

Family Law

The newsletter of the Illinois State Bar Association's Section on Family Law

Chair's Column

BY SALLY K. KOLB

My time as chair is quickly coming to an end. I want to take this month's column to introduce you to your incoming secretary, Wesley Gozia. If you have not yet had the pleasure of his acquaintance, please allow me to help you become acquainted with him!

Wesley obtained his B.S. in business administration with an emphasis on marketing from Saint Louis University. He later graduated with his J.D. from the University of Missouri, having gone straight through from undergrad. His first job out of law school was not a law-

related job. He was a political consultant doing field operations for the Bill Brady for Governor campaign in the metro-east St. Louis area. He got hired based on connections he made working in politics throughout undergrad and law school in both Illinois and Missouri. After that job was finished, he did some contractual work for an attorney who represented clients on gaming and tax matters while he contemplated his future career path. He received an offer to work in Springfield for the Senate staff, but, ultimately, decided

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New Methods in Interviewing/ Representing Nonverbal Children: Best Practices

BY JACALYN BIRNBAUM

It's not big news that we are living at a time of tectonic shift.

In the olden days, we had at least the appearance of certainty and consensus about what was right and wrong.

In the olden days, we were sure there was unanimity. Turns out, there were issues and voices unaddressed.

As with the country—so with its families and the children we represent.

In every one of our cases, relationships that began with at least the appearance of certainty and consensus fell apart when previously silenced, overlooked or ignored voices began to speak and unaddressed issues arose.

The Opportunity

In our little area of Domestic Relations, we are already insanely familiar with

distrust, vindictiveness, rage, and conspiracy theorizing. All the time. Every day.

The statutes and the studies and the experts and the courts—and each other—are our tools to get through our cases.

Within manageable boundaries, we are in consensus on the tools we use to manage the chaos in our practice.

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he would start his own practice. He then founded Gozia Law Firm LLC in December 2010, where his primary area of practice is family law. He also handles criminal defense, estate planning and real estate disputes.

He resides in Salem, Illinois (that is WELL South of I-80, FYI) with his wife Ren and children Libby and Hank. His wife works as the judicial secretary for Justice David K. Overstreet of the Illinois Supreme Court. His daughter, Libby, plays soccer and tee ball and his son, Hank, is just chomping at the bit to be old enough to get to start playing sports like his big sister. When he's not being a legal warrior, he likes going to his daughter's soccer and tee ball games and practices. He enjoys trap shooting and target shooting. He also enjoys a delicious meal out from time to time and looks forward to being able to do so more often in the future. As for all of us, Covid restrictions have limited those restaurant opportunities.

On how his life has changed since having children, Wesley says that it primarily has just made scheduling more difficult because he strives to be available to attend as many functions for his children as possible. They are only young once and time moves quickly, so he wants to enjoy every minute of it! He says the most influential person in his life is, in fact, his daughter Libby. That is because becoming a father gave him a new outlook on life and has made life much more fulfilling.

Wesley enjoys the practice of law, particularly the challenges of finding ways to make differing personalities come together for common solutions. He is actively involved with the Carlyle Rotary Club. His involvement has given him the opportunity to give back to his community as well as to network with Rotarians outside of his little corner of the world. He is also very active in the Illinois State Bar Association. About his ISBA involvement, Wesley says it gives him opportunities to have other people to discuss legal and practical issues with, helps give our

profession a good public face, and gives him an enjoyable opportunity to give back to our profession while striving to improve it.

Wesley says a few things folks might not know about him are that he was adopted at birth and was an ice hockey goalie coach for a couple of summers during high school. He also enjoys the book *The Catcher in the Rye*. That being said, he has found that since starting law school, his desire to do recreational reading has been nonexistent.

When he first began practicing, a judge gave him advice on work/life balance. It pertained to how to deal with people who had perceived emergencies on holidays and weekends. "Ask them if the emergency is worth \$10,000? If it is not, tell them you'll talk to them about it on Monday." And, as far as advice Wesley would give to new law school grads, "Go and do what your heart tells you to do, because contrary to popular belief, happiness cannot be purchased." Well said, Wesley, well said.

I hope this brief introduction has made you want to learn more about Wesley Gozia. He has been a very hard-working, dedicated member of the Family Law Section Council for years and will lead us well in the future. So, if you haven't had the chance to have a conversation with him, do so! You won't be disappointed. He's extremely insightful, kind, and personable. He has a wealth of knowledge and expertly pairs it with a healthy dose of common sense. If you have the opportunity, grab a cup of coffee with him. You'll be glad you did! ■

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This is the newsletter of the ISBA's Section on Family Law. Section newsletters are free to section members and published at least four times per year. Section membership dues are \$30 per year. To subscribe, visit www.isba.org/sections or call 217-525-1760.

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New Methods in Interviewing/Representing Nonverbal Children: Best Practices

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In 2020—with Judge Dickler leading the way—we somehow managed to navigate through a pandemic - and survive.

We were on the same frequency.

The Challenge

We may have the tools, but to use the tools, we have to reach the kid.

In these particularly crazy times, how can we get on the SAME FREQUENCY as the kids we represent IF THEY CANNOT or WILL NOT TALK.

WE are the voices for these kids. We have to be on the same channel as they are, but HOW?

Let us reach them by meeting them where they are—and where we all once were.

The EYES, An Ancient Strategy

In what we call the olden days, there were a handful of channels, none with opinions. Now, there are thousands of channels and choices, on television and computers and devices. The noise is thunderous and deafening.

Before we can use our tools, we need get in the door. To get in the door, we need a key.

Methinks to find the key, we need to look back way further than Channels 2, 5, 7, 9 and 11. Back to ancient times.

It's the EYES. Always has been. Eyes really are windows to the soul.

The Value of SEEING and BEING SEEN

For sure, your client is in pain, is confused, is dealing with FEAR on an instinctive and primal level ... NOT a rational one. His/her neural pathways are in the process of being laid. Right now. How can we help?

WE CAN SEE THEM SO THEY FEEL SEEN

EMPATHY

The only experience EVERYONE shares is that every single one of us was once a kid. Without exception, every one of us once experienced the world from people's knees. Everyone hated it, except those few that had perfect childhoods—and a great

many of them have been miserable as adults because the real world never matched their rose-colored expectations. With a little introspection, we can all go back to the future and remember how we learned to digest disappointment and frustration.

IMMUNIZATION

Disappointment and frustration are not unlike THE VIRUS: ubiquitous, virulent, contagious, random, unfair, and potentially lethal. Whether by experience or inoculation, or both, we need to IMMUNIZE - to become physiologically (and psychologically) familiar with ominous threats, so our bodies are able to recognize and successfully fight a deadly threat whenever it appears.

KINDNESS

The kids we represent are not abandoned, they are being fought over by parents (sometimes other family members), each of whom is certain he/she is RIGHT. Indeed, the family system may be fractured, but it is not broken—it is held by the court and the case—and by us. As a cast is to a fracture, the legal process can hold space for the kids while the conflict resolves. Effectively immunizing the kids without killing them or their parents.

For years, the emphasis has been on **external** indicators: grades, clothes, houses, circumstance, appearance of calm. How about using this legal experience to highlight the importance of **internal** processes, like resilience and flexibility?

With apologies to the late Leonard Cohen: **The crack is important; it's how the light gets in.**

In the meantime, while a case proceeds through the python, how about treating parents' opposing world views as a course in diversity training - since real diversity is more about world view than skin color, anyway.

To be sure, each litigant has a separate emotional language, but the kids we represent need to be emotionally bilingual. They need to speak a universal language. **We can use our EYES—one on one—to slice through their feeling of invisibility and**

speak to them with the best language of all: KINDNESS.

I wrote this poem in April 1990 while I was in law school; seems prescient now:

Look to Nature for your metaphors and
find there what is true
Organic life is all around, its lessons to
construe.

In nature what is rigid, is by its nature, ill;
A tree that will not bend will break;
immobile joints can kill.

All species must adapt or die, and learn to

comprehend

That stimuli and circumstance teach how
to stretch and bend.

What's healthy is what's fluid, resilient and
in sync

With its nature as a living thing; we're
more than what we think.

We've been wrong each time we
overestimate the odds

And are frightened and misled by those
who think there are no gods.

The odds seem always stacked against the
soul that can't be measured,

That can't be graphed and charted, but
is—above all - to be treasured. ■

An Overview of Islamic Marriage Contracts and Enforceability in Divorce Proceedings

BY STEPHANIE L. TANG

Imagine a potential client comes into your office. You start explaining to her generally how courts adjudicate maintenance and equitable distribution of property in Illinois. The potential client then explains her parents negotiated an Islamic marriage contract with her husband, consenting to and actually signing the contract on her behalf. The contract provided for a deferred *mahr* ("dowry") provision that her husband would pay 15,000 rupees (approximately \$1,500 USD) in the event of a divorce. The potential client asks the million-dollar question: Will this contract be enforced and preclude her from receiving maintenance and an equitable distribution of property? The answer may surprise you.

In *Chaudry v. Chaudry*, wife faced this exact scenario, and the Superior Court of New Jersey found the contract enforceable under New Jersey contract law. 388 A.2d 1000, 1003 (N.J. Super. Ct. App. Div. 1978). Because the parties did not include any provision for alimony or equitable distribution of property when they otherwise could have, the court agreed that the contract was akin to a prenuptial agreement and effectively precluded wife, after a fourteen-year marriage, from any portion of her husband's estate or any alimony. *Id.*

Unfortunately, because of U.S. courts' lack of familiarity with these concepts, cases involving adjudication of *mahr* provisions span a wide spectrum in results. In Illinois, there is no case law guidance on the topic, so judges may likely look to other states' treatment of such provisions to guide their analysis.

What Is Mahr/Sadaq?

Under traditional Islamic law, when a couple is married, they sign a marriage contract in an official ceremony, frequently referred to as the *nikah*. These contracts provide that the husbands must gift their

wife a *mahr* (also called a *sadaq*). The contract may provide for gifting of an immediate *mahr* (*muajjal*), payable at time of the marriage, or a deferred *mahr* (*muwajjal*), payable upon demand, death, or divorce, unless the wife initiates divorce proceedings without cause (*darar*). The immediate *mahr* is typically a symbolic amount like one gold coin. Before signing the contract, the solemnizer will ask the couple if they consent to the amount of *mahr* outlined in the contract.

Dissolution of Marriage Under Islamic Law

Prior to dissolution of marriage, the Qur'an instructs couples to first try to resolve the conflict through mutual consultation and open discussion. If they cannot resolve it, husband may employ *daraba*, interpreted traditionally as "hitting" or "beating" but in more modern interpretations as "leave" or "separate." Divorce as seen as a "last resort" measure.

Islamic law provides four methods to dissolve marriage: (1) unilateral (*talaq*), (2) delegated (*tafwid/ismah*), (3) wife-initiated (*khul*), and (4) judicial (*tafriq*). For a wife-initiated dissolution, the wife obtains consent of her husband to dissolve the marriage in exchange for her forfeiting her *mahr*.

Illinois Courts' Interpretation

There is limited case law in Illinois on religious contracts generally and no case law regarding enforcement of a *mahr* obligation in Illinois. See *Schneider v. Schneider*, 408 Ill. App. 3d 192 (1st Dist. 2011); *In re Marriage of Goldman*, 196 Ill. App. 3d 785 (1st Dist. 1990). The case of *In re Marriage of Goldman* is the closest illustration of enforcement of a religious contract. In *Goldman*, the appellate court analyzed whether or not a *ketubah*, a Jewish certificate of marriage, obligated the husband to later obtain a *get*,

a document that a husband must transfer to a wife for the divorce to be valid under Jewish law. Husband argued that the *ketubah* was unenforceable because the terms were too vague to support specific performance because the *ketubah* did not specifically refer to husband's obligation to obtain and deliver a *get*. After hearing a rabbi's testimony, the First District Appellate Court rejected husband's arguments and found the *ketubah* was enforceable because both parties were familiar with what was promised and intended that the *ketubah* would be binding and governed by Orthodox Jewish law. Based on *Goldman*, it appears a court in Illinois would strongly consider whether both parties were familiar with and intended for the contract to be governed by Islamic law.

Other Courts' Interpretations of Islamic Marriage Contracts

As Illinois lacks case law on this issue, it is important to consider what approaches other jurisdictions have employed in analyzing enforceability of *mahr* provisions. Many courts in other states have applied general contract law or paralleled the analysis of these provisions to prenuptial agreements. In *Odatella v. Odatella*, the court viewed video footage of the entire familial negotiation leading up to the signing of the marriage contract and listened to wife's testimony explaining *mahr*. 810 A.2d 93, 96-97 (N.J. Super. Ct. Ch. Div. 2002). Applying contract law, the court enforced the *mahr*, finding husband's signature represented an offer of the *mahr*, wife's signature served as acceptance of same. *Id.* Similarly, in *Chaudry*, discussed above, the court enforced a deferred *mahr* of \$1,500 USD with no provision of alimony or equitable distribution of husband's property because the agreement only provided for the provision of *mahr*, despite the parties' 14-year marriage and disparity in incomes.

388 A.2d 1000, 1006 (N.J. Super. Ct. App. Div. 1978). In contrast, the Ohio Court of Appeals found an agreement providing for a *mahr* of \$6,600 USD was not enforceable as at the time the agreement was entered into, wife was not represented by counsel and there was no disclosure of husband's assets. 2001 WL 1518116 at *3 (Ohio Ct. App. Nov. 30, 2001). Further, courts have found *mahr* agreements invalid as they fail to satisfy the statute of frauds. *In re Marriage of Shaban*, 105 Cal. Rptr. 2d 863, 865 (Ct. App. 2001).

Alternatively, other courts have effectively promoted certain interpretations of Islamic law over another by attempting to apply Islamic law as testified by expert witnesses and the parties. In the California case of *In re Marriage of Dajani*, the court relied upon testimony presented by an expert in the Islamic faith that provided wife should not be able to recover her *mahr* because

she initiated the divorce. In contrast, the Florida District Court of Appeal disregarded husband making the same argument that the *mahr* should not be enforced because wife initiated the divorce.

Recommendations

Because of the disparate treatment of *mahr* provisions between courts across the United States, practitioners should strongly consider if they are told about a *mahr* at the time of marriage, that the parties should execute a separate prenuptial agreement incorporating the terms of the *mahr* therein to increase likelihood of future enforceability. Unlike *mahr*, prenuptial agreement negotiations involve legal counsel, have a broader scope, and require a financial disclosure of all earnings and assets. On the back end, practitioners should ask potential clients who discuss *mahr* provisions with

them what the intent of entering into the *mahr* was, what evidence there is to support said intent, and whether they have an expert witness who may be available to testify as to this obligation if the case proceeds to trial.

Additional Sources:

Maha Alkhateeb, *Islamic Marriage Contracts*, 2012, available at: <https://s3.amazonaws.com/gbv-wp-uploads/wp-content/uploads/2017/07/17215509/Islamic-Marriage-Contracts-Resource-Guide-2012.pdf>.

Lindsey E. Blenkhorn, *Islamic Marriage Contracts in American Courts: Interpreting Mahr Agreements as Prenuptials and Their Effect on Muslim Women*, 76 SCALR 189 (2002).

Tracie Rogalin Siddiqui, *Interpretation of Islamic Marriage Contracts by American Courts*, 41 Fam. L.Q. 639 (2007). ■

Illinois AAML Announces African American Law School Scholarship

BY JAMES QUIGLEY

In the wake of the recent George Floyd verdict, the nearly yearlong racial tumult exacerbated by the Covid pandemic, many of us were left with more questions than answers and perhaps, in some instances, more problems than solutions.

A year or so ago the Board of Managers for the Illinois Chapter of the American Academy of Matrimonial Lawyers (AAML) voted unanimously to post on the Chapter's website a letter received from the National ostensibly supporting the Black Lives Matter movement raising awareness of racial inequity and injustice. The Board was challenged to actually "do" something positive, as opposed to simply acknowledge that a problem exists.

After months of spirited debate James Quigley made a motion that the organization do something more than just post a letter on their website. The Board expressed the belief that it was vitally important to our practice

to have the perspective of African American attorneys, not only for the litigants we serve, but for each of us as practitioners.

From this dialogue the Board voted to implement a scholarship for African-American law students within the state of Illinois. The scholarship is intended to increase awareness of the practice of family law, along with the need and opportunity for young, aspiring African American law students in this area of law. The ILAAML has embarked on trying to finally do something to help address some of the inequities African-Americans have historically faced in the United States. In other words, to do something tangible.

The first person consulted outside of the board was the Honorable Judge William Stewart Boyd. We have had the privilege and honor to practice before Judge Boyd from the time he became a judge, and have been treated with the utmost professionalism,

respect, and graciousness. Judge Boyd was asked his thoughts on the possibility of a scholarship for an African American law student and his comment was: "you can't help everyone, but you can help someone" and that became the mantra in developing the scholarship.

So, after months of hard work by Academy Fellows, the organization has formally introduced the AAML Illinois Chapter William Stewart Boyd scholarship for African American Law Students. The first scholarship will be given in the first semester of this calendar year, 2021. The scholarship is a one-time \$5,000 scholarship to a first-year African American law student at an Illinois law school who has an interest in family law. Perhaps more valuable to the recipient of the scholarship each year than the financial award, will be the opportunity, as part of the scholarship, for the recipient to intern with Judge Boyd for a semester during his or her

second year of law school, and also for a clerk position within the firm of one of the Academy Fellows firms, in his or her third year of law school. This type of real-world experience can be invaluable to a young law student.

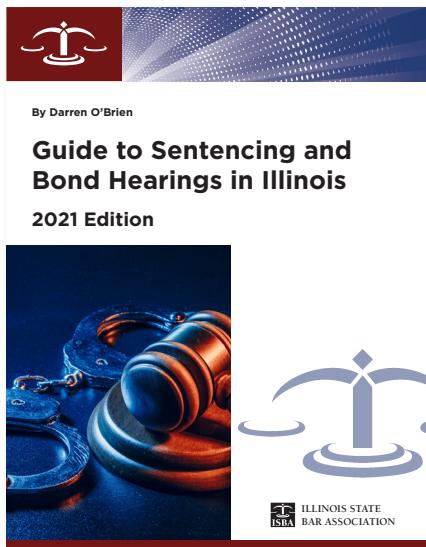
It is the collective goal and hope of the Illinois chapter, through this scholarship,

to help encourage, develop, support, and promote broader representation of African American attorneys practicing in the practice of family law, for years to come.

For more information about the scholarship please see visit: <https://aaml-illinois.org/home-2/>. ■

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Pub Date: March 26, 2021

Format: Softcover

Pages: 133