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Spring 2018

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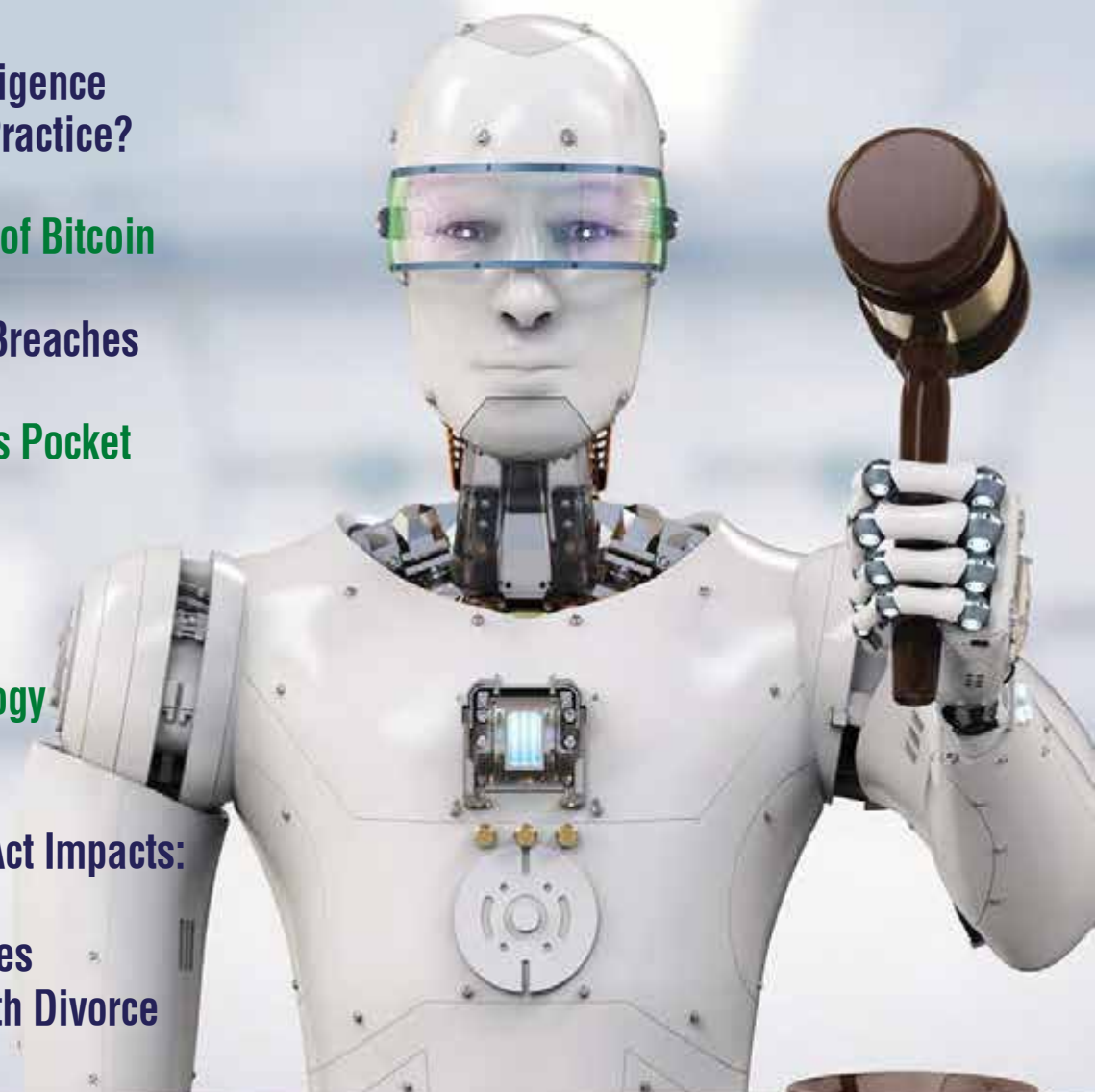
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TECHNOLOGY

- 6 Divorce in the Age of Bitcoin
- 10 Can Artificial Intelligence Benefit Your Law Practice?
- 38 How to Avoid Security Breaches
- 42 Child Support Software: Risks and Benefits



FINANCIAL MATTERS

- 12 How the Tax Cuts and Jobs Act Impacts Corporate Taxes
- 20 New Tax Law Helps & Hurts High-Net-Worth Divorce Cases
- 24 Reversing the Tax Burden of Alimony
- 28 Forensics Technology and Family Law



LEGAL ISSUES

- 16 The Spy in Your Client's Pocket
- 22 Social Media and Family Law cases
- 26 Top Cases 2017 (Part 2)



MARKETING/PRACTICE MANAGEMENT

- 18 2 Changes That Impact Your Website's Google Ranking
- 32 Asking "What's Next?" Leads to Resolution
- 44 Recent and Recommended Articles



OUTSIDE THE BOX

- 36 5 Ideas to Improve the Family Law System's Efficiency and Accessibility



PROFESSIONALS AND SERVICES DIRECTORY

- 46 Listing of Family Lawyers and Related Professionals and Services



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MESSAGE FROM THE PUBLISHER



Dan Couvrette is the CEO of Divorce Marketing Group and Publisher of Family Lawyer Magazine and Divorce Magazine

Technology is a blessing and a curse for family law professionals.

On one hand, more information is available and easier to access than ever before. The move towards paperless offices, cloud storage, digital workflow, and the predominance of email as a communication tool means that you can send or receive case information at the touch of a button. By the year 2025, analysts from International Data Corporation predict that we will be awash in a sea of data, creating 163 zettabytes of data per year – a ten-fold increase over what was created in 2016.

On the other hand, this accessibility made data protection and timely data analysis an even more crucial part of your business.

This issue of *Family Lawyer Magazine* has a dual focus – technology and finance – highlighting the challenges and opportunities both new tech and the new “Tax Cuts and Jobs Act” offer to family law professionals.

Artificial Intelligence (AI) has the potential to save time and money for law firms big and small by automating aspects of a firm’s day-to-day

practice. “Can Artificial Intelligence Benefit Your Law Practice?” (page 10) discusses reliable technology to help you streamline your law firm’s processes, and the impact of AI software on data analytics, legal research, and contract review.

Since they are often traded pseudonymously, cryptocurrencies can be difficult assets to locate – and potentially a good place to hide assets during divorce. “Divorce in the Age of Bitcoin” (page 6) is what family lawyers must know about cryptocurrency.

Other must-read articles include:

- The Spy in Your Client’s Pocket (p. 16)
- How to Avoid Security Breaches (p. 38)
- Forensics Technology and Family Law (p. 28)
- How the Tax Cuts and Jobs Act Impacts Corporate Taxes (p. 12)
- New Tax Law Helps & Hurts High-Net-Worth Divorce Cases (p. 20)
- Reversing the Tax Burden of Alimony (p. 24).

I hope this issue of our magazine helps you to keep up with the constant changes your business is faced with. ■

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DIVORCE IN THE AGE OF BITCOIN

Since they are often traded pseudonymously, cryptocurrencies can be difficult assets to locate – and potentially a good place to hide assets during divorce. Here is what family lawyers must know about cryptocurrency.

By Carl Taylor, Family Lawyer

In full disclosure, for quite some time my general attitude toward “crypto currencies” has been as follows: ignore them and hope they go away. Unfortunately, as family lawyers, we can no longer bury our heads in the proverbial sand.

Cryptocurrencies and “blockchain” technology may or may not be the wave of the future, but they are an increasingly commonly-held “asset” class – and one that will have to be dealt with in equitable distribution, and in divorces in general. As usual, the law tends to lag behind technology, meaning there are few if any published opinions on this subject. This article will attempt to address basic principles that may apply to this volatile and burgeoning class of assets.

Overview of Cryptocurrencies

Created in 2009, cryptocurrencies (“cryptos”) are a form of decentralized virtual currency that have been increasingly traded, often on virtual currency platforms. They are often anonymously owned and thus pseudonymously traded. They are “stored” in virtual or cryptocurrency “wallets”: desktop, smart phone, or cloud-based software. These currencies generally utilize novel “blockchain” technology to record permanent, decentralized, and encrypted transactions to and from a virtual wallet.

In 2014, under Notice 2014-21, the IRS defined cryptocurrencies as follows: “Virtual currency is a digital representation of value that functions as a medium

of exchange, a unit of account, and/or a store of value.” The IRS also noted in 2014-21 that: “The IRS is aware that ‘virtual currency’ may be used to pay for goods or services, or held for investment.”

Security is a great concern regarding these types of currencies. Although Bitcoin is the most well-known type of cryptocurrency, there are now various types of these “coins” ranging from Bitcoin down to “penny-stock” type of exchanges. There has been a great deal of volatility in cryptocurrency value: during 2017, the price of one Bitcoin rose from around \$900 to a high of \$20,000. There have also been well-known scams, thefts, and the shutting down of crypto-exchanges. In other



words, it's the Wild West of investing.

In a run-up commonly compared to Holland's 17th Century "Tulipmania" bubble, the investment class has outpaced a hot stock market. You can now hear about cryptocurrency investment tips while getting your haircut, riding in an Uber, or talking to your cousin at the annual family get-together. Its relative anonymity makes it a difficult asset to locate – meaning it may be ripe for inappropriate divorce-planning attempts. That risk coupled with its increasing use amongst the general population means that divorce attorneys must learn the basic principles of cryptocurrencies to provide clients with necessary guidance.

Cryptocurrencies and Equitable Distribution

The treatment of cryptocurrencies for equitable distribution purposes is in theory not too dissimilar from any other asset. If at the time of divorce there exist two Bitcoins and no marital exemptions apply (such as non-commingled

premarital property, gifts, inheritance, etc.), then each party should generally be entitled one Bitcoin. Likewise, one party could buy the other out provided there is agreement as to the valuation. The more interesting questions arise under protecting against a party attempting to hide these digital assets.

Because cryptocurrencies can be pseudonymously transferred to others, it may be difficult to determine ownership. In an article on the subject of cryptocurrencies and divorce on mensdivorce.com, Mat Camp calls the attempt to hide such assets: "The high-tech method of burying a sack of cash in the woods." As divorce practitioners, what can we do to effectively prevent such inappropriate actions?

First, we should consider adding specific cryptocurrency questions to all initial discovery requests. Although general questions as to currencies, monies, or assets may be sufficient, it may be helpful to ask in interrogatories whether the spouse owns or has ever owned any cryptocurrencies. Likewise, this issue can be specifically raised in requests for admissions, at depositions, and at trial. By specifically addressing the issue of cryptocurrency, the opposing spouse is more likely to be upfront and also more likely to be sanctioned if it is later discovered they are attempting to hide assets.

Finding Hidden Cryptocurrency

If you suspect a client's spouse of harboring hidden cryptocurrency, then there might be ways to discover the asset. Although Bitcoin and the like are generally pseudonymously held, their purchase and sale do create trails: cryptocurrency is generally purchased using fiat currency (creating a record), and most cryptocurrencies are purchased via an exchange (the largest one at the moment is Coinbase.com), which will charge transaction fees. You could subpoena such exchanges to procure transaction records.

The IRS has recently issued a summons seeking "a wide variety of records [from Coinbase.com] including: taxpayer identifiers for all of its

customers who have bought, sold, sent or received cryptocurrency worth \$20,000 or more in any tax year from 2013 to 2015; transaction logs; and correspondence." Accordingly, there may be ways to obtain releases and/or to subpoena such records to determine the existence of cryptocurrencies.

Tracking these assets on tax forms in the future should make it easier to follow the crypto trail in years to come. As always, consider retaining forensic accounting experts if you or your client believes sufficient hidden cryptocurrency assets may exist.

Are Cryptocurrencies a Passing Fad?

Whether cryptocurrencies will be merely a "flash in the pan" or the start of a new way of global commerce, not even our foremost futurists know for sure. But in the short term, there will be more and more cases where a portion of marital wealth will be a cryptocurrency held in the blockchain. Using innovative discovery and forensic accounting techniques to locate these assets will become increasingly important – both today and in the future. ■



Carl Taylor III is the principal of Carl Taylor Law, LLC located in Flemington, New Jersey. His practice emphasizes all facets of family law as well as local

government law and litigation.

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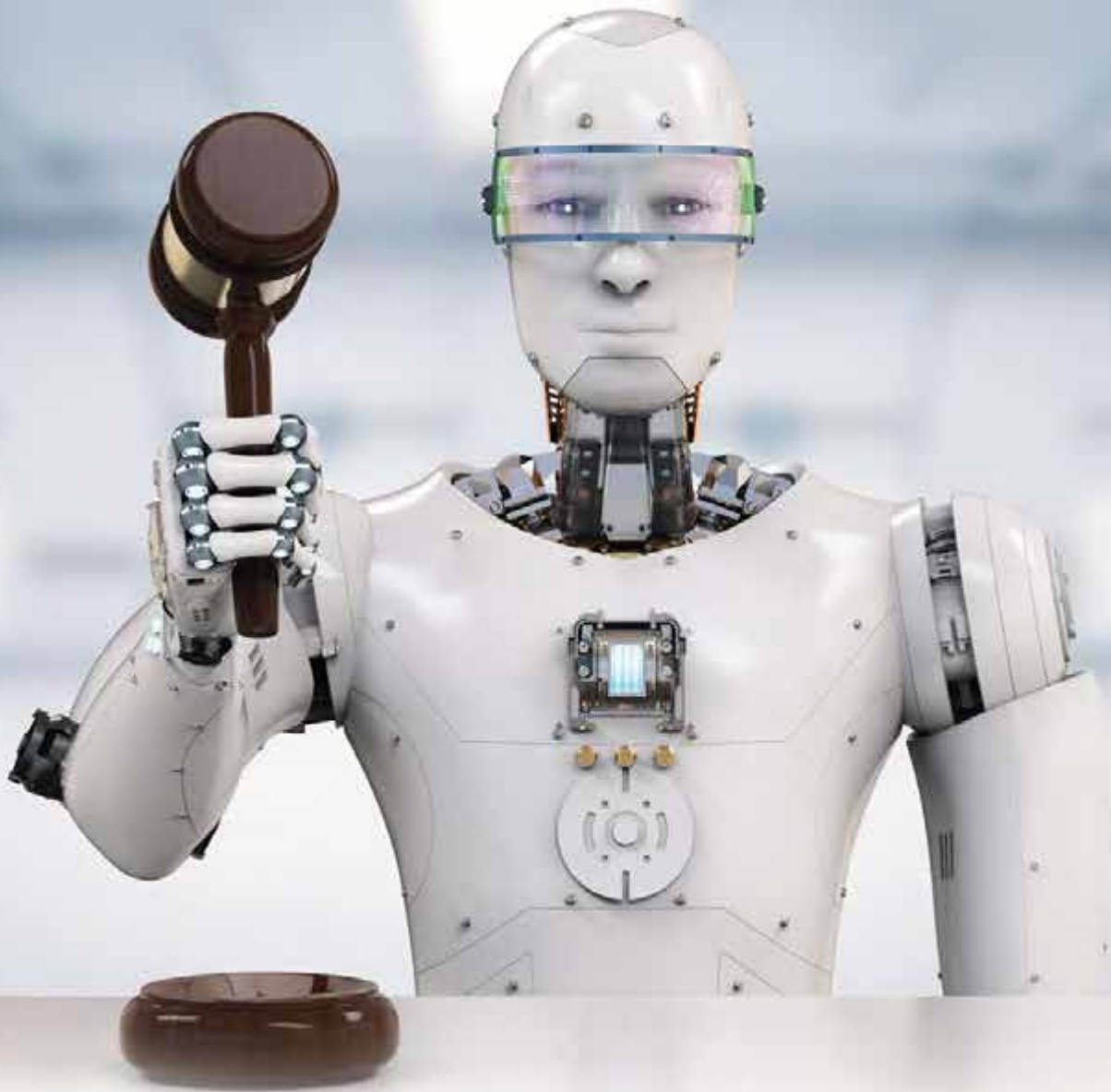
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Can Artificial Intelligence Benefit Your Law Practice?

One way or another, in the very near future, artificial intelligence will no doubt affect at least one aspect of your firm's day-to-day practice.

By Nicole Black, Lawyer and Legal Technology Expert

There's been a lot of hype – both negative and positive – about artificial intelligence (AI) over the past year. Some articles predict dire consequences resulting from “robot lawyers” replacing most legal work, while others tout the multitude of benefits to be had when AI software takes over mundane legal tasks, allowing lawyers to focus on more interesting, high-level work.

There's a reason for all the press: it's because AI has the potential to save time and money for firms big and small. Of course, a key element that is necessary in order for lawyers to flock to AI software en masse is trust. Unless lawyers trust the results provided by the software, they're unlikely to welcome it with open arms. And the reality is that trust will only come with the passage of time.

Start Automating Your Practice Now

The good news is that you don't necessarily need AI software to get started with automating your solo or small firm family law practice right now. Reliable technology designed to automate your law firm is already available and can help you streamline your law firm's processes today.

First, there's document assembly. Document assembly tools have been around for years now. Using document templates, you're able to automatically create frequently used legal documents and forms. So if your firm often uses the same format for a client intake letter, a legal document such as a will or contract, or a pleading in a litigation matter, document automation will save countless hours of repetitive work.

You can also automate your law firm's billing and invoicing processes. Automate time-tracking by using your computer or mobile device to easily enter billable time contemporaneously with your work. This will ensure that you always enter your billable hours as they occur. If you use law practice management software like MyCase, Clio, or Rocket Matter, once your billable time is entered it is automatically associated with the appropriate matter and the invoice is auto-populated with that data. With the click of a button, you can send the invoice to your client

for payment – and your client can then instantaneously pay your firm's bill using a debit or credit card.

Task management can be automated as well. Instead of using old school paper tickler systems, some law practice management software includes features that allow you to create workflows at the start of a case – including assigning tasks to your assistants and tracking their progress. That way you're able to stay on top of assignments and ascertain which ones are completed and which ones are still in progress. You can also create workflows to help you track court and statutory deadlines for each case. For example, with automated workflows, you can streamline your client intake process or create templates for important dates that relate to specific types of cases or trials.

Artificial Intelligence Tools

There are other ways to automate your day-to-day law practice by using recently released artificial intelligence tools. Key areas where AI software is having a noticeable impact include data analytics, legal research, and contract review.

Litigation attorneys can use AI tools such as Lex Machina, Ravel Law, or Bloomberg Law Litigation Analytics to reveal insights about judges, lawyers, and parties. The data provided from the analysis of past actions in cases similar to the one at issue assists lawyers in determining how to best proceed in a case.

Legal research is another area where AI is having an impact. All of the major legal research companies – including Westlaw and LexisNexis – are now incorporating machine learning into their platforms. These companies are using AI to change natural language processing so that it focuses not only on the words entered into the search box, but also on the past behavior of the user and other users who've made similar inquiries. This method drastically reduces the amount of time lawyers spend conducting research by providing increasingly relevant results.

AI can also be used for contract review. Software programs like LawGeex

compare contracts submitted by users to a multitude of similar documents contained in their databases. Next, the software provides a report that suggests contractual revisions based on its analysis of similar contracts in its database.

The Inescapable Effects of AI

The bottom line is that one way or another, in the very near future, AI will no doubt affect at least one aspect of your firm's day-to-day practice. Whether it's document assembly, time tracking and billing, task management, contract review, legal research, or data analytics in litigation, the effects of AI will be inescapable.

Fortunately, there's a good chance that AI's impact will be a positive one. After all, AI is designed to reduce the need for lawyers to perform rote, tedious tasks and low-level analysis, allowing them to focus on the more interesting aspects of practicing law. Certainly most lawyers would agree that this will be a welcome change, but for some, the jury is still out. AI is undoubtedly the future, but whether the legal profession will welcome it with open arms remains to be seen. ■



Nicole Black is a Rochester, New York attorney, author, journalist, and the Legal Technology Evangelist at MyCase legal practice management software.

She is the nationally-recognized author of Cloud Computing for Lawyers (ABA, 2012) and co-authored Social Media for Lawyers: The Next Frontier (ABA, 2010). www.mycase.com

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How the Tax Cuts & Jobs Act Will Impact Corporate Taxes



An overview on how the new tax law could affect the value of major community assets: C-corporations and pass-through entities.

By Arik Van Zandt, Business Valuator

Divorce lawyers don't need to be tax experts, but when it comes to business valuation, understanding how corporate-level taxes are being treated in the valuation is worth knowing.

The new Tax Cuts and Jobs Act (TCJA) that was signed into law in December 2017 was highlighted by a simplification of the effective tax rate for C-corporations, with a new flat rate of 21%. Historically, C-corporations were taxed at progressive rates that ranged from 15% to 39%, depending on the level of taxable income. The income ultimately received by a shareholder in a C-corporation suffers from double taxation: first taxed at corporate rates with any subsequent distributions taxed at individual rates.

S-corporations and other "pass-through" entities are not taxed at the corporate level, but instead the income that the business generates is passed onto the shareholders, who then pay taxes on that income at individual rates. Individual tax rates ranged from 10% to

39.6% in 2017, and while still remaining progressive in nature, the overall rates were lowered with the new tax law.

The following examples attempt to simplify the overall effect on taxable income for both C-corporations and pass-through entities. While simple in presentation, this analysis concludes that C-corporations will enjoy a greater benefit from the new tax laws than pass-through businesses.

While pass-through entities have historically been a tax advantaged structure, after-tax distributions (as shown in Table 1) increased marginally, by only 2.5%, based on the new TCJA. This increase in after-tax earnings is the result of slightly lower individual tax rates.

As shown in the next example, after-tax distributions for C-corporations increased more significantly, by 20.1% on an assumed \$1 million in taxable income. Previously, only approximately \$660,000 would have been available for dividends based on \$1 million in taxable income. Now, with the reduced and simplified corporate tax rate of 21%, \$790,000 will

be available for dividends to shareholders. (See Table 2)

Incentives to Convert to a C-Corporation

Given the lower C-corporation tax rates, pass-through businesses may be enticed to switch to a C-corporation and enjoy the benefits of C-corporations – such as shareholder flexibility and the ability to offer different classes of shares. The TCJA makes it relatively easy for pass-through entities to convert to a C-corporation during the next two years. If a conversion requires a change in accounting method, which results in taxable income, that income is spread over six years. In addition, a new C-corporation that distributes previously earned income can do so indefinitely as if it were a pass-through instead of just in the year after the conversion.

TCJA's Deduction for Qualified Business Income

To combat the examples above, the TCJA created Section 199A. Business income

that passes through to an individual from a pass-through business will be taxed at individual tax rates *less a deduction of up to 20%* (which is subject to limits and restrictions, of course).

The following is an overview of “Section 199A–Deduction for Qualified Business Income of Pass-Through Entities.”

Taxpayers *other than C-corporations* will generally be entitled to a deduction equal to the sum of:

1. The lesser of:
 - a. the taxpayer’s “combined qualified business income amount”, or
 - b. 20% of the excess of the taxpayer’s taxable income for the taxable year over any net capital gain plus the aggregate amount of qualified cooperative dividends, plus
2. The lesser of:
 - a. 20% of the aggregate amount of the qualified cooperative dividends of the taxpayer for the taxable year, or
 - b. the taxpayer’s taxable income (reduced by the net capital gain).

A taxpayer’s combined qualified business income (QBI) amount is generally equal to the sum of

1. 20% of the taxpayer’s QBI with respect to each qualified trade or business, plus
2. 20% of the aggregate amount of qualified real estate investment trust (REIT) dividends and qualified publicly traded partnership (PTP) income.

Not everything in the new tax code was done to simplify its application, but based on the TCJA, we expect to see many companies make the switch from a pass-through entity to a C-corporation. ■



Arik Van Zandt is a Managing Director with Alvarez & Marsal Valuation Services. He specializes in the valuation of business and other assets, supporting

divorce counsel by providing financial analysis reports, asset tracing, and serving as an expert witness.

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Table 1:

After Tax Distributions as a Pass-Through	Tax Cuts and Jobs Act	Prior Tax Law
Taxable income	\$1,000,000	\$1,000,000
Income taxes on earnings at individual rates	(335,690)	(351,819)
Effective Tax Rate	33.6 %	35.2 %
Distributions in Excesses of Taxes	\$664,311	\$648,181
Increase in distributions based on new tax law	2.5%	

Table 2:

After-Tax Distributions as a C - Corporation	Tax Cuts and Jobs Act	Prior Tax Law
Taxable income	\$1,000,000	\$1,000,000
Income taxes on earnings at corporate rates	(210,000)	(340,000)
Effective Tax Rate	21.00%	34.00%
After-tax income	\$790,000	\$660,000
Presumed C-Corporation dividends	790,00	660,000
Income taxes on dividends at individual rates	(257,990)	(217,179)
After-tax Dividend Income	\$532,011	\$442,821
Increase in dividends based on new tax law	20.1%	



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By Aaron D. Weems, Family Lawyer

THE SPY IN YOUR CLIENT'S POCKET

Smartphones map our lives – and the Supreme Court’s re-examining of third-party doctrine of electronic data will have wide-ranging impacts on privacy rights.

It is not hyperbole to say that technology offers continually evolving benefits and efficiencies in our daily lives and in the practice of law. The proliferation of smartphones, cellular service providers, and infrastructure creates the double-edged sword of constant access to the Internet and communication, with what Justice Sonia Sotomayor described as a “precise, comprehensive record of a person’s public movements that reflects a wealth of detail about her familial, political, professional, religious, and sexual associations.” *United States v. Jones*, 132 S. Ct. 945, 955 (Sotomayer, J. concurring). Without a doubt,

this information and the increasing exactness with which it can produce a record of our activities is of great value in any number of commercial, criminal, and judicial capacities. The sacrifice of some level of privacy for the sake of the utility of the smartphones seems to be a fait accompli.

Birth of the Third-Party Doctrine

The law surrounding access to this information, however, evolved in the 1960s and 1970s through a series of cases resulting in the “third-party doctrine” for collected electronic data. This doctrine – rooted in the limited information created by the analog telephone system – was predicated on the idea that the use of the telephone was a public act and revealed certain information such as the location of your call and phone number to the service provider (i.e., the “third party”). This conscious, public act of using the telephone precluded Fourth Amendment protections to the collected information. The expectation

of privacy for that information did not exist and access to this information did not require a warrant.

The crescendo of technological advances and device proliferation in recent years, as seen in the Supreme Court case of *Carpenter v. United States* (No. 16-402), has outpaced the law on this issue, and this appeal from the Sixth Circuit hopes to recalibrate our legal system’s consideration of electronic data privacy and its accessibility as evidence. Pen registers of the analog telephone system simply do not compare in form or function to cellular site location information.

Scope of Accessible Information

The case of *Carpenter v. United States* addresses the 2011 criminal conviction of the ringleader of a series of cell-phone store armed robberies in Ohio and Michigan. His conviction was based, in part, on cellular site data obtained from the cell-phone service provider by a “disclosure order” pursuant to the

Stored Communications Act (18 U.S.C. § 2703). The cellular site data tied Carpenter’s personal cell phone to the locations of several armed robberies. He was sentenced to 1,395 months in prison for these crimes.

The Stored Communications Act provides for the use of warrants and subpoenas, but the disclosure order procedure utilized in the Carpenter case requires that the government had to offer “specific and articulable facts showing there were reasonable grounds to believe that... electronic records... are relevant and material in an ongoing criminal investigation.” This standard is considerably less rigorous than the probable cause standard needed for a warrant, yet it has the potential for producing a considerable amount of personal information – including that well beyond the scope of the case. This is even more true now than it was in 2011: since Carpenter’s conviction,

Cont. on page 34

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2 Changes That Impact Your Website's Google Ranking

Is your website's ranking being negatively or positively impacted by these two new Google preferences?

By Dan Couvrette and Martha Chan, Family Lawyer Marketing Experts

Google regularly tests and makes changes to their search-results algorithms. Towards the end of 2017, Google officially announced two preferences that would impact how websites rank in its search results. To keep a good ranking – or to improve a poor one – you need to ensure that your website satisfies these new requirements.

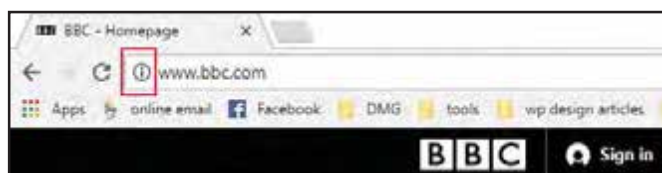
1. A Secure Website: “HTTPS”

You may have noticed that some website urls begin with “http” and others with “https”. The “s” in “https” is for “secure”, so <https://yourdomainname.com> is secure and <http://yourdomainname.com> is not secure. HTTPS (Hyper Text Transfer Protocol Secure) means communications between a visitor's browser and the website are encrypted. Google prefers secure websites for obvious reasons; this is particularly true for e-commerce websites. Although the majority of family law firms' websites are not e-commerce, most have a submission form that asks for information from visitors who may be interested in requesting a consultation. It is comforting for visitors to know that your website is secure and any information they submit is safe.

Aside from the telltale “s”, a secure website shows up with a green padlock and the word “Secure” in the URL box. For example, compare this secured website:

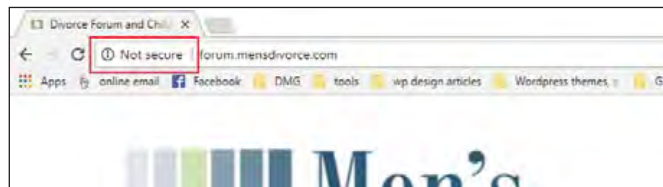


To this non-secure website:



The July Deadline is Already Here for Some Websites

As you can see, the notification to Google Chrome users regarding a non-secure website is not that obvious to a lot of people yet. Even though Google announced in February that come July, they will be marking unsecured websites in a much more prominent way, we have already seen some sites being marked this way. Perhaps a few unlucky websites are being used as a part of a Google test.



Bottom line: if your website is HTTP, we recommend that you convert it to HTTPS as soon as possible.

What Does an HTTPS Conversion Entail?

You do not need to redesign your website; what you need is an SSL Certificate. There are different levels of certificates you can purchase. Some come with insurance in case information is breached and there is damage incurred; these cost about \$60 a year. We use BlueHost as the provider to host websites, and BlueHost provides a free basic level of security coverage that is deemed enough for the majority of family law firm websites we build and maintain.

HTTPS conversion is a relatively short process that can generally be done in a day, but it can get tricky because part of the process requires a confirmation email to be sent to the contact email of the domain name for verification. Quite often that information is dated; if it is, you will need to update it

before converting your website. There are a myriad of little details to attend to, including: watching for possible downtime for your website and email, and submitting your website to Google once the conversion is complete. Be sure to coordinate this with your website designer to minimize disruption to your business.

2. The Speed of Your Website

Simply put, Google prefers websites that load fast, especially on mobile phones. This is because visitors tend to leave when a website is too slow to load.

Do Not Forget Your Business Objectives and Prospective Clients

When optimizing for speed, keep in mind the type of cases/clients your family law firm wants to attract: how much information does your target audience want or need for them to decide to contact/engage your law firm? For example, high-net-worth individuals will want to feel confident that you can help them with all the complicated aspects of their cases – that you know how to identify and divide all the marital properties and debts, family business, stock options, pensions, inheritance, etc. Or they may want to see your demonstrated ability to help them achieve their desired custody arrangements and support payments.

If you are after complex cases, you will need to provide plenty of information – in text, audio, and video formats – on your website. We believe your prospective clients will be willing to wait a little while for the valuable information they need.

Enticing and Easy-to-Consume Content

The use of podcasts and videos have been on the rise. Among other reasons, their popularity can be attributed to the fact that they are easy and faster for website visitors to consume vs. having to read the text. A two-minute video is about 500 words to read when written out, while a 15-minute podcast would transcribe into 3,000+ words, which may be too long for a prospective client to read. However, a web page that only has text loads faster than one with image, video, or audio files, so you need to strike a balance between achieving your business objectives and reducing the load time of your website.

Although images and graphic elements will increase the load time, they can make your web pages more enticing to visitors – and sometimes, a chart or a picture really is worth a thousand words. A group shot will tell a visitor immediately that your firm has a team of 10 family lawyers, and five badges from (AAML, CFLS etc.) displayed on your webpage will instantly convey the message that you are a qualified family lawyer. Some websites have animated sliders and a rotating display of text and/or images. When done right, these will catch your visitors' attention and entice them to stay and explore your website.

Three Tools to Test Your Website's Speed

A. Think with Google: <https://testmysite.thinkwithgoogle.com>

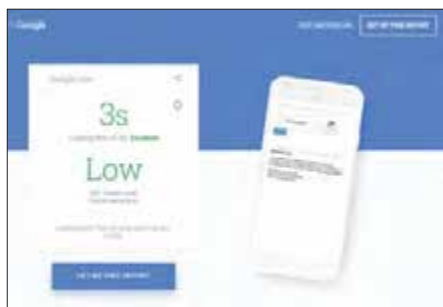
This simple tool will tell you how many seconds it takes your website to load completely on a mobile phone. All you have to do is type in your website's URL and it will tell you your website's speed in seconds. This test also suggests what percentage of your visitors may leave before the website is fully loaded, and what to do to improve load time. Many websites are designed to load text before images, this will help reduce the chances of visitors leaving the websites because visitors get to see something while the rest of the website is loading. This test uses a 3G connection because Google predicts that 70% of cellular network connections on a global basis will be at 3G or slower through to the year 2020. 3G is a measurement of the speed of the Internet; in most North American cities, which is where the majority of your clients are, a lot of us enjoy a much faster 5G connection.

Here are the test results for some websites (remember, results will differ depending on your Internet speed, which will vary throughout the day):

- Google.com – 3 seconds. (This page is virtually blank.)
- DivorceMarketingGroup.com – 4 seconds. (This is our own website which has a video and multiple images.)
- Avvo.com – 7 seconds
- CNN.com – 9 seconds
- Youtube.com – 9 seconds

When we first tested the secure version of our website, we were shocked to find it was taking 18 seconds to load. Our digital department had made sure that the whole site

www.Google.com



www.DivorceMarketingGroup.com



www.Avvo.com



Cont. on page 49



New Tax Law Helps & Hurts High-Net-Worth Divorce Cases

Many high-net-worth couples may want to finalize their divorce agreements this year to preserve some important financial options.

By Heather L. Locus, Wealth Manager

The Tax Cuts and Jobs Act of 2017 (TCJA) enacted some of the most dramatic changes we've seen in decades to the tax issues impacting how divorces are settled. With an entirely new view of taxable income, it will be harder for spouses to limit the financial pain that comes with divorce.

Although much is still uncertain, it is becoming clear that many high-net-worth couples may want to move quickly in order to preserve some important financial options. Couples who finalize their divorce agreements this year have many more options since the most significant rules impacting divorce go into effect on New Year's Day 2019. Here's why.

2019 is a Pivotal Year for Alimony

Agreements executed in 2018 will retain the default of alimony being deductible by the payor and included as taxable income to the recipient – which has been the case since 1942. If taxpayers have a pre-2019 divorce or separation decree and they legally modify it, the new rules do not apply unless the modification expressly provides that the TCJA applies.

Therefore, existing divorced couples and those who prove-up in 2018 will be able to maintain the current deductibility of alimony/maintenance after 2019 and for as long as they pay it. Depending on what your clients want, you may be faced with a heavy workload to finalize divorces before the end of 2018 – or to defend delaying a divorce until 2019.

The Clock is Ticking

For divorce agreements executed in 2019, payments between former spouses will be treated in much the same way as shared income during their marriage. This means that alimony/maintenance and unallocated support payments will no longer be tax deductible by the payor nor taxable to the recipient – akin to how child support has always been. Without the tax deduction as an incentive, 2019 alimony payments will likely drop so the payor is out-of-pocket for the same amount as they would have been under the old rules. Even accounting for the recipient's tax savings, this means they will almost certainly be receiving less than they would have in 2018. It's

a lose-lose proposition for both payor and recipient.

Aside from scrapping deductible alimony, other changes to keep in mind include:

- 1. The Personal Exemption.** It was reduced to \$0 for all taxpayers this year but may return as a \$4,000 exemption in 2026 unless laws change again.
- 2. State and Local Taxes.** Deductions for state income and property taxes above \$10,000 combined are gone. However, this results in fewer taxpayers being subject to the AMT.
- 3. Moving Expenses.** Unless one of the divorcing spouses is a member of the Armed Forces, expenses incurred separating one marital household into two are no longer deductible.
- 4. Legal and Professional Service Fees.** Tax preparation, investment advisory fees, and your legal fees incurred for tax planning and to obtain taxable alimony are also gone. Some other changes – such as the

Cont. on page 50



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Social Media & Family Law Cases

A look at some evidentiary hurdles and legal challenges attorneys can face when submitting or being presented with evidence from social networking sites.

By Lynne Strober and Jennifer Presti, Family Lawyers and Khizar A. Sheikh, Lawyer



The legal profession is utilizing social media to gather information about clients, potential clients, opposing parties, witnesses, jurors, and even judges.

Increasingly, social media information has also become valuable in family law cases. It can be used as a basis to assert claims of cohabitation, challenge custody, address alimony, etc. Often, after a client contacts a family law attorney, and even before meeting, attorneys can learn about a potential client, their spouse, and the businesses the potential client and/or spouse own through the Internet.

Cases in various states address the evidentiary hurdles attorneys face when submitting evidence from social networking sites, and also the legal challenges attorneys should consider when presented with objectionable or potentially fraudulent social media evidence from his/her adversary. Collectively, social media evidence seems to be admissible if there is proper authentication of the evidence. However, attorneys have the ability to challenge the admission of social media if there is doubt about the authenticity of the records being presented by the other party. *Fed. R. Evid.* 901(a). Note that the Third Circuit recently held that social media communications are self-authenticating as “business records.” See *U.S. v. Browne*, 834 F.3d 403 (3d Cir. 2016).

Dexter v. Dexter

A glaring example of how social media can be used in custody matters is the case of *Dexter v. Dexter*, decided by the Court of Appeals of Ohio. 2007 - Ohio - 2568, ¶ 1, 2007 WL 1532084, at *1 (Ohio App. 11 Dist. 2007). The mother, “both in her testimony and through her writings in on-line blogs, stated that she practiced sado-masochism and was a pagan,” *Id.* at *6. The mother challenged the admissibility of this evidence. *Ibid.* See also *J.N. v. D.R.M.*, No. CN07-01654, 2008 Del. Fam. Ct. LEXIS 62, at *17 (Del. Fam. Ct. Jan. 29, 2008) (relying heavily on photos posted on MySpace that highlighted a mother’s drinking habits in a decision to deny the mother sole custody). *Dexter*, *supra* at *6 (Ohio App. 11 Dist. 2007). With respect to the evidentiary hurdles, the mother admitted in court that she wrote the on-line blogs on her Myspace account, and that those writings were open to the public to view. *Dexter*, *supra* at *1 (Ohio App. 11 Dist. 2007). Thus, the Court of

Appeals of Ohio found that she could hardly claim an expectation of privacy regarding the writings. *Id.*

Shaw v. Young

An August 17, 2016 decision by the Court of Appeals of Louisiana in *Shaw v. Young* held that the “husband’s repeated emails and text messages to his wife and his repeated postings on his social media account about her constituted cyber stalking, which qualified as domestic abuse and thus supported the issuance of a permanent Protective Order.” 199 So.3d 1180 (La. App. 4 Cir. 2016). In this case, the husband sent electronic messages to the wife and posted negative things about her online. *Id.* at 1187. The wife testified that her husband posted messages on Facebook about her immigration status and threatening to release private photographs of her to others, and sent messages to her friends saying “bad things” about her – messages that the friends then forwarded to her. *Ibid.* at 1188. The Court of Appeals found the messages, “whether they were emails, text messages, or even letters – constitute a ‘repeated pattern of verbal communications or nonverbal behavior without invitation’ that would cause a reasonable person to feel alarmed or to suffer emotional distress.” *Shaw v. Young*, 199 So.3d 1180, 1187.

The Louisiana statute specifically includes cyber stalking and a definition of electronic communications. *Id.* The Court further found that the Facebook pages are public and while Facebook users can restrict access, individuals that were not the husband’s friends were getting contacted, and he had not utilized any privacy settings. *Ibid.*

Social media evidence can be acquired both informally – by personal investigation – or more formally through the use of discovery. Many of the cases cited above relate to evidence that is publicly available. Generally, evidence that is publicly available may be gathered freely and used in any matter allowed by law or the Rules of Professional Conduct. See, e.g., Colorado Bar Association Ethics Committee Opinion 127. ■



Lynne Strober is the Co-Chair of the Family Law Department at Mandelbaum Salsburg, PC. Jennifer Presti is an associate in the Family Law Department and Litigation Department at the firm. Khizar A. Sheikh is an attorney. www.lawfirm.ms

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Social Media in Divorce Proceedings

Lawyers must modify and change the way they prepare for highly conflictual cases in these changing times. To do so, they need to understand and know the right questions to ask about social media

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REVERSING THE TAX BURDEN OF ALIMONY

Under the Tax Cuts and Jobs Act, alimony payments will be neither tax deductible for the payor nor taxable in the hands of the recipient. There is still a window to receive favorable tax treatment for your clients, but it is closing.

By Briggs Stahl and Connie Rossi, Forensic Accountants

The Tax Cuts and Jobs Act (H.R.1) passed by Congress in December 2017 has effectively reversed the tax burden of alimony beginning in 2019. But fear not, there are exclusions for family lawyers who act quickly for their clients.

The changes to the tax code will require family law professionals to plan for more than just the new alimony provisions, however. Changes to the individual and corporate tax rates could also affect planning and negotiation of alimony in divorce proceedings.

The Alimony Provisions

Under the new Act, alimony payments will not be tax deductible for the payor spouse, and alimony will no longer be considered gross income for the recipient in divorces and legal separations that are executed on or after January 1, 2019. This new alimony provision is not retroactive, and does not apply to divorces and separation orders entered before 2019.

A few salient points regarding the new alimony provisions:

- 1. If your client wishes to have alimony be deductible/taxable, your must finalize their divorce by December 31.** Schedule the trial to allow for entry of the Court order before 2019.
- 2. Alimony payment timing under the recapture provisions and provisions equating payments as child support will no longer**

create concerns for divorce after 2018. Front-end loading of support will not be an issue since alimony will not be deductible and may create opportunities for prepayment.

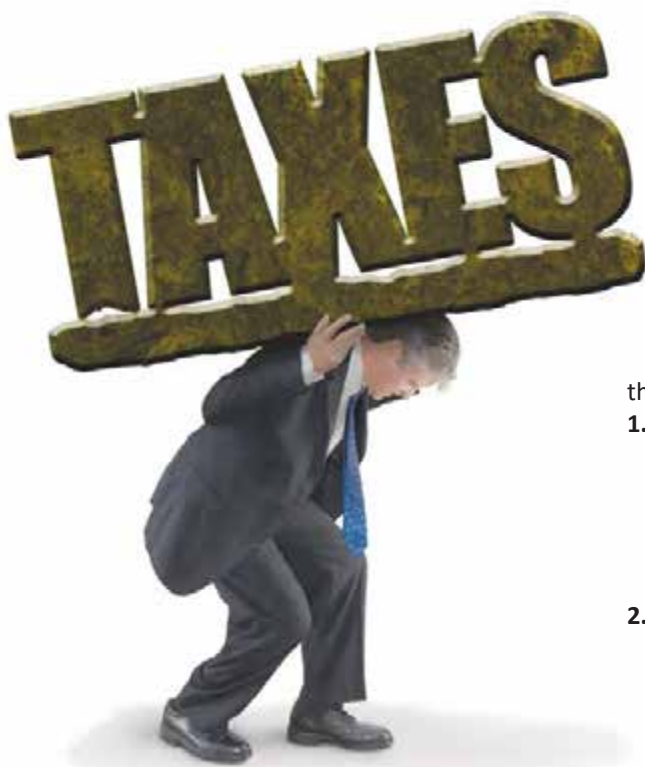
- 3. The alimony and lower tax rate provisions will affect States that compute child support based on net cash available to the parties.**

It is important to emphasize that the prior rules will apply to already-existing divorces and separations as well as divorces and separations that are finalized before 2019, even if those agreements are legally modified after January 1, 2019. However, under a special rule, if taxpayers have an existing (pre-2019) divorce or separation decree legally modified, they can expressly choose to apply the new Act rules in the modification.

Feeling the Impact

There are other provisions of the Act that could impact the financial considerations of a divorce, including calculations of alimony and child support.

Tax brackets for individuals are set to decrease overall, though how much will depend on many factors. The repeal of personal and dependency exemptions, a new dollar limit on itemized deductions for state and local taxes, changes to the standard deduction for filing singly or jointly, and changes to the child tax credit will affect tax computations. These in turn will affect the available income



and assets used in alimony and child support considerations for both sides.

Additionally, all miscellaneous itemized deductions currently subject to the 2% floor are repealed through 2025. Legal fees that were deductible for getting alimony are no longer deductible under this provision.

In 2018, the Act makes the corporate tax rate a flat 21%. It also eliminates the corporate alternative minimum tax. Some S-corporation and partnership owners will receive a 20% deduction for certain pass-through income. Business valuations will increase as the new corporate and flow-through rates for pass-through entities provide increased cash flow for valuation purposes.

As we look ahead to 2019, there are several changes coming that impact the family law practice area. Whether that means working to finalize a divorce or separation by the end of 2018 or considering the impacts of alimony payments on both parties in 2019 and beyond, family law professionals must keep these new provisions in mind. ■



Briggs Stahl, CPA, ABV, CFF, CBA is a Partner and Connie Rossi, CPA, CFF, CGMA is a Manager at RGL Forensics. Briggs has over 30 years of experience in family law cases. Connie has over 20 years of experience in all areas of taxation. She provides expert witness services family law litigation. www.rgl.com



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How the Tax Cuts & Jobs Act Will Impact Corporate Taxes

An overview of how the new tax law could affect the value of major community assets: C-corporations and pass-through entities. [Page 12](#)

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U.S. Supreme Court Tackles Discrimination Against Same-Sex Couples

In the following cases, state Supreme Courts have ignored the ruling in *Obergefell v. Hodges*, which holds that the government may not treat same-sex couples differently from opposite-sex couples. Essentially, these states are undermining same-sex marriage under the guise of “religious liberty.”

By Laura Morgan, Family Lawyer and Consultant

Pavan v. Smith, 582 U. S. ____, 137 S.Ct. 2075 (2017).¹

The Facts of the Case

In this case, Leah and Jana Jacobs and Terrah and Marisa Pavan, both same-sex couples, were married in Iowa in 2010, and in New Hampshire in 2011, respectively. Leigh and Terrah each gave birth to a child in Arkansas in 2015, and each couple completed the requisite paperwork for birth certificates for the newborns listing both spouses as parents: Leigh and Jana in one case, and Terrah and Marisa in the other. Citing a provision of Arkansas law, Ark. Code 20-18-401, the Arkansas Department of Health issued certificates bearing only the birth mother’s name.

The Jacobses and Pavans filed a lawsuit in Arkansas state court against the director of the Arkansas Department of Health seeking a declaration that the State’s birth-certificate law violates the constitution. The trial court agreed with the couples, holding that the state statute is inconsistent with the Supreme Court’s decision in *Obergefell v. Hodges*, 576 U.S. ____, 135 S.Ct. 2584, 192 L.Ed.2d 609 (2015). The Arkansas Supreme Court reversed the trial court.

The United States Supreme Court’s Opinion

The United States Supreme Court held that a state law that precludes same-sex couples from having both spouses’ names on a birth certificate violates the Due Process Clause and

the Equal Protection Clause under *Obergefell v. Hodges*. In a per curiam opinion, the Court held that the rule functionally deprives married same-sex couples the same rights to be listed on their children’s birth certificates as married opposite-sex couples have. Not being listed on a child’s birth certificate can significantly affect a parent’s ability to participate in transactions that require showing proof of parentage. Therefore, this rule unconstitutionally discriminates against married same-sex couples by denying them access to the same rights, responsibilities, and benefits that married opposite-sex couples have.

The Supreme Court made the ruling it did because the Arkansas law violated a key tenet of *Obergefell v. Hodges*: “the Constitution entitles same-sex couples to civil marriage on the same terms and conditions as opposite-sex couples.” This is likely why Chief Justice John Roberts joined the majority opinion in *Pavan v. Smith*, even after dissenting in *Obergefell v. Hodges*. See also *McLaughlin v. Jones in and for County of Pima*, 243 Ariz. 29, 401 P.3d 492 (2017) (statutory marital paternity presumption cannot be restricted to only opposite-sex couples).

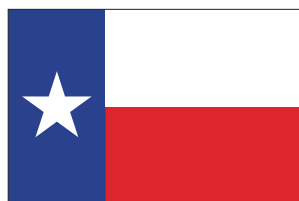
The Texas Supreme Court Defies the United States Supreme Court

Despite the decision in *Pavan*, which was basically the Supreme Court saying “we meant it when we said ALL the rights of opposite-sex couples,” the Texas Supreme Court decided *Pidgeon v.*

Turner, No. 15-0688, 2017 WL 2829350 (Tex. Supreme Court, June 30, 2017) ².

Texas law prohibits same-sex couples from receiving spousal benefits for government workers. After the United States Supreme Court struck down the federal same-sex marriage ban in 2013, the Houston city attorney advised then-Mayor Annise Parker that this prohibition ran afoul of the Constitution. While the Texas law remains on the books, Parker mandated that it no longer be enforced in Houston, ordering the city to “extend benefits” to government employees’ same-sex spouses who’d been legally married elsewhere. Two taxpayers, Jack Pidgeon and Larry Hicks, challenged Parker’s directive shortly thereafter, arguing that by granting benefits to same-sex couples, Houston was “expending significant public funds on an illegal activity.”

A state trial court agreed and blocked the new policy. While the city appealed that decision, the Supreme Court issued *Obergefell* in June 2015, invalidating state-level same-sex marriage bans. The 5th U.S. Circuit Court of Appeals applied *Obergefell* to Texas several days later in *De Leon v. Abbott*, striking down the state’s bar on same-sex marriage. In light of these decisions, a state appeals court reversed the block on



same-sex benefits in Houston and sent the case back down to the trial court “for proceedings consistent with *Obergefell* and *De Leon*.” Pidgeon and Hicks appealed the ruling to the state Supreme Court, which initially refused to take the case. After a group of high-profile Republicans urged the justices to reconsider, however, the court reversed course and heard arguments in March.

The Texas Supreme Court held that *Obergefell* “did not address and resolve” the “specific issue” of state spousal benefits. Therefore, the state appeals court erred in ordering the trial court to resolve the case “consistent with *Obergefell* and *De Leon*.” Instead, the Texas Supreme Court insisted, the trial court must settle the issue itself – keeping in mind that *Obergefell* “did not hold that states must provide the same publicly funded benefits to all married persons.”

The Texas Supreme Court acknowledged *Pavan* but noted that the justices also agreed to hear *Masterpiece Cakeshop v. Colorado Civil Rights Commission*, a constitutional challenge to LGBTQ nondiscrimination laws. This decision “to hear and consider *Masterpiece Cakeshop*,” the Texas Supreme Court insisted, “illustrates that neither *Obergefell* nor *Pavan* provides the final word on the tangential questions *Obergefell*’s holdings raise but *Obergefell* itself did not address.”

The Texas Supreme Court’s Opinion Is Infirm

This decision is nonsense. *Obergefell* declared that the Constitution grants same-sex couples “the constellation” of “rights, benefits, and responsibilities” that “the states have linked to marriage.” Its holding was not limited to marriage licensing. The Arkansas Supreme Court learned this lesson when it attempted to keep same-sex parents off their children’s birth certificates. Nonetheless, on December 4, 2017, the Texas Supreme Court let stand the decision in *Pidgeon*, clearly undermining *Pavan*.

As Mark Joseph Stern of *Slate* notes, “[The decision in *Pavan*] is bizarre... *Masterpiece Cakeshop* asks whether businesses have a First Amendment right to turn away same-sex couples. *Obergefell* and *Pavan* hold that the government may not treat same-sex couples differently from opposite-sex couples. No matter how the court rules in *Masterpiece Cakeshop*, its decision cannot abridge the rights and benefits that a state must afford to same-sex couples... The Texas Supreme Court essentially ignores this command in an insidious effort to preserve vestiges of the pre-*Obergefell* regime. Its gambit will almost certainly fail in light of *Pavan*.”

The Supreme Court Retreats from *Obergefell* and *Pavan*

In 2018, the Supreme Court continues to undermine same-sex marriage under the guise of “religious liberty.” The High Court declined to hear *Barber v. Bryant*, No. 16-60477 (5th Cir. 2017) ³, an appeal from the Fifth Circuit concerning a challenge to a Mississippi law that allows businesses to discriminate against same-sex couples. Mississippi HB 1523 allows citizens, small businesses, government employees, and charities to discriminate against same-sex couples if they believe that marriage is between one man and one woman.

A New Era of Anti-LGBTQ Legislation

Perhaps emboldened by the Supreme Court’s unwillingness to enforce *Obergefell* and *Pavan*, and its willingness to cater to the religious right, at least 129 anti-LGBTQ bills were introduced across 30 states during the 2017 state legislative season, according to a new report published by LGBTQ advocacy group Human Rights Campaign (HRC). Twelve of these bills – which range from adoption laws to “religious freedom” legislation – became law.

One of the more insane proposals comes out of Missouri. Missouri still has a law on the books defining marriage as a

Cont. on page 50

Forensics Technology and Family Law

How new technologies are allowing forensic accountants and family lawyers to cut costs and reach conclusions faster and more efficiently.

By Rebekah Smith and Anthony Reitzel, Forensic Accountants

Advances in technology and the adoption of artificial intelligence (“AI”) are changing how financial and accounting records are managed and analyzed. This evolving landscape presents an opportunity for forensic accountants to extend services to family law clients with increased efficiency and accurateness.

Many family law cases involve critical financial issues that can include questions related to financial misconduct and misappropriation of assets, tracing of separate property (in states where applicable), and fraudulent financial statements. Historically, performing the analysis to develop conclusions about these issues involved the manual review of documents. This analysis can be labor-intensive depending on the volume of documents and the format in which the data was produced.

Using computer software programs, forensic accountants can remove some of the manual aspect of data analysis, making the process more efficient and effective. One of these types of programs includes sophisticated data analytics software that can analyze large quantities of data more effectively and efficiently than Microsoft Excel – the software most accountants use. Data analytics software has the ability to import PDFs, plain text (.txt files), and spreadsheets, and pull the information into a database. Once the database is designed, the user can perform various analyses, such as Benford’s Law, Gap Detection, and Fuzzy Duplicate. Using data analytics software, a user can also search a database using criteria they set. For example, if a user wanted to

search for any checks dated on a weekend, they can set a parameter to extract this information. With the ability to set search criteria, forensic accountants can automate the process of searching for evidence of fraud in accounting and banking records by setting parameters based on various indicators of fraud.

Data analytics software packages can automate burdensome tasks that were previously performed manually, but they are not as easy as just pushing a button. The user must still tell the program what characteristics to search for, and much of the analysis is driven by the individual’s professional judgment. The emergence of AI in the accounting industry can enhance the professional’s judgment by implementing concepts like machine learning to teach software the characteristics to look for in a data set. By adopting AI solutions, forensic accountants will have the capacity to move away from manual analysis and concentrate on larger issues while providing lower costs to their clients on data intensive projects.

Options for AI are currently limited, yet this is steadily changing as the technology continues to develop. The current AI technology can perform many of the functions data analytics software offers in an intuitive format that is both interactive and able to integrate into various accounting systems, including QuickBooks. For example, you can load data into an AI program and, with the appropriate instruction, the program can identify risk areas by finding transactions or accounts where the transactions do not appear normal when compared to the rest of the data. Once the program

identifies the risk areas, the forensic accountant can then use this data to tailor their investigation and analysis. AI programs have the ability to streamline investigations when there is question about the underlying integrity of the data because one spouse believes the other spouse has done something to manipulate the records of the company.

Finally, there are services and programs (such as IDEA) that can assist with – or automate – the conversion of bank and credit-card statements into an electronic (generally Excel) format. For clients with copious amounts of statements, it may be useful to use a service or software to convert the statements to a format that can be filtered and searched with ease.

As forensic accountants are able to implement some of these relatively new technologies, they should be in a position to reach conclusions faster and more efficiently, resulting in cost-savings benefits for the attorneys and clients who engage them. ■



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Asking

"What's Next?"

Leads to Resolution

How asking "what's next?" throughout the litigation will have you learning more about the case than your opponent, and help drive the litigation to conclusion.

By Ashby Jones, Family Lawyer

When she was a toddler, our extroverted daughter Maggie bounced from one event or interaction to the next. Every scoop of ice cream was met with a question about her next sweet snack. Maggie wanted to know who would read her a book, when she could have another play date, when would we call her grandparents on the telephone, could we go outside? What's next?

My husband and I marveled at how this tiny being controlled the energy in our home. She was the source of the questions, and we the source of the answers. Bedtime was a reprieve from her laser focus on the day's events, and we felt such relief when our tiny planner fell into a deep, quiet sleep.

Relentlessly Pursuing Resolution

Litigators have much to learn from a

toddler. Though our clients watch legal thrillers on television and have a working vocabulary of the *Law and Order* method of litigation, they do not want us to try their cases. Not really. We like trying cases. We find our trials challenging. We welcome the opportunity to put our skills to use, and perhaps try the new technique we have learned in continuing education. We are energized. We are having fun. We must admit, though, that we are the *only* ones having fun.

Our clients, for the most part, yearn for resolution. Resolution can be best achieved by applying a relentless toddler's approach to our litigation. We must constantly ask ourselves and our opposing counsel: "What's next?"

Asking what's next throughout the litigation accomplishes two goals:

1. We are learning more about the

case than our opponent; and
2. We are driving the litigation to conclusion.

A command of the facts in court, in view of the opposing litigant, is an invaluable display of strength. But there are also a number of behind-the-scenes exchanges with opposing counsel that convey additional strength. Consider all of the conversations and correspondence we have with opposing counsel during a case. Knowing more about the case, no matter how inconsequential the detail, conveys strength to opposing counsel. Strength during litigation is a source of leverage. Leverage drives a case to conclusion.

Be the Attorney Behind the Wheel

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Cont. on page 34



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What's Next / Cont. from page 32

our opposing counsel, we should ask ourselves: What is the best course of action? Does the communication require a response? Is *not* responding a response all on its own? Does the communication raise an issue we must address in discovery? What should we do next with the communication? Filing the communication away without considering “what’s next” is a missed opportunity to learn more about the case and drive the litigation.

During written discovery, we are often inundated with materials from opposing counsel. It is imperative that we review the materials as possible gateways to additional information. While it is true discovery responses are meant to inform us, the responses may also serve as clues for what is *not* stated or revealed. Reviewing discovery responses with an eye towards what is missing leads to obtaining more information. Ask the follow-up questions,

write the follow-up letter, and do what is necessary to maintain the focus on your role as recipient of information and the attorney behind the wheel.

Depositions also provide an opportunity for developing facts. Keeping a notepad with a post-deposition “To Do” list is most helpful. Has the witness identified another key player? Has the witness pointed to a gap in the information? Do you need to subpoena additional information from a provider or a financial institution? Do you need to supplement your written discovery? How does the deposition assist you in addressing what’s next?

Driving the Case to a Conclusion

The opposing litigants will notice that their energy is directed towards responding to you. The opposing litigants will also recognize that it is you driving the litigation to conclusion. Responding and reacting to you will leave your opposing litigant feeling exhausted by the litigation. Once you have your opposing

litigant feeling as exhausted as the parents of a talkative toddler, your case is ripe for resolution. ■



Ashby Jones practices in Lexington, South Carolina. She is a Fellow in the American Academy of Matrimonial Lawyers, is Board Certified in the area of Family Law, and is a 2017 and 2018 Super Lawyers Selectee. www.kinardjones.com

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the amount of cell service infrastructure has increased to the point that much more specific geographical locations can be established, and the amount and type of data stored on these systems (i.e., text messages, pictures, videos) has broadened considerably.

New Privacy Concerns Impact Third-Party Doctrine

Carpenter’s conviction at the trial level relied, in part, on the “third-party doctrine” applying and that short-term, real-time tracking of a suspect’s cell phone is not a Fourth Amendment search. On appeal, the question is whether a reasonable privacy expectation exists for cell phone location records held by the service provider. The Circuits are split in their decisions as to whether a reasonable expectation of privacy exists with respect to cellular site data, and the Sixth Circuit split in their decision, finding that no reasonable expectation existed since

it is comparable to a business record of the service provider that reveals “routing information” rather than the contents of the communication. This is consistent with the long-standing “third-party doctrine” of analog telephone calls. Though concurring in the conviction, Judge Jane Bransetter Stranch of the Sixth Circuit highlighted Justice Sotomayor’s analysis from *United States v. Jones* and drew a sharp distinction between a business record and a record that carries with it Fourth Amendment issues through its utility in tracking an individual.

Quite simply, if the courts treat cell phone location data as a business record and allow accessibility through means other than the warrant process, its production and admission into evidence becomes easier. The *Carpenter* case has the potential for the Supreme Court to reinterpret the “third-party doctrine” and clarify the level of privacy individuals should expect for their electronic data. The Supreme Court’s decision in this case will undoubtedly shape how

we approach obtaining and applying electronic data for years to come. ■



Aaron Weems is a partner in Fox Rothschild’s litigation department. He primarily focuses on matrimonial law cases in Philadelphia, including advising clients

on matrimonial law issues affecting their business succession plans.

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A black and white photograph of a family—a man, a woman, and a young boy—hugging each other in a doorway. The man is in the center, smiling, with the boy on his left and the woman on his right. They are all looking towards the camera. The background shows a doorway leading to another room with a decorative railing.

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5 Ideas to Improve the Family Law System's Efficiency and Accessibility

These court procedure substitutes could make domestic controversies less traumatic, less expensive, more user-friendly for the litigants, and more streamlined for the courts.

By James Gray Robinson, Family Lawyer and Consultant

Many divorce lawyers practice some form of alternative dispute resolution in addition to litigation because of the traumatic impact judicially determined divorces have on families who are already traumatized emotionally, mentally, and financially by the divorce process. The current system does not do enough to utilize available resources to make the process less confrontational and more user-friendly for divorcing couples.

The most common complaints I hear about the divorce process are its expense, the lack of availability of courts, and lack of consistency of results. This frustration is exacerbated by the fact that clients usually have a “friend” who got what they wanted and don’t understand why their results weren’t similar. This gives clients the impression that courts aren’t fair, and that justice is fleeting. This does not even include the horrible toll custody litigation has on the family. Here are five common-sense alternatives that could make domestic controversies less expensive – both financially and emotionally.

1 Divorce Panels

Family lawyers know that the judicial system was not designed to handle divorce cases. As a substitute for battle, the court system often appears to litigants as cold and unfair. Until we can mandate a substitute for courts applying a medieval concept to the breakup of a family, litigants who can’t agree on their future will be forced to apply a “win-lose” resolution to the breakup. My first recommendation for fixing the system is to create panels of lawyers, mental-health and behavioral professionals, and guardians *ad litem* to decide the ground rules for failed families.

Perhaps family lawyers should be required to serve on the panels, which would decide custody, visitation, child support, and protective orders. Court “policies” that award custody and support may not be in the best interest of the family – but if a lawyer, mental-health professional, and child advocate could decide these issues, parties would be reasonably assured that



a fair and impartial result could be found. These panels would serve *pro bono* and therefore greatly reduce the cost of the process. There would be no need to involve courts unless there was evidence of bias or manifest injustice.

2 Loser Pays

The American rule, which requires parties to pay their own attorney's fees, can have a detrimental effect on quick resolutions of issues and oftentimes forces the "poorer" spouse/litigant to give up because they don't have the resources to battle like their opponent. The party with resources might refuse to settle or compromise because they know they can outspend their opponent.

The British rule, which requires the party who loses to pay *all* of the attorney's fees, could even the playing field and force the party with resources to have to risk having to pay the winner's attorney's fees, which is a powerfully persuasive reason to compromise. To take this one step further, if the loser's attorneys are responsible for paying the winner's attorney's fees, this would be an even more powerful persuasion to reach a compromise.

If the jurisdiction has administered court preferences regarding custody, child support, and other family matters, and a party challenges those preferences because they are "different", they should pay the court costs and their opponents attorney's fees if they lose.

3 Clerk's Courts

Unfortunately, a lot of court, judges', and litigants' time is wasted by cases that don't really rise to the level of a controversy. Jurisdictions could institute clerk's courts who deal with prepackaged divorces, uncontested custody matters, and parties who have a settlement agreement in place. The judicial system could institute relatively lower fees for choosing this route and make the filing fees for cases requiring judicial determination more expensive. This would result in people choosing to appear before a clerk rather than a judge because of the cost of the latter. The economic pressure to choose a clerk would take a tremendous strain off our domestic court systems.

4 Simplify, Simplify, Simplify

The more we can streamline the process by creating user-friendly forms, the better – especially if we make the forms simple enough for lay people to use. Sometimes, it appears that forms are unnecessarily complex only to require litigants to hire lawyers to fill them out.

One of the most frustrating aspects of the court system is that litigants cannot get help from court staff to fill out the usual forms. Perhaps lawyers could provide *pro bono* services, in proportion to the size of their practices, that are limited to filling out the forms. If the litigants choose to hire the lawyer who has helped them to fill out the forms to represent them in litigation, good for the lawyer. Most litigants just want help to fill out the forms and will take their chances in court. If we go to divorce panels as suggested above, litigants would have a better chance of having their concerns heard after filling out the forms.

5 Small Claims Property Division

There will always be a need for judicial supervision of large and complex marital estates. However, equitable distribution is simply not justified in estates that are less than some reasonable threshold amounts – such as \$100,000 of marital assets, or even higher depending on demographics. The success of the creation of small claims courts for civil disputes warrants giving a similar threshold amount for property division. This could also be relegated to the divorce panels mentioned above.

As the number of divorces rises along with custody and property conflicts, there has to be a more conscious and mindful approach to these specific types of disputes. Marital and family conflict should be decided with compassion and understanding with the input of mental- and family-health professionals – not just left to a judge who may or may not appreciate the consequences of their actions on a family in a combative courtroom setting. ■



James Gray Robinson specialized in family law for 27 years. In 2004, he became a consultant who works with a wide range of people, professional organizations, and corporations. At 64, he passed the Oregon Bar exam and is again a licensed attorney.
www.JamesGrayRobinson.com

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Family Lawyer Magazine would like to hear from you! If you could change one or more aspects of the family-law system, what would they be? Send your ideas for change to: editors@familylawyermagazine.com

How to Avoid Security Breaches

Staying one step ahead in protecting your firm's and your clients' data.

Karen D. Sparks, Divorce Financial Analyst® and Lawyer

In our work as family law professionals, we are inundated with many forms of information related to our clients' financial status. There is always a considerable amount of paperwork and electronic data to be reviewed and analyzed. Technology advancements have created wonderful benefits for our profession, but a huge downside to this is the continuing challenge of preventing security breaches, identity theft, data mining, and the sale of data as a commodity. Good practice maintenance must include a regular review of all of our policies and practices as they relate to document retention, email, and business liability insurance protection.

Paper Documents

Always be certain that your retainer agreement includes language on what will be done with client files after the conclusion of each engagement. Your retainer agreement should state specifically how long your office will store records, exhibits, and other pertinent information. Client file information should be secured at all times in locked or password-protected filing cabinets, storage areas, or secure facilities.

When disposing of professional client documents and/or personal papers, take great care to ensure that no critical private information can be culled from the items being discarded. There is an excellent product on the market that I recommend called "Guard Your ID." It is a roller-ball that is very effective at obliterating sensitive information on both paper files and glossy items (such as mail, magazines, prescription labels, etc.) by covering over all private data on these objects with a random pattern of letters and numbers. After you have used Guard Your ID to successfully remove all important indicators from your documents, it is then appropriate to shred everything for an even more secure disposal of client information.

Electronic Storage

For client data that is stored electronically with cloud storage providers, monitor closely who will be able to access this material in shared files or notes. Change your password for access to the cloud storage on a regular basis to minimize the risk of information theft. At the conclusion of each client's case, delete all file folders, comments, and notes relating to that case.

Best Practices for Technology Security Breaches

Two alarming new security flaws (called "Meltdown" and "Spectre") have just been discovered. These flaws are exceptionally dangerous because they allow hackers to access and steal sensitive data by targeting actual computer microprocessor chips themselves. The flaws can have serious



consequences for clients of cloud servers because, if one server user gets hacked, the private data of *all* of the cloud server's users becomes available to the hackers.

The pervasive nature of new developments like "Meltdown" and "Spectre" underscores the absolute necessity of performing regular and frequent technology housekeeping. Whether your practice operates with a standalone computer or laptop, or utilizes a sophisticated network system or cloud server, updating your technology equipment on a regular basis is absolutely essential to the prevention of hacking disasters. Checking regularly for updates and patches – and installing them immediately – will go a long way toward preventing any hacking of the sensitive client information that is vital to your business investment.

Email and Other Electronic Communication

While there is no bulletproof solution for electronic hacking, there are some steps that we can take as professionals to add additional levels of security for our email and text communications:

1. Quick messages sent via text to clients often save time and allow us to monitor case issues without a lot of complication. However, be very vigilant about how you are communicating and what information you are communicating. Never transmit any key client data over text. Request that the client contact you by phone to receive the necessary facts.
2. Keep your mobile devices secure with passwords, fingerprint detection, and other security apps and programs to prevent unauthorized access.
3. If your business email is connected to a company server or network, make a point of inquiring about the security measures and protocols that have been implemented to protect your data.

If you have set up your own email accounts and servers for your business, it is easier to implement encryption strategies. There are quite a few products available within the open source

community that can operate either as stand-alone programs or be integrated with your own setup. Many of these products utilize JavaScript or an app for iOS and Android.

One notable provider is ProtonMail. The ProtonMail servers that maintain emails only store the encrypted emails themselves and do not have a password or key to decipher the stored emails. ProtonMail has a functional interface with folders, spam filters, etc. A key benefit of this product is that you can exchange encrypted emails with other users who do not use ProtonMail. It is important to note that you cannot access ProtonMail via a plug-in or SMTP or IMAP, but you can use ProtonMail with your own domain name with either a free or paid account.

Business Insurance Protection

Take a proactive approach to your insurance coverage and confer with your professional liability carrier to determine whether it offers additional insurance riders for electronic data breach

protection. Consider adding this coverage as an essential cost of doing business in order to provide an extra layer of security for your practice.

Additionally, as your practice grows, be sure to review your levels and categories of coverage. Take note of new or expanded service offerings and consider whether you have adequate liability protections for your practice.

Conclusion

You cannot prevent every occurrence of security breaches, but you *can* investigate and implement strategies that will provide significant levels of security and protection for your client data and your business development. ■



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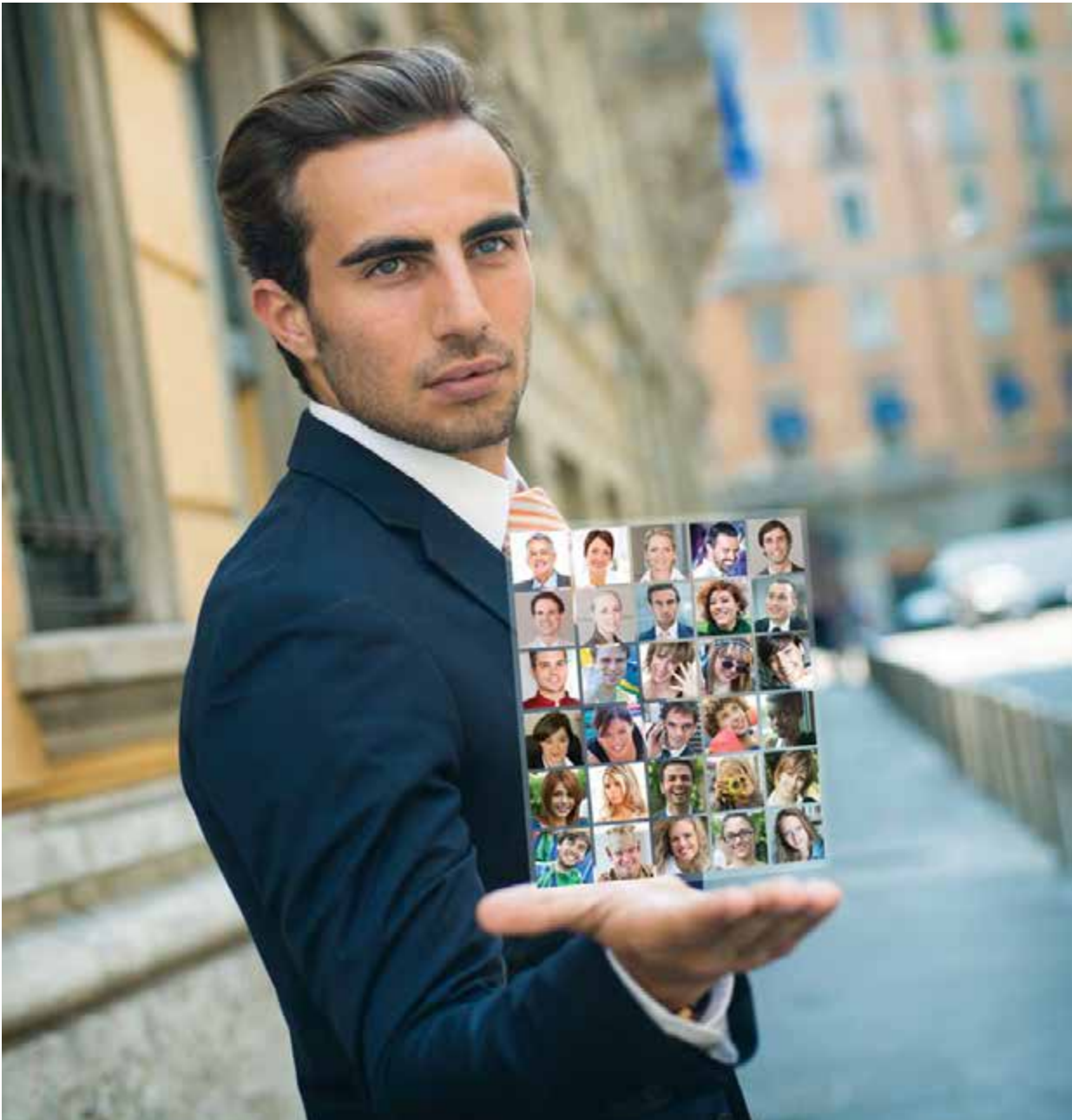
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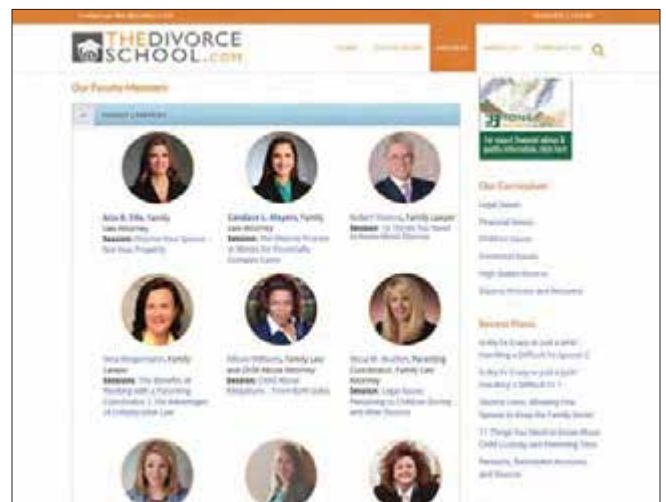
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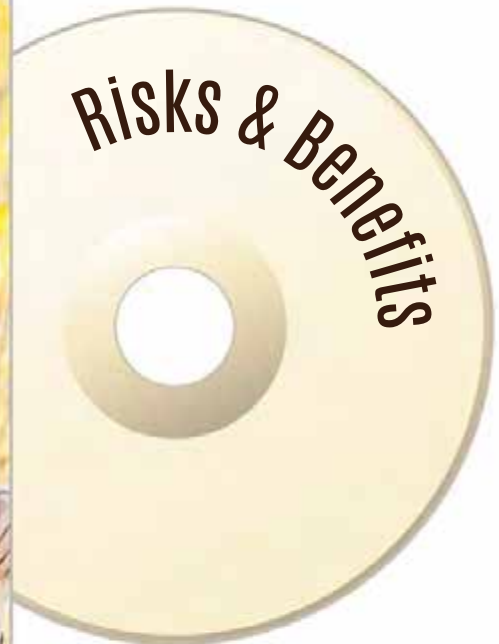
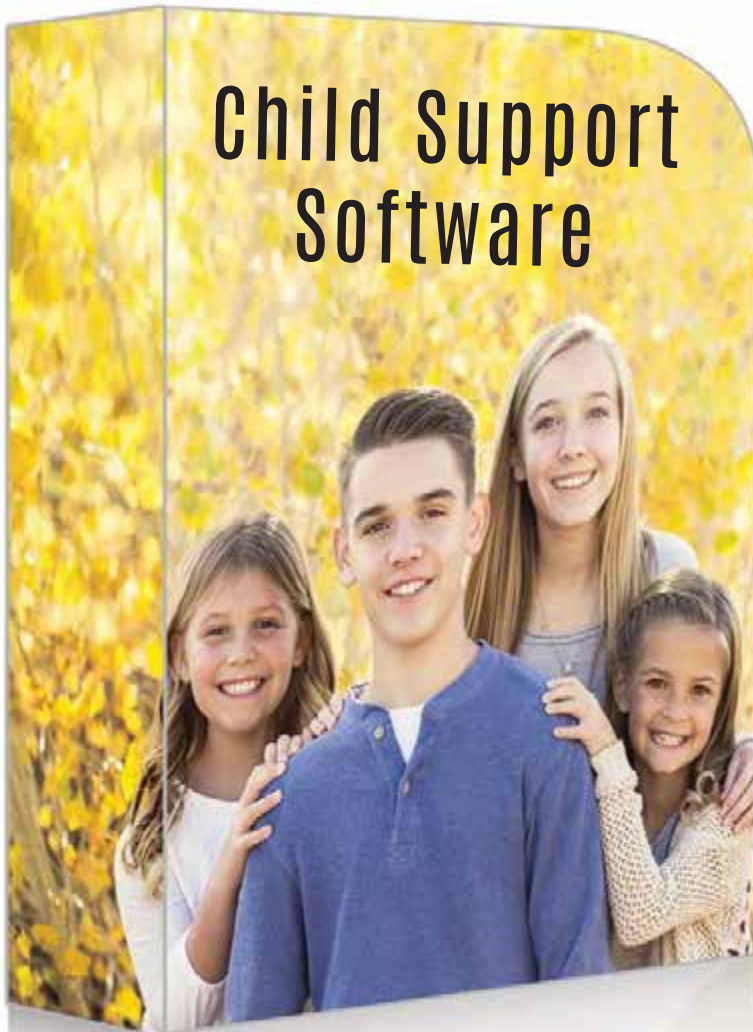


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By Stephanie L. Tang, Family Lawyer

Software that automatically calculates child support can be a valuable tool – but you must advise clients that the calculations are not written in stone, and how and why they might change.

Child support can be a sensitive topic for many clients. Some clients believe they should not have to pay any money to their soon-to-be former spouse, or will ask their lawyers to find ways to pay a smaller amount in monthly support. Software that automatically calculates child support based on specific income inputs and the applicable state's law can be a valuable tool for family law attorneys.

However, attorneys should advise clients that the software calculations are not written in stone because of the modifiability of child support – and because judges have the option of deviating from the state guidelines.

Three Models of Child Support

There are three primary models of child support codified throughout the United States: the Income Shares Model

(the majority approach), the Melson Formula approach, and the Percentage of Income Model. Specifically, 40 states employ the Income Shares Model, including California, Illinois, and New York.

The Income Shares Model is based on the idea that children should receive the same proportion of their parents' income that they would have received if their parents were still living together.

This model considers the combined incomes of both parents in determining a support obligation.

The Melson Formula approach (used only by three states) is a variation of the Income Shares Model in that it considers both parents' incomes, but it also considers both the parents' and the children's needs.

The Percentage of Income Model only considers a percentage of an obligor parent's income in determining the child support obligation.

Regardless of the model employed, many states and state agencies have developed online calculators or separate software that attorneys and clients can use to try to estimate their child support obligation.

Using Child Support Software in Divorce

Many attorneys already utilize child support software once the tax returns and paystubs have been exchanged, financial disclosures have been completed, and the parties have started settlement negotiations. However, this software can also prove beneficial to clients in the initial intake process to illustrate possible scenarios for structuring child support.

When potential clients come into your office, they are often anxious and unsure about what the divorce process looks like. While most attorneys are accustomed to explaining what income sources, deductions, or other considerations a judge may take into account, seeing the inputs on the screen helps visual learners to understand the explanation. This way, they can prepare and focus on the relevant information in moving forward. Showing your new client calculations using the software will help to familiarize them with the inputs – and the information you will need for those inputs – before the case even begins.

Another potential use for the software is to illustrate the effects of different inputs on the calculated amount of child support. For example, a client's spouse may have significantly variable income from month to month because

of fluctuating overtime hours; showing the client examples of how those fluctuating hours could affect support makes the concept much easier for the client to grasp. You could simply *tell* your client that child support could fluctuate depending on this variation in income, but *showing* the potential effects as well is a much better way to make your point.

If you have clients with older children who may soon emancipate, many programs also allow for calculation of child support "step-downs" and carry these step-downs over to projected budget reports for the parties. This helps parties understand not only what their projected cash flow will look like in the immediate future, but also once their oldest child emancipates.

Risks of Relying on Support Software

When using child support calculation software, attorneys should be wary of the potential effects that seeing a certain number can have on a client. It is important to discuss the possibility of a judge deviating from the statute and the potential modifiability of any child support award.

Although most states have a presumption that judges should apply the guidelines, there are factors that could persuade a judge to deviate from them, including extraordinary out-of-pocket medical expenses due to a child's illness, or additional expenses due to a child's developmental or physical needs.

Many software programs can extrapolate child support if parents have a combined income above what is provided in the relevant income tables, but judges may still choose to deviate from that extrapolated amount and focus on other factors – such as the demonstrated needs of the children.

In the vast majority of states, child support is always modifiable as long as a substantial change of circumstances has occurred. You need to explain that even if a judge sets a child support award based on one spouse earning, say, \$250,000 under that state's statute, if that spouse is fired, he or she could

petition the court for a modification downward. Consider running scenarios with different inputs to educate your client as to potential changes to support due to a change of circumstances in addition to just indicating a potential range. This can be particularly useful in cases where a client/client's spouse is self-employed or has large fluctuations in their income: for example, in cases where their income is commission-based or if they have variable hours.

Many family law attorneys see child support calculation software as indispensable when negotiating settlement proposals and developing arguments for child support hearings. It can also be a great tool for attorneys during the initial intake process and to illustrate the impact of certain events on a parent's child support obligation. However, attorneys must keep in mind that even when using the software-generated spreadsheets, they still need to educate clients as to potential deviations and modifiability of support. Armed with these considerations, child support software can be a powerful tool in the attorney's belt. ■



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AUTHENTICATION OF DIGITAL EVIDENCE

By William Sosis, Family Lawyer

The authentication of digital evidence in the legal system has failed to keep pace with the growth in digital information. There are more mobile devices on earth today than people. More data has been created in the past two years than in the entire previous history of the human race. This enormous shift from paper to digital information requires that law firms and attorneys increasingly become competent with how digital information is stored, retrieved, and authenticated during legal proceedings. Requiring attorneys to become familiar with technology has little, if any, impact toward the authentication of digital evidence without changes to the Federal Rules of Evidence (FRE). Current FRE rules were introduced in 1975 but remain predominantly the same today. Given the volatile nature of digital evidence, the rules are woefully inadequate. www.familylawyermagazine.com/articles/authentication-of-digital-evidence



REPRODUCTIVE RIGHTS TECHNOLOGY AND DIVORCE

By Evie Jeang, Family Lawyer

Often times, couples pursue the path of bearing a child by way of a surrogate. This can be an extremely stressful time for both potential parents, taking both an emotional and financial toll on the couple. As a result, couples often contemplate whether they truly want to have a child, or whether it is meant to be. The legal question then becomes: In the event that either spouse was not biologically the parent due to failure to use their sperm or eggs, should they still be financially liable for not only support, but the cost of surrogacy or IV Fertilization? Here are the key legal requirements to help insure that parties contemplating an assisted reproductive agreement are held liable to that agreement – and the agreement is fully enforceable. www.familylawyermagazine.com/articles/reproductive-rights-technology



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By Gary Stenzel, Family Lawyer

A look at the ubiquitous nature of email accounts and discovery issues surrounding attorney-client communications during highly contested family law cases. Could leaving a laptop or even a new phone on and open to your emails waive attorney-client privilege? Since just one strategy email in the hands of the other party in a highly contested divorce or custody battle could destroy your case, what instructions do you need to give your client to ensure that email communication between the two of you remains privileged? This article deals with attorney-client privilege in the context of a hypothetical email account access, witness tampering, ways to remove the veil of confidentiality of alleged attorney-client confidentiality, and other factors dealing with these issues. www.familylawyermagazine.com/articles/email-and-discovery



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By Lydia Terrill, Family Lawyer

The legal industry has historically produced a massive amount of paperwork. Huge files sit dormant in filing cabinets, overflowing with pages and pages of handwritten notes, correspondence, memoranda, legal research, billing information, pleadings, depositions, court transcripts, financial information, expert reports... the list goes on. But, for many law offices, the days of paper files may be coming to a close, as more and more offices are "going paperless."

There is a cost to going paperless, and any office must weigh the costs against the benefits. For many offices, the task of scanning and converting paper files to digital files can be enormous. Nevertheless, the cost-saving advantages of having a paperless office can also be enormous.

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DIVORCE AND COLLEGE FINANCIAL AID

By Sandy Voit, Divorce Financial Analyst

Many divorce settlements do not effectively take the impact of college financial aid into account – preserving equitable Head of Household status and Child Tax Credits while still maximizing their student's financial aid. When couples are getting divorced and there are children who either are already enrolled, or have yet to enroll, in college, there are some factors that should be taken into consideration when structuring their settlement. Here are strategies for optimizing college financial aid, and six factors to warn your clients about.

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CRYPTOCURRENCY CONSIDERATIONS IN DIVORCE

By Edward Bryan, Family Lawyer

At the beginning of a divorce, one of the first steps for a matrimonial attorney is to identify and value each spouse's assets. The identification and valuation of real estate, business interests, stocks, and other assets occasionally presents unique but manageable challenges. When in doubt, forensic accountants, appraisers, valuation experts, and the like are hired to identify and determine values of those hard-to-value assets. But what is the matrimonial lawyer to do when presented with an entirely new asset class that is little understood and whose value fluctuates wildly on a daily basis? This article discusses key valuation and distribution issues, and offers three practice tips when dealing with cryptocurrency in divorce.

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FAMILY LAW TOOLS OF THE TRADE

By Kumudha Kumarachandran, Family Lawyer

Like most young professionals, I am always looking to technology to make my work life quicker, easier, and more productive. This article looks at a short list of technology I use in my family law practice, and explains why I find iBackup Viewer, Our Family Wizard, and Custody X Change invaluable.

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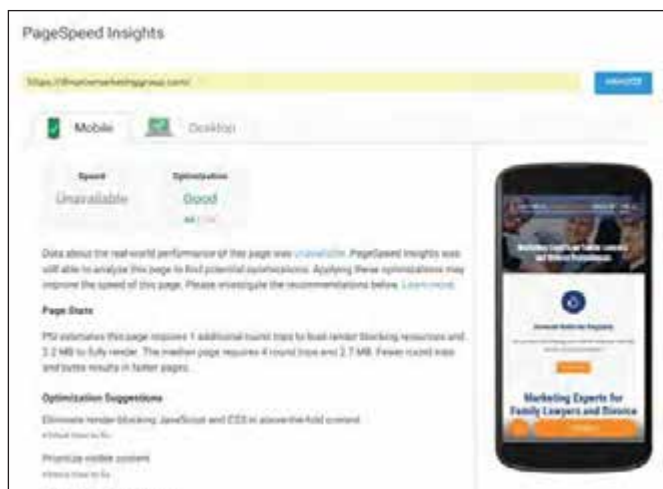
was completely optimized, and it should have been blazing fast. With further investigation, our Google Webmaster expert discovered that a small piece of third-party software was causing a huge loss in speed. Once our developers created a workaround for the software, our site earned top marks for load time.

The next two tools are used by website developers who require more in-depth and technical recommendations on how to improve site speed.

B. Google PageSpeed Insights: <https://developers.google.com/speed/pagespeed/insights>

This tool is much more comprehensive than the one we discussed above. It is designed to provide actionable insights into a website speed and a much more complete overview of the overall performance of different web sources as Google Chrome loads a website page.

PageSpeed Insights offers a detailed analysis of website speed on two major devices: desktop and mobile. The data highlight technical issues to fix to improve website speed, and the tool offers device-specific feedback to show which parts of the website successfully passed the test. Google PageSpeed Insights ranks different websites from 0 to 100 points based on the load time: a good score is somewhere between 85 and 100; websites that score between 65 and 85 need work; and a score below 65 is always labeled “poor.” The exact number of seconds it takes to load the website is only available to big websites with lots of pages and traffic.



C. GTmetrix Speed Test Tool: <https://gtmetrix.com>

This is another website speed performance test tool widely used by developers to analyze page speed score, YSlow score, load time, page size, and the number of requests a website has. A web page is made up of different assets – including HTML, JavaScript, CSS, and images – and each of these assets generates a server-side request while the browser renders

a page. In many cases, the number of requests can have an impact on the website speed performance.

GTmetrix Speed Test Tool provides a website performance report containing over 25 recommendations. It uses Google PageSpeed Insight rules to give your website a score, and the ratings are from 0 to 100 (F to A).



Other Factors Affecting Site Speed

How fast any website loads depends on many factors: some are determined by the website itself, and others are beyond the website’s control. The load time depends on the computer or smartphone you are using, and your Internet speed (which in turn depends on the service package you have purchased from your provider as well as the time of day: the speed may fluctuate depending on the number of people in your neighborhood using the Internet from your provider at the time). ■



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raising of estate values subject to inheritance taxes – may indirectly impact high-net-worth divorce negotiations as the need for advance estate planning vehicles such as Life Insurance Trusts and Grantor Retained Annuity Trusts (GRATs) are reduced.

New Opportunities for Your Clients

The changes to alimony and unallocated support means supported spouses will likely report far lower taxable income, potentially making them eligible for additional credits previously out of reach.

It's not unreasonable to assume that a woman receiving \$17,000 per month in alimony and unallocated support will now qualify for the Child Tax Credit, recently doubled from \$1,000 to \$2,000 for children under the age of 17. The adjusted gross income threshold for this credit has now increased to \$200,000 for a single filer and phases out at \$240,000. To qualify, the parent must have the dependency exemption. While the exemption amount is \$0 through 2025, it still is important to negotiate who is entitled to it.

In addition, there are credits available to the "custodial parent" as defined by the IRS, including the credit for child and dependent care expenses, education credits, and the Earned Income Credit.

Keeping the Marital Home Becomes More Expensive

The combination of new limits will make keeping the marital home a more expensive consideration. Because alimony and unallocated support payments will no longer be considered taxable income, it's too soon to know how mortgage companies will adapt their qualification process. And, when it comes to the mortgage interest deduction, it is now available for interest paid on up to \$750,000 of debt on first and second homes combined. However, taxpayers with existing mortgages on first and second homes for up to a total debt of \$1 million are grandfathered for interest deductions at that higher level. Add to that the inability to deduct interest paid

on home equity loans and there is a lot to consider.

A New Trend for Lump-Sum Property Settlements?

With the elimination of deductions for alimony and unallocated support, it's very possible we will see more lump-sum property settlements in high-net-worth cases. The appeal of splitting the marital assets and walking away clean can be attractive to both sides. With no tax incentives to provide spousal support income, the interest in exploring lump-sum property settlements can only increase.

Time Is of the Essence

With such major changes taking place, and confusion surrounding new rules, our roles as divorce advisers will be more important than ever for the next few years. As you can see, much of the ability to tailor divorce agreements to suit a couple's particular financial situation will disappear when we ring in 2019. ■



Heather L. Locus, CPA, CFP®, CDFA® is an owner and wealth manager at Balasa Dinverno Foltz LLC in Chicago where she also heads up the firm's divorce practice group.

She is the author of The Next Chapter: A Practical Roadmap for Navigating Through, and Beyond, Divorce (BDF, 2018). www.bdfllc.com

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An overview to help divorce lawyers better understand how the new tax law could affect the value of major community assets: C-corporations and pass-through entities. [Page 13](#)

Reversing the Tax Burden of Alimony

Under the Tax Cuts and Jobs Act, alimony payments will be neither tax deductible for the payor nor taxable in the hands of the recipient. [Page 24](#)

union between a man and a woman. This new bill HB 1434, according to sponsors, would completely nullify marriage in the public arena for everyone. Instead, the term "marriage" would apply only to unions performed by religious institutions, while all state-recognized unions – hereto referred to as marriage – would undergo reclassification as "domestic unions." Of course, passage of the bill would create total chaos within Missouri as couples – gay and straight alike – would have to reclassify themselves as "domestically unionized" on everything from their taxes to the census. Needless to say, that could prove very problematic when applying for marriage tax credits come federal tax time.

The "constellation of rights" seems to be dead. ■

¹ www.supremecourt.gov/opinions/16pdf/16-992_868c.pdf

² www.txcourts.gov/media/1438061/150688.pdf

³ caselaw.findlaw.com/us-5th-circuit/1865573.html



Laura W. Morgan is the owner/operator of Family Law Consulting, which provides research and writing services to family law attorneys nationwide. She is

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