to assist with many of the services it provides and these volunteers serve more 1,700 hours per month in a variety of activities. Inn members served lunch at the men's mission to approximately 75 men and took the opportunity to interact with the staff and men served by the mission. ♦

## Delaware Bankruptcy American Inn of Court

Each year the Delaware Bankruptcy American Inn of Court in Wilmington, Delaware, sponsors the Hon. Thomas L. Ambro Fellowship, which provides a stipend for a summer internship with the Delaware Bankruptcy Court. The Ambro Fellow rotates among each of the judges of the court for eight weeks. Candidates interested in the fellowship must submit a letter of interest and a resume and have an interest in practicing law in Delaware; a sense of ethics and high moral character; be intelligent, honest and hardworking; have a pleasant personality and ability to work independently or as part of a team; and an interest in commercial or bankruptcy law. The recipient is selected from numerous candidates by the judges of the bankruptcy court for the upcoming summer.

The 2018 Ambro Fellow is Julia Blackburn Otero, a student at Northeastern University School of Law. Otero was recognized at the Inn's annual banquet on June 12, 2018 and presented with a plaque commemorating her selection for the fellowship. ♦



Judge Frederick L. Pollack has been presented with the 2018 Theodore Millison Professionalism Award by the Stann Givens Family Law American Inn of Court of Tampa.

## Stann Givens Family Law American Inn of Court of Tampa

Frederick L. Pollack has been awarded the 2018 Theodore Millison Professionalism Award by the Stann Givens Family Law American Inn of Court of Tampa. The Theodore Millison Professionalism Award, named in honor of the late Theodore Millison, a Tampa family law practitioner who was beloved in the family law community, is given once a year to an attorney who exemplifies the highest standards of ethics and professionalism in the practice of family law. This is the highest award presented by the Stann Givens Family Law Inn of Court.

Pollack practiced in the Tampa Bay community and participated as a valuable Inn member for many years, so for the Givens Inn, it was delightful to see him appointed to serve as a family law judge in the 6th Judicial Circuit for Pinellas County, Florida. Appropriately nicknamed "Captain Child Support" before stepping into his judicial role, Pollack's peers chose him for this award in part because he is extremely knowledgeable in the area of family law and is a professional and collegial attorney who is always willing to help his peers.

The award was presented to Pollack at the Inn's April 4, 2018 meeting and on May 14, 2018, a ceremony dedicating the courthouse plaque was held at Hillsborough's George Edgecomb Courthouse. Pollack was joined in this celebration by his family, peers, colleagues and several members of the judiciary, including the Inn president, Judge Ralph Stoddard.

Above all, Pollack is a really nice individual who is open and welcoming to his colleagues. In his free time, he enjoys SCUBA diving. As a devoted husband and father of two girls, Pollack is an example of work life balance and career success that is often sought but rarely duplicated. ♦



*Bearman Inn members who volunteered at FedEx Family House included, from left to right, R. Matthew Price, Esq.; Whitney Fogerty, Esq.; Terrence O. Reed, Esq.; Kendra Tidwell, Esq.; David A. Billions, Esq.; Mary Wu Tullis, Esq.; and Adam Johnson, Esq.*

## Leo Bearman, Sr. American Inn of Court

Each year, the Leo Bearman, Sr. American Inn of Court in Memphis, Tennessee, conducts several community service projects in the local community. The most recent project was on Sunday, April 22, 2018, when more than 25 members of the Inn and their families volunteered at the FedEx Family House. The FedEx Family House has been housing families with children being treated at Le Bonheur Children's Hospital since 2010 and has served more than 126,000 family members from around the world since it opened its doors. Attorneys and judges alike devoted their Sunday serving the FedEx Family House families and donated hundreds of dollars of food and beverages. Members grilled chicken, hot dogs, and burgers and prepared salad, sides items, and desserts for the families staying at the FedEx Family House. The volunteers also stocked the pantry, filled welcome bags, and cleaned the dining room and kitchen areas. The most rewarding part of the community service project was meeting the families, dining with them, and offering them support. ♦

## Barbara M.G. Lynn American Inn of Court

The Barbara M.G. Lynn American Inn of Court, in Dallas, Texas, conducted a very successful community service project in April. During conversations with Inn members, key experiences and people who have influenced career paths are often discussed. Realizing the importance of these influential experiences, the Inn's Community Service Pupillage Group organized Career Day presentations at nearby schools to introduce students to intellectual property concepts and careers. Students learned about trademarks and designed logos for their future businesses; explored careers in intellectual property, engineering and entrepreneurship; found out how IP attorneys help clients grow their businesses; and saw final products protected by patents that Inn members had helped their clients acquire. The presentations were well received and feedback from teachers and parents was fantastic. The group created a short video that provides a great summary of the school visits. You can watch the video on YouTube at <https://youtu.be/rxfoLA0xBHo>. ♦

## Canakar American Inn of Court

Twenty-five years ago on May 28, 1993, the Canakar American Inn of Court in Clearwater, Florida, was chartered with 63 members. The Inn was comprised of a group of dedicated family law attorneys and family law Judges that wanted an Inn specifically for Family Law practitioners in Pinellas and Pasco Counties.

Today the Canakar Inn has grown and continues to benefit from the wonderful participation from the local judiciary. The Inn places an emphasis on mentoring and professionalism, which is especially important in the family law arena, where often times professionalism tends to fly out the window when tempers flare and emotions are high.

The Inn's success is largely due to the leadership and guidance of its founding members. Newer members are extremely fortunate that two of those leaders, Judge Marion L. Fleming and Raleigh Williams Greene III, Esquire, are still active in the Inn and still participate with vigor and enthusiasm. At the Inn's annual social event on May 11, 2018, these leaders were celebrated for their 25 years of dedication to the organization. ♦



*Canakar Inn members, from left to right, are Lindsey M. French, Esq., executive director; Judge George Jirotko, president; Judge Marion L. Fleming; and Raleigh "Lee" Greene III, Esq.*

## Linn Inn Alliance News

**O**n Tuesday, May 22, 2018, approximately 40 American Inns of Court members joined together to break bread and get to know each other during the International Trademark Association (INTA) Annual Meeting in Seattle, Washington. Conferences such as INTA are a great opportunity for intellectual property focused Inn members to network and get to know each other. Generally, there are high degrees of closeness and having a reception for a couple of hours gives members a chance to make those connections. Currently, there are 25 IP focused Inns and approximately six were represented in Seattle. The Linn Inn Alliance thanks the Seattle IP American Inn of Court and everyone who took the time out of their extremely busy INTA schedules to attend the reception. It is hoped that the event will inspire similar Inn of Court gatherings at other



*Members of the Linn Inn Alliance recently gathered for a reception during the INTA conference in Seattle, Washington.*

conferences and that other Inn members will see the great opportunity for growth, comradery, and friendship for which these receptions pave the way. ♦

## Thomas S. Forkin Family Law American Inn of Court

**O**n June 19, 2018, the Thomas S. Forkin Family Law American Inn of Court in Cherry Hill, New Jersey, awarded its prestigious Honorable Joseph F. Nardi, Jr. Award to Bruce P. Matez, Esquire. The award was presented to Matez by Maryann Rabkin, Esquire, Forkin Inn president, at the Inn's annual banquet.

Matez is a founding member of the Forkin Inn and served on its executive committee from 1997 to 2009. A divorce and family law attorney, a significant portion of Matez's practice involves currently serving as a mediator for couples seeking an alternative to divorce and family law litigation. ♦



*Bruce P. Matez, Esq., center, pictured with his parents, received the Hon. Joseph F. Nardi, Jr. Award presented by the Thomas S. Forkin Family Law Inn.*

## Richard S. Rodney American Inn of Court

**T**he Richard S. Rodney American Inn of Court in Wilmington, Delaware, held its year-end banquet on April 24, 2018. More than 100 members of the Inn mixed and mingled for a fun night of networking, and took advantage of the opportunity to form personal bonds outside of the courtroom. The Inn's president, Judge Paul A. Wallace, commented on the success of the last year and encouraged the younger members to develop strong networks within the Inn's membership. The Rodney Inn also presented its annual award for best substantive program—the distinguished Velvet Elvis—to the Carpenter pupillage group for its fascinating "Criminal Issues in Delaware" program.

During conversations with several judges at the banquet, Meghan Adams, the Inn's president elect, conceived a summer mentoring program of a series of more intimate events for newer members of the Inn to socialize with jurists on a rotating basis. The first event was held on June 11, 2018, with an event planned for July. ♦

## American Inns of Court 2018 Pegasus Scholarship Recipients Selected

The American Inns of Court is pleased to announce that Christie Mason Hebert and Patrick C. Holvey have been selected as Pegasus Scholars for 2018. They will spend six weeks in London studying the English legal system beginning October 1, 2018.



**Christie Mason Hebert** of Austin, Texas, is a law clerk for Judge Sam Sparks of the U.S. District Court for the Western District of Texas. She is a member of the Lloyd Lochridge American Inn of Court and serves on the American Inns of Court Young Lawyers Task Force.

A graduate of Davidson College, Hebert earned her bachelor of arts degree in economics. She attended the Lyndon B. Johnson School of Public Affairs and the University of Texas School of Law concurrently, earning a master of public affairs and a juris doctor degree in December 2015. She was administrative associate editor of the *Texas Law Review* as well as a teaching assistant. She received the Dean's Achievement Award in Legal Research and Writing and the Beck Award for Research and Writing.

While in law school, Hebert was a summer associate at the firms of Jones Day and Beck Redden LLP, both in Houston. She also served as a law clerk with the U.S. Senate Office of Legislative Counsel and as an intern for Judge Ronald H. Clark of the U.S. District Court for the Eastern District of Texas. After graduating, she served as a law clerk in the Civil Litigation Division of the Travis County Attorney's Office. Upon completion of her clerkship and Pegasus scholarship, Hebert will join the firm of Johns & Counsel in Austin.



**Patrick C. Holvey** is a law clerk for Chief Judge J. Rodney Gilstrap of the U.S. District Court for the Eastern District of Texas. He is a member of the Giles S. Rich American Inn of Court where he serves as co-membership chair. He served on the American Inns of Court Pegasus Placement Committee from 2016–2017 and is currently serving on the Program Awards Committee.

Holvey is a graduate of New York University School of Law, where he served in various editorial capacities on the *Journal of Intellectual Property and Entertainment Law*. After earning a bachelor of science degree in chemistry at the University of Notre Dame, where he also played the tuba in the Band of the Fighting Irish, Holvey earned a master's degree in materials science and engineering at the Johns Hopkins University.

Before joining Gilstrap's staff, Holvey served for two years as judicial law clerk to Judge Pauline Newman of the U.S. Court of Appeals for the Federal Circuit in Washington, DC. During law school, he worked as an intern for the American Civil Liberties Union's Speech, Privacy, and Technology Project and as an extern for the Criminal Division of the U.S. Attorney's Office for the Eastern District of New York. He is the 2018 recipient of the Honorable Nancy F. Atlas IP American Inn of Court Sponsored Scholarship Grant for Judicial Clerks, which is administered by the IPIL Institute at the University of Houston Law Center. Following his Pegasus Scholarship, he will begin work as a trial attorney for the U.S. Department of Justice. ♦

## Lewis F. Powell, Jr., American Inn of Court and John Marshall American Inn of Court

The Lewis F. Powell, Jr., American Inn of Court in Richmond, Virginia, celebrated its fifteenth anniversary on Monday May 7, 2018, in a joint celebration with Richmond's John Marshall American Inn of Court, at the Virginia Museum of Fine Arts.

Chartered in 1990, the firmly established Marshall Inn, with a full and expanding membership, recognized in 2002, the potential for a new Inn in Richmond. The Marshall Inn saw benefits to being able to include more Associates and younger lawyers in their membership. With the overwhelming support of its members, an organizing committee was appointed and in April 2003, a charter application was submitted for a second Inn in Richmond. Invitations were extended to 15 Masters, 13 of whom were members of the John Marshall Inn, and to five Barristers, all from the John Marshall Inn, to be charter members of the new Inn. On April 30, 2003, the new Inn received its charter and was named in honor of Richmond native Associate Justice Lewis F. Powell, Jr., of the Supreme Court of the United States. As a result, both the Marshall Inn and the new Powell Inn grew quickly in membership and continue to thrive today.

Given the historical connection and collegiality between both Inns for the past fifteen years, it was fitting to celebrate the anniversary of the Powell Inn as a joint celebration. Members from both Inns enthusiastically supported the event, with more than 150 members and guests including family members of Justice Powell in attendance. Also attending was Chief Justice Donald W. Lemons, who was president of the Marshall Inn during the founding of the Powell Inn and president of the American Inns of Court 2010–2014, and Christina Hartle, American Inns of Court Director of Chapter Relations, Mid-Atlantic Region. ♦

## Florida Family Law American Inn of Court

The Florida Family Law American Inn of Court in Jacksonville, Florida, celebrated its 20th anniversary this year in many ways. One important aspect of the celebration came in the form of outreach projects in support of the community. The Inn held several meetings at the Friday Musicale, a local nonprofit organization dedicated to bringing music to the community. This location was selected because part of the proceeds from meeting fees are used to provide musical opportunities to low-income children in the area. To thank the Inn for its support, one of the students of the Friday Musicale played the piano for the Inn.

Shortly after the Inn's anniversary year began, tragedy struck in the form of Hurricanes Harvey and Irma. Hurricane Irma hit Jacksonville and caused record levels of flooding and damage. Despite many members suffering their own losses due to the storm, the Inn responded by donating time, energy, and office space to others in the legal community. The Inn also challenged members to donate their time to work with FEMA by answering questions and advising callers on where to find disaster assistance, or donate to the Florida Bar Foundation's Florida Hurricane Legal Aid Fund.

Other outreach projects throughout the year included donations of shoes and supplies to the Family Nurturing Center, a nonprofit organization



*A student of the Friday Musicale plays piano as a thank you to the Florida Family Law Inn.*

dedicated to the needs of children and families in crisis. The Inn also asked members to donate supplies to the Jacksonville Humane Society. The response was huge—big enough to completely fill a member's large SUV. The generosity of those who donated money, time, or goods to the various organizations and causes throughout the year is truly a credit to the character of the Inn.

The year culminated with a Roaring 20th Anniversary party on May 31, 2018. Members dressed in roaring 20's fashion and enjoyed live music, dinner, and dancing. The Inn celebrated its history, where it is now, and where it wants to be in another 20 successful years! ♦



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## 2018 Temple Bar Scholars Announced

The American Inns of Court is pleased to announce the selection of its 2018 Temple Bar Scholars®. The scholars will spend a month in London, visiting the Inns of Court and meeting with members of the British bench and bar. The 2018 scholars are Chike Croslin, William E. Eye, David J. Feder, and Geoffrey C. Shaw.



**Chike Croslin** is a graduate of Harvard Law School and the London School of Economics and Political Science. At Harvard, he was the recipient of the 2013 MCCA Lloyd M. Johnson, Jr., Scholarship and the 2014 Ford

Foundation Public Interest Law Fellowship. He served as notes editor for the *Harvard Law Review* and as parliamentarian of the Harvard Black Law Student Association. At LSE, he received the American Friends of LSE Scholarship and authored a thesis on American bank bailouts and their effects on democracy. As an undergraduate at Washington University in St. Louis, he earned a bachelor's degree in political science and received the Ralph Bunche Award for academic excellence. Croslin has served as a law clerk to Judge Tanya S. Chutkan of the U.S. District Court for the District of Columbia, and to Chief Judge Carl E. Stewart of the U.S. Court of Appeals for the Fifth Circuit. While in law school, he worked as a student attorney at the Harvard International Human Rights Clinic.



**William E. Eye** is a law clerk for Chief Judge Edward E. Carnes of the U.S. Court of Appeals for the Eleventh Circuit. A graduate of Emory University School of Law, Eye was a Woodruff Fellow. He took first place in the ABA Student

Writing Competition and received the Paul Bryan Prize. He was a Dean's Teaching Fellow and served as executive notes and comments editor on the *Emory Law Journal*. He worked as an associate at the Atlanta firm of Jones Day before joining Carnes' staff. Eye earned a master of letters with distinction in international political theory from the University of St. Andrews in Scotland. He was a Rhodes Scholar Finalist at Emory University where he graduated summa cum laude in philosophy and violin performance. He was a Sonny Carter Scholar and was awarded the Kuntz Prize as outstanding philosophy

student. He completed a fellowship with Humanity in Action in Berlin and Sarajevo, studying minority rights in Europe, and was an exchange student with the International Human Rights Exchange in Johannesburg, South Africa.



**David J. Feder** is a law clerk to Associate Justice Neil M. Gorsuch of the Supreme Court of the United States; he also clerked for Gorsuch when he was on the U.S. Court of Appeals for the Tenth Circuit. He previously served as an

associate with the firm of Munger, Tolles & Olson LLP. Feder received his JD summa cum laude from Harvard Law School, as well as the Fay Diploma for graduating first in his class. He served as articles editor of the *Harvard Law Review*, and as editor of the *Harvard Latino Law Review*. After graduating, he returned to Cambridge to complete the Olin-Searle Part-Time Fellowship, where he researched constitutional and administrative veil-of-ignorance rules. A graduate of California Polytechnic State University, Feder earned his bachelor of arts degree in communication studies. He received the Communication Studies Department Community Service Award and was named Outstanding Student in Organizational Communication.



**Geoffrey C. Shaw** is a clerk for Associate Justice Anthony M. Kennedy of the Supreme Court of the United States. A former Rhodes Scholar, Shaw earned a doctor of philosophy degree from the University of Oxford, authoring

a dissertation on H.L.A. Hart's Critique of American Legal Thought. A graduate of Yale Law School, Shaw earned the Benjamin Scharps Prize for Best Paper by a Third-Year Student and the Joseph Parker Prize for Best Paper on Legal History. He was a Coker Fellow in Constitutional Law and served as social chair of the *Yale Law Review*. Shaw also has clerked for Judge Stephen Reinhardt of the U.S. Court of Appeals for the Ninth Circuit. Shaw has worked as a summer associate in the law firms of Munger, Tolles & Olson LLP in Los Angeles and Susman Godfrey LLP in New York. He earned his undergraduate degree magna cum laude in philosophy from Yale College, where he received the George A. Schrader Prize Excellence in the Humanities. ♦

## William C. Koch, Jr. Welcomed as President of the American Inns of Court

**R**etired Tennessee Supreme Court Justice William C. Koch, Jr., became president of the American Inns of Court Board of Trustees on July 1. He served on the board from 2000 to 2008, and again from 2014 to the present, including terms as secretary and vice president.

Koch has long been committed to the American Inns of Court movement, helping found the Harry Phillips American Inn of Court in Nashville in 1990, and serving as its president for 27 of the last 28 years. He helped found six other Inns in Tennessee and is an emeritus Master of the Bench of the Belmont University College of Law American Inn of Court.

Koch notes that local Inns are able to accomplish their mission by keeping their membership small enough to enable their members to become acquainted with each other on a more personal and less formal basis

“You can’t simply hand somebody a book or article and say, ‘Here, read about how to be a professional.’ The American Inns of Court promote professionalism more effectively because their members model professional behavior. What differentiates the Inns of Court from most other legal organizations is their ability to create an intimate environment in which judges and lawyers can pass down, discuss, refine, and even create ethical and professional standards for their local legal communities.” Koch says.

Following his retirement from the court in 2014, Koch was named president and dean of the Nashville School of Law (NSL), where he has taught courses in U.S. Constitutional Law and Tennessee Constitutional Law for the past 21 years. He also

received adjunct appointments at Vanderbilt Law School and Belmont University College of Law. His commitment to civility, professionalism, and excellence in the practice of law is explicitly

reflected in the words on the NSL logo adopted during his tenure.

The importance of those characteristics to an aspiring lawyer starts on day one. During orientation, matriculating NSL students take a professionalism oath administered by a justice of the Tennessee Supreme Court. “We begin teaching our students before they even start their classes that lawyers are held to higher standards and have higher obligations to their clients and the courts,” he says.

But teaching professionalism, as with so many things in the study of law, is not a concrete notion.

“It’s an elastic concept that exists in the eyes of the beholder. I do think it boils down to some common denominators, including accountability, courtesy, humility, collegiality, and consistency. These standards are aspirational, of course,” Koch says.

“We learn the tricks of the trade and the ways to smooth out the rough edges by watching others in action,” he continues. He cites as his own role models Bill Willis, a premier Nashville trial lawyer who handled many high-profile cases (“professionalism in action”) and Judge William Russell (“he provided candid and helpful critiques of young lawyers’ performance”).

Koch served as a justice on the Tennessee Supreme Court from 2007 to 2014, following a 23-year tenure on the Tennessee Court of Appeals, including four years as presiding judge. Although he concedes the appellate court environment is more sedate than the trial court environment, he still had a role in enforcing standards of professionalism in the courtroom.

“There were certainly occasions when I was required to admonish lawyers saying, ‘That is not the sort of behavior we accept here.’ It was particularly troublesome when lawyers did their best table-pounding Clarence Darrow impersonation while their clients were sitting in the front row,” he says.

“I always tried to ascertain whether the behavior was calculated or just due to inexperience,” he explains. “Judges should try to avoid publicly embarrassing lawyers, so if it was just inexperience, I would invite the lawyer for a conversation in my office after the case was concluded.”



*Continued on page 24.*



## Federal Court Finds Representative Plaintiff Has Conflict of Interest

A recent decision of the U.S. District Court for the Southern District of New York found that a shareholder pursuing both direct claims and derivative claims against a corporate director had a conflict of interest that prohibited him from pursuing both claims at the same time in the same suit. The case styled *Tatintian v. Vorotyntsev*, 2018 WL 2324998 (S.D.N.Y. May 22, 2018), involved claims by a shareholder in a startup company who was an early investor, along with about eight others. The shareholder plaintiff claimed that the defendant director looted the company by using corporate funds to support a lavish lifestyle. The shareholder filed suit and brought direct claims for securities fraud, as well as derivative claims for breach of fiduciary duty. The defendant director sought to dismiss the derivative claims based on the argument that Federal Rule of Civil Procedure 23.1 bars a plaintiff from bringing direct claims and derivative claims in the same action when it creates a conflict of interest.

Rule 23.1, which governs shareholder derivative actions, provides that a derivative action “may not be maintained if it appears that the plaintiff does not fairly and adequately represent the interests of shareholders or members who are similarly situated in enforcing the right of the corporation or association.” The Second Circuit has not held that there is a *per se* rule against bringing derivative and direct claims simultaneously, but that suits with both claims need to be scrutinized for actual conflicts.

The court stated that an actual conflict may exist where “substantial recovery on the direct claim may reduce the potential recovery on behalf of the corporation on the derivative claim.” The court wrote that direct and derivative claims can be brought in the same action, for example, when the company at issue in the litigation “has been dissolved or is no longer in existence.” Both claims have also been allowed to move forward simultaneously in the Second Circuit where the plaintiffs and the defendants are the only shareholders in the company. Neither of those situations applied in this case.

The court found an actual conflict of interest. The primary reasoning was that the bylaws provided for indemnification of the defendant director. The court reasoned that because the defendant director “must be indemnified pursuant to these bylaws, recovery for the direct and derivative claims could ultimately come

from the same pool of money.” Therefore, the court granted the motion to dismiss the derivative claims.

The court did not discuss the nuanced prerequisites of the right to indemnification. If the defendant director did not satisfy the generally applicable conditions for indemnification, he might not be entitled to indemnification. It appears that the corporation involved was a Delaware corporation. Delaware General Corporation Law Section 145(b) provides that, with respect to claims brought by or in the right of the corporation itself, “no indemnification shall be made in respect to any claim, issue or matter as to which such person shall have been adjudged to be liable to the corporation. . . .” Section 145 would require that the defendant director have acted in good faith if he did not prevail on the underlying claim.

This column cannot address all the issues raised in this decision, but it is instructive that in Delaware there is no *per se* disqualification of a representative plaintiff who brings direct claims and derivative claims in the same suit. Although the representative plaintiff is required to satisfy several criteria, it is not common for Delaware courts to disqualify the shareholder plaintiff—especially on the primary basis that the defendant director might be entitled to indemnification. One treatise has described the state of the law in Delaware on this point to allow one to conclude that “disqualification of a derivative plaintiff will result only where the record reveals a conflict of interest on the part of the shareholder-plaintiff that is of such a fundamental and egregious nature that the effect of attending abuse could not be adequately precluded or deterred by the judicial oversight mandated by Rule 23.1.” See Donald J. Wolfe, Jr. and Michael A. Pittenger, *Corporate and Commercial Practice in the Delaware Court of Chancery*, § 9.02(b)(1) at 9-35 (2017). See generally *In re Fuqua Indus., Inc. S’holders Litig.*, 752 A.2d 126, 130 (1999) (discussing multiple factors that the court will consider to determine the adequacy of a representative plaintiff).

There are many facets to the analysis of when a derivative plaintiff could be or should be disqualified when pursuing derivative and direct claims at the same time and in the same case. The issue is one that should be identified before a plaintiff files a complaint with both direct and derivative claims. ♦

Francis G.X. Pileggi, Esquire is a litigation partner at Eckert Seamans Cherin & Mellott, LLC. He comments on key corporate and commercial decisions, and legal ethics rulings, at [www.delawarelitigation.com](http://www.delawarelitigation.com).



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# Practicing Professionalism Does Not Conflict With Zealous Advocacy

BY VICTORIA E. PAONE, ESQUIRE

Professionalism in the practice of family law encompasses far more than wearing a suit to court or arriving to an early settlement panel on time. Treating our adversaries and the court with civility and respect during the course of litigation is an integral component of professionalism. It is our duty as attorneys to make an active effort to help our adversaries, even when it goes against our instincts to win at all costs.

Exercising professionalism and civility with our adversaries throughout the litigation, while still zealously representing our clients, is often difficult. This is especially true in high-conflict cases in which the parties may expect their attorneys to project the animus they have for their spouse onto the other attorney. However, professionalism and zealous advocacy can be simultaneously achieved. Indeed, there are small acts that we as attorneys can perform on a daily basis that provide the mutual benefit of showing professional courtesy to our adversaries while also benefiting our clients.

First, do not reject your adversary's first adjournment request even if the reason for the delay appears to be illegitimate or your client does not want to prolong the matter. Believe it or not, this act can set the tone for the entire case. If you reject your adversary's first adjournment request,

your adversary is more likely to do the same when the shoe is on the other foot. While our clients may encourage us to say "no" more than "yes," in situations in which the adjournment will not have any noticeable impact on our client's interests, we cannot allow our client's perspective to cloud our professional judgment. Inevitably, circumstances will arrive from time to time when your client will need more time to respond to discovery or to provide documents requested by an expert for a report to be completed. In those cases, you will seek the same courtesy that you have displayed to others.

Second, ask your adversary first before you ask the court for any relief. That is to say, do not file a motion before asking your adversary whether it is possible to settle some or all of the disputed issues by consent. Your adversary will be understandably annoyed if he or she receives a motion without being granted the

opportunity to at least discuss these issues with you ahead of time. While your client may be breathing down your neck to run to the judge for immediate relief, the client should be advised that immediate relief is never granted absent exceptional circumstances. Moreover, the client should be advised of the potential financial benefit of resolving issues by consent without incurring the significant costs of motion practice. If you fail to try to resolve issues by consent before filing an application with the court, you are effectively communicating to your adversary that it is your intention to conduct this case by way of controversy rather than conversation. In short, get the “no” before you go to court.

Third, never refuse to speak with an adversary on the telephone. If you are worried about misinterpretations or miscommunications as a result of telephone communications, send a follow-up letter to confirm what was discussed. Open communication between attorneys is key to settling a case for your client prior to trial. In the same vein, if your adversary asks a question in a letter or leaves a message with a question, do not wait more than two days to respond to the question. If you do not

have the answer because you are waiting to hear from your client, let your adversary know.

Finally, do not make faces or talk under your breath when the adversary speaks during oral argument. This is rude and will not gain the respect of your adversary or the court. Likewise, weaving disparaging comments about your adversary into motion papers does not equate to zealous advocacy. Rather, it displays disrespect for a fellow attorney, while also dancing on the line of unethical behavior. Making firm arguments is different from engaging in conduct that is discourteous, unprofessional, and unethical.

These simple acts are often ignored or overlooked by both seasoned and rookie attorneys. In isolation these acts may not seem important, but together they can mean the difference between an uncontested divorce and a tumultuous trial. Help your adversary in order to help your client. ♦

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## The Bencher

*The Bencher*® is the flagship publication of the American Inns of Court. Authors are invited to submit original feature length articles on the topics of professionalism, legal ethics, civility, mentoring, and other subjects that advance the cause of excellence in the practice of law.



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*March/April 2019*

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# Tax Cuts and Jobs Act: The New Federal Divorce Law

BY REGINA SNOW MANDL, ESQUIRE

I have never had a client who has said that he or she is getting divorced to take advantage of the tax laws. Divorce is an overwhelmingly difficult and often very painful personal experience, and while support and property division are factors, they generally are not what drives the decision to end a marriage. Historically, divorce laws are shaped by the common and statutory laws of the states, and with only certain exceptions it is state, not federal, law that is central. The Tax Cuts and Jobs Act H.R.1, enacted on December 22, 2017, has changed this dynamic in both obvious and subtle ways, culminating in what one could call the “New Federal Divorce Law.”

Although there is the perception that the primary purpose of the Tax Cuts and Jobs Act was to significantly reduce tax rates for businesses and simplify taxes for individuals, there is a category of individuals also greatly affected: divorced and divorcing couples. The changes to the tax laws for these individuals are so profound that they require a reexamination of traditional concepts for family support and, as a result, asset division. These changes took effect January 1, 2018, with the exception of the repeal of the alimony deduction, which takes effect after December 31, 2018. Unlike the change in the corporate tax rate, the tax law changes for individuals sunset in 2025 unless further legislation is enacted. The one exception is the expansion of 529 Plans, described below, which in part does not have an expiration date.

The Tax Cuts and Jobs Act is complex and lengthy, and I have no doubt that there will be much more discussion about its impact on family law in the future. To begin the conversation, I have selected the following five areas:

1. Repeal of the alimony deduction effective December 31, 2018, and for all modifications to preexisting divorce judgments if the modification expressly provides that alimony is not deductible by the payor or includible by the payee.
2. Repeal of personal exemptions effective January 1, 2018, worth \$4,050 per person in 2017.
3. Doubling of the child care tax credit and substantial increases in the income limits for who can claim the credit. For taxpayers who pay no federal taxes, there is a credit of up to \$1,400.

4. Expansion of categories for distribution of 529 Plans, which can now be used for up to \$10,000 per student per calendar year for attendance at a private or religious elementary or secondary school and may also be applied to an ABLE program.
5. Repeal of the interest deduction on a home equity line of credit or home equity loan, unless for purposes of acquisition or home improvement.

### Repeal of the Alimony Deduction

Under current federal law, alimony payments are deductible from the gross income of the payor and taxable as income to the recipient. The Tax Cuts and Jobs Act repealed the alimony deduction, so that it is no longer deductible from the gross income of the payor, nor is it taxable to the recipient. The first version of the bill would have made the repeal of the alimony deduction effective as of January 1, 2018, and would have applied to any modification made of any instrument executed before then if expressly provided for by such modification. The earlier Summary of Section 1309 of the Tax Cuts and Jobs Act H.R. 1 stated that the considerations were that the provision would eliminate what is effectively a “divorce subsidy” in that a divorced couple can often achieve a better result than a married couple and that the provision recognizes that spousal support should have the same tax treatment as within the context of a married couple. The bill was eventually enacted repealing the alimony deduction, but the effective date was changed from January 1, 2018, to December 31, 2018. See Section 11051(c), not part of the Internal Revenue Code.

In Massachusetts, it took years to enact the Alimony Reform Act (Massachusetts General Laws Chapter 208 §§ 48-55; 2011 Mass. Acts 124 § 3). The Massachusetts Child Support Guidelines ([www.mass.gov/courts/docs/child-support/2017-child-support-guidelines.pdf](http://www.mass.gov/courts/docs/child-support/2017-child-support-guidelines.pdf)) are reviewed and revised periodically, most recently in September 2017. Both the Alimony Reform Act and the Massachusetts Child Support Guidelines have specific mathematical directions that were carefully developed. One of the factors in the calculation was the deductibility of alimony for income tax purposes. To fix this will likely take an act of the Legislature or the appellate courts.

While this all gets sorted out, the Probate and Family Court will need to consider if an alimony order of 30–35 percent of a payor’s income is fair when it will not be deductible by the payor, nor taxable to the payee. Under the existing alimony law, the court may need to write findings of fact in each case in which the alimony order does not conform to the statute. There will be a rush to finish divorce cases, either by trial or agreement, to lock in the alimony deduction before the end of 2018, burdening the probate and family courts even more.

The effect of the deduction of the alimony repeal goes beyond the boundaries of the divorce cases themselves. The Tax Cuts and Jobs Act in grandfathering preexisting divorce agreements refers to “divorce or separation instruments.” Code Section 121 (d)(3)(C) defines a divorce or separation instrument as “(i) decree of divorce or separate maintenance or written instrument incident to such decrees, (ii) a written separation agreement, or (iii) a decree (not described in clause (i) requiring a spouse to make payments for the support or maintenance of the other spouse.” What will happen to alimony provisions in existing pre-marital and post-marital agreements?

### Repeal of the Personal Exemptions

Many divorce agreements have provisions for taking the personal exemptions for children. This will no longer be available, even if it’s already in the agreement. However, as the repeal expires December 31, 2025, it would be prudent to provide for the taking of personal exemptions for the children if, as, and when they become available. See Section 11041 and Code Section 151.

### Child Care Tax Credit

The child care tax credit has been increased from \$1,000 to \$2,000 per child per calendar year. The income limits for the parents have been dramatically increased from \$75,000 to \$200,000 for unmarried persons and from \$110,000 to \$400,000 for married taxpayers. For taxpayers who pay no federal taxes, there is a credit of up to \$1,400. The suspension of the personal exemptions through 2025 does not affect which party is entitled to the child care tax credit. See Section 11022 and Code Section 24.

### 529 Plans

529 Plans, which had been limited to savings for higher education expenses, can now be used for tuition in connection with enrollment or attendance at an elementary or secondary public, private, or religious school (Section 11032.529, Code Section 529). There is a cap of \$10,000 per student per calendar year from all plans combined. The expansion of the use of 529 Plans does not have an expiration date except for transfers to ABLE programs, which will expire at the end of 2025.

A note of caution from Barry Salkin, Esquire, of The Wagner Law Group: “The benefit of 529 Plans to a certain extent depends on whether state law will allow deduction or credits for these contributions. A change in the federal tax code is not automatically followed in Massachusetts. If Massachusetts takes no action with respect to 529 Plans, then individuals who contribute to a 529 Plan for elementary and secondary education will not be entitled to the

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Massachusetts state tax deduction for contributions and may be taxed upon the withdrawal of the funds from the plan for pre-college expenses. See Sections 11032 and 11025.”

### **Deduction of Interest on a Home Equity Line of Credit or Loan**

Sometimes parents will access the equity in their home to pay for a child’s college education. Effective January 1, 2018, the interest on a home equity line of credit or home equity loan will no longer be deductible unless it is used for “acquisition purposes.” Acquisition purposes include improvements to the residence. The taxpayer will need to keep records to show whether the funds were used to improve the residence. Mortgage interest is still deductible. Preexisting mortgages (the old limit was \$1 million) are grandfathered; new mortgages of up to \$750,000 will have an interest deduction; and interest for refinanced mortgages up to the limits of the grandfathered mortgage or the new limit will be allowed. See Section 11043 and Code Section 163(h)(3)(F).

### **What to Do Now**

Given that most of these changes expire in 2025, going forward it would be a good idea to have a tax clause in all new divorce cases that provides options should the law rewind to 2017. While no one has a crystal ball as to what may be in store, it would be prudent to consider language in all agreements and proposed judgments that will minimize future disputes and the attendant legal costs.

This article was written to highlight five changes that I felt will likely affect divorce cases. However, keep in mind that there have been extensive changes in the federal tax laws (the new federal tax law is over 600 pages long). Care should be given in every situation to evaluate how the new federal tax law will affect the property and support provisions in each particular case. My intention was to provide food for thought, and not to give, nor should it be considered to be, legal advice. ♦

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### **William C. Koch, Jr. *continued from page 18.***

In the 1970s and early 1980s, Koch served the State of Tennessee in various roles, trying some 400 cases during his career in the attorney general’s office. He left his position as deputy attorney general to join Governor Lamar Alexander’s cabinet as commissioner of personnel, and later counsel to the governor. He first accepted the position of legal advisor with Alexander following his November 1978 election and then played a key role in one of the seminal events in Tennessee political history—the January 1979 swearing-in of Alexander three days early to prevent the outgoing Democratic governor, Ray Blanton, from releasing prisoners en masse after having been accused of selling pardons to criminals.

The events were compressed into a matter of hours, Koch says. “Those attributes of professionalism—accountability, courtesy, humility, collegiality, and consistency—were on full display by all of the lawyers who were tasked that day to decide whether an early swearing-in was legal. The lawyers who were advising the legislative leaders, the constitutional officers, and the governor-elect that day were consummate professionals.”

“We would not have been able to accomplish what we did that day had the Nashville Bar not expected high standards of professionalism,” he continues.

“The situation was high-stakes and potentially explosive. The diplomatic conversations going on between the incoming Republican administration and the Democratic majority leadership in the legislature were civil and professional.”

As he assumes the role of president of the American Inns of Court board, Koch is focused on accomplishing the organization’s mission of providing a quality member experience by keeping the size of existing local Inns small and creating new local Inns. He also notes recent changes in the organization’s governance structure, particularly the downsizing of the board. He hopes to develop collaborative programs with other legal organizations, and to secure financial endowment for some flagship programs.

“As we move forward, we need to be sure we’ve properly aligned the roles of the volunteers and our professional staff, that our strategic goals are shared, and that all our lines of communication are robust and effective,” he says. “Professionals thrive when they are working within a community of other professionals and when everyone is trying to raise the tide that will lift all the boats.” ♦

**—By Jennifer J. Salopek**

*Jennifer J. Salopek is a freelance writer based in McLean, Virginia*





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## The American Inns of Court and the Collaborative Process: Shared Ideals of Professionalism and Civility

BY JORYN JENKINS, ESQUIRE

**Y**ou know that the American Inns of Court were conceived to address and, indeed, to combat, the deterioration in civility and professionalism of attorneys. Ethics and respect among us have plummeted as more and more lawyers have entered our profession and fewer and fewer of us know each other personally. In fact, there are four times more U.S. lawyers per person now than there were in 1958. I've been practicing long enough—since 1980—that I've actually witnessed the downward spiral in my own lifetime. It's easier to insult people you don't know and to picture them as boogymen instead of as real people just like you, isn't it?

And, as we all know, the public is all too aware of this decline in our civility.

The Inns were created to support in a very hands-on way the aspirations of professionalism, ethics, civility, and mentorship, all of which advance the cause of excellence in the practice of law. We break bread together so that we know, like, and trust each other; we are less likely to offend or to be offended by those whom we respect.

I was on the leading edge of this crusade when I formed my first Inn in 1988, eight years after the first Inn in the country was organized.

Since then, I've witnessed the Inn idea seize the hearts and minds of lawyers whom I know and respect; for whom the practice of law is an art, not

a job; and who have often been troubled and even personally distressed by the deterioration of civility in our profession. I've shared with those lawyers how to organize their own Inns of Court and how to keep them healthy and vibrant. I've observed the Inn concept spread across the United States and become a living, breathing institution, 38 years old this year. I've contributed to that cause, as the progenitor of the first regional counsel of Inns, as the first editor of *The Bench*, and as a member of the American Inns of Court Board of Trustees, among other things.

While the civility of the profession as a whole worsened, divorce attorneys in particular were gaining reputations as "pit bulls." As a result, families

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suffered while they lined their lawyers' pockets by cashing out their retirements and their children's college funds to pay for what was too often termed "frivolous" litigation by the judges ultimately deciding their cases. Why? Because people in divorce often suffer the worst stress of their lives and at the same time assume their lawyers know best how to alleviate their pain. Wrong!

There had to be a better way, and luckily, we finally found it. A form of dispute resolution for families entangled in divorce, the collaborative process developed as an alternative to hostile and often unnecessary Rambo litigation.

My involvement in the Inns crusade opened me up to the possibilities of the collaborative process as soon as I stumbled upon it. And stumble we early practitioners did. Unlike the Inns of Court movement, there has been no core of dedicated lawyers intent on spreading the word and no group of related organizations (the Inns cannot forget the early support of ATLA, ABOTA, and West Publishing, to name just a few) willing to lend their financial support to our cause.

But the collaborative movement is now finally gaining momentum, spreading throughout the country and the world. We collaborative practitioners are changing the way the world gets divorced. In collaborative divorce, a team of professionals (usually a lawyer for each spouse, an unaligned mental health facilitator, and a financial neutral) work together in a civil manner that promotes transparency and prevents the churning that has become endemic among divorce lawyers. There is but one defining prerequisite: Two lawyers agree (in writing) that they will not represent the clients in court if the clients choose to forego the collaborative process. This eliminates any incentive (conscious or otherwise) to stir the pot; the lawyers are completely focused on achieving a settlement acceptable to their clients.

Thus, in the team meetings, all of the professionals are freed to help the clients uncover their most important interests and creatively brainstorm and problem-solve resolutions to satisfy those interests. Collaborative teams are able to address not just the legal and financial issues implicated in a divorce case, but also the emotional issues.

So how do these two movements relate? The Inns of Court, above all else, promote relationships between attorneys because incivility toward someone you know and with whom you have dined is difficult. Collaborative practice relies on close relationships between lawyers. In fact, many of my cases are referred to me by "the opposing counsel!"

"What?!" you ask. "How can that be?!" you demand.

If you can appreciate how close the relationships between Inn members develop over time you can perhaps understand how this might happen. A lawyer commencing a collaborative matter, if he has the opportunity to recommend counsel for the other spouse, which he often will, is most likely to recommend someone with whom he has worked before, whom he trusts, and whom he believes has a high success rate in his collaborative matters. After all, in this process if the "opposing counsel" is successful, so is the referring counsel!

And imagine how much closer those relationships between collaborative lawyers grow over time, as we work through our clients' issues, as we rely on each other to help our clients talk to each other (which they often haven't done for a very long time), and as we trust each other to cover our backs in the crucial conversations, brainstorming, problem-solving, and selection of options.

One of the biggest issues currently facing family law practitioners is that "to a hammer, everything is a nail." That is to say that to a lawyer, everything should go to court. But it should not. Families don't belong in court, and professionalism and ethics require that family lawyers offer our clients all the alternate dispute resolution mechanisms, including the newest one: the collaborative process. The law should be a family's last resort.

Now, don't misunderstand me. Collaborative practice is not just for families. It has been used to resolve other types of legal and financial disputes. For example, the emotions involved in the dissolution of a business, especially a small, family-run business or a partnership between two close friends, are often similar to those in the dissolution of a marriage. Similarly, consider the issues and emotions that boil up when a family is involved in a probate dispute.

The collaborative process has been used to resolve sexual harassment/retaliation claims. It has also been used to resolve a clash between the contractor and the homeowner over proper construction of a house.

It is easy to see why parties involved in any of these types of matters could benefit from the assistance of a collaborative team comprised of their attorneys, a financial neutral, a facilitative mental health professional, and any other neutral experts chosen by the team to problem-solve a specific dispute.

The ideals driving the collaborative divorce movement and the American Inns of Court crusade travel hand-in-hand. One key aspect of the Inns

is the idea that members regularly “break bread” together. People have a more difficult time being rude to or betraying those with whom they share meals. Collaborative teams integrate this approach by offering sandwiches and snacks during full team meetings, as well as during the celebratory signing meeting. In fact, many collaborative cases begin with the professionals meeting together to share a meal and discuss the clients, the potential issues, and the proposed protocols for the case.

Another vital element of the Inns is that more experienced attorneys mentor those who are less practiced. In litigation, opposing counsels battle against one another, with the more seasoned attorneys often taking advantage of the inexperience of younger attorneys. But in the collaborative setting, team members work together, allowing for an environment in which all professionals learn from one another and grow professionally.

The Inns inspire civility and ethical awareness among their members. In collaborative practice—a process that promotes transparency—members strive for honesty and integrity. The scheming, mudslinging, and sandbagging that often occurs in litigation is unacceptable in collaboration. Rather, professionals pump each other up, and the teams benefit when all members work together at their highest levels of effectiveness.

So, too, just as the Inns of Court encourage creativity among our members by asking each pupillage to prepare a monthly program and by giving awards for the most original of these, collaborative teams strive toward helping their clients reach creative outcomes that meet the best interests of the entire family.

And, like pupillage teams, collaborative teams benefit from the use of well-intended humor to lighten the mood, enhance communication, and unite team members.

Participation at Inn meetings by all members is also crucial. So, too, is it on a collaborative team. If the facilitator notices that a collaborative team member, whether professional or client, is not participating, the facilitator will meet with that team member to determine the reason for withdrawing. When all members of the collaborative team participate to the fullest, collaborative magic happens and important issues and feelings are not overlooked.

What impact has membership in the American Inns of Court had on my own family law practice? It ensured that I would be open to the concept of collaborative practice, for starters. I organized my own Inn (Tampa’s Cheatwood Inn) 30 years ago

this year, and I’ve been a member ever since. I’ve also participated in several other Inns since then. More importantly, perhaps, I’ve had a hand in establishing at least another 30 Inns of Court.

Thus, I am indoctrinated in the concepts of professionalism, civility, mentoring, and ethics; of sharing my practice problems with other lawyers I trust and with whom I break bread monthly; and of setting an example of trust and confidence in the professionalism of the other lawyers in our community. This has made it easy for me to create a practice that requires trust in other lawyers and working together toward a resolution our mutual clients can accept. In fact, we collaborative lawyers mentor our clients. In any given divorce, we are two lawyers on opposing sides who demonstrate for our clients how to work together, brainstorm, communicate, problem-solve, and create resolution out of conflict.

Don’t get me wrong; our clients still get divorced. But they reconstruct their family systems instead of destroying them.

The best testament to this process is through the words of clients who have successfully ended their marriages collaboratively. At the end of each collaborative case, I debrief the clients. In one of my recent cases, my client admitted, “I learned how to communicate with [my husband], to wait it out, to calm down, and to think about the words I would say that could make our discussion better instead of worse.”

But she was not the only one with positive things to say. Her ex-husband said it more succinctly: “I came out of my divorce a better person.”

The goals of the American Inns of Court and of collaborative practice are fundamentally similar. At the heart of each is the promotion of ethics and professionalism for the benefit of the public. Collaborative lawyers have found a proactive method for putting Abraham Lincoln’s maxim—often quoted during the toasts at our Inn meetings—into action:

*Discourage litigation. Persuade your neighbors to compromise whenever you can. As a peacemaker, the lawyer has superior opportunity of being a good man. There will still be business enough.*

I could not say it better. ♦

*Joryn Jenkins, Esquire is the founding partner of Open Palm where she practices as a trial and collaborative attorney in Tampa, Florida. She is an active member of the J. Clifford Cheatwood AIC. Jenkins also served on the American Inns of Court Board of Trustees from 1991 to 1997 and received the 2001 A. Sherman Christensen Award.*



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## Helping Families in Challenging Situations Find Healthy Solutions

BY THERESA E. VIERA, ESQUIRE

One day is never the same as the next in the practice of family law. With the ever-evolving definition of what it means to be a family or a parent or to be in a relationship, family law is constantly attempting to stay ahead of the game. The courts consistently deal with new societal practices that state and federal legislatures have yet to define, so family law practitioners find themselves regularly breaking new ground and overlapping with other areas of legal practice, such as estate planning. Every case is different, but there are some unifying topics and overarching best practices to help each family find its own path forward.

### Let's begin with money.

A typical topic for family law practitioners is financial support for children or a spouse. In calculating the financial support owed to a spouse or on behalf of a child, it is well understood that you must first determine the income of the supporting spouse or obligor. Income determination was an easy computation when individuals had one source of income from an employer. Generally, this number is easy to find on a paystub or W-2 tax form. But with today's technology that allows individuals to earn income remotely, combined with the need for increased income due to the rising cost of living in many areas, there

are many times when income encompasses more than just a paystub from one source. For example, does the obligor have an eBay account through which he sells antique furniture? Does he have an Instagram account through which he sells his photography? Are these forms of income factored in for spousal support and child support?

Aside from sources, what is the currency? Most business practices trade services and goods for the U.S. dollar. But what about bitcoin? If a person buys and sells items or services on internet platforms using bitcoin, does that count as income? In my state, the North Carolina Child Support Guidelines define income as "a parent's

actual gross income from any source ... [including] operation of a business." If bitcoin can be income for financial support purposes, what is its value? How does the court decide when to value bitcoin? Unlike other currencies, the value of bitcoin has increased and decreased sharply over the past year. In 2017, its price climbed from below \$1,000 to above \$19,000. Is an average used for income purposes? Or does bitcoin only become income and valued when converted to the U.S. dollar? What if the amount is never converted?

Are you keeping up? We have not even broached the income computation of the obligee or dependent spouse. Nor have we delved into the various factors that influence the calculation for child support or spousal support. In North Carolina, practitioners are fortunate to have a child support calculation established by statute to compute the obligation when the combined income of the parents is at or below \$25,000 per month. However, practitioners in North Carolina are not as lucky when it comes to the computation of spousal support. Rather, the court exercises discretion in determining the amount, duration, and manner of payment of alimony. In theory, this means a judge could award alimony to be paid in bitcoin, though we've not seen that yet.

One of the spousal support factors that a court in North Carolina uses in its discretion is the "relative earnings and earning capacities of the spouses." With the increase of equal rights over the past five decades, women have gained greater earning capacities than women of previous generations. Laws in the United States have transformed to permit women to own and control property, earn and manage their income, and be able to keep said earnings separate and apart from any control by their husbands. Title IX of the U.S. Education Amendments of 1972—renamed the Patsy Mink Equal Opportunity in Education Act in 2002—states in part, "No person in the United States shall, on the basis of sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any education program or activity receiving federal financial assistance." Higher education equals on average a higher income. Women currently earn the majority of degrees: 57 percent of bachelor's degrees, 60 percent of master's degrees, and 51 percent of doctoral degrees, according to *Forbes*. Furthermore, although the wage gap between men and women still exists, the trend continues to shift toward equality. The Pew Research Center reports that compared with the median hourly earnings of men between the ages of 25 to 34, the earnings

of women have increased from 67 percent in 1980 to 89 percent in 2017. When you consider how difficult it was for a woman to purchase real estate or even get a credit card in the 1970s and earlier, women's economic power has come a long way. Long story short: A court's analysis of a woman's earning ability gives rise to a much different picture today than it did 50 years ago.

Let's shift now to how marital property is divided upon separation or divorce. The laws defining the distribution of the marital estate can vary significantly state to state. One of the notable differences is whether the state's law uses equitable distribution or community property. A simple but major difference between the two forms of law is that in equitable distribution jurisdictions, a judge has a bit more discretion on determining what is equitable and is able to consider a family's unique situation and adjust the final distribution as a result.

North Carolina is an equitable distribution jurisdiction, which sometimes works in our clients' favor and sometimes not. With more factors considered, the final distribution can be more complicated than a simple math equation of 50/50. Notably and admirably, such laws provide flexibility in the law to find necessary protections for children and the relevant parties. For example, a judge can award possession of a residence to a spouse that cannot afford the debt related to the house if said spouse was a stay-at-home parent providing for the daily needs of the minor children. Possession may be granted until the children reach the age of majority and have graduated from high school; thereafter, the residence is sold and proceeds divided in an equitable fashion.

Still not too difficult? Consider this: It's not unusual to regard a residence bought during the marriage as marital property subject to distribution—but what about pets? While people may consider them members of their family, they are property under most laws. Or even more complicated, what about an embryo? Frozen sperm? A frozen unfertilized egg? Under current laws, an embryo is technically not a child. Pursuant to North Carolina General Statute §50A-102, a child is defined as "an individual who has not attained 18 years of age." Will the court find distribution of such precious biological matter appropriate and "equitable" should a couple divorce? For example, one court in Pennsylvania was faced with the difficult decision to award embryos to the wife. It was found that she was a cancer survivor and had no other means of procre-

*Continued on the next page.*

ation with her own genetic material. (*Reber v. Reiss* (Pa. Super. Ct. 2012) 42 A.3d 1131).

This brings up a real concern for our clients: Do they really want a stranger, albeit a most likely intelligent and respectable stranger, determining the future of their genetic material? I advise my clients not to let their genetic material be the test case for North Carolina courts. Before freezing embryos, eggs, or sperm, they should work with their partner or spouse to agree upon the disposition of said genetic material in the event of death or divorce by formalizing said agreement in writing (preferably not on a napkin, but on a typed and notarized document).

When I tell people I am a family law attorney, their thoughts often jump to divorce. But because of how the absolute divorce laws work in North Carolina, divorce is not where I spend most, or even a notable amount, of my time practicing law. Rather, I spend much of my time helping parents in child-custody disputes. Earlier, I went over the definition of a “child.” What is the definition of a “parent” under North Carolina law? The answer may not be as simple as it appears. It is true that if a woman and a man procreate, the result—confirmable by a simple DNA test—is a child to which they are defined as the parents. However, that is only one way a child is created in today’s technologically advanced world.

In 1977, a baby was conceived by in vitro fertilization (IVF) for the first time. IVF is a process by which the eggs are extracted from a female, sperm are obtained from a male donor or donors, and the egg and sperm are combined in a laboratory. The embryo is then transferred to a uterus. It is not only possible, but also relatively commonplace, to have the biological material of more than two people involved in the conception process. For example: egg from woman 1 combined with sperm of man 1 could be transferred to the uterus of woman 2. Who are the parents? Can you make a determination with these facts alone?

Scenario 1: Woman 1 is an anonymous egg donor, man 1 is the husband, and woman 2 is the wife. Who are the parents? If woman 1 donated her eggs through a fertility program, it is likely that she already waived any legal or parental rights she had to her eggs.

Scenario 2: Woman 1 is the wife, man 1 is an anonymous sperm donor, and woman 2 is a surrogate. The surrogate was in essence hired by the wife and husband to carry to term the embryo created between the wife and the sperm donor. Again, if man 1 donated his sperm through a fertility program, it is likely that he already waived any legal or parental rights he had. How about the surrogate birth mother? Does she have rights or should she have rights equal to a parent?

Scenario 3 (because yes, things can get even more interesting): A same-sex male couple decides to have a child. Woman 1 is an anonymous egg donor, both of the men in the couple donate their sperm to be used in IVF, and woman 2 is a surrogate. In addition to the concerns noted earlier, what happens if the men decide never to conduct a DNA test to determine who is the biological parent... until they decide to divorce when the child is 12 years old? Who are the parents? Does the law defining “parent” in your jurisdiction match who you believe should be the parents?

Once the term “parent” is clarified, the impact ripples beyond the boundaries of family law. Inheritance and estate laws then come into the picture upon contemplation of death in the family. Social security and disability laws are also affected should a parent or family qualify.

Investigating the answers to some of these tricky questions is not only interesting but necessary for the protection of the legal rights of our clients. The efforts of the American Inns of Court and my Inn, the Chief Justice William H. Bobbitt American Inn of Court, provide the necessary platform upon which to open this dialogue. Across practice areas, I have observed attorneys collaborate, disseminate, and push the conversation forward.

Where the law is silent or absent, it is up to legal practitioners to pave the way for the future of families in our communities and country. The answers to finding healthy solutions for families and children in unhealthy situations are not always clear; however, in lieu of waiting for statute revisions tomorrow or case law decisions years from now, collaboration among practitioners is necessary to protect families today. ♦

*Theresa E. Viera, Esquire, is an attorney with Sodoma Law in Charlotte, North Carolina. She is an Associate member of the Chief Justice William H. Bobbitt American Inn of Court.*



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## Why Family Law Inns Are Special

BY JUDGE KEVEN M.P. O'GRADY

**T**he Johnson County Family Law Inn of Court in Olathe, Kansas, just celebrated the successful completion of its fifth year. It has grown from a startup to an Inn with more than 80 members. We have excellent participation from the judges handling family law-related cases. The Inn includes a mix of experienced and new family law attorneys, emphasizing lawyers with fewer than 10 years of family law practice. We have been platinum four out of our five years.

Our Inn meets monthly from September to November and January to April. Members who attend all meetings can complete two-thirds of all their CLE requirements, including all of their ethics hours. We have monthly meetings in small groups and a well-attended annual social where several members of the appellate courts join us. This of course describes many successful Inns across the country, so why did we create a family law specialty Inn of Court?

Family law practice is not like other practice areas. It is high stress in a different way. Many clients are demanding, but in a divorce or parenting dispute, the demands are highly personal and emotional. Most clients are unfamiliar with the legal system. They are confronted with the loss of a marriage, of relationships, or time with a child. The bedrock social structure of their life, the family, is broken.

The opposing parties share deep emotional connections. Lawyers working with these clients must manage both the professional and psychological tolls exacted by this calling.

Balancing work and personal life is difficult when clients might call with a child exchange dispute at 9:30 p.m. Family lawyers are particularly prone to vicarious trauma as they are helping people work through the most stressful period of their lives. Many lawyers overextend themselves with nowhere to turn. They might not have anyone to help them deal with practice management issues. While starting out in family law is tough, staying in it is harder. Even experienced attorneys begin declining to take “contested” cases because of the high levels of conflict and stress.

*Continued on the next page.*

Law offices dealing with family law are often small. Many practitioners are solos. The burnout rate is staggering. Family law is an area in which many young lawyers start. However, without the benefit of other lawyers in a firm, they might receive little or no mentoring. Most successful family lawyers settle most of their cases so they are not seen in the courtroom as often as the “Rambo” lawyers are. Younger, newer lawyers are often seeing the least-proficient attorneys in the courtroom. Many successful family law lawyers are handling higher asset and more complex cases, which means new lawyers don’t meet and work with them. Making connections and networking is a struggle.

Family law is not often an emphasis in law school. While students may get training in the legal aspects of family law, they rarely receive vital education in the social and psychological aspects of the practice. Most family law attorneys did not go to law school expecting to practice family law even though these cases make up a large portion of cases actually litigated in most state courthouses. Most general jurisdiction judges had limited exposure to family law before taking the bench.

Many judges handling all types of cases have noticed declining civility. This has always been a problem in family court. Ill-trained lawyers confuse obstruction and combativeness for zealous advocacy. “Old school” or “hired gun” tactics become easier than having hard conversations with emotional people. Despite being the area of law that has perhaps the most real-world impact on the most people every day, family law is not something many lawyers aspire to do. It’s the “easy stuff” to work on between “real” cases.

In criminal practice, many defense lawyers started in a prosecutor’s office. Both sides know and respect one another. They appreciate the other’s role. In civil practice, many organizations have been created to bring the like-minded and adversaries together to promote professionalism and good practice. But family law is localized. Opportunities to share and grow are not easy to find.

Family law is different from some practice areas in another significant way: the large number of unrepresented litigants. Young lawyers are well-trained to work with competent opposing counsel but very often are the only legal professional in their case. The ethical and professional issues arising from working with non-lawyers can be daunting. As increasing costs of representation outpace the financial capabilities of many court users, family law attorneys need help adapting to a new business model.

In 2013, a group of attorneys and judges in Johnson County, Kansas, decided to do something. After five years, we can genuinely attest that the creation of a family law specialty Inn of Court has made a significant impact. The change in culture is both noticeable and positive. We have witnessed an increased focus on civility and professionalism among those joining. While substantive legal matters are often discussed at monthly meetings, small groups meet regularly. It is in this setting that mentoring relationships are fostered. These smaller meetings are often roundtable discussions. Young lawyers ask for advice and direction from the more experienced. Newer lawyers develop connections with experienced lawyers. Before long, self-selected mentoring occurs through phone calls, emails, and other meetings. Newer lawyers develop peer relationships. They begin to mentor one another. They get that sounding board that they were unable to find in a small or solo practice.

New lawyers are exposed to higher-level issues. Many would not have the opportunity to consider, let alone discuss, access to justice, best practices, self-care and vicarious trauma, and interdisciplinary issues. Without the Inn, it would be difficult for them to get feedback and suggestions from the bench. Before electronic filing and email, it was not uncommon for young lawyers to often be in the courthouse where they might have a moment to personally interact with a judge. To help foster that connection, our Inn offers “View from the Bench.” Any Inn member can watch a trial from the front of the courtroom. The lawyers are apprised in advance of the issues that will be discussed at the hearing. The judge might discuss with them in advance the pre-trial order or other procedural issues as well as the legal standards that will control the decision. The lawyers then hear the arguments and evidence as a neutral. As they observe the trial “from the bench” they can appreciate what good advocacy looks like, what is helpful to the court (and what isn’t), and the lawyers’ demeanor and professionalism. Participating lawyers report that seeing a case from the judge’s perspective had an impact on how they prepared their cases and their clients. They have a better appreciation for what judges need to hear and how to present it in a helpful way.

At Inn meetings, lawyers hear the bench’s expectations of civility. Without mentors, younger lawyers sometimes lack the tools to explain to clients the benefits of civility and professionalism. They hear that successful lawyers value collegiality and that you can be a zealous advocate without losing your soul or



your mind, and they hear how to deal with unrealistic clients—it's okay to tell a client "no" sometimes.

When the Inn began, one young, small-firm associate joined. His firm regularly took family cases, but the senior lawyers did not often handle them. That job fell to the younger lawyers. The firm's litigators espoused a scorched earth policy, even in family cases. Every issue is a battle; every battle is a war. Emotional clients deserved an even more emotional argument. Not surprisingly, this young lawyer was not having the success he had hoped. After some time in the Inn, his attitude changed. He stopped accusing opposing parties of dishonesty when there was simply a difference of opinion. He stopped pursuing clearly inappropriate arguments just because the client insisted. He focused on issues. Soon he began to see that he was having more success in and outside the courtroom and that his peers began to work with and respect him. Experienced attorneys began treating him differently. He no longer had discovery disputes in every case. Simple issues were resolved amicably. He became a better lawyer, and his clients got better service.

The change in culture has been evident even among lawyers who are not Inn members. Non-members have started to realize that the high-conflict style doesn't work. They can no longer bully the younger lawyers who are members of the Inn. One lawyer had a terrible reputation for his aggressiveness and highly conflictual style. When he started having cases with young Inn members he found that this style was no longer effective. These young lawyers had a better grasp on what was important and what helped the court make better decisions. They had more confidence in their understanding of what was expected and valued. Consequently, the high-conflict lawyer realized that if he didn't change his ways, he would no longer be a successful family law practitioner in Johnson County, Kansas.

Another change has been a renewed commitment to public service. Most lawyers are givers. We want to help; that's why we became lawyers. New lawyers don't often know where to look for opportunities to help. They can be isolated. They are the lawyers most directly dealing with the unrepresented, and they want to provide affordable service to those that want it.

We promote access to justice in several ways. Our Inn requires membership in our local bar association. The Inn encourages and fosters a growth in limited scope representation. Helping new lawyers to start a limited scope practice and to

do it ethically, has increased public access to legal advice. We have seen a growth in domestic case managers as they have mentoring opportunities. More lawyers are offering to work as guardians ad litem and as alternative dispute providers.

We have seen an increase in lawyers willing to provide pro bono service also. New lawyers benefit from the exposure to different types of cases and the mentoring available, but they need to do so in ways that are affordable. The Inn participates in our District Court Help Center's Volunteer Attorney Project. A particularly successful aspect of that work is the monthly Night Court. Unrepresented parties often find it difficult to miss work for simple hearings. Many, if not most, divorces and parentage cases without lawyers are resolved by agreement. If a case without lawyers is fully resolved, it can be set on a 5:30 p.m. docket. For the Night Court docket to run smoothly, the unrepresented parties' paperwork needs to be in order. Inn members volunteer to attend Night Court, where they meet with each couple and review the paperwork for completeness. If something is missing, they are able to immediately help them, thus avoiding another court date. Each volunteer spends 5 to 10 minutes per case. The judge is able to quickly work with the family, court staff can instantly process the paperwork, and litigants are often finished in less than one hour. While this is a great service to the community, the lawyers learn what the judges need and expect, which helps them draft better pleadings. They have a chance to talk with judges and, critically, court staff, in a more informal setting. Our Inn members are enthusiastic supporters of Night Court, many stating that it's one of their favorite moments at the courthouse.

Professionalism, ethics, civility, and excellence are the guiding principles of the American Inns of Court. While we can't know if the founders anticipated specialty Inns, and specifically ones focused on family law practice, the Inn of Court model is particularly well-suited to advancing these principles in this vitally important area of law. The family law-specific Inn succeeds in promoting all four principles. Most importantly, however, the benefits flow far beyond the courtroom and individual offices. Better family law practice leads to real and meaningful benefits to families. A family law Inn can and does make a difference. ♦

*Judge Keven M.P. O'Grady serves on the Johnson County District Court in the Tenth Judicial District of Kansas. He is a Master of the Bench and a past president of the Johnson County Family Law Inn in Olathe, Kansas. He has also served as a member of the American Inns of Court Program Awards Committee.*



## TECHNOLOGY IN THE PRACTICE OF LAW

Richard K. Herrmann, Esquire

### Can You Believe It, People Still Text While Driving? Do you Do It?

Not too long ago, I was standing outside my home when I watched a young girl riding over a speed bump on her bicycle while texting with one hand. An incredible feat. On the one hand, I found myself just shaking my head in disbelief; on the other hand, I could not understand how an obvious intelligent young person could pull a stunt like that in complete disregard for her own safety.

The incident reminded me of what I thought was the evolution of the awareness and mindfulness of distracted driving. I teach a course on Technology and the Law. Years ago, I would begin each semester by asking for a show of hands as to how many students drive while texting. When I began, the vast majority would raise their hands, setting the stage for the semester's theme on the risks associated with the use of technology. I noticed, as the years passed, fewer and fewer students would raise their hands as the semester began. Last year, no hands were up at all, and I remarked how things have changed. One student in the back simply said, "It is not that we don't do it; this is a law class and everyone knows enough not to admit it".

So, I find myself continually amazed as to the dangers people place themselves and other in, when driving while texting. The law calls it "inattentive driving". When a person is driving while intentionally taking his/her eyes off the road, there is nothing "inattentive" about it. Some states have addressed the issue but specifically making it a traffic offense use your mobile phone unless it is "hands free". Obviously, considering today's technology, this is not sufficient. Let me give you an example:

In May of this year, a police officer noticed a woman stopped at an intersection light. The driver caught the officer's attention when he saw her looking down and a glow from an electronic device. After the light turned to green and the driver did not move; the officer shown his light to get her attention. Once the women cleared the intersection, he pulled her over. She was ticketed and fined \$400. The women argued she was simply consulting her watch for the time but had to tap

it twice. The judge did not accept the old "just looking at my watch" argument and found her guilty of distracted driving, noting an Apple watch is no more safe than a cell phone taped to your wrist. <https://nationalpost.com/news/canada/a-cellphone-taped-to-someones-wrist-woman-looking-at-apple-ibatch-found-guilty-of-distracted-driving>

Apple has been the target of litigation for a number of years, by those claiming it should "lock its iphone when in motion". According to a recent AAA Foundation for Traffic Safety study, distracted driving now tops the most significant dangerous behavior lists, - even higher than driving while drinking or while using drugs. And yet, of the drivers polled in the study, more than "(49 percent) of drivers report recently talking on a hand-held phone while driving and nearly 35 percent have sent a text or email." <https://newsroom.aaa.com/2018/03/distraction-tops-drivers-list-growing-dangers-road/>

The question arises, besides suing Apple and other device manufacturers for liability connected with distracted driving, what should lawyers do? And I am not talking about more advertising to represent injured victims of distracted drivers. We ought to get in front of this. We, as an organization, should make it clear that this form of distracted driving is not acceptable behavior. We don't want our partners doing it, and we don't want our associates engaging in it. In August 2012, the American Bar Association amended the Rules of Professional Conduct. Comment 8 to Rule 1.1 provides "[ 8] To maintain the requisite knowledge and skill, a lawyer should keep abreast of changes in the law and its practice, including the benefits and risks associated with relevant technology." If there is any risk that can be associated with inattentive driving, it is using an electronic device such as a cell phone or smart watch. And if a member of the Bar is found liable for engaging in this form of distracted driving, the issue should be brought to the attention of Disciplinary Counsel as a violation of Rule 1.1, comment 8. We need to step up and be leaders, for the sake of our communities, our clients and our families; we need to Raise the Bar. ♦

*Richard K. Herrmann, Esquire is a partner in the firm of Morris James in Wilmington, Delaware. He is a Master of the Bench member of the Richard K. Herrmann Technology AIC.*

## Dorothy Does Oz: Professional Expectations for Family Lawyer

**Program No.:** P14000

**Presented By:** Susan Greenberg Family Law American Inn of Court of the Palm Beaches, West Palm Beach, Florida

**Presented On:** November 8, 2017

**Materials:** Script, Citations of Law, Handouts

**CLE:** Approval Pending: 1 Hour, Florida

### Summary:

This program focused on professional expectations and ethical considerations involved in a complex family law case presented as a parody of the movie *The Wizard of Oz*. Using four skits, aspects of the case were presented that included the respondents' and petitioner's consultation with lawyers; mediation; and the trial of a paternity and parental relocation matter before "Judge Oz." After each scene, discussions were held about the ethical issues presented. The factual scenarios were derived from the Rules of Professional Conduct and the Bounds of Advocacy Goals for Family Lawyers and raised four to eight ethical issues for review and discussion. A handout presented as a "Playbill" sparked further discussion of the ethical issues. Topics included conflict of interest; excessive fees; raising invalid defenses; confidentiality; improperly obtaining evidence; professionalism and minimization of conflict in family law disputes; intentionally misleading opposing counsel; ex parte communications; statements to the media; and false evidence.

### Roles:

Munchkins/Narrators .....	Associates, Masters of the Bench
Scarecrow .....	Barrister
Tin Man .....	Master of the Bench (Judicial)
Lion .....	Master of the Bench (Judicial)
Monet Ripoff, Esq. ....	Master of the Bench
Wicked Witch/Private Investigator .....	Master of the Bench
Dorothy .....	Master of the Bench (Judicial)
Jack Ripoff, Esq. ....	Master of the Bench
Glinda the Good/Mediator .....	Master of the Bench
Honorable Wizard of Oz .....	Master of the Bench
Ms. Flying Monkey .....	Barrister

### Agenda:

Opening Remarks/Introductions .....	5 min.
Act I Scene 1 .....	5 min.
Discussion of Ethical Issues in Act I Scene 1 .....	5 min.
Act I Scene 2 .....	5 min.
Discussion of Ethical Issues in Act I Scene 2 .....	5 min.
Act II—Mediation .....	10 min.
Discussion of Ethical Issues in Act II .....	5 min.
Act III—Trial .....	10 min.
Discussion of Ethical Issues in Act III .....	5 min.
Closing Remarks/distribution of citations/handout .....	3 min.

### Recommended Setup and Equipment:

Microphones, PA system, tables, chairs, podium, overhead projector; props; costumes.



## Submit your Inn Programs!

Submitting your programs to the Program Library helps us deliver convenient, meaningful and up-to-date program information to Inns and other Inn members. With the first program meeting of the Inn year fast approaching, now is the perfect time to start collecting materials for submission.

Electronic submissions are encouraged; please include all materials necessary for other Inns to restage the program. These materials might include a script, supporting documents, research materials, or any handouts.

When submitting a program please include a Program Submission Form, which can be downloaded from our website [www.innsofcourt.org](http://www.innsofcourt.org). Every program that the national office receives is included in the current Program Library Catalog and helps your Inn along the track to Achieving Excellence.

If you have any questions please call 703-684-3590 or send an e-mail to [programlibrary@innsofcourt.org](mailto:programlibrary@innsofcourt.org).

*The national program library is an important service offered to the Inn membership by the Foundation. This Program Spotlight highlights the best of the program library as an offering to spark your own program creativity. If you would like to order any of the featured programs, please visit our website at [www.innsofcourt.org](http://www.innsofcourt.org) or send an e-mail to [programlibrary@innsofcourt.org](mailto:programlibrary@innsofcourt.org).*

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*The Bencher* is the flagship publication of the American Inns of Court and is published six times a year. The purpose of *The Bencher* is to provide a regular communication link among the national office, Inns, and members of the American Inns of Court. Contributions are welcome. Feature articles or news items must be submitted to the editor and will be reviewed for suitability and may be edited for content or to fit. *The Bencher* accepts paid advertising. The presence of advertising in no way implies that the American Inns of Court either has any relationship with the advertiser or endorses the product or service advertised, unless so indicated in the body of the advertisement or elsewhere. Please submit content to Rita Zimmerman, Editor, at [rzimmerman@innsofcourt.org](mailto:rzimmerman@innsofcourt.org). Address changes should be made online at [www.innsofcourt.org](http://www.innsofcourt.org) or sent to Howard Hurey at [hhurey@innsofcourt.org](mailto:hhurey@innsofcourt.org).

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