

Message from the Chair

George N. Seide, Chair

It has been a tumultuous year for FLEXCOM. Larry Doyle, our lobbyist for the past nearly two decades, moved to the private sector. We had the expected growing pains with our new Sacramento staff, but no one expected California's budget woes to interfere with the normal chaotic functioning of our Legislature as it did.

It was more difficult to get sponsors for bills this past session and also to get our legislators to be involved outside the budget process, which did not conclude until late in September.

Despite these challenges, FLEXCOM still had many legislative successes. We helped to kill legislation that was detrimental to the practice of family law, secured amendments that alleviated our objections to others, successfully supported several
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Message from the Editor

Lynette Berg Robe, Editor

Resilience...the capacity to "roll with the punches," to adjust and not be defeated, to "carry on" as the Brits say, in spite of the vicissitudes of life...has always interested me. Where does resilience come from? How do we get it? How can we instill that quality in children and the adults they become? If only we could bottle resilience as a magic elixir that could be given to children

who become enmeshed in dissolution of marriage, paternity, or domestic violence cases in our court system, to children who must stay in homes where there is an
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Family Law News

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abusive parent or relative, or to children who must endure poverty and grow up without the basics of existence... water, food, shelter, safety, medical care, or with no family at all.

Resilience is still something of a mystery. Countless books, fiction and nonfiction; films, theatrical and documentary; and numerous news articles and television feature stories have recounted touching stories of children who have overcome unspeakably adverse conditions to become normally functioning, and even highly achieving, adults. The young man who carried the U.S. flag at the Olympics, Lopez Lomong, comes to mind. His is one such story, being one of the thousands of Lost Boys of the Sudan. He survived war and loss of home and family, witnessed the deaths of many other children, withstood the hardships of a refugee camp, and was able to come to the U.S. and then become a track star and qualify for the 2008 Olympics. We are familiar with these stories, and inspired by them, because we know they are unusual, that they represent the rare few who do have that quality of resilience in the face of adversity. The untold stories are the thousands, millions, who do not survive, or who go on to live broken lives.

In recent decades, psychologists, psychiatrists, and others have studied resilience and have come to some conclusions, but it is clear that it is a very complex matter. There is no single prescription that will help a child attain resilience in every situation. There are many variables. First and foremost, each child is a different human being, bringing to any situation genetic traits and acquired traits influenced by his or her environment. Then, there are many risk factors. The age at which the adversity, trauma, abuse, or maltreatment occurs varies. There are cultural variables. The adversity, trauma, abuse, or maltreatment varies in both type and degree. In some cases, it is physical trauma. In other cases, it is mental and emotional trauma. In others, both physical and mental/emotional trauma occur. Sometimes, the adversity or trauma is a natural disaster, war, or societal failure; in other cases, the adversity comes from individuals and even members of the child's own family.

The protective factors that encourage resilience vary as well. In a 1999 article by Heller, Larrieu, D'Imperio, Boris, "Research on Resilience to Child Maltreatment: Empirical Considerations," in *Child Abuse & Neglect*, Vol.

23, No. 4, the authors reviewed the then current research literature on resilience to maltreatment in childhood and adolescence. They used the definition of "resilience" as "**the process of, capacity for, or outcome of successful adaptation despite challenging or threatening circumstances**" cited in Masten, Best, & Garmezy (1990) "Resilience and development: Contributions from the study of children who overcome adversity," *Development and Psychopathology*, Vol. 2, 425-444. Among the major protective factors that ameliorated the trauma and contributed to resilience in the children were: (1) dispositional/temperamental attributes of the individual child; (2) a warm and secure family relationship; and (3) the availability of extrafamilial support. Each of these general factors can be broken down into numerous sub-categories of protective factors. For example, extrafamilial support may be from a structured school environment, outside intervention into the family, involvement with a religious community, and extracurricular activities.

We who labor in the field of family law are aware that dissolution of marriage, parentage cases, domestic violence, and the other family law related cases all bring change to children's lives. The Legislature has passed some statutes seeking to alleviate the impact of these changes on children resulting from the legal child custody proceedings and the events that precipitated them. We have statutes that mandate that children should continue to have frequent and continuing contact with both parents; we have statutes that mandate that domestic violence must be taken into consideration in making custody orders; we mandate mediation in child custody matters, as well as sponsor and require attendance at programs for parents to increase their knowledge of the effects of custody proceedings on children. Courts can order litigants to take parenting classes and engage in co-parenting psychological therapy. We have devised ways for mental health professionals to become involved and to provide information to the court as to what is really going on in a family and to provide recommendations for how that family is to go forward. But, as legal professionals and as a society, we *must do more*.

We still have very little concrete information about the effects, both long-term and short-term, of child custody proceedings on children. It is estimated that at least half of the nearly ten million children now living in the state of California have been touched by or involved in the court system as a result of their parents' actions. As the research we do have has shown, if having a "warm and secure fam-

ily relationship” is one of the major protective factors that promotes resilience in children, then the loss or alteration of that family clearly has an effect on the ability of a child to be resilient. We know that some children continue to do well in spite of the disintegration of their family unit, but we also know that many other children do not fare so well in the face of such changes. We *must do more* to find out the reasons for the differences. If there is no single factor that assists children to develop resilience, then we must put as many remedies and processes into place as possible in the hope that we will supply the ingredient that will help that particular child.

Although family law cases in California have continued to increase, the resources being allocated to family law cases involving children do not reflect the ratio of family law cases to the overall number of court cases. We need more judicial officers, and we need a greater share of the resources of the court system.

The Association of Family and Conciliation Courts (AFCC), an international, national, and state organization composed of judicial officers, mental health professionals, and family law attorneys, is one of the only interdisciplinary organizations that focuses on child custody proceedings. The Board of the California chapter of the AFCC has recently drafted a “Declaration of a Public Health Crisis” based on the inability of our society to address the impact of child custody proceedings upon our children. This Declaration and the proposed Resolution will be debated at the California AFCC Chapter’s annual meeting at the Mark Hopkins Hotel in San Francisco on February 6-8, 2009. A copy of the working draft of the Declaration and the proposed Resolution follows this column. The AFCC calls for all the “stakeholders” in the family court system, which include the Family Law Section of the State Bar and all the family law sections of the local bar associations, the Association of Certified Family Law Specialists, the American Academy of Matrimonial Lawyers, and the Judicial Council, to demand from the Governor, the Legislature, and the Judicial Branch that adequate, immediate, and sustained resources be funded to address these concerns to ensure the welfare of the children of California.

Through collective efforts, the AFCC hopes to ensure that children in California who are brought into contact with legal proceedings will be able to develop the resilience they need to meet the resulting challenges they will have to face in their young lives.

This is my last issue as editor of *Family Law News*. The past year has flown swiftly, and I want to thank all the contributors from around the State. It has been a pleasure to work with such knowledgeable attorneys, accountants, psychologists, and judicial officers, who have been willing to share their expertise and spend their time writing articles. I particularly want to thank my assistant editor, Julie Saffren, for her excellent help and assistance, and I hope she will have as satisfying a year being editor as I have had. I also want to thank my friend and colleague Executive Editor Mel Ross for being a sounding board and for his wise counsel when questions about articles arose. Thanks also to the contributing editors Harold J. Cohn, Debra S. Frank, and Bonnie Riley for their time and eagle eyes in reviewing the articles. And a special thanks to Megan Lynch, our production coordinator, who is able to take the mass of words sent to her and put it into the attractive, readable format.

In this issue, I am pleased to introduce the following articles:

- Robert N. Kipper treats us to another of his lively and vibrant articles analyzing cases. This time his article, “**Three (Not-So) Biggies for Us Piggies**” discusses the three recent cases of *Montgomery*, *Rothrock*, and *Lucio*.
- Julie Saffren in her article “**Making Marriage Matter Less**,” reviews *Beyond (Straight and Gay) Marriage: Valuing All Families Under the Law*, a new book by Nancy Polikoff with the provocative hypothesis that we should be focusing on a system of laws for protecting all kinds of family relationships rather than focusing only on rights gained by marriage.
- Charles P. Kindregan, a Professor of Law at Suffolk University Law School in Boston, provides a comprehensive article, “**A Family Law Revolution: Changing Attitudes about Parentage in Nontraditional Families’ Use of Collaborative Reproduction**,” which discusses the advances in reproductive technology and the resulting effects it has had on the legal landscape in family law and the societal landscape in general.
- Stephen D. McMorrow, a certified public accountant, in his article, “**Tax-Affecting S Corporations for Business Valuations in a**

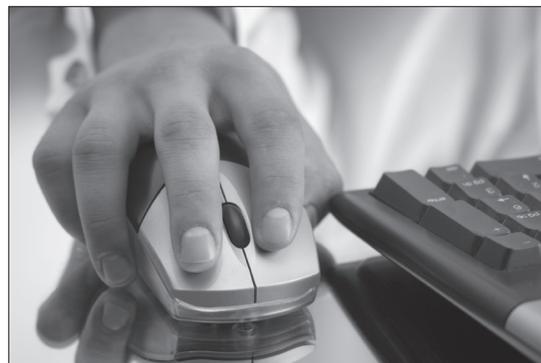
Marital Dissolution,” thoughtfully analyzes a Massachusetts case, *Bernier v. Bernier*, which for the first time in a family law case valued an “S corporation,” which is a “flow through” entity, using tax-affecting or deducting income taxes from pretax income to arrive at net income of the corporation. He emphasizes that it is imperative for family law attorneys to understand tax-affecting and how the appraiser might use it in the valuation of an S corporation. ■

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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.■

Contribute to Family Law News

FAMILY LAW NEWS WANTS TO HEAR FROM YOU!

We are looking for authors to write relevant and timely articles for upcoming issues.

**For more information, please contact
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