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AFCC-CA President's Message

Each new-year brings exciting change, challenges, and opportunity. This is equally so for the California Chapter.

Effective immediately, the Chapter has retained Marilyn Pallister as its Executive Director. Presently, Marilyn serves as the Seminar Director for the Rutter Group® California Family Report (Cflr)®. Marilyn's background in family law goes back to the birth of Cflr® in the early 1980's. She has participated in the growth of the family law specialization program; and she has worked with many of the top family law educators in California including family law icons like Stephen Adams and Justice Donald King to name a few.

The Board determined that it was time for the California Chapter to aggressively pursue and strengthen its connections with the "legal side" of the family law legal community and its justice partners. Our Chapter has always had a robust focus and

attachment with the mental health community with some involvement from the lawyers, mediators and bench officers. To advance the goals elaborated in our Mission Statement, and the Public Health declaration of clear and present danger to the children and families of our state, the Board concluded that the Chapter should move deliberately toward attracting more lawyers, mediators, and bench officer members. I can personally attest that one of my greatest regrets professionally is that I did not become seriously active in AFCC until I joined the bench; and I was prompted by our former California Chapter President, Sherrie Kibler Sanchez to become active. I owe Sherrie a great debt of gratitude for recruiting me. The legacy of AFCC has always included broad based participation by the lawyers and judges within the family law community. That said, we do have a significant, vibrant, active group from the legal community who are active in AFCC. In simple terms, the Board believes we can do

**The Honorable Thomas
Trent Lewis**
AFCC-CA President



a better job; and we are optimistic that Marilyn will help advance those goals.

Change is difficult and affects many. As we bring Marilyn into the role as our Executive Director, we say thank you and good-bye to Debbie Peacock who has served the California Chapter over the years. Everyone who has met Debbie can attest to her vibrant extra bright smile at our Conferences. As the Board envisioned changing the role from more of an administrative role geared towards the conference to an executive director role, the Chapter negotiated Debbie's transition. And during this transition Debbie has served admirably and with professionalism. Frequently when organizations make transitions, those changes can be painful and difficult. Debbie has shown her real

President's Message cont. from page 1)

credentials during this time; and on behalf of the Board and the Chapter, we wish her our best regards. Again, thank you, Debbie.

As you read this newsletter it is my earnest hope that you have already enrolled for the International Conference for AFCC which will take place in Los Angeles in May 2013 as we celebrate 50 years for AFCC and look forward to the years ahead. I would like to thank Justice Carlos Moreno, retired Associate Justice of the California Supreme Court who has agreed to participate at the International Conference. I know that Justice Moreno will bring a unique perspective to the conference. Others have worked very hard for the 2013 AFCC International Conference including our Vice President, Lulu Wong who has worked with the parent organization to facilitate our Chapter's participation. Our Treasurer, Mike Kretzmer skillfully worked in the local community to help secure sponsorships for the International Conference. California Chapter Board Member, Matt Sullivan, who also serves as a Board Member for the parent organization, provided wise counsel to the Chapter; and when asked to provide guidance and assistance, parent organization Board Member, Judge Dianna Gould Saltman also lent her considerable talent and experience to help guide our Chapter in its participation. The California Chapter will have an open booth at the 2013 Conference, so please stop by and say hello. Finally and seeking forgiveness in advance, kindly endure a surfing analogy. One of the things that surfers who see their friends the next day are oft heard to shout and crow is, "you should have been here yesterday!" So to avoid some of us saying, "you really should have been at the 2013 International Conference," for the sake of your own well-being and professional development, please sign up for the conference before it's too late. Besides, you don't want a bunch of kahuna surfers (like me) saying, "you really

missed it!"

Immediate Past President, Diane Wasznicky and the legislative committee continue to monitor, suggest, and interact with various stakeholders regarding upcoming legislation. The Legislative Committee is one of the hardest working committees of our Chapter. While there are many pieces of pending legislation, two important (or future) legislative concerns are addressed here.

First, there is legislation regarding whether California will enact legislation so that there can be more than two parents for a child in California. Similar legislation was passed last year, which Governor Brown vetoed. The effort to establish a vehicle for the court to establish more than two parents is before the Legislature again this term. The proposed legislation does not impose a numerical limit on the number of potential parents for a child whether same sex or opposite sex parents. If the legislation does pass, it must address the complex requirements for calculation of child support where there are more than two parents. Whether children should have more than two parents may be viewed as an erosion of stable relationships for a child or an evolution taking into account structural changes, which are part of the current societal norms and landscape. Current case law and existing statutory enactments recognize that a child shall have at least one parent but not more than two parents. Federal and California law mandate that the court make guideline findings for child support. There are other practical elements of Federal Law, such as social security derivative benefits that may be affected. Family systems benefit both from stability and continuity and benefit from adaptability as emerging social structures change. And in the middle of all these social policy considerations, change will necessitate other practical, fiscal considerations. What do you think? We have established a special email address

for you to inform us of your thoughts: Newsletter@afccca.org. We encourage your comments.

A second area where legislation may find its way into a sponsored bill involves access to child custody evaluations by regulatory boards and agencies where there is a complaint concerning the work of an evaluator, private mediator, or special master. Presently, the law prohibits the unauthorized dissemination of a confidential child custody report absent a court order. The tension is between the needs of consumers, license holders, and licensing agencies who may wish access to child custody reports for a transparent and complete investigation or defense of earlier conduct by an evaluator. On the other end of the spectrum are the interests of the non-complaining parent, the child, and participating collateral individuals (teachers, other families, and health care providers) to preserve the confidentiality of the report from dissemination into the records of public agencies. From the perspective of the mental health professional, there may be good cause to assure the licensing agency has access to the information so he or she can defend their license. From the perspective of the complaining parent or individual, access to the report may be the only means of demonstrating the viability of a complaint. For the licensing board, unfettered access to the report may be the only way to efficiently and adequately determine whether the complaint has merit. Viewed from the perspective of the child and the other parent or collateral participant, revelation of the contents of the report may prove embarrassing, or draw them into conflict in yet another public forum. Finally, there may be concerns regarding whether there will be a chilling effect upon collateral participants in custody evaluations out of concern for becoming further embroiled in a custody dispute as the report is exported into another more public venue. Current law allows

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the court to order the release of the report upon duly noticed and properly presented application for good cause shown. Should the law change in this area? Again, we welcome your comments at: Newsletter@afccca.org.

The Chapter Task Force continues working with the Association of Certified Family Law Specialists (ACFLS) to discuss whether structural changes should occur in the method by which family law courts operate. Long before the current budgetary crisis began to unduly shatter and unquestionably impact the operations of the third branch of government, the Chapter passed a resolution, which bears the signature of many organizations calling for adequate funding for the family law divisions of the court. We again reprint a copy of the resolution at the end of this Newsletter.

In closing, I want to restate my thanks to all our Board members who work so tirelessly to advance the interests of the families and children of California through their efforts. And in this regard, I extend a special thanks to our Newsletter Editor, Steven Friedlander. And for your part, I would encourage you to contact me if you have ideas or want to participate further. I'm reachable at: JudgeTTLewis@gmail.com

All my best, Thom

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JudgeTTLewis@gmail.com

**Judge Thomas Trent Lewis
Biography**

Judge Thomas Trent Lewis is the President of the Association of Family & Conciliation Court; and he currently serves as the Assistant Supervising Judge of the Los Angeles Superior Court Family Law Department. Judge Lewis serves on the CJER Family Law Education Committee. He is a Fellow of the American Academy of Matrimonial Lawyers and Certified Family Law Specialist. During his career as an attorney he served as the Chair of the Board of Legal Specialization and President of the San Fernando Valley Bar Association. Judge Lewis is a member of the Rutter Group CFLR faculty; and he is an editor of the Hogoboom & King Rutter Group Family Law Practice.

Upcoming Events!

Riding the Wave of the Future:
Global Voices, Expanding Choices
JW Marriott Los Angeles at L.A. Live
May 29–June 1, 2013
Los Angeles, California



A ROAD MAP FOR CONDUCTING SYSTEMATIC PARENTING PLAN EVALUATIONS

by

Leslie Drozd, PhD, Co-editor, Parenting Plan Evaluations:
Applied Research for Family Court, Newport Beach, CA
Nancy W. Olesen, PhD, Independent Practice, San Rafael, CA
Michael Saini, PhD, University of Toronto, Toronto, ON

Even years of experience and practical wisdom of the family law practitioner may not fully help to arm against the vulnerabilities to bias and errors in procedures and in thinking. Cognitive research in recent decades has demonstrated systematic tendencies in human thinking that lead to predictable errors in decision-making.

Drozd, Olesen and Saini have considered this robust and impressive literature about systematic thinking errors and its impact on decision-making as they have developed connections to the context of family law. In their new book, *A Road Map For Conducting Systematic Parenting Plan Evaluations*, due out in May 2013 from Professional Resource Press, the authors describe a process intended to enhance child custody evaluators' knowledge and skills to conduct systematic and transparent parenting plan evaluations within the context of child custody disputes. Drozd, Olesen and Saini introduce the reader to an overarching road map to guide the evaluation method and several tools to help evaluators make sense of the information they collect as part of the evaluation process. Focusing on the multiple factors involved in analyzing and synthesizing the data, the authors provide a series of decision trees for creating parenting plans that emerge from the data.

Readers are introduced to a systematic method for planning and collecting the evidence relevant to the case. In developing a preliminary hypothesis of the case, the evaluator considers various factors based on specific case details, psycho-legal factors and the scientific evidence. Using an evaluation matrix, the book demonstrates how to organize the data so that parenting plan recommendations are based on reliable and defensible conclusions about the case. Using a case example, readers are assisted to navigate the road map for conducting parenting plan evaluations. Along the way, there are checklists, practice tips, self-assessment tools and guides to further organize the evaluation process and to provide evaluators with

A recent finding illustrated that preventable medical errors lead to the death of 100,000 people every year in the US (the equivalent of a Boeing 737 crashing every day). We must assume that as family law practitioners (e.g. judges, lawyers, mental health professionals, etc.) we are at least as likely to make serious and potentially catastrophic errors in our work as hospitals and physicians are in theirs. Recent controversies about the reliability and validity of programs and services within family law emphasize the importance of considering both the potential benefits and harm when making decisions by providing recommendations to the courts.

Cognitive science and the study of systematic thinking errors have important insights into why family law practitioners get stuck in biases, binary

thinking and rigid perceptions. Once these distortions and biases are cemented, they can be difficult to change.

Procedural biases are “methodological shortcuts” for conducting evaluations that omit certain steps or procedures that can impact the overall results (e.g. not conducting an observation with one of the parents and the child). Systematic errors are “thinking shortcuts” where we think and react too fast without allowing ourselves to consider alternatives and we get stuck in our original ideas about the situation, event or person. Research biases are “application shortcuts” that are based on the overgeneralization of research findings to particular cases without considering the potential limits of transferability based on sample, design, methods and/or results.

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the tools and resources to perform complex evaluations using simplified approaches.

This new book will be the foundation for a workshop with Drs. Drozd, Olesen, Saini and the Honorable Marjorie Slabach (ret.) (50 Years of Cognitive Science: Implications for the AFCC Community) at the AFCC annual international conference workshop in Los Angeles May 29-June 1.

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**Dr. Michael A. Saini
Biography**

Dr. Michael A. Saini is an Assistant Professor at the Factor-Inwentash Faculty of Social Work, University of Toronto and the Course Director of the 40-hour Foundations to Custody Evaluations at the University of Toronto. For the past 14 years, he has been conducting custody evaluations and assisting children's counsel for the Office of the Children's Lawyer, Ministry of the Attorney General in Ontario. He has over 50 publications, including books, book chapters, government reports, systematic reviews and peer-reviewed journal articles.

He is an editorial board member for the Family Court Review, the Journal of Child Custody, Research for Social Work Practice and Oxford Bibliographies Online. As well, he is a peer reviewer for 10 peer-reviewed journals and 4 international funding organizations.



**Dr. Leslie Drozd
Biography**

Dr. Leslie Drozd is a licensed psychologist and marriage, family, and child therapist in Newport Beach. She is the editor of the International Journal of Child Custody, a co-editor of the Oxford University Press book, Parenting Plan Evaluations: Applied Research for Family Court, and she is a co-author of an upcoming book, to be published in May 2013 by Professional Resources Press, Road Map to Parenting Plan Evaluations: A Systematic Decision Tree Approach. Dr. Drozd has been a child custody evaluator for over 20 years, trains other evaluators, serves as a consultant to attorneys, and as a testifying expert in family law matters. She also works clinically with families in the various stages of divorce including co-parenting therapy, family therapy, unification therapy, and parent coordination.



**Nancy W. Olesen, Ph.D.
Biography**

Nancy W. Olesen, Ph.D. graduated in psychology from the University of Wisconsin, Madison and earned a Ph.D. in clinical psychology from the University of North Carolina, Chapel Hill. She has conducted over 150 child custody and dependency evaluations for the courts in California and has provided expert testimony in child custody cases throughout California and other states in the US.

Dr. Olesen has taught many courses in best practices in child custody evaluation for professionals in California, including the mandatory training required for court appointed evaluators. In addition she has taught courses in child custody issues such as child abuse, alienation, domestic violence and attachment for judges and attorneys and mediators throughout the US, as well as in Hong Kong and Sweden. She has collaborated on a number of professional articles about custody evaluation, alienation and domestic violence as well as an upcoming book, and has served on several national advisory councils for the National Council of Juvenile and Family Court Judges.



Overcoming Barriers

by
Matthew J. Sullivan, Ph.D.

Overcoming Barriers is a non-profit organization created to develop and provide family-centered programs and professional trainings that promote children's healthy relationships with both parents and that keep children out of the middle of challenging co-parenting situations. Some of these situations present with parents who are in danger of losing their relationship with their children. Typically, traditional court and mental health interventions have failed to address the problematic dynamics in the family.

Our programs are a blend of a traditional family retreat, parenting classes and intensive family interventions designed for families that are struggling to successfully navigate the treacherous waters of divorce with children. The target populations for our programs are families that are at risk for heavy litigation or have not been able to establish the basic co-parenting relationship that is the essential fabric of parenting after separation.

Consistency in messaging, limit setting and routine are tantamount to effective parenting in the dynamic and tumultuous modern world. Those of you who work with divorcing families and their children know that the process of divorce presents significant challenges to the fundamentals of co-parenting. It is common to see children struggle during the transition of separation and divorce. The challenges to parents can be exacerbated by characteristics of the children, extended family or complicated separation issues. Overcoming Barriers offers a unique experience and curriculum for the entire family system (often including step-parents) that takes these issues on one-by-one with the goal of moving families through their entrenchment.

Both the week-long multi-family High-Conflict Divorce Camp and the single family Forging Families' Futures Weekend Intensive systematically present families with the situations that are most challenging for co-parents.

These activities, which include eating meals together, sharing space, bedtime transitions, playing group games, working as a team and making plans, happen in a highly structured environment where clinicians have the resources to do meaningful preparation with individuals, debrief interactions, use support staff to keep things on track and hit the "reset" button when needed. Parents and children gain immense insight into their own family dynamics, their roles within the family, strategies for taking care of themselves and others and most importantly, they then have opportunities to practice and build momentum towards positive and healthier interactions.

Hosting an intensive program is not easy. Not only is it challenging for the families that attend, but there is an immense amount of planning and experience working with high-conflict families and family courts required to create and then support these family programs. After developing and running programs for five years, in 2013 we turn our attention to training clinicians to run these intensive interventions. Our goal is to increase access to these alternative programs as more clinicians are trained and able to offer programs in their local regions. To make this possible we are developing a training curriculum, online seminar series and immersion program for select trainees to run in conjunction with the High-Conflict Divorce Camp.

The High-Conflict Divorce Family Camp will run in Vermont in the Summer of 2013. Forging Families' Futures weekend intensive program will continue to be available in the Boston area and will be available in California starting in the Spring/Summer of 2013.

In 2012 OCB developed a new measure for evaluating outcomes using interviews and various scales for each family member pre- and post-program. We are in the process of gathering six-month follow-up data from the 2012 High-Conflict Divorce Camp and will gather data again at the one-year mark. We plan to begin collecting intake and

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follow-up data for all OCB program participants using the new evaluation method.

For more information about Overcoming Barriers including how to refer a family and apply to the training program in Vermont this summer go to www.overcomingbarriers.org.

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Matthew J. Sullivan, Ph.D.
Biography

Matthew J. Sullivan, Ph.D. is a founder and current President of the Board of Directors of Overcoming Barriers, Inc. He also serves on the Board of Directors of the AFCC-CA.



AFCC 50th Anniversary Conference

*Riding the Wave of the Future:
Global Voices, Expanding Choices*

May 29-June 1, 2013

JW Marriott Los Angeles L.A. LIVE

More information <http://tinyurl.com/afcc50conf>

AFCC Returns to Los Angeles for the 50th Anniversary Conference

AFCC is pleased to be return to its roots for the AFCC 50th Anniversary Conference, May 29-June 1, 2013 at the JW Marriott Los Angeles L.A. LIVE. AFCC was founded in the Los Angeles Conciliation Court in 1963 by a group of California family court judges and marriage counselors. The first AFCC conference had just 27 attendees—the organization has come a long way and there is much to celebrate! For the last 50 years AFCC members have been a major force for family law reform around the globe, striving to improve outcomes for children and families

through interdisciplinary cooperation, education and support.

This conference, *Riding the Wave of the Future: Global Voices, Expanding Choices*, will examine the new challenges we face and how the AFCC community can continue to influence the constantly evolving family court system. The interdisciplinary program will feature the latest in research, programs, policies and practice. There are over 100 conference sessions, eligible for up to 20.5 hours of continuing education; and the best professional networking opportunities with premier researchers, practitioners and policymakers in the field.

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Register early so as not to miss out!

Last year's annual conference sold out in March. AFCC members receive the best rates on conference registration by registering before March 8, 2013.

More information and to register

<http://www.afccnet.org/ConferencesTraining/AFCCConferences/ctl/ViewConference/ConferenceID/5/mid/615>

<http://tinyurl.com/afcc50conf>



AFCC 50th Annual Conference
May 29 – June 1, 2013
JW Marriott Los Angeles, CA

**Scholarships are Available to the AFCC 50th Anniversary Conference**

Half of the general scholarships to the AFCC 50th Anniversary Conference have been earmarked for California residents. Applications will be accepted through March 1, 2013, and recipients will be notified mid-to-late March. Scholarships include conference registration; pre-conference institute registration; the awards luncheon and annual banquet; AFCC hospitality suite and a certificate of attendance. Conference scholarship recipients are responsible for funding their own travel, lodging, additional meals and other related expenses.

Apply For A Scholarship

<http://www.surveymonkey.com/s/AFCC50>

Guidelines And Criteria For Recipient

www.surveymonkey.com/s/AFCC50

**Selection**

<http://www.afccnet.org/About/ScholarshipFund/ScholarshipGuidelinesandCriteria.aspx>

<http://tinyurl.com/afccscholarship>

**Present a Poster at the AFCC 50th Anniversary Conference**

AFCC is accepting proposals through March 15, 2013 for posters to be exhibited during the 50th Anniversary Conference. Presenters can discuss their work with participants between scheduled workshop sessions and during breaks. This is an excellent opportunity to share these ideas with knowledgeable colleagues from the many disciplines that make up the AFCC community. We specifically invite lawyers, mental health practitioners, academics and students to propose posters concerning innovative interventions, initiatives, new programs, legal or policy changes and/or scientific research.

Call for posters, submission instructions and topic suggestions:

<http://www.afccnet.org/Portals/0/Call%20for%20Posters%20LA.pdf>

Poster Instructions

**Submit A Poster Proposal**

<https://www.surveymonkey.com/s/AFCC50thPosters>

Submit a Poster



Building a Better Family Court

By
Commissioner
Josanna Berkow (Ret.)



The year is 2020. Representing himself, John files for divorce from Mary, his wife of five years, on January 1 and requests primary custody of their two children, child and spousal support and division of community property and debt. Mary, represented by counsel, files opposition. Following mandatory mediation on all issues, the case is heard in court on February 1 and final judgment entered on March 1. John incurs \$500 for filing fees; Mary, the higher earner, incurs fees and costs of \$5,000. Total court time involved is five hours. Three months and \$5,500 later, John and Mary complete their divorce, and although neither gets everything they wished for, both are reasonably satisfied.

The year is 2013. Same facts. First hearing is delayed to July 1 to complete Family Court Services (FCS) mediation before hearing. No additional mediation is available. Absent agreement, the case is set for a three-day trial on the court's next available days that are in September, October and November. Decision issues in December and final judgment entered in January. John's costs come to \$3,000, Mary's fees and costs to \$25,000. Total court time – five full days. A year and \$28,000 later the divorce is done. John and Mary are dissatisfied with the time and expense involved.

Our current system takes too long and costs too much for a fairly straightforward case like John and Mary's. To understand how we got here, a bit of history is instructive. The twenty

years that I served on the family law bench from 1992 to 2012 saw significant advancements in the law, such as the expanded definition of family to include same-sex couples, domestic violence prevention orders and enforcement of child support obligations resulting, among other things, in greater access, significantly larger court caseloads, and a dramatic increase in self-represented litigants. In 2010, the Administrative Office of the Courts (AOC) reported that 175 judicial officers statewide were handling 460,000 new family law cases plus an unspecified number of ongoing cases from previous years. AOC recommended that 449 judicial officers should be so assigned, more than double the actual number, based on the fact that family law filings constituted over 19% of total court caseloads. (Elkins Report, April 2010). This historic imbalance was exacerbated by the recent court-funding crisis.

We could make significant progress by funding current family court services that work, eliminating some that don't and adding a few new programs designed to improve case management and enhance mediation that would reduce adversarial contests, resulting in a streamlined court process for most cases.

First, we should provide the resources existing programs need to function and tweak them a bit as follows: double the number of judicial officers assigned to family court to reflect actual percentage of total court caseloads, require a minimum three year family law

assignment to ensure there are always knowledgeable jurists available, and retain family law support staff in the department when the judicial officer rotates out to ensure continuity of expertise. Give FCS sufficient resources to ensure that mediation precedes hearing (savings occur by reducing the number of hearings) and to provide evaluations as needed for cases presenting serious immediate safety concerns. Provide the Family Law Facilitator's Office (FLF) sufficient staff to triage all pro per matters for proper filing, ensure necessary documents are in the file prior to judicial review, meet litigants the day of hearing to organize issues, conduct exit interviews immediately after hearing to clarify next steps required and file Orders After Hearing. And, supply funding for reporters on all contested hearings and interpreters for contested hearings, mediation, and exit interviews.

Next, fix things that do not work. Stop inviting dissatisfied litigants to re-file for the same relief with impunity. Do not require judicial participation in case management conferences where the case does not meet minimal standards of preparedness (requisite documents have not been filed or served). Replace mandatory mediation in domestic violence cases with appropriate evaluation. Recognize that confidential custody mediation is a luxury courts can no longer afford and mandate recommending mediation statewide. And, provide referrals to qualified private confidential mediators upon request.

Finally, implement new programs to enhance mediation, reduce contests and better manage families with multiple cases in different divisions of the court. Here are three ideas:

SLOW TRACK – Currently, there is no disincentive preventing dissatisfied litigants from filing repeated motions seeking the same relief. These "frequent filers", almost always self-represented,

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constitute a small percentage of total litigants but consume an inordinate amount of court resources. Identify these matters by examining a moving party's previous six-month filing history before routinely calendaring a motion to the next available date. If the moving party filed for similar relief within the past six-months, send the matter for judicial review. Absent good cause, the judicial officer would set the motion on a special calendar significantly farther out than the regular next-available date.

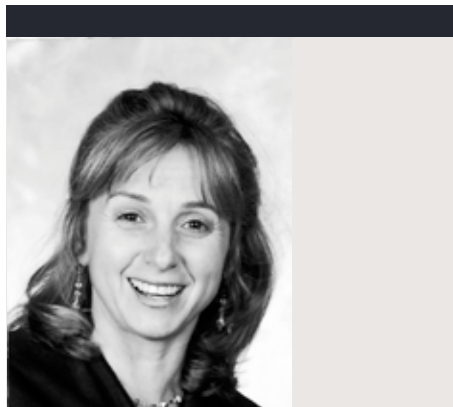
TRIAGE MEDIATION - Triage Mediation (TM) mandates mediation for all non-complex family cases seeking judgment by trained attorney mediators either within (FLF) or outside the court.

Attorney mediators can be selected on a rotating basis either as volunteers or for a fixed hourly rate with a cap on total time spent. TM establishes a minimum level of case readiness before judicial resources are deployed. The Mediator would prepare a brief report confirming that required documents were filed/served (e.g. disclosure statements), specifying all contested issues, recommending the order in which the issues are heard (e.g. date of separation, MSOL), noting outstanding necessary documents (e.g. tax returns), hopefully with a stipulation for exchange or, if not, a proposed order requiring exchange, thereby reducing the need for costly and time-consuming formal discovery. The Mediator would also try to mediate stipulations of fact to shorten requisite hearing time and for appointment of joint court experts as needed. The case would then be set for appropriate judicial conference/hearing.

CASE MANAGER - This proposal is intended for families with "crossover" issues involving multiple divisions of the court (e.g. family, juvenile, guardianship, elder, criminal). The court would establish a Case Manager (CM) position to follow a family from one division of the court to another and ensure that the next judicial officer hearing a matter has

been provided all prior court orders and previously admitted evaluative reports concerning the family.

If we make a long-term investment to provide court services that work sufficient resources to function, eliminate requirements that do not work and add a few new programs like SLOW TRACK, TRIAGE MEDIATION, and CASE MANAGER, we could make significant progress towards streamlining court processes and achieving better outcomes in most cases.



**Commissioner Josanna Berkow (Ret.)
Biography**

Commissioner Josanna Berkow is a certified family law specialist recently retired from two decades on the family law bench of Contra Costa County. She served on the California Judicial Council Advisory Committee on Family and Juvenile Law, the Family Law Education Committee and taught extensively for the California Center for Judicial Education and Research (CJER),

Witkin Judicial College, National Council of Juvenile and Family Court Judges, American Academy of Matrimonial Lawyers, State and County Bar Associations, and other professional organizations representing accounting and mental health professionals.

Commissioner Berkow is an adjunct professor at John F. Kennedy University School of Law in Pleasant Hill, California where she authored a specialized curriculum titled Children, Families & the Law and teaches Family Law and Jurisprudence.

She co-authored Family Law Forms, (The Rutter Group, a Division of West, a Thomson Reuters Business, 2011) and Special Needs Children in Family Court Cases, 43 Family Court Review 4 at pp. 566-581 (2005). Commissioner Berkow chaired Contra Costa County's Domestic Violence Advisory Council and has done extensive training on domestic violence for lawyers, judges, law enforcement and mental health providers.

Prior to her appointment to the bench, Commissioner Berkow served as a California Deputy Attorney General in the Criminal Appeals Division and later as Statewide Coordinator for Child Support and Child Abduction Programs. Prior to that Commissioner Berkow was a Hearing Officer and Staff Attorney for the Federal Labor Relations Authority. She began her legal career in Washington D.C. as Staff Counsel to United States Senator Paul Sarbanes of Maryland.



Time for Some Serious Changes ?

By
Michael Kretzmer, Esq.

"The best way to predict the future is to invent it."

- Advice given to Steve Jobs

When is the last time you heard one of your colleagues or fellow laborers in the trenches of human fulfillment, otherwise known as Family Law, tell you how happy they are to be involved in such a progressive, non-adversarial, community-building, faith-in-the-human race profession? Now, don't have a stroke trying to remember when that was exactly. If you are like most attorneys, mental health professionals, accountants, judges and assorted other participants involved in dissolution, custody, domestic violence, paternity, juvenile dependency and related proceedings you likely haven't heard an encouraging word about the professional world in which we struggle for the legal tender in quite awhile.

Provided you have not spent the last 5 or 6 years trekking through the jungles of the lost civilization with no cell reception, internet, the latest iPad and that your telepathic receptors were not severely compromised, you are no doubt aware of the drastic top to bottom cuts in the budgets of the family law courts, the reduced services to litigants and children involved in family disputes and the vastly increased delay in the delivery of what services remain available, not to mention the constantly lengthening time it takes to move any case through the court system to completion.

Not all the difficulties that we experience in family law matters, however, are the result of slashed budgets and cutbacks in available services. Some, if not a great deal, of what is wrong with family law is the inability of all of us to move parents and children more quickly through the court and related processes.

Of course, few things are as stressful in our lives as the break-up of a family, the economic and emotional disruption that accompanies virtually every dissolution, the uncertainty that often comes with the displacement of parties and children from familiar homes, schools and communities. The feelings of loss, the thought of a child that somehow he or she is at fault for the break-up, the frequently palpable anger of a parent at the other parent or at the circumstances which have spun out of control, are all things with which we are too familiar. If you are like me and I am sure many others, you can be exhausted by the stress of bearing some or a lot of your client's pain and frustration.

Over the last several years, we have seen a number of efforts to address flaws in the family courts and to improve the availability and delivery of services in an effort to insure that justice is even-handed, and to reduce instead of compound the problems of litigants. There have been task forces such as the Elkins commission whose charge it was to examine and make recommendations concerning consistent, timely and equal access to justice, how to insure procedural fairness and insure the due process rights of parties to all proceedings, to increase efficiency, effectiveness, consistency and understandability of our court process, and increase the public's confidence and trust in our Courts. Many of our finest organizations, such as the Association for Family and Conciliation Courts ("AFCC"), the Association of Certified Family Law Specialists ("ACFLS"), the American Academy of Matrimonial Lawyers ("AAML") and other groups, big and small, have all attempted to take on the issues of how to improve our practice of family conflict resolution and family law.

With all the resources and big brains that we have thrown at the myriad problems, why are we still so bogged down, so inert when it comes to moving parties and children through the process? Why is there so much despair and lack of hope that we can make things better?

(Continued)

I submit, my friends, that it is – in part – because we have grossly and vastly over-complicated so much of the process. We have lost sight of what litigants want and need. We have, in many instances, sacrificed the good of our clients and their children to our own ideas of what is needed and required. Perhaps worst of all, we have become reliant upon cadres of experts and consultants instead of relying on the common sense and judgment many of us learned, hopefully, growing up.

What do litigants want? First and foremost, they want, like most of us, simply to be heard. They want the gracious act and courtesy of having someone really listen to them and hear what is creating so much turmoil in their lives. Too often, our system and its requirements seems to do all it can to avoid having to listen to litigants and allow them to voice what is bothering them. We require cumbersome paperwork and tedious hearing procedures. As lawyers and judges, we often become frustrated that the litigants haven't filled out the right form or paid the proper fee or they appear in the wrong courtroom or haven't completed conciliation court or have failed to do any other number of things that our "system" says they must do. As often as not, hearings then get continued thus creating a further period of waiting during which no problems get resolved, parties miss more work, hardships are increased. It is not all the fault of judges and lawyers, but we often times do little to clear the obstacles so that a matter can be heard as soon as possible.

Once heard, litigants want someone to make a decision. Quickly. Far too frequently, we slow the process of making decisions down to the point where it is unconscionable. In poking a bit of serious fun at some lawyers who were imploring the court to order counseling for the minor children in a less than hotly contested case, I heard a very respected judge say, "Wow, I must have been a bad father. Am I the only

one I know who hasn't gotten a therapist for his children?" Does every case require a therapist, a conjoint counselor, a child custody evaluator, a child-focused interview, or some assemblage of all or some of the foregoing? Really? How about the Court listening intently to what each side has to say, using the Court's knowledge and experience, speaking directly to the litigants and making a decision, then sending the litigants back into the world? I have been in enough intense custody and child abuse cases to know that this is not always the means by which a case should be handled, but far, far too many of the cases we see are handled in a manner akin to having the Bomb Squad come and inspect the suspicious package. We simply cannot and should not turn every single custody case into a grand inquisition. And, frankly, yes there will be times when an erroneous or less than ideal decision might be made. That said, however, I have seen more than my share of child custody evaluations which have taken

months and months and, in some cases, over a year or more to complete that have offered little useful insight and reached erroneous and misinformed conclusions and recommendations. Sorry, I got to call them like I see them.

A more diligent and conscientious approach to management systems in our courts and better feedback on exactly what progress is achieved in our conciliation courts, in counseling and mediation, etc. would be most welcome as well. We need to squeeze more out of our scarce resources by being more discreet and conscientious when it comes to our use of them. While to some, including my own brethren, it may sound like blasphemy, we cannot afford to allow one case or a few cases to swallow whole a courtroom for weeks at a time. We need a system that calls for litigants who can afford to pay for the services of a court and its staff, pay for that court and staff. It is either that or we tell many, many other and far, far



"Some, if not a great deal, of what is wrong with family law is the inability of all of us to move parents and children more quickly through the court and related processes."

(Continued)

less affluent parties that they will have to wait and incur more and more delay while the well-heeled litigants gobble up what justice is available. And, of course, the parties who often suffer the longest delays are the ones least able to afford it.

Courtroom time management is a critical area deserving evaluation. We should be no less concerned with time management in our courtrooms than we are with it in our offices and elsewhere. It is without question that some courts accomplish more in the 6.5 hours of court time allotted each day than do some other courts. Just like some of us, there are procrastinators and efficiency experts. Why shouldn't we, especially in a time dwindling resources, be more attuned to the daily operations of courtrooms? Being respectful of the time of the litigants and the attorneys is just as important as being respectful of the Court's own time. Judges need to examine their own management practices and process cases more efficiently and effectively. Judges need to cease being so deferential to lawyers and litigants who waste the court's time and resources. Try the issues that matter, not every single nit and pick. Lawyers need to be less fearful of failing to look under every single rock in the quarry. The use of experience and common sense should still inform us all about the value of particular issues in a case. Sending 400 interrogatories and requesting mountains of documents is not necessary in every case. We need to spend more time discussing with clients risk/reward analysis when it comes to conducting discovery, making efforts to settle and in trying cases.

A very recent article in the New York Times ("Secret Ingredients for Success" by Camille Sweeney and John Gosfield, January 19, 2013) talks about the importance of self-awareness and success. Whether applied to running a restaurant empire, winning a major tennis championship or pursuing a successful career as an entertainer, there

are times when we need to make a brutal assessment of our performance or our inability to successfully perform. The same applies no less to what we do in our family law dispute resolution and family law litigation practices. In order to succeed, we must be ready to question every aspect of our approach, including our methods, our biases and our most deeply held assumptions about what we do. At some point in our lives, most of us come to the realization that we cannot get by on our native talents and instincts alone. It is at that moment that we need to dig even deeper and find the courage and commitment to act on what we discover in conducting that brutal assessment of ourselves if we hope to come up with new solutions and better ways of handling and repairing the complex relationships in fractured families.

That is where I think we are at now in our efforts at family conflict resolution and in our family courts. As hard as it can be to set aside our old tried and true ways, the evidence points to the fact that there are ever more rats in the maze, the demands on our time and resources are quickly exceeding, and in many cases have already exceeded, our capacity, and our systems are at or beyond the breaking point. Our communities, the opportunity to improve the lives of our children and, maybe, a more peaceful existence itself is all that is in the balance.

Change has got to come and why not now? Status quo will not do. The advice given to Steve Jobs is sound and critical to our professions today – "The best way to predict the future is to invent it." We must be unafraid to explore new options, we must be committed to trying new methods, we must be brutal in our self-examination if we are to create a more innovative and responsive system to address the resolution of family conflict, engage in effort to prevent conflicts from reaching courts and, when we cannot avoid the necessity of court

intervention, providing pathways to more intelligently, compassionately and efficiently assist litigants and children through the process. How can you help?

♦♦

(The views expressed herein are solely those of the author alone and not attributable to any other person or organization).



Michael Kretzmer, Esq.
Biography

Mike Kretzmer is a Family Law Attorney and a partner with Kolodny & Anteau in Beverly Hills, California where his practice emphasizes custody, juvenile dependency, guardianships and related matters. He is the Treasurer of the California Chapter of AFCC, Secretary of the State Bar of California's Family Law Executive Committee, and a Fellow of the American Academy of Matrimonial Lawyers.

Association of Family and Conciliation Courts, California Chapter DECLARATION OF PUBLIC HEALTH CRISIS

Association of Family and Conciliation Courts, California Chapter DECLARATION OF PUBLIC HEALTH CRISIS

Whereas, it is the Mission of AFCC to improve the lives of children and families through the resolution of family conflict.

Whereas, it is the Vision of AFCC to promote a justice system in which all professions work collaboratively through education, support, and access to services to achieve the best possible outcome for children and families.

Whereas, among the Values AFCC seeks to promote are innovation in addressing the needs of families and children in conflict and the empowerment of families to resolve conflict and make decisions about their future.

Whereas, every year, the number of children who are affected by the court system increases. Courts reported 455,000 family law filings in 2006. These included 158,000 filings for dissolution of marriage. The 297,000 other filings include petitions for child support and domestic violence protective orders. Over 35% of children born each year are born outside of marriage. The volatility of these relationships make court intervention likely. In addition, one in two children born to married partners are likely to interface with the family court based on the historical 50% divorce rate in California.

Whereas, according to 2006 census data, California has approximately 9,551,877 children (26.2% of the California

population). It is estimated that at least half of those California children (4,775,939) have been touched by/involved in the Court system as a result of their parents' actions (e.g. separation, divorce, domestic violence, paternity, dependency, or guardianships). Approximately 18% of children under 18 in California (as of 2007) are estimated to be involved in child support enforcement caseloads.

Whereas, the children of California are also affected by the family court because of the increased incidents of domestic violence, the increased number of paternity proceedings and the steady percentage of the divorce rate. In a 2007 judicial workload assessment, judicial workload for family cases and other petitions had increased from 2004 to 2007 and currently makes up 64% of the family and juvenile workload in the courts. The resources of each court need to be allocated in a manner that meets the needs of the court's family law caseload.

Whereas, the children of California are also affected by the steady increase in self-represented litigants who may not have access to the same resources available to children whose parents are represented by counsel. In a survey of all judicial officers hearing family law cases, the judicial officers reported seeing at least one self-represented litigant in 75% of the cases they heard. They also estimated that at least one party was self-represented in 89% of Domestic Violence Prevention Act hearings and 93% of child support hearings.

Whereas many of the children of California have interaction with several forms of court intervention, including the family court, the probate court, and the dependency and delinquency system. In 2007 judicial workload assessment, it is estimated that family, juvenile dependency and delinquency, and probate workloads increased 3 to 6% from 2004 to 2007, with 30 to 44 courts experiencing growth in either or all family, juvenile or probate workloads.

Whereas, the resources allocated to family law cases involving children do not reflect the ratio of family cases to the overall work of the court. This is ineffective and ultimately unacceptable. There are approximately 175 "full-time equivalent" judicial officers hearing family law cases and responsible for the one-half million new filings and petitions in family law every year, as well as all the cases still in the court system. The Administrative Office of the Courts estimates a need for 459 full-time equivalent judicial officers: 2.6 times as many judicial officers as currently serve in family law. It is vital that we "reframe" this problem and create more realistic remedies to meet the needs of California's children.

RESOLUTION

NOW, THEREFORE, BE IT RESOLVED THAT, The Board of the California Chapter of the Association of Family and Conciliation Courts declares that there is a clear and present danger to the public health of the children of this State based on our society's failure to adequately address the impact of child custody proceedings upon children as a chronic, system-wide, statewide, public health crisis which impacts the previous, current and future generations of California's most precious resource--its children.

NOW, THEREFORE, BE IT RESOLVED THAT, The Board of the California Chapter of the Association of Family and Conciliation Courts calls upon the Governor, the State Legislature, and the

Judicial Branch to devote adequate resources to meet the needs of the children who are impacted by this public health crisis.

NOW, THEREFORE, BE IT RESOLVED

THAT, The Board of the California Chapter of the Association of Family and Conciliation Courts calls upon all the stakeholders in the family court system, including, but not limited to, all relevant sectors of the Judicial Council of California, the State Bar of California, particularly its Family Law & Juvenile Law Sections, the Association of Certified Family Law Specialists, and the American Academy of Matrimonial Lawyers, to join the California Chapter of the Association of Family and Conciliation Courts in identifying this public health crisis and demanding that adequate, immediate, and sustained resources be funded to address these concerns by all aspects of the public and private sectors whose stewardship of trust includes the welfare of the children California.

NOW, THEREFORE, BE IT RESOLVED

THAT, The Board of the California Chapter of the Association of Family and Conciliation Courts will review legislation, and funding/resource issues that could impact children in family law courts, taking into account this clear and present danger to the children of California. And for this constituency which has no voice, we resolutely rally for change.

THE ASSOCIATION OF FAMILY AND CONCILIATION COURTS, CALIFORNIA CHAPTER

ADDITIONAL SIGNATORIES IN SUPPORT OF THE AFCC'S DECLARATION AND RESOLUTION, As of February 12, 2010:

American Academy of Matrimonial Lawyers (Southern California Chapter)
 American Academy of Matrimonial Lawyers (Northern California Chapter)
 Association of Certified Family Law Specialists, California

California Association of Marriage and Family Therapists

California Psychological Association

California Society for Clinical Social Work

Century City Bar Association

Collaborative Practice California

Harriett Buhai Center for Family Law

Levitt & Quinn Family Law Center

Los Angeles Collaborative Family Law Association

Los Angeles County Bar Association and its Family Law Section, Domestic Violence Project, and Juvenile Courts Task Force

National Association of Social Workers, California Chapter

Sacramento Collaborative Practice Group

San Fernando Valley Bar and its Family Law Section

Long Beach-South Bay chapter of California Association of Marriage and Family Therapists Board of Directors

Napa County Family Law Section

Placer County Bar Association Family Law Section

San Francisco Family Law Section of the Bar

Sonoma County Family Law Section

State Bar of California Family Law Executive Committee on behalf of the Family Law Section of the California State Bar Association

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New Email Address

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We look forward to hearing from you!



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