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American Judges Association

2022

Editor's Noted, Vol. 58, No.2

David M. Johnson

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Court Review

THE JOURNAL OF THE AMERICAN JUDGES ASSOCIATION

Volume 58, Issue 2

2022

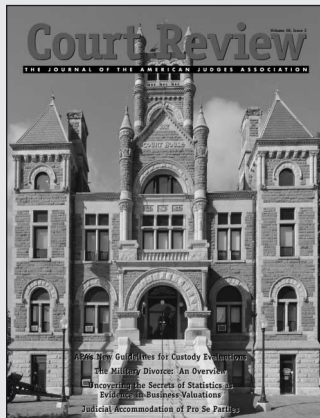
EDITOR'S NOTE

I am honored to be a guest editor for this issue of *Court Review*. Judge David Prince approached me in early 2021 about helping him “curate” the articles for this issue. His focus was on family law cases and how to identify authors and topics that will be of interest for the readership of *Court Review*. We had several discussions and settled on the four lead articles with topics that are front and center for family court judges: The APA Guidelines for Child Custody Evaluations; “Uncovering the Secrets of Statistics as Evidence in Business Valuations”; “The Military Divorce: An Overview”; and “Judicial Accommodation of Pro Se Parties.”

The method and science that goes into the preparation of child custody evaluations is the topic of the article by Dr. Helen Brantley, Dr. Eric Drogan, and Dr. Jemour Maddux. Their article is especially timely because it focuses on the newly published Guidelines for Child Custody Evaluation of the American Psychological Association. The Guidelines were approved in February 2022 and update the 2010 Guidelines. The new Guidelines address recent research and developments in multiculturalism, domestic violence and when children resist parenting time. Judges who preside over contested custody cases will find the article very helpful in determining if a report they receive has followed the time-tested protocols of the APA Guidelines and if it makes recommendations supported by sufficient data.

Christopher Melcher’s article on the use of statistics in business valuations tackles the often confusing and potentially misleading use of numbers and statistics in such reports. A nationally respected trial lawyer and expert in business valuations, Christopher takes the reader through the sleight-of-hand manipulation that can occur when analyzing the economic history and value of a business. He discusses the bias that may exist in a statistical study; how a small sample size can be meaningless; how the court is the gatekeeper under the *Daubert* rule of what is or is not reliable expert testimony; and how outcomes can be manipulated depending on how the numbers are presented. His article helps fact finders separate the wheat from the chaff when it comes to determining how much weight to give to an expert business valuation report.

Because cases that involve jargon can be confusing at best and totally mystifying at worst, Mark Sullivan, Joseph DeWoskin, and Judge Dan Wiley shed light on the military divorce. The article is formatted as an easy-to-follow conversation between the two lawyers and an experienced family court judge. They cover all aspects of military pay and benefits and the recently modified handling of military retirement pay. They provide a helpful glossary of the multitude of acronyms that are part and parcel of the military divorce; a checklist for the court of the issues presented in a military divorce; and a template for the orders needed to divide the service member’s retirement pay. After reading this article the judge will know the difference between BAH and an SBP; will understand why the question of whether a spouse is a 20/20/20 spouse is important; and will be able to confidently read and understand an LES and a DD 214.



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Court Review, the quarterly journal of the American Judges Association, invites the submission of unsolicited, original articles, essays, and book reviews. *Court Review* seeks to provide practical, useful information to the working judges of the United States and Canada. In each issue, we hope to provide information that will be of use to judges in their everyday work, whether in highlighting new procedures or methods of trial, court, or case management, providing substantive information regarding an area of law likely to be encountered by many judges, or by providing background information (such as psychology or other social science research) that can be used by judges in their work. Guidelines for the submission of manuscripts for *Court Review* are set forth on page 94 of this issue. *Court Review* reserves the right to edit, condense, or reject material submitted for publication.

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On the cover: The Perry County Courthouse in New Lexington, Ohio was designed by Ohio architect, Joseph Warren Yost. The cornerstone was laid on May 18, 1887 and was dedicated on December 20, 1888. The Courthouse was added to the National Register of Historic Places in 1981 and has been an integral part of Perry County history for over 100 years. It was the site of the landmark case *DeRolph v. State of Ohio* regarding public school funding in 1991. The county courts have operated out of the courthouse since its construction. Perry County continues to invest in the preservation of the Courthouse, founding the Perry County Preservation Committee in 2016. Photo taken by Mark Cooper and generously provided by Judge Luann Cooperider. Judge Cooperider is the first female judge of Perry County and forever grateful to the people of Perry County.

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Cite as: 58 Ct. Rev. ____ (2022).

desires for brevity and concision, while honoring the requirements of regulatory agencies that all relevant data be presented. One way of meeting both goals may be to describe the data sources, the rationale of the findings, and the recommendations separately, followed by a sufficiently complete description of the sources consulted and the data collected in a separate section. The best and most effective reports are professionally composed, honor privacy needs to the extent feasible, avoid unnecessary jargon, and convey respect for all parties.

CONCLUSION

With respect to child custody proceedings, there is perhaps no other form of civil or criminal litigation in which judges find themselves more dependent upon the assistance of expert witnesses. Some of these witnesses are exceptionally skilled in conveying their recommendations, cataloging the data that inform those recommendations, and explaining the ways in which psychological practice, research, and ethics converge to make those recommendations more than just a product of instinct, sympathy, and experience. Others of these witnesses wait with thinly veiled impatience for the Court to reveal just what part of “scientific expert” it fails to understand.

In either instance, the Court will want to be armed with sufficient information concerning just what it is that psychologists’ national guild organization recommends in terms of best practices for child custody evaluations. The Guidelines will soon be publicly accessible, and well worth the Court’s review. Encouraging psychological expert witnesses to heed the advice of their own profession—and enabling them to do so—will benefit all parties in the long run.



Helen T. Brantley, Ph.D. chaired the American Psychological Association’s Task Force for the Development of Guidelines for the Practice of Parenting Coordination and, most recently, the American Psychological Association’s Working Group for the Revision of the Guidelines for Child Custody Evaluations in Family Law Proceedings. She served as the Director of the Forensic Psychiatry Service at the University of North Carolina. Dr. Brantley currently serves as Chair of the North Carolina Psychology Board.



Eric Y. Drogin, J.D., Ph.D., ABPP is a forensic psychologist and attorney serving on the faculty of Harvard Medical School. He is the Affiliated Lead of Psycholegal Studies for the Psychiatry, Law, and Society Program at Brigham and Women’s Hospital in Boston, Massachusetts. Dr. Drogin’s multidisciplinary practice encompasses mental health law, expert witness testimony, and trial consultation.



Jemour A. Maddux, Psy.D., ABPP is board certified in forensic psychology by the American Board of Professional Psychology, and he is a fellow of the American Academy of Forensic Psychology. He is also a member of the American Psychological Association’s Committee on Professional Practice and Standards. Dr. Maddux is currently based in New Jersey, offering forensic evaluation and consultation services in the contexts of family, civil, sentencing, and other proceedings in several states.

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Rounding out the quartet of articles, Michael Roundy of Boston, Massachusetts provides guidance to judges in his article on judicial accommodation of *pro se* parties. A challenge to the efficiency and fairness of resolving domestic relations cases is the ever-increasing number of self-represented parties. Given that there is no right to appointed counsel in most domestic relations scenarios, how the Court in a domestic relations case handles the *pro se* party can impact the process and outcome of a case. Michael provides an excellent survey of case law, court rules, codes of conduct, and ethics opinions that readers will find very helpful in handling these often challenging situations. He provides a number of real-life examples for judges to consider when determining how far they can go in advising and guiding the *pro se* litigant.

I enjoyed working with these respected and knowledgeable professionals. All of us at *Court Review* hope that these articles will be helpful to the judicial officers who are charged with help-

ing families move through the court system.

— David M. Johnson



David M. Johnson is a senior partner with the firm of Johnson Kush PC in Colorado Springs, Colorado and has practiced family law for over 45 years. He is a graduate of the University of Notre Dame and the St. Louis University School of Law. He is a fellow of the American Academy of Matrimonial Lawyers and a past recipient of the ICON Award of the Colorado Bar Association Family Law Section. He is a former family court magistrate. He has served as President of the El Paso County Bar Association, the Colorado Bar Association, and the Colorado Chapter of the AAML. He is a former Peace Corps Volunteer in the Marshall Islands (1971-1973) and is the proud father of Marianne Johnson of Richmond, Virginia.