Ethics, Malpractice, and Professional Liability in Family Law Cases: An Annotated Bibliography, 2013-2018

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This bibliography covers law review articles published since 2013. For an earlier annotated bibliography on ethical issues in the divorce or child custody context, see Barbara Glesner Fines & Nancy Levit, Ethics and Matrimonial Representation Annotated Bibliography, 27 J. AM. ACAD. MATRIM. LAW. 499 (2015).

Assisted reproduction and ethical issues for attorneys .... 560 R
Attorney fees ........................................... 561 R
Child abuse and neglect cases ........................................... 561 R
Clients with special vulnerabilities or needs ............... 562 R
Collaborative and interdisciplinary practice ............... 563 R
Confidentiality and privacy issues .............................. 563 R
Conflicts of interest ........................................... 564 R
Cross-cultural lawyering ........................................... 564 R
Discipline of attorneys ........................................... 564 R
Divorce and child custody matters ........................... 565 R
Domestic violence ............................................. 567 R
Education and training on ethics and professionalism for family law attorneys ......................... 567 R
Expert witnesses and consultants ..................................... 568 R
Ethical issues in the general practice of family law .... 568 R
Limited scope representation ........................................ 570 R
Malpractice liability .............................................. 570 R
Mediation, arbitration, and other alternative dispute resolution methods .............................. 572 R
Military service members .......................................... 573 R
Nonlawyer legal professionals ..................................... 573 R

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Assisted reproduction and ethical issues for attorneys


Noel K. Tucker, *As ART Technologies Evolve, Watch for Hidden Malpractice Pitfalls*, FAM. ADVOC., Fall 2017, at 46 (explaining how to reduce malpractice risk in handling assisted reproduction issues, particularly how to ensure competent representation for
clients and how to avoid conflicts with representation of multiple parties with different interests).


**Attorney fees**


Robert G. Spector & Carolyn S. Thompson, *The Law of Attorney Fees in Family Law Cases*, 69 Okla. L. Rev. 663 (2017) (discussing legal and ethical rules and issues concerning attorney fees in family law cases, including grounds for fee awards, procedures for obtaining an award, methods of calculating an award, a lawyer’s interest in attorney fees, and ethical considerations in obtaining contingency fees in family law cases).


**Child abuse and neglect cases**

Samson Habte, *Rule Limits When Attorneys May Report Child Abuse*, 34 Child L. Prac. 169 (2015) (discussing Indiana bar opinion concluding that a lawyer’s obligation to report suspected child abuse or neglect is limited by the lawyer’s duty to protect client confidentiality).
Journal of the American Academy of Matrimonial Lawyers


**Clients with special vulnerabilities or needs**

Bruce A. Boyer, *Representing Child-_clients with “Diminished Capacity”: Navigating an Ethical Minefield*, 24 Prof. L. aw. 36 (2016) (providing advice for advocating as a guardian ad litem and/or attorney for a child with diminished capacity).

Robert B. Fleming, *Representing the Elderly Client or the Client with Diminished Capacity*, 50 Fam. L.Q. 27 (2016) (discussing practical, ethical, and strategic considerations in dealing with aging clients with diminished mental capacity).


Paula G. Kirby, *Introduction*, 50 Fam. L.Q. 1 (2016) (introducing a symposium on ethical dilemmas for family law attorneys in “gray divorce” and “silver separation” matters involving an older spouse or a vulnerable spouse with diminished capacity).

Jamie Rosen, Note, *The Child’s Attorney and the Alienated Child: Approaches to Resolving the Ethical Dilemma of Diminished Capacity*, 51 Fam. Ct. Rev. 330 (2013) (examining ethical issues where a child is alienated from a parent due to “brainwashing” or other actions by the other parent meant to damage the alienated parent’s relationship with the child).


**Collaborative and interdisciplinary practice**


Johannah O’Connell, Note, *Don’t Settle for “The Devil You Know”: The Benefits of Using Collaborative Law Rather than Litigation to Resolve Employment Disputes*, 49 Ind. L. Rev. 533 (2016) (encouraging the use of collaborative law in employment disputes, and discussing how ethical concerns about collaborative approaches have been handled in family law settings).

**Confidentiality and privacy issues**


(discussing an attorney’s duty to maintain confidentiality of all information about a representation).


**Conflicts of interest**


**Cross-cultural lawyering**


**Discipline of attorneys**

another attorney, the inappropriate use of ethical complaints, and best practices for handling reporting dilemmas).

Barbara Glesner Fines, *The Changing Landscape of Disciplinary Risks in Family Law Practice*, 50 FAM. L.Q. 367 (2016) (noting that family law attorneys face high rates of disciplinary complaints and malpractice suits, and discussing the impact of changing ethical standards with respect to aspects of practice such as collecting evidence, civility, and communications with opposing parties and counsel).

**Divorce and child custody matters**

Rebecca Aviel, *Counsel for the Divorce*, 55 B.C. L. REV. 1099 (2014) (arguing against the legal profession’s foundational assumption that legal services must be provided in an adversarial posture, particularly in divorce cases).


Frank R. Ezzo, *Child Custody and Three Case Studies of Mortality: When Child Custody Litigation Should Involve Risk Assessment*, 56 FAM. CT. REV. 572 (2018) (discussing the importance of evidence-based risk assessment in child custody cases, and discussing case studies involving infant death or a parent committing suicide during or shortly after custody litigation).


Donald R. Lundberg, *Should Lawyers Be Responsible for Protecting Public Policy?*, 57 RES GESTAE 25 (Aug. 2013) (discussing ethical implications of Indiana case where a court held that it violates public policy to let a parent escape child support obligations in exchange for having reduced parenting time rights).

Leta S. Parks, *In re Lee: How the Parental Right to Self-Determination Came to Trump Judicial Authority*, 57 S. TEX. L. REV. 483 (2016) (analyzing the diminished role of judges, the increasing importance placed on parental decision-making through mediation, and the ethical duties of mediators in family law cases).


Donald G. Tye, *The Preferences and Voices of Children in Massachusetts and Beyond*, 50 FAM. L.Q. 471 (2016) (discussing issues raised by use of judicial interviews and guardians ad litem in child custody determinations).

Domestic violence


Education and training on ethics and professionalism for family law attorneys


Bruce L. Beverly, *A Strategy for Teaching Objectivity to the Domestic Relations Student: Utilizing Psychodrama to Explore Attorney Empathy Toward Improving Family Law Outcomes*, 40 Ohio N.U. L. Rev. 371 (2014) (exploring ways to teach law students studying family law to reach the necessary equilibrium of objectivity needed to represent clients while holding conflicting attitudes about the client’s position).


Expert witnesses and consultants


Ethical issues in the general practice of family law


Diane M. Guariglia & Benjamin Ritz, *Dirty Deeds Done Not Dirt Cheap*, 57 S. Tex. L. Rev. 503 (2016) (covering a variety of misdeeds committed by attorneys and clients in family law cases, including discovery abuses, court order violations, and procedural misdeeds).


Sheryl A. Moore, *Strategies for Handling Current Ethics Issues and Trends in Family Law*, in *Ethics in Family Law, Leading Lawyers on Guiding Clients Through Domestic Disputes in a Principled Manner*, ASPATORE, Dec. 2013 (covering new ethical issues arising in family law practice, such as the impact of social media, the use of technological products like spyware and nanny cameras, use of safe deposit boxes to hide valuables, and misuse of petitions for protection against domestic violence).

Rebecca A. Provider, *Current Ethics Issues and Trends in Family Law*, in *Ethics in Family Law, Leading Lawyers on Guiding Clients Through Domestic Disputes in a Principled Manner*, ASPATORE, Dec. 2013 (discussing new ethical issues for family law attorneys, such as issues raised by social media and professional networking websites, issues arising from use of alternative dispute resolution, and issues relating to prenuptial agreements).
570 Journal of the American Academy of Matrimonial Lawyers

Sara Rittman, The Ethical Traps a Family Law Practitioner Must Avoid, 32 GPSOLO 22 (July/Aug. 2015) (noting the high rate of disciplinary complaints about family law attorneys and recommending ways to reduce that risk).

Lynda C. Shely, When There Are Problems With Your Lawyer, Fam. Advoc., Summer 2017, at 26 (providing advice to clients hiring and firing attorneys, based on the author’s experience advising attorneys on lethal ethics issues).


Limited scope representation

Anne C. Adams, Tips for Providing Limited-Scope Representation in Family Law Cases, 32 GPSOLO 26 (July/Aug. 2015) (discussing ethical issues with limited scope representation in family law cases).

Michele N. Struffolino, Limited Scope Not Limited Competence: Skills Needed to Provide Increased Access to Justice Through Unbundled Legal Services in Domestic-Relations Matters, 56 S. Tex. L. Rev. 159 (2014) (explaining competency requirements for family law attorneys and rules regarding limited representation, and discussing how attorneys can stay within the rules governing limited representation while furthering the goal of increased access to justice in family matters).

Malpractice liability

Jeffrey P. Aiken, The Standard of Care for Attorneys: What’s a Reasonably Prudent Lawyer to Do – Or Not Do?, Fam. Advoc., Fall 2017, at 16 (analyzing the standard of care applied to lawyers in malpractice cases).

Carl W. Gilmore, *Avoiding Insult and Injury: Malpractice Defenses Based on Client Nonpayment*, Fam. Advoc., Fall 2017, at 42 (discussing the extent to which a client’s failure to pay attorney fees may be a defense to the client’s legal malpractice claim).


Emily W. McBurney, *Avoiding Legal Malpractice: Retirement Benefits and Qualified Domestic Relations Orders*, Fam. Advoc., Fall 2017, at 22 (describing common mistakes that can lead to malpractice claims concerning retirement benefit plans and qualified domestic relations orders).


572 Journal of the American Academy of Matrimonial Lawyers

Thomas J. Watson, Beware the Danger Signs: The Top Ten Family Law Malpractice Issues, FAM. ADVOC., Fall 2017, at 6 (listing the most common mistakes that attorneys make when it comes to family law malpractice claims).

Mediation, arbitration, and other alternative dispute resolution methods

Kristen M. Blankley, The Ethics and Practice of Drafting Pre-Dispute Resolution Clauses, 49 CREIGHTON L. REV. 743 (2016) (discussing practical and ethical considerations for transactional lawyers drafting clauses that provide for the use of dispute resolution mechanisms like mediation and arbitration).

Ashley Carleton, Comment, An Ethics Analysis of Arbitrating Malpractice Claims, 27 J. AM. ACAD. MATRIM. LAW. 445 (2015) (discussing a court decision validating a malpractice arbitration agreement and looking at the ethical implications surrounding such provisions.

Carrie Menkel-Meadow, The Evolving Complexity of Dispute Resolution Ethics, 30 GEO. J. LEGAL ETHICS 389 (2017) (arguing that legal and ethical rules have been shaped by assumptions about the adversarial nature of legal work, resulting in rules that are inadequate for lawyer roles in non-adversarial settings, such as mediator, arbitrator, or facilitator).

Caitlin Park Shin, Comment, Drafting Agreements as an Attorney-Mediator: Revisiting Washington State Bar Association Advisory Opinion 2223, 89 WASH. L. REV. 1035 (2014) (arguing for reconsideration of a Washington bar advisory opinion concluding that an attorney/mediator violates rules of professional conduct by drafting legal documents such as property settlement agreements, child support orders, or parenting plans for unrepresented parties).

Thomas E. Spahn, Staying Active in ADR Proceedings After Retirement Raises Unique Issues, EXPERIENCE, Fall/Winter 2015, at 47 (providing a checklist of ethical and other considerations for retired attorneys working as mediators or arbitrators or representing parties in those settings).

Military service members


Nonlawyer legal professionals


Lori W. Nelson, LLLT – Limited License Legal Technician: What It Is, What It Isn’t, and the Grey Area in Between, 50 Fam. L.Q. 447 (2016) (discussing ethical and other issues raised by the creation of new categories of legal professionals who are not attorneys, such as “limited license legal technicians” or “licensed paralegal practitioners”).

Secondary traumatic stress

Jennifer Brobst, The Impact of Secondary Traumatic Stress Among Family Attorneys Working with Trauma-Exposed Clients: Implications for Practice and Professional Responsibility, 10 J. Health & Biomedical L. 1 (2014) (discussing the impact of secondary traumatic stress on family law attorneys who work closely with clients who have experienced traumatic events).
574 Journal of the American Academy of Matrimonial Lawyers


Self-represented parties


Natalie A. Knowlton, From Talk to Action: How the IAALS Summit Recommendations Can Reshape Family Justice, 55 Fam. Ct. Rev. 97 (2017) (discussing recommendations produced by the Family Bar Summit at the University of Denver, with a focus on issues relating to the prevalence of self-represented litigants in family courts).

Yolanda F. Sonnier, Approaching Your Case Against the Pro Se Litigant, Fam. Advoc., Fall 2013, at 11 (discussing ethical considerations for family law attorneys in cases with pro se litigants).

Jessica Dixon Weaver, Overstepping Ethical Boundaries? Limitations on State Efforts to Provide Access to Justice in Family Courts, 82 Fordham L. Rev. 2705 (2014) (considering whether state judges and agencies have overstepped ethical boundaries and caused harm by promulgating standard forms, such as divorce pleadings and paternity acknowledgements, to be used by people without lawyers for family law matters).

Victoria White & Thomas G. Wilkinson Jr., Ethics Digest, Penn. Law., Aug. 2016, at 54 (reporting on an ethics opinion about a situation where a family law attorney had a client who insisted on appearing pro se at custody conference without permitting the attorney to withdraw as counsel of record).
Social media

Vanessa S. Browne-Barbour, “Why Can’t We Be ‘Friends’?”: Ethical Concerns in the Use of Social Media, 57 S. Tex. L. Rev. 551 (2016) (examining ethical concerns presented when lawyers use social media to research and investigate cases and to communicate with clients and non-clients).


Simon R. Goodfellow, Social Media as Evidence: Navigating the Limits of Privacy, Fam. Advoc., Spring 2015, at 32 (explaining how basic rules of discovery, evidence, and ethics apply to social media evidence).

Thaddeus Hoffmeister, “Liking” the Social Media Revolution, 17 SMU Sci. & Tech. L. Rev. 507 (2014) (discussing the legal significance of Facebook’s “like” button, including its evidentiary impact as a party admission).

Heather L. King, Jessica Hall Janicek & Paul M. Leopold, When Evidentiary Matters Cross Ethical Boundaries, 57 S. Tex. L. Rev. 527 (2016) (discussing the use of social networking evidence, such as compromising information obtained via Facebook, in divorce cases).

Jennifer J. Riley, High-Tech Cures for the Low-Budget Case, Fam. Advoc., Fall 2013, at 42 (discussing how to use social media and other technology to obtain evidence for family law cases while reducing legal costs and avoiding ethical violations).

Trust accounts

Wiretapping