

(upbeat music) [00:00:07]

[KRIS TURNER]

Hello and welcome back to Wisconsin Law in Action, a podcast where we discuss new and forthcoming scholarship with University of Wisconsin Law School professors. I'm your host, Kris Turner, and my guest today is Associate Clinical Professor and Director of the Family Court Clinic, Jennifer Binkley. Professor Binkley oversees law students who represent clients and directs complex family law litigation. Professor Binkley serves as the Chair of the Dane County Bar Association's Delivery of Legal Services Committee and has won multiple honors for her work, including the State Bar of Wisconsin Pro Bono Attorney of the Year in 2023.

That's great. Congratulations. [00:00:41]

[JENNIFER BINKLEY]

Thank you. [00:00:42]

[KRIS TURNER]

Today, Professor Binkley is here to discuss her recently published book, Wisconsin Family Law with Forms, released in December of 2023. This treatise is an essential resource for Wisconsin family law practitioners. It runs the gamut—the treatise includes in-depth but easily readable guides to various aspects of family law and the history of family law in Wisconsin and includes forms for easier court filings. The book is available in print or via the Lexis Plus platform. Thank you for joining the podcast today, Professor Binkley. [00:01:11]

[JENNIFER BINKLEY]

Thank you for having me. I'm excited to reflect a little bit on the efforts that went into making this book, now that I've had a little time since its publication. [00:01:20]

[KRIS TURNER]

I look forward to hearing more about it. I know effort is a very easy way of putting it, but a lot of effort to write this book. So, congratulations. I've been looking forward to discussing your new book with you for some time. It's a great resource for practitioners, students, scholarly researchers. So, to begin, let's discuss your day-to-day work and how it translates into this book. How can it make someone's work more efficient? [00:01:40]

[JENNIFER BINKLEY]

Sure. Well, I think my first audience was students when I put this together, but I do think you're right, that it would be very helpful to practitioners, whether you be new or more advanced, they have more experience or more time in practice. There's some chapters that may be very obvious to those who have been practicing family law, and then there are some that, as you go through the book, that are more unusual. I can't think of a better word. valuable, because they don't come up frequently in a practice, and I know for myself as a practitioner and as a writer for this book, those were the hardest chapters to write, but also the most valuable, because these things will come up periodically as you practice, but so infrequently that you have to think about it or ask questions or do some reading to either refresh or teach yourself it the first time. So if you're a new practitioner, you can start from the beginning, and how do I file a divorce action, and what are the different kinds of family court actions that regularly come up? Or if you've been doing this forever but you're like, "Oh my goodness, and now I've got a juvenile court action, and I want to represent my client in that because I've been with them for so long. How does this work?" I haven't done this ever or I haven't been involved in this case in 10 years. So that was kind of my original focus, again, was on teaching, how can I use this and be a better teacher? But I really think it is going to be a big advantage to practitioners, either new or those who've been in practice for 20 years. [00:03:20]

[KRIS TURNER]

We have practitioners come into the law library and look for these kind of exact resources. They say, "I haven't done this action in family court in 15 years, so this is exactly what we need in the library." So again, I'm glad we have a copy. So, what was the process for writing this book? How should others approach taking on a large project like this? [00:03:37]

[JENNIFER BINKLEY]

Wow, you know, I wish I'd had somebody to talk to about that. I did have, fortunately, we have wonderful resources at the law school, and I went to a presentation by Keith Finley, who's Professor Emeritus now, I believe here, but at the time he's with us full time, and he was talking about writing and how do you approach writing and how do you integrate it into your work? I can't remember if it was a focus for clinical professors—it might have been—because we do, you know, we do a lot, and we do a lot that's not scholarship. We teach, obviously, but we have cases, and we're pretty consumed with that. And one of the things he suggested was to find a time in your day, like put it on your calendar or schedule it, whatever you do that you put your tasks for the day. And I really, I did that, and I needed to do that. So last summer, I spent a big chunk of time on it because we didn't have students with us, so I just put on my calendar, like I'm going to be writing, and I actually had a page number I needed to meet. And so, I knew how many pages I needed to get done in a week. And I gave myself little rewards whenever I met that target, because I had a pretty strict deadline to get this published. So, I think, again, just saying, like, "I'm just going to sit down and do it," is one of the most important things. But I also spent a lot of time on my outline to get the materials for the book. Just as a starting point, I use my course syllabus, right? What do I teach in a year? What do I think is important for students to know about? And these chapters are really, really a reflection of my syllabus. And there's some deviations: I don't do a chapter on marital property. That was one of my hardest chapters to wrap my head around. So, there are some deviations. You don't do a lot on the history, and I do have a chapter on that. But that helped a lot, right, to have that structure. And then I looked at my PowerPoints for each of my classes. So, like, "Okay, now what's going to be my subsections?" And obviously, that doesn't take you too far, but it was a big help. [00:05:45]

[KRIS TURNER]

Yeah, you kind of have a little bit of the skeleton built already, because you've already done so much work with your students for the PowerPoints and the syllabus. That's wonderful. That's a great suggestion. And I'm glad Professor Finley had some good thoughts as well. I've heard that same advice about just kind of closing the door and saying, "Here is the time I am writing, or else it's just going to fall by the wayside." Wonderful advice for anybody.

[JENNIFER BINKLEY] Right. There's always other things you need to do, right, and emails that pop up and all of that. Right, just to have one email pop up and say, "Well, I can answer that in five minutes." That's five minutes less of writing when you were dedicated to writing. So, wonderful suggestions. And this is where I plug Professor Finley was on the podcast about four years ago. Go back, everyone, and listen to his podcast, because it was wonderful to hear him talk about his scholarship in writing as well. But back to the point in hand here. Let's dive into some of the topics. You began the book with a history of family law in Wisconsin. Why start there? [00:06:38]

[JENNIFER BINKLEY]

Well, I thought this was the most interesting chapter. And I will say that this is the chapter I did the least amount of direct writing on. I had a colleague who had worked with me before on cases, Attorney Lucy Brown, who is retired now, but does some pro bono work with me.

She had a history degree and worked as a historian prior to her career as an attorney. So I thought, who better to work on this for me or with me? And so, we developed an outline of what that would be. And she did a lot of research. And the law librarians here at the law school were a tremendous resource. And we just both found it incredibly interesting. So, I thought, just to ground us on how we got to where we are today. So, of course, I had ideas and had some knowledge about where we had been in recent history. And I'm old enough that when I was in law school and doing the family law project, clinical experience was when we had a lot of changes to domestic violence laws related to family law. So, it was there for that history. I'm old enough for that. But we went way back. And it was just a fascinating project. And I think if folks have the time to read that, you don't need to, right? You can do your job as a practitioner or learn as a student about Wisconsin family law. But just to have that grounding. And I was a history major too and have a degree in history. So, I just thought that was a good way to give some context to where we are today. And I think that Wisconsin's family law history is one of the most interesting I know of, and the little I know of other states. When we talk about the chapter on marital property, there's references back to what those events and the progress we made. We're a community property state. There are other states that are community property states. But we're the one who is most, I would say. I don't know how you say that. And how did we get there? And what is our history of why we are community property? I think that, yeah, to me, it's very fascinating. So somewhat selfishly, I guess. But I do think that it grounds the rest of the book and gives it some context. [00:08:55]

[KRIS TURNER]

From one history major to another, I agree. It gives you the nuance, and it gives you the context to understand why you're practicing the way you are right now. It was a great way to start the book. So, in further structuring the book, how did you select the organization of chapters? What to include? It must have been kind of a difficult task to get this organized. [00:09:13]

[JENNIFER BINKLEY]

It is. And you know, like I said, I went back to my syllabi over the years. But family law is funny in Wisconsin. So most of what I write about is found in Chapter 767 of our Wisconsin statutes, although there's Chapter 48 and 766. And there's other parts, 822 so, but most of it's in there. But it's funny because, and this is interesting going back to the history, in Wisconsin paternity actions, paternity, and divorces, and annulments, and dissolutions of marriage, they all handle child custody, emplacement, and support of children in the same way, right? Like when you may start differently, right? You need to file different actions, but the courts are going to make those decisions and use the same parts of the statute. If you talk about a divorce or dissolution of a marriage, it could be annulment or legal separation. Those are much more rare. At some point, you're going to have these huge overlaps, right? If there's children, right? So if there's not children, then you have property and that doesn't happen in paternity actions. But so how do you do that linearly? If you just said, 'Here's A to Z divorce,' then okay, we've got that. But then if you're doing A to Z paternity, you're going to go back and you're going to see all this stuff that happened in divorce related to children. So, I did my best and I tried to make it make a little bit more sense than it is if you just read through the statute from beginning to end. And not that I'm saying the legislature didn't do a good job of things. I just don't think there is a better way for them to have structured the statute itself. But that was just a little bit tricky. So again, I tried to make some sense of it and not be repetitive. So, I talked about the financial support of children is its own chapter, right,

so you can just go to that if you're dealing with that. If you're modifying an order, it doesn't matter if you started with a divorce or paternity. So that's its own chapter. If you're enforcing an order, that's its own chapter. Instead of trying to do it again, everything that could happen in a divorce action or after the divorce is finalized. So that was tricky, though, I don't know. Maybe I didn't do the best job. That was my goal. [00:11:29]

[KRIS TURNER]

No, it makes total sense the way you laid it out. Did you have a lot of freedom and leeway with the publisher about how to do that? [00:11:36]

[JENNIFER BINKLEY]

I absolutely did. Yeah, I had an example. They gave me a textbook from Alabama. So, I had some ideas of what structure they would like. But they had me turn in an outline, a pretty detailed outline to get things started. I have a deadline for that. And then, you know I move some things around. And I said, 'Is it okay if I move some things around?' And they're like, 'Absolutely. It's part of the process.' So no, I had tremendous freedom within the structure. [00:12:02]

[KRIS TURNER]

Oh, great. That had to make things a little bit easier to be able to take a little more control and agency over the layout. This may be a bit of an unfair question, but is there any particular topic that you feel will be of most use to readers, an area that you have seen students or practitioners often stumble? [00:12:20]

[JENNIFER BINKLEY]

So, you know, it doesn't come up a tremendous amount because of the way things are initiated in Wisconsin. But I think that in general, the chapter on paternity and initiating paternity actions, it's very confusing. And this is an interesting thing that happened to me as I was writing it. And I've been doing this for a long time. And I have filed paternity petitions several times. I have been involved with paternity cases more times than I can count. But I got a lot of help from Connie Chesnick with the Department of Children and Families, who is sort of the top dog when it comes to child support policy and on the state level. She was a wonderful resource in all the parts of the book that dealt with paternity and child support. And she said to me, and this is getting a little into the weeds, but you need to phrase this differently, because when we're dealing with paternity actions after these things happen — an acknowledgement of paternity, administrative genetic testing, then... these are family court actions. Paternity won't be adjudicated. It's just going to be a family court action to set support, custody, and placement. And I just had this moment, I'm like, "I never really got that." And I talked to other practitioners, and they're like, "I don't get paternity. I don't get how it happens. I don't get," like, they kind of deal with it after the fact. But I do think it's important to understand when you're in it, how these things happen — like, there are things your kind of missing. You don't know you're missing. So, I thought that was an interesting- Obviously, students don't know anything about it. But practitioners could maybe benefit from that- that particular chapter. And then there's obviously a lot of things that would just be again, if you don't have, if you're not doing the work, and it comes up, and it's a surprise. But I just thought, you know, for me, that was, it was really good to really understand how we got to the point where, you know, in those initial orders, what was the groundwork? What's the legal mechanisms behind the scenes? Again, maybe it's- but I've talked to other — I thought maybe it's just me, but I really have talked to other practitioners, and they also say, "Oh, yeah, I don't really. I didn't really get that, or I don't really understand that."

[00:14:39]

[KRIS TURNER]

I've had that same experience, where teaching something, you learn it better. You're like, "I never got this until I had to sit down and write it or teach it." And that sounds like you have a similar experience here. [00:14:47]

[JENNIFER BINKLEY]

Yeah, yeah, absolutely. [00:14:49]

[KRIS TURNER]

I think that's a signal that people reading the book will get a lot more out of it, because you understood it as you were working through it. That's even better. [00:14:56]

[JENNIFER BINKLEY]

And thank goodness for the experts that help me get things right. (laughs) [00:15:00]

[KRIS TURNER]

Yeah, extremely important. You kind of have almost like proofreaders in some way as you're discussing, like, 'Okay, here's the order.' And you might want to lay it out like, 'well, here, go this way or that way.' [00:15:08]

[JENNIFER BINKLEY]

Yeah, absolutely, yeah. Or just, yeah, Howie Erlinger was a huge help in the marital property chapter, and he's like, 'I sent him the chapter, and he called me and he said, "Why don't we talk because I'm a little worried."' (both laughing) And, but he was wonderful. And I don't think he was worried at the end, but, you know, he did get on a little off base on a couple of things. And again, it was more, you know, just having that really, you know, understanding of some key pieces that you could do a lot of the work, right? You don't necessarily need to know that. But when you're teaching it, you really do need to start from scratch and make sure you're on the right path the whole way through. [00:15:51]

[KRIS TURNER]

So obviously, family law can be stressful for both clients and attorneys. How do you provide guidance about approaching these subjects with the distance that somewhat necessary for writing a treatise on the topic? [00:16:03]

[JENNIFER BINKLEY]

Right, So I try to sort of sprinkle in things that I think will be helpful to, you know, when you're in practice, right? So things that the courts might want to see, the best ways to handle conflict when it comes to, you know, we focus on settlement, right, on most cases to try to get there, the part about discovery in Wisconsin, the courts are going to want you to bend over backwards to do everything you can before you file a motion to compel and ask for the court's assistance in getting what you need. That's not in the statutes, right? That's not- that's just what you experience. Although there's local court rules, too. If you look at many counties do have local court rules about these things, and they have local court rules about attempting settlement discussion before you come to the courtroom, contacting the other party about adjournments and things like that. So, I think that it's interesting to- those are rules, so, I can cite to them and all that, right? Just that sort of there is a reminder to try to be conciliatory in some ways, to be professional, to work with the other side as well you can. And sometimes there's, you know, that's just the opposing party. But that's similar sort of guidance. But yeah, it definitely is difficult. And there are some really difficult subjects, again, going back to the domestic violence, which is not uncommon in contested cases. I'm not saying it's common in all relationships that dissolve. And that's what we're mostly dealing with in family law. But it's very common in cases that go to trial or have contested hearings. So, yeah, so I try to- you're right, have some distance and sort of just here's the

nuts and bolts, but then sort or pull back to, you know, what's going to happen in real life when you walk into a courtroom or when you're dealing with the other side and something's not going as well as you'd hope. It's not going to textbook, right? [00:18:02]

[KRIS TURNER]

That makes a lot of sense. You want to have the nuts and bolts, but also when things become emotionally charged, you want to maybe prepare the students for something like that as well. [00:18:10]

[JENNIFER BINKLEY]

Mhm. [00:18:12]

[KRIS TURNER]

So, I'll ask you to pick some favorites now. Something I don't normally do, but I'll do it this time. Which chapters would you most recommend to practitioners? [00:18:20]

[JENNIFER BINKLEY]

If you can have time to read the history chapter, I think that you'll learn a lot. And it's pretty fascinating. And then, you know, some of my favorite chapters, the special immigrant juvenile status chapter is just something that most practitioners and judges and commissioners don't know anything about. That is a path to... well we receive findings in juvenile and family court. That's a path to... permanent residency citizenship for a child. And it's based, you know, there's federal rules and how they play out. So, something I knew very little about before I started law school, we did quite a bit of it. It's one of those few- I mean, obviously, it's wonderful for the families and the child. But it's one of those few situations in family law where it's like a happy ending, right? It's just purely everyone is usually really happy. The judges are happy about it. Their clerks are happy about it. The lawyer who's in the room, the family, the child, obviously. So, I think that you don't get many of those moments in family court where you're like, this is a pure win. It's often a compromise, right? This is going to be better. This is a path forward. We're reducing conflict. Hopefully, everybody's, you know, moving on to bigger and better things. But still, those are really neat cases. It's also really interesting, right? It's something that a lot of folks don't know about. Then some of the things that I think that lawyers forget about who practice family law. So the rules of evidence. So I do talk about using evidence in family court proceedings. I think it's first of all, it's the rules apply its civil procedure. The rules of civil procedure apply in family court cases unless there's a specific allowance or difference. And those are few and far between. You get extra time to serve, for example. But otherwise, you know, we are litigators. So when we walk into that courtroom, if we do have a contested hearing, the rules that apply in other civil litigation apply to us. And I think that, that's true. But it's also because commonly family law practitioners are sort of brushed them aside or not be very familiar with them. It can be, you know, I do talk about like we want to settle things, but at some point, we want the edge, right? So and I think that's a tool, right? If you know how to use those rules really well, you can get what you need in and you can get stuff, you know, out that you don't want potentially. So, I think that's important. I think discovery sometimes, although I'm not a fan of using it willy-nilly, you should use it judiciously. But sometimes I think family law lawyers forget about the rules of discovery and the tools that they have there. So, that's another, you know, kind of forgetting where you are in the rules of civil procedure. So, I think those, that so the SRJS is just kind of fun (laughs) and interesting. And then those other things are just wonderful tools that I think practitioners sometimes forget, in the crush of family law litigation, the emotions that every day, like fires to put out, which, if you're doing large scale, complex civil litigation, you don't have—things aren't happening

every day that affect your game plan. So, it can be a lot. Right? And that- But I think you can still use those tools. [00:21:59]

[KRIS TURNER]

Absolutely. It's great to have them in there because you couch them in the family law aspects. Now you have CIV pro. It sits off to the side, or evidence for classes and students, or practitioners, sometimes. Now, you're seeing it as it's actually used in the courtroom and in discovery as well. So, what was the process for developing the forms appendix? in your experience which forms have given other lawyers and students the most trouble? [00:22:22]

[JENNIFER BINKLEY]

So, one of- so some of the forms are in there because Lexis wanted them to be in there, right? So, I got a list, and they're like, "Here's the form bank we have." And there are a couple I pushed back on and said, "We would never. That's not going to happen in Wisconsin." I don't even remember what they were. In one of them that I was like hmm, is the cohabitation agreement. Never used it before, but it kind of turned out to be interesting. And I kind of learned, you know, when I was putting it together. So, I think that one is interesting. One that I worked pretty hard on, kind of selfishly, is the financial disclosure form. So, you know, we have forms available to us from the state bar. We have forms developed by the circuit court, which I did draw from, and I give credit to those circuit court, you know, publicly accessible. But the financial disclosure forms, I never found one I like a lot. And the pro se form, it works, and it's—has to be. You know, it follows all the rules, and the courts will always accept it. But if you're using them as a practitioner, you can't add rows, you can't—you have to switch things in. And if you have anything that's nuanced, it gets pretty messy fast. So, I wanted to be able to, you know, just have some flexibility in how that form was filled out to provide for, you know, more exigencies and odds. And, you know, nobody quite fits a form. So, I think that that one I really thought was good to add. And then, I did add a number of special immigrant juvenile forms, status forms. I get a lot of requests for those from lawyers who are doing those cases for the first time. I'm supporting them in their work. So, I was like, "Well, this would be really nice if we just have these all in there in the way that they're easily fillable." So those, you know, if you get the elect, there's an electronic form bank that's separate, not included with the book that you can get access to. And those aren't in there right now. But I'm hoping I can get those added. They are part of the electronic book purchase. So those, I just said, "I really want to include these." And then there's a couple other ones, too. There's—or at least one—and I'm going to hopefully add another. I'm doing an update eventually. But the one that I really wanted to be in there, because it's really hard to find anywhere, is registering a foreign judgment form. And we had a form that had been made here at the clinic, but it was like, I could only find a PDF of it. It was just really funky. And that's an unusual thing. It doesn't come up that often. So, I don't think it's one that lawyers would have at their fingertips. And there's a lot of odd requirements, as opposed to just a motion. You know, I think most lawyers can put together a motion. [00:25:15]

[KRIS TURNER]

It sounds like it was an opportunity to mold some of these forms into a better format, but also to elevate other ones. You're like here's one that sometimes we see requests for— to kind of get out there further. You mentioned an update. When would that be happening? [00:25:29]

[JENNIFER BINKLEY]

So, I'm working on that over the summer. So, it'll be the, you know, published at the end of the year and be called technically the 2025. But I think it'll come out at the end of 2024.

[00:25:39]

[KRIS TURNER]

Okay, great. Well, I will watch for it, I'm excited to get further updates.

[JENNIFER BINKLEY] Yeah! We have a few updates from statutes. We have a new ethics opinion that came out about GAL work. And that's always kind of wacky. I didn't make it that much clearer, but we have it. (chuckles) I will discuss it. And yeah, so there's a few interesting things that have come out this year. So I'm excited to do some updates. That'll be integrated into the ebook version on Lexis automatically? [00:26:09]

[JENNIFER BINKLEY]

Yes. [00:26:10]

[KRIS TURNER]

Perfect. Excellent. So, with that, what do you most hope readers take away from your book? [00:26:15]

[JENNIFER BINKLEY]

Well, there's one thing I hope they don't take away, and that it's a pretty daunting subject area. So, what I would like them to take away is that you can just read a chapter and learn a lot if you're having an issue. You can kind of get your mind around a particular problem or obstacle you have in a case. And I think that that's the thing about family law too, like break it down, right? Like, what's your problem here and how best to tackle it? And also, just a reminder that there is case law. That's the other thing that I see practitioners forget, or they don't want to read a case. But it's, you know, I mean, that's what we learned in law school. Let's go back to the basics. So, there's a ton of law, and there's a ton of case law. And it's interesting. There's not as much as there might be in other areas. People don't often have the money or the time to appeal a family court case, right? Their kids are going to be 18 before it winds its way through. But we have a pretty good body of work from our appellate from the Supreme Court. So yeah, I guess those are kind of, again, it's a lot. But if you break it down to what your particular issue is and take it from there, hopefully you'll learn enough to move forward. (chuckles) [00:27:30]

[KRIS TURNER]

There's no matter what, they will learn a lot. (chuckles) Now, that's my takeaway from our interview here is they will learn a lot and be better practitioners for it. But let's wrap up with a question about your family court clinic. What's a rewarding experience you've had working with UW law students? [00:27:45]

[JENNIFER BINKLEY]

I think the best thing about working with students is that it always keeps things fresh, right? So, you get kind of in a groove. This is how I do my cases. I don't want to try that. I may suggest things and sometimes you say, "no..., we can't do that." But other times you're like, "well, yeah, no, we could give that a try." You know, that's a novel angle. And it just pushes you as a practitioner to keep fresh and to keep thinking about things in a different way. And, you know, I've been doing this now. It'll be, I've been doing the math, 23 years since my law school graduation. So, it's a long time to be doing family law and working with mostly low-income people, you know, without resources. And I think that that's one of the best things about working with them is just their energy, their ingenuity, their great ideas. And... It helps me be a better practitioner and it certainly helps their clients. [00:28:42]

[KRIS TURNER]

It's very re-energizing to have a student say, "Well, why don't we try it this way?" And you go, "I never would have thought of that." And it's a great thing that you can work into your own workflows as well. I've had the same thing happen in the library world. Like, "yeah, wait a minute. Why are we doing it that way when you just suggested a better way of doing that?" It's a relief and it's encouraging. [00:28:58]

[JENNIFER BINKLEY]

Yeah, absolutely. [00:28:59]

[KRIS TURNER]

We'll link to Professor Binkley's scholarship on our podcast page, including a link to the book, both through Lexis and where you can find the print book. Thank you very much for joining the podcast today, Professor Binkley. I learned a lot and I look forward to diving further into the book. [00:29:11]

[JENNIFER BRINKLEY]

And thank you for having me. I really appreciate this opportunity. [00:29:15]

[KRIS TURNER]

We've been discussing Professor Binkley's book, *Wisconsin Family Law with Forms*, published by Matthew Bender and released in December of 2023. For a complete listing of Professor Binkley's work, visit The University of Wisconsin Law School repository. Thank you for listening. Find links to the book we discussed today, and links to all our previous podcasts, (upbeat music starts) at wilawinaction.law.wisc.edu Stay up to date on Wisconsin Law School scholarship by subscribing to this podcast via the Apple iTunes Store, or follow either [@WisconsinLaw](https://twitter.com/WisconsinLaw) or [@UWLawProfs](https://twitter.com/UWLawProfs) on X, formerly Twitter, for updates on faculty news and publications. See you next time, and happy researching. (upbeat music continues)