

acfls Hosts cp States: "Donor's Remorse"

Hotel Monaco • San Francisco • April 15, 16, & 17, 1999

Leonard D. Weiler, cfls, President
ldw@weilerialaw.com

Reserve these dates: April 15, 16 and 17, 1999. That is when ACFLS will host the 1999 symposium of the Family Law Council of Community Property States in San Francisco. Admission to this event will be limited, so reserve the dates and enroll and make hotel reservations early. Carroll J. Collins III, cfls (cjc@lpslaw.com) chairs the ACFLS committee responsible for organizing this special event.



during marriage, contributions of separate property to the community or to joint tenancy during marriage, and contributions of community property to joint tenancy during the marriage. Each of the nine participating state delegations will present a paper setting forth the law and attitude of their state on the issues presented, followed by questions and discussions. In addition, each state will designate a

The topic for April's symposium will be "Donor's Remorse: When a Gift Is Not a Gift – Recovery of Contributions of Property During Marriage." This topic will include consideration of gifts to one or both parties

speaker to present two or three of the biggest/most important cases published in their state over the preceding year dealing with community property issues.

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ACFLS

NEWSLETTER

Fall/Winter 1998, No. 3

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This newsletter is designed to provide accurate
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acFLS Mission Statement

It is the mission of ACFLS to promote
and preserve the Family Law Specialty.
To that end, the Association will seek to:

1. Advance the knowledge of Family Law Specialists;
2. Monitor legislation and proposals affecting the field of family law;
3. Promote and encourage ethical practice among members of the bar and their clients; and
4. Promote the specialty to the public and the family law bar.

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Letter to the Editor



Dear Editor:

I recently read the latest version of the ACFLS Newsletter and [Len Weiler's] contribution thereto [President's Soapbox re: *Walrath* decision]. We seem to see eye to eye on these matters and also share a nickname (my colleagues often call me the Curmudgeon).

It apparently isn't enough that we have a know-nothing, amateur legislature complicating family law litigation beyond belief, but now the appellate courts have stepped up to assist. I suppose that *Walrath* is "just" in some cosmic sense, but a flock of additional tracing trials for people who cannot afford them and be people who often do not understand them is not what is needed.

On another issue and continuing to act in a curmudgeonly fashion, I reference the two articles on the new visitation supervisor standards. The articles are interesting, but miss the point. The point is that this year we have had these standards, as well as standards or guidelines on mediations and evaluations, produced by the Judicial Council. Does anyone feel the need for these things? If one year ago someone had asked us to name the twenty things most needed in family law would any of these things have made the list? Of course not!

The visitation standards are easily and completely summarized in one sentence: Select intelligent supervisors and require them to make thoughtful decisions. It costs hundreds of thousands of dollars to fly folks to meetings to discuss and enact these things that no one needs. Those dollars are better spent helping kids by hiring more mediators to resolve more disputes and thereby keeping more kids away from the litigation wars in which they observe their parents whom they love acting like animals.

I would add that the fault is not that of the Judicial Council as it is the legislature that requires production of these things. However, my court is currently struggling with the implementation of a security system and with inventing management procedures which are applicable to a court that in an instant went from 25 to 45 judicial officers (due to court consolidation). Wouldn't it be great if the Judicial Council, instead of producing guidelines and standards, would produce the expertise necessary to assist us with security and management practices?

James H. Libbey, Commissioner,
Contra Costa County

President's Soapbox

Whither Specialization?

Leonard D. Weiler, CFLS, President
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What will become of the legal specialization program in California if the State Bar dies or is dismantled? And what should ACFLS do about it?

As this is written the State Bar is moribund and some say on its deathbed. Hope springs eternal, and optimists suggest that all will be worked out by the State Supreme Court or within the new legislative session in early 1999. We'll soon see. What is clear, though, is that *if* it survives, the State Bar will be substantially reduced in size and mission. Will the Board of Legal Specialization – an agency of the State Bar – survive the cut? If not, can and will the legal specialization program continue on regardless?

Too Close to Call

In 1998, three different legislative bills were introduced to reorganize, reform, or (at one point) eliminate the State Bar, primary among these being AB1669 (Hertzberg) and SB1371 (Kopp). All envisioned the continuation of the legal specialization program and the State Bar's role as the administering and certifying body. Thus, it would seem that there is no gubernatorial or legislative animus toward the program. Since it is self funding and not dependent on any general bar dues, it is highly probable that specialization will continue under State Bar auspices, *if* the State Bar itself is permitted to continue.

From what we hear, the main roadblock to passage of a compromise bill saving the State Bar was Governor Wilson. He will be gone next year, and perhaps the incoming governor will be less hostile. On the other hand, California lawyers as a group have been underwhelming in their support of the State Bar, and many have openly advocated its elimination. The bottom line is that this one is too close to call right now.

Which brings us back to the Question: If there is no State Bar, what will become of legal specialization? One possibility is that a specialization program will continue on the books, but in the absence of the State Bar, new certifying entities will need to come forward. Or there may be no state regulation of the certification process at all. This would not prevent lawyers from holding themselves out as "specialists," and undoubtedly, as time went by more and more would do so, particularly in the absence of any certification scheme.

Should ACFLS Become a Certifying Organization?

All of us obviously believe in the usefulness of certifying specialists in family law or we would not have gone through the process or joined ACFLS. Certification raises the standards of practice and engenders pride and professionalism in our field. It provides consumers with a degree

of assurance in their selection of counsel, and gives us an opportunity to make our level of experience and our practice specialty known to the public and other attorneys.

In order to protect the family law specialty and the gains we have made over the last 20 years, and in the absence of the State Bar, should we in ACFLS become a certifying organization? Obviously, it would be a tremendous undertaking. At the same time, who is more qualified for such a task? The ACFLS Board of Directors has begun mulling over these possibilities and, depending on developments, may need to expedite this evaluative process. What do YOU think? Can we do this? Should we do this? Would you help? Or should we do nothing?

Assuming the Board of Legal Specialization survives, I have another question for you: How do you think BLS is doing? I am not impressed personally with the product I've seen (aside from the initial application and examination process, which is fine, but carries a separate fee and is self-supporting). But what do YOU think? Are we getting our money's worth for the \$200 we ante up each year? If not, what do you believe BLS ought to be doing? How can they improve their services?

Let me hear from you. You can reach me at ldw@weilerlaw.com or via fax at 925-830-8787.

Unbundling: The Hot New Trend

M. Sue Talia, cFls
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One of the hottest issues in family law is the unbundling of legal services. Where lawyers in the past handled the entire case or nothing, there is increasing pressure from the public to offer limited legal services, from coaching or consulting in mediation to ghost-writing pleadings, assisting with strategy and discovery, to of-record representation on selected issues.

The statistics are horrendous. Statewide, nearly sixty percent (60%) of family law litigants are unrepresented. In some jurisdictions, the numbers are closer to eighty percent (80%). These are people who are without access to effective legal representation. Many of them can't afford a lawyer. Others are making the choice for consumer reasons. In the Age of the Internet, people are used to going online and obtaining virtually any type of information, instantly and without charge. They are no longer willing to pay a full-service lawyer to be the gatekeeper for the legal system. They are demanding control over their lives

and their divorces. The resulting influx of *pro per* litigants is having a predictable effect on already crowded court calendars.

How are lawyers responding? Many are seeing the opportunity for a win/win. They can improve access to the courts while tapping a new source of clients. People who would otherwise be outside the system are now candidates for coaching, ghost-writing and limited representation. And, since most unbundled legal services are "pay as you go" there is an alternative to the traditionally high family law accounts receivable.

The movement is growing across the country, and numerous state bar associations have offered ethics opinions in support of the practice. The key seems to be to ensure that the consumer is advised of the consequences of dispensing with full service. The result seems to be a self-selecting group of extraordinarily satisfied clients. We all know the old adage that no family law client is ever happy with the result, because when it is over he is divorced and has half



M. Sue Talia is a Certified Family Law Specialist practicing in San Ramon, California. She is the author of *A Client's Guide to Limited Legal Services*, a handbook for unbundled family law litigants, as well as *How to Avoid the Divorce from Hell (And Dance Together at Your Daughter's Wedding)*. She is a frequent speaker and teacher on unbundling and other family law topics. Ms. Talia has developed retainer agreements and other forms for use in offering unbundled legal services.

of what he thought he had before. This seems to be an exception. Many unbundled clients are thrilled to only pay for the services they want, rather than those which they don't want or

can't afford. On the other hand, the attorneys are pleased to be relieved of the role of guarantor of the legal proceeding. Of course, any attorney offering unbundled legal services is responsible for the quality of the services contracted for and provided; that is a given. But what a relief not to be responsible for the rest of the client's life.

Many clients perceive that the insistence on either full representation or none at all is just the lawyer's way of maximizing his profit and cornering the market. They don't see it as a protection of their rights; in this anti-lawyer climate, the perception is quite the contrary. Many attorneys are finding a new brand of client satisfaction when they offer unbundled legal services.

This clearly isn't for every lawyer or every case. Many family law issues are just too complex to comfortably delegate to the client with assurance that the client understands the risks of limited representation and can competently handle it himself. However, the garden variety support or property issues work very well in this context. An attorney can easily run Dissomasters or property calculations for a client, who then goes off to negotiate his or her own deal.

Unbundling also resolves a common dilemma faced by family lawyers. How many of us have had a client with limited funds and one horrendous issue which obviously

needs our expertise, together with lots of little ones which don't? When that happens we are faced with the choice of taking that case knowing that we'll eat bulk of the fees, or turning the client away to be thrown to the wolves. Neither is a pretty choice for practitioners, but it comes up all the time. In an unbundling context, the attorney can offer assis-

responding to this increasing need. Equally fortunately, many judges are embracing the concept as they recognize that an educated *pro per* is more likely to successfully navigate the system.

There will always be room for the full service lawyer. There are cases and clients which deserve and demand it. In fact, unbundling takes

absolutely nothing from the full service approach. But the vast majority of unrepresented litigants are on their own because they can't afford to pay for the whole show. Full service representation is out of the question, but access to information is even more critical than with the full service client. Without it, they are completely at the mercy of the system.

The Family Law Section of Contra Costa County has taken the lead in establishing standards for offering unbundled legal services in family law. A three hour course has been developed to instruct attorneys on how to offer limited legal services in a way which protects both their clients and themselves.

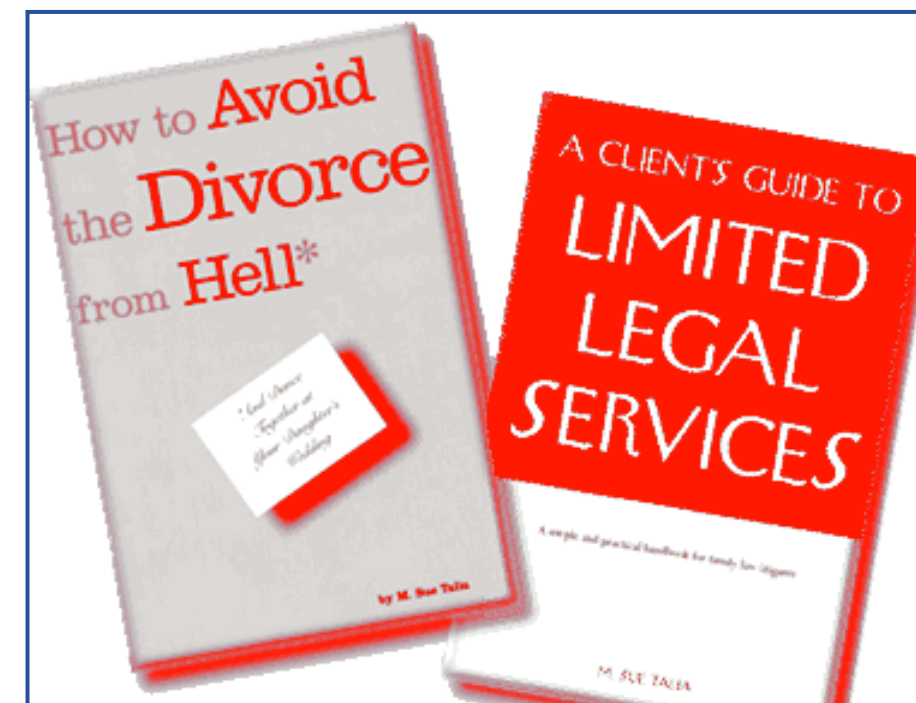
This can truly be a case of "doing well while doing good" for family lawyers. They can increase access to the courts and help people in the areas where they most need it, while drawing upon a new and untapped source of clients. The result is an increase in the satisfaction of both lawyer and client.

Visit Sue's Web Site:
www.divorcefromhell.com

Editor's Note

Where the Family Court 2000 project sought to design a court process around the abilities of *pro pers*, the limited legal services movement offers each litigant the skills and expertise of a family lawyer on the issues or tasks that matter most to that individual. Many of us have engaged in forms of unbundling before the term was even coined, developing retainer agreements which memorialized the client's informed consent and defined with particularity the responsibilities we would undertake. M. Sue Talia is one of the pioneers of unbundling. While self-representation with the assistance of a family lawyer has its risks, it offers far greater protection to family law litigants than does self-representation with the assistance of a *pro per* service or paralegal. A consulting family lawyer can help a client issue-spot, plan strategy, and use limited eco-

nomical resources for professional services around the most important or complex aspects of his or her case. Often a consulting lawyer can negotiate a whole or partial settlement, without assuming formal representation of the client. As a profession, we must expand the paradigm of lawyering to include this form of practice, and to develop ethics guidelines and standards which make practical sense for the protection of clients and lawyers alike. With such guidelines and standards in place, malpractice carriers. Litigants who have lawyer coaches and ghostwriters are far less of a burden on the courts than *pro pers* who don't have such assistance. While some courts view this trend with concern, practical problems facing judicial officers, such as bifurcating evidentiary hearings to allow limited attorney participation, can be resolved with far less calendar time lost than struggling with *pro per* confusion now creates. [ed.]



acfls Co-Sponsors afcc California Sonoma Seminar

Leslie Ellen Shear, cfls, Newsletter Editor
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ACFLS will co-sponsor the Association of Family and Conciliation Courts California Chapter Conference January 24-25, 1999 at the Sonoma Mission Inn and Spa in Sonoma, California. The theme of the interdisciplinary conference of legal and mental health professionals will be *Better Outcomes: Making Laws and Services Friendly for Children and Their Families*.



Keynote Speaker, Stephen D. Sugarman

Boalt Law School Agnes Roddy Robb Professor of Law Stephen D. Sugarman, co-editor of *All Our Families: New Policies for a New Century*, will be the keynote speaker. His presentation will be followed by a panel discussion, moderated by Jeanne T. Ames (Mediator, Special Master and past Director, Family Court Services, San Francisco), and including the Hon. Donald B. King (Justice, California Court of Appeal, Ret.) and the Hon. Patrick Morris (Judge, San Bernardino County Court).

Ira Lurvey, CFLS, will be the

luncheon speaker, to be introduced by Suzie Thorn, CFLS.

Dr. Joan Kelly, Executive Director of the Northern California Mediation Center, will present a research update, Garrett C. Dailey, CFLS, President of Attorney's Briefcase, will present a legal update.

The AFCC Hospitality Suite will offer wine, cheese and the opportunity for informal conversation on Sunday from 4 p.m. until 6 p.m.. Sunday's Conference Dinner will feature the Joseph Drown Award, other awards and announcements and entertainment by the *Pro Bono* Singers. The Sonoma Mission Inn's new executive chef has a worldwide reputation, an indication that the meal will be memorable.

Other conference events include the California Chapter Board Meeting on Sunday morning, and the General Membership Meeting and Election (with continental breakfast) on Monday morning.

Dean Jay Folberg, University of San Francisco Law School, will moderate a judges' panel on Alternative Dispute Resolution. Panelists will be the Hon. Susan Alexander (Commissioner, Alameda County), the Hon. David Haet (Commissioner, Solano County Court), the Hon. Susan B. King (Commissioner, San Francisco Unified Family Court), the Hon. James W. Stewart (Judge, Santa Clara County Court), and the Hon. Bobby Vincent (Commissioner, San Bernardino County Court).

Conference participants may

select three of twelve workshops to attend. (See workshop schedule on the next page.)

Conference registration will cost \$250 for AFCC members and \$300 for non-AFCC members. Guests may register for \$100, attending meals only. Registration fees should be sent to Patricia A. Parson, 1884 Knox Street, Castro Valley, CA 94546, tel. (510) 581-3799, fax (510) 581-8222. Registration and accommodations are limited. The 1995 AFCC Conference at the Sonoma Mission Inn sold out very quickly. The Sonoma Mission Inn typically sells out during AFCC California conferences. Register immediately to avoid disappointment.

AFCC is an interdisciplinary association of judges, lawyers, mediators, and mental health professionals dedicated to the development and improvement of the practices and procedures of court-connected services as a complement

to the judicial process. AFCC's annual, regional and local chapter conferences provide unparalleled opportunities to exchange information and develop interdisciplinary relationships, while comparing practices

from various jurisdictions. Members receive a subscription to the peer-reviewed journal (*Conciliation Courts*)

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SONOMA MISSION INN & SPA®



afcc Conference Workshop Schedule

Sunday, January 24, P.M.

1. Impact of the Child Support Laws on Custody and Visitation

- Nordin Blacker, CFLS, AAML, Moderator (San Francisco)
- Toni Heineman, DMH, Clinical Psychologist (San Francisco)
- Hon. Isabella Horton Grant, Judge, San Francisco Superior Court, Ret.

2. "Move-Aways": Burden of Proof

- Lorie Nachlis, CFLS, Moderator (San Francisco)
- Hon. Donna J. Hitchens, Presiding Judge, San Francisco Superior Court
- Diane Ehrensaft, Ph.D., Psychologist, Evaluator (Alameda)

3. Domestic Violence Differential Thresholds of Domestic Violence for Decisionmaking

- John Sikorski, M.D., Moderator, Mediator, Evaluator, Therapist (San Francisco)
- Janet R. Johnston, Ph.D., Executive Director, Judith Wallerstein Center for the Family in Transition (Marin)
- Emberley Catherine Cross, J.D., Co-op Restraining Order Clinic (San Francisco)
- Christopher F. Emley, CFLS, AAML (San Francisco)

4. Evaluations: Who's In Charge?

- S. Margaret Lee, Ph.D., Moderator, Evaluator, Therapist, Special Master (Marin)
- Hon. Margaret S. Johnson, Commissioner, Santa Clara County Court
- Roger Meredith, CFLS, (San Francisco)
- Hon. Thomas J. Mellon, Jr., Judge, San Francisco County Court

Monday, January 25, A.M.

1. Parental Alienation

- Hon. Susan B. King, Moderator, Commissioner, San Francisco Unified Family Court
- Matthew Sullivan, Ph.D., Evaluator, Therapist, Special Master (Santa Clara)
- Diana Richmond, CFLS, AAML, Author and Lecturer for Matthew Bender (San Francisco)

2. Mediation: Different Models, Different Arenas

- Pamela E. Pierson, CFLS, AAML, Moderator (San Francisco)
- George Ferrick, MSW, Family Court Services (Los Angeles)
- Larry Lehner, Ph.D., Bureau Chief, Family Court Services (Alameda)
- Kim Harmon, J.D., Director, Dependency Mediation (San Francisco)

3. Collaborative Work: Protecting Therapy for Children

- Madeleine Simborg, CFLS, AAML, Moderator (Marin)
- Nancy Olesen, Ph.D., Evaluator, Therapist (Marin)
- Steven Friedlander, Ph.D., Evaluator, Therapist, Special Master (San Francisco)

4. Services for Alternative Families

- Lorie Nachlis, CFLS, Moderator (San Francisco)
- Milton Schaeffer, Ph.D., Evaluator, Therapist, Special Master (San Francisco)
- Hon. Marjorie Slabach, Commissioner, San Francisco Unified Family Court

Monday, January 25, P.M.

1. Ethical Duties of Lawyers for Parents and Children in Custody Litigation

- B.J. Herran, MSW, Moderator, Family Court Services (San Francisco)
- Aleta Beaupied, J.D., Attorney for Children, Dependency and Family Court (San Francisco)
- Hon. Michale Dufficy, Judge, Marin County Court

2. Supervised Visitation: Issues and Standards

- Jan Shaw, M.S., Moderator, Director, Family Court Services (Orange)
- Stacy Rodriguez, Independent Visitation Supervisor
- Nadine Blashek-Brown, Director, Rally Project

3. Setting Up a "Kids' Turn" Program

- Julie Schrieber, Moderator, Executive Director, Kids' Turn (San Francisco)
- Shari Delisle, Ph.D., Director, Kids' Turn (San Diego)
- Linda Lasin Eisnitz, M.A., Director, Kids' Turn (Sonoma)



New cjc Rules, Forms and Standards

Leslie Ellen Shear, cFls, Newsletter Editor
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In addition to reviewing statutory changes in preparation for 1999 practice, family lawyers would do well to take a close look at the new court rules, forms and standards adopted by the California Judicial Council. The full text of the amended rules can be found at www.courtinfo.ca.gov/rules/amendments.htm.

Despite the late distribution of the proposals reported last issue, it is clear that the comments of family lawyers were considered in drafting the final versions.

Many of the new forms are mandatory, including forms for domestic violence restraining orders and actions under the new Uniform Interstate Enforcement of Support Act.

Revisions to Rule 1243 permit the use of a new Financial Statement (Simplified) in many circumstances instead of a full Income and Expense Declaration. The rule provides:

A Financial Statement (Simplified) is appropriate for use when a party's sole income is from salary, wages, disability benefits, unemployment insurance, workers' compensation, Social Security, retirement benefits or public assistance. A Financial Statement (Simplified) is not appropriate for use in proceedings to determine or modify spousal support or to determine attorney's fees.

In the last issue I expressed concern about the substantial restrictions on the participation of counsel in the proposed standards for mediation and evaluation. Those standards have been substantially revised since that commentary, including removal of the restrictions upon attorney

participation in the process. Each jurisdiction has been given a year to develop local rules which are to include rules addressing *ex parte* communications.

Rule 1257.3 Uniform Standards of Practice for Court-ordered Child Custody Evaluations requires local jurisdiction to adopt a number of policies within the next year, in addition to addressing the issue of *ex parte* communications. It is critical that family lawyers participate in the development of those policies.

The evaluation standards also provide for:

Data collection and analysis that allow the evaluator to observe and consider each party in comparable ways and to substantiate (from multiple sources when possible) interpretations and conclusions regarding each child's developmental needs; the quality of attachment to each parent and that parent's social environment; and reactions to the separation, divorce, or parental conflict.

Separate standards for custody evaluators require in-depth domestic violence training, reinforced by annual four-hour refresher-update sessions. All of the evaluation standards apply both to family court services and private evaluations.

The standards go on to suggest methodology to achieve those goals. These standards will prove of great assistance to lawyers and courts in assessing the reliability of evaluations and the weight of the ensuing recommendations.

The new mediation standards, which take effect July 1, 2001, require mediators to:

Use reasonable efforts and consider safety issues to:

(i) Facilitate the family's transition and reduce acrimony by helping the parties improve their communication skills, focus on the child's needs and areas of stability, identify the family's strengths, and locate counseling or other services; (ii) Develop a comprehensive parenting agreement that addresses each child's current and future developmental needs; and (iii) Control for potential power imbalances between the parties during mediation.

Mediators are also required to have reviewed the court file and the intake sheet. It will be impossible for mediators to comply with these new mediation guidelines in Los Angeles County if the existing four family per day caseload continues. Ideally these new guidelines will be further impetus for Los Angeles County to follow the legislative mandate requiring maintenance of the earlier staff to filing ratios, under which mediators typically worked with two families each day.

The L.A. Conciliation Court reported a 72% rate of full or partial agreements for the last reporting period. Nonetheless, families seen only briefly do not have the opportunities to develop communications skills, develop insight, consider alternatives, and attend to details which may make parenting plans more effective. Any trial court funding legislation must consider eliminating the differential between the time given to families in the state's largest county, and that available in many other locales.

Amicus Committee Report

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All three cases in which ACFLS submitted *amicus curiae* arguments resulted in published opinions in the latter half of 1998.

Lorraine Gollub, CFLS, submitted answers on ACFLS's behalf to questions posed by the appellate court in *Dale v. Dale* (4th District, 9-25-98) supporting the viability of an independent civil action for damages, including punitive damages, arising from breach of a spouse's fiduciary duty (concealment of community property assets). In *Dale* the Court solicited *amicus* participation and asked the parties to nominate prospective organizations. Gollub argued that requiring consideration of such claims in the dissolution proceedings would be unworkable. The Court of Appeal held that the wife's

remedies were not limited to setting aside the dissolution judgment and that she could bring a tort action in which she could seek punitive damages.

In re Marriage of Nasca (U.S. 9th Circuit, 11-27-98) involved the efforts of an employer to avoid joinder of the retirement plan in a family law action. Barbara A. DiFranza, CFLS, led the *amicus* efforts on behalf of ACFLS and the American Academy of Matrimonial Lawyers. Peoplesoft, the employer, removed the case to Federal District Court, arguing that ERISA pre-empts California community property law. The federal magistrate found in favor of the Nascas and awarded them \$13,000 in attorneys fees. Peoplesoft's appeal was dismissed when the Ninth Circuit

concluded that the parties had not consented to the hearing of the matter by a magistrate, and that consent could not be inferred from their participation in the hearings.

ACFLS defended a "Borson" attorney's right to a hearing on the merits of her claim for fees and costs attributable to the period of her representation in *Marriage of Kelso* (2nd District, 10-21-98). Leslie Ellen Shear, CFLS, submitted a letter brief and appeared at oral argument. In *Kelso* the commissioner hearing the dissolution proceeding recused himself from hearing issues relating to the fees of "Borson" attorney Linda Wisotsky, CFLS. He then proceeded to make findings adverse to Wisotsky,

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Sonoma Seminar

Continued from page 6

Review), the newsletter, and the opportunity to purchase pamphlets and videos which are useful resources for professionals and the families that they work with. Membership information may be obtained from AFCC, 329 West Wilson Street, Madison, WI (808) 251-4001.

Hotel reservations should be made directly with the Sonoma Mission Inn and Spa (800) 862-4945. The Mission Inn's specially-reduced room rates for the conference (also available for Monday and Tuesday nights) are: \$119 single or double (Historic Inn), \$159 (Wine Country Rooms) and \$189 (Wine Country

Rooms with fireplace). For more information, photographs and a history of the Inn visit www.sonomamissioninn.com.

Built in the 1920's on the wooded site of a natural hot spring, Sonoma Mission Inn & Spa is an intimate, luxurious and romantic oasis nestled in the heart of the wine country offering luxury accommodations, European-style Spa, 18-hole golf course, two award-winning restaurants, and outstanding meeting and wedding facilities, all located just one-hour from San Francisco.

Sonoma Mission Inn & Spa is located at 18140 Sonoma Highway (Highway 12) in Boyes Hot Springs, just two miles north of the historic town of Sonoma. Getting there is easy. The Inn is located only 45 miles

from San Francisco – an easy drive through beautiful countryside. The Sonoma Airporter provides a convenient connection between the Inn and San Francisco International Airport. The shuttle runs on a schedule six times a day, Sunday through Friday, and five times on Saturday. The current fare is \$25 per person, each way. Reservations are required and must be guaranteed by credit card deposit. Reservations can be made with the Inn's concierge or directly with the Airporter at (707) 938-4246.

Joining ACFLS as co-sponsors are the American Academy of Matrimonial Lawyers, the Suzie S. Thorn Foundation, and the Family Law Sections of the San Francisco and Sonoma Bar Associations.

MAI Appraisers: Why Do They Cost So Much? When Do You Need Them?

James Mize, cFIs

The October meeting of the Sacramento ACFLS Roundtable included a discussion of the burning questions: Why do MAI appraisers charge so much? and Why do you need them anyway? Richard (Smoky) Stover, MAI Appraiser, commenced a presentation lamenting the often used malapropism of "MAI" appraiser. He indicated that they are not "Missing In Action." "MAI" stands for Member, Appraisal Institute and, for the most part, includes appraisers of income producing properties as opposed to single family residences. While MAI appraisers can determine the value of single family residences, they tend to be a little pricey for such jobs.

Unlike other appraisers, MAI appraisers are required to study for and submit to approximately nine separate exams including a daylong licensing exam. In addition, and perhaps even more onerous, MAI appraisers must subject themselves to 4,500 hours of appraisal experience evaluated and critiqued by one or a team of other MAI appraisers. Perhaps for this reason, of the 13,000 appraisers in California, only about one thousand are MAI certified.

Mr. Stover believes that there are three situations in which a MAI appraiser should be used – calling these instances the three C's. First of all, when the jobs or the properties are *Complex*. This can occur, for example, when there is an issue of "highest and best use" of a piece of bare land or other property that is

underdeveloped. The second category of cases that need a MAI appraisal is where the *Credibility* of the appraiser is necessary or helpful to convince a court to adopt a particular figure. Finally, a MAI appraiser is useful in *Challenging* another appraisal. In other words, a MAI certified expert can be a great asset to an attorney in preparing for and suggesting cross examination questions of another appraisal.

Mr. Stover indicated that many MAI appraisers are willing to look at an appraisal briefly for little or no cost to see if there is an obvious error. If a more formal review is necessary, anticipate costs in the neighborhood of \$1,500. If a MAI appraiser is doing an evaluation from scratch, his or her fees could be between \$3,000 and \$6,000, averaging perhaps around \$4,000. This charge would not include consultation time or deposition or trial time. Sacramento area MAI appraisers charge between \$125 and \$250 per hour for such work.

Twenty years ago, two MAI appraisals which were more than 10 percent disparate in their appraisals would be subjected to an automatic review by their national reviewing authority. Today there is no such strict automatic review; nevertheless, MAI appraisers' work is subject to challenge any time. Such challenge is reviewed by the Chicago headquarters and then, if indicated, referred to a local board for further examination and review.

From the standpoint of litigation,

the information in such reviews is generally held confidential and would not be readily available to a challenging attorney. Nevertheless, attorneys can at least start their cross-examinations with the question: "Has your work ever been subject to review regarding standards or ethics?" If the appraiser is honest, then he or she would have to indicate when and how often their work was criticized. On the other hand, if the appraiser is less than candid, the attorney may be stuck with the inaccurate response.



Headquartered in Chicago, Illinois, the Appraisal Institute and its predecessor organizations have been at the forefront of the real estate appraisal profession for more than 60 years. Appraisal Institute members are identified by their experience and knowledge of real estate valuation, and adhere to a strictly enforced Code of Professional Ethics and Standards of Professional Appraisal Practice. The Appraisal Institute has over 13,000 members and 121 chapters across the country.



The MAI membership designation is held by appraisers who are experienced in the valuation and evaluation of commercial, industrial, residential, and other types of properties, and who advise clients on real estate investment decisions.



The SRPA membership designation is held by appraisers who are experienced in the valuation of commercial, industrial, residential, and other types of property.



The SREA membership designation is held by appraisers who are experienced in real estate valuation and analysis and advise clients on real estate investment decisions.



The SRA membership designation is held by appraisers who are experienced in the valuation of single-family homes, townhouses, and residential income properties of up to and including four units.



The RM membership designation is held by appraisers who are experienced in the valuation of single-family dwellings and two-, three-, and four-unit residential properties.

For more information visit www.appraisalinstitute.org.

"Donor's Remorse"

Continued from front page

ACFLS is the sponsor of the California delegation to the FLCCPS. Most other states are represented by their State Bars. Each of the nine community property states takes a turn hosting the annual symposium, which provides an opportunity for practitioners to compare the approaches of each of the states to community property issues. This comparison can stimulate new arguments to raise in cases in our state, as well as proposals for legislation. In recent years, topics have included cohabitant relationships and community property (Las Vegas), temporary orders and community debts (Phoenix), characterization questions (San Antonio) and pre-nuptial and post-nuptial agreements (Milwaukee). Thus it will be almost a decade before the FLCCPS symposium returns to California.

The Council of Community Property States Symposium will replace ACFLS's annual Spring CLE program for 1999. That annual program will resume in 2000.

The symposium provides a wonderful opportunity to learn about an interesting issue of daily relevance in community property practice, and perhaps more importantly, to see this issue from new and different vantage points based on the law and practice in other jurisdictions. Attendees and delegates also enjoy the opportunity to meet leading practitioners from the other community property states to learn how the theory of (legal) relativity operates in our field, exchange war stories, and have a generally fascinating and stimulating time. Each of the ACFLS delegates and attendees at past symposia have become devotees of these unique programs.

Delegates and attendees may also

look forward to a Napa Valley wine tasting tour on Thursday, April 15th, followed by a welcoming cocktail party that evening; a dinner cruise on San Francisco Bay on Friday evening, April 16th, and an afternoon tour of Alcatraz on Saturday, April 17th.

The symposium will be held at the Hotel Monaco, a charming boutique hotel on Geary Street in San Francisco. Special rates have been arranged for ACFLS members and delegates. Reservations can be made directly with the hotel at (888) 852-3551 or (800) 794-1103. The cost for the symposium will be \$200 for ACFLS members and \$225 for non-members. (Hotel, wine tour, Alcatraz tour and Friday night dinner not included.) Registration fees should be sent to ACFLS Administrator Patricia A. Parson, 1884 Knox Street, Castro Valley, CA 94546, telephone: (510) 581-3799.

For a video tour of the Hotel Monaco visit www.hotelmonaco.com.

Amicus

Continued from page 9

which were adopted by the new judge in rejecting her request to set a trial on the fee issue. The Second District reversed, holding that the commissioner's actions following recusal were void. In remanding, the Court concluded that the issue of fees and costs is a matter which may be resolved under *Reiffer v. Superior Court* and does not require a trial.

Consequently, *Borson* motions could present evidence regarding the underlying claim and resolve the issue of fees at or near the time that the *Borson* attorney discontinues representing the party. The decision also implicitly recognizes the standing of the *Borson* attorney to appeal, independent of the former client.

Minors' Counsel Committee Report

Leslie Ellen Shear, cFLs, Newsletter Editor
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Frieda Gordon, cFLs
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The Minors' Counsel Committee has concentrated its efforts on working towards a second phase of proposed legislation, together with Rules of Court and court forms which address and resolve a number of time-consuming practical issues.

On August 1, 1998 committee member Leslie Ellen Shear, CFLS, made a presentation to the California Judicial Council's Family Law Advisory Committee in Buellton.

On December 12, 1998 committee member Frieda Gordon followed up, attending the Los Angeles meeting of the committee.

Shear and Gordon represented ACFLS as part of an informal coalition of the Minors' Counsel committees of the LACBA Family Law Section, the State Bar Family Law Section Child Custody and Visitation Subcommittee (South), and the National Association of Children's Counsel.

Shear presented the 11-item "wish list" and commentary. Shear gave every committee member a large packet of materials including draft legislation, model forms, pamphlets and rules from other jurisdictions, journal articles and newsletters. The Advisory Committee decided to appoint a task force to address these issues.

At the December meeting the Family Law Advisory Committee set a target date of January 1, 2000 to have standards in place. Those interested in participating on the task force should contact Michael Fischer at michael_fischer@jud.ca.gov. The Family Law Advisory Committee is looking for task force members from various parts of the state.

Advisory Committee members urged Gordon to try to attach the consortium's proposed legislation

California Trial Lawyers, who have voiced opposition to affording such immunity.

Children's lawyers serve in a quasi-judicial capacity, rather than as traditional advocates. Their duty is to assist the court by providing evidence and analysis concerning children's best interests, and facilitating settlement. They do not accept instructions from their child clients. Children's lawyers are increasingly the targets of civil lawsuits brought

by parents serving as guardians ad litem to obtain removal of a child's lawyer who does not support the parent's custody claims. Shear and Gordon argued that grievances about the performance of children's lawyers, and requests for their removal should be

addressed to the appointing judicial officers.

Plans for a third ACFLS Minors' Counsel program scheduled for after the November election fell through due to disappointing enrollment. The Minors' Counsel committee plans to query past attendees about their interest in a third program, optimal timing for such a program and possible venues. Those interested in serving on the Minors' Counsel committee should contact new president Gary Kearney at (626) 796-9621 or gkearney@cogent.net.

concerning making minors' counsel fees payable as additional child support and waiving all statutory filing fees to one of the omnibus child support bills that will be coming out after the first of the year rather than seeking introduction of a separate bill.

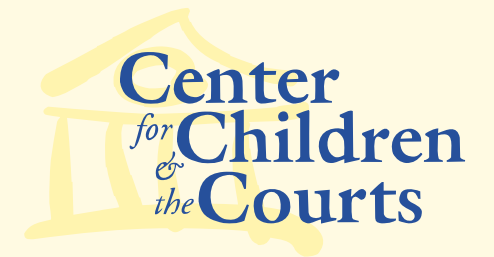
The most controversial issue is immunity from civil liability. There is a movement afoot to enact legislation abolishing quasi-judicial immunity for child custody evaluators. The Family Law Advisory Committee urged the ACFLS committee to contact the

What's Needed From the Judicial Council

1. Court Form Appointment Order
2. Development of Standards for the Statement of Issues and Contentions
3. Standards for Compensation
4. Mechanism for Waiver of Court Filing Fees and Costs and for Payment of Other Court Costs
5. Collection of Fees from Parents by Counties Rather Than Minors' Counsel
6. Quasi-judicial Immunity
7. Adoption of Clear Standards Defining the Role and Duties of Minors' Counsel
8. 40-Hour Minors' Counsel Training
9. Rule Providing That Trial Counsel Will Ordinarily Continue to Represent Minor in Appellate Proceedings
10. Judicial Education Concerning the Role, Ethics and Contributions of Minors' Counsel in Family Courts
11. Informational Pamphlet for Families

cjc Announces Annual Scholarly Journal: First Issue Focuses on Representation of Children

Leslie Ellen Shear, cFLs, Newsletter Editor
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The California Judicial Council's Center for Children and the Courts has created an annual academic journal covering contemporary and important issues regarding children, families and the interplay between these parties and the courts. The first issue of the Journal of the Center for Children and the Courts will be published in October of 1999.

Editor-in-Chief Audrey Evje heads an editorial board consisting of Judith Aren, James Bell, Dr. Jill Duerr Berrick, Dr. Donald Bross, the Hon. Leonard P. Edwards, Cassandra Flipper, Margaret Campbell Haynes,

Edward Humes, Hunter Hurst, Dr. Joan Kelly, the Hon. Arthur Scotland, Larry Sipes, Dr. Russell Van Vleet, Michael Wald, and Lynn Woolsey. Shonda Hollinger will serve as managing editor.

Evje announced that each issue of the journal will be devoted to a single topic addressing issues surrounding children and the courts. The first issue of the journal will focus upon representation of children in and out of the courts. That issue will have a special emphasis on the 100th anniversary of the juvenile court in the United States.

The editors invited brief abstracts

of potential contributions addressing attorney and lay representation in all court proceedings in which children are involved: juvenile, family, probate, mental health, civil and criminal. Abstracts were due November 6, 1998, with articles to be selected in early December.

The Editorial Board and journal staff will address topical and salient issues relevant to juvenile and family law beyond the selected topic in each issue's editorial/comments section.

Questions and comments concerning the journal should be directed to Evje at (415) 904-2392 or audrey_evje@jud.ca.gov.

cjc Family Court Services 1999 Dissertation Grant Program

The Family Court Services Dissertation Grant Program was created to promote innovative and timely research in areas that impact the California court system and its clients, especially the delivery of services to families seeking resolution of child custody disputes. Students in California seeking a doctoral degree in programs relevant to family and juvenile court (e.g., psychology, sociology, education, social work, law, human development, etc.) are invited to apply.

Up to two grants of \$8,000 each will be awarded by June 30, 1999, as a result of this grant solicitation.

Preference will be given to applicants who are conducting research on topics of high priority to the California Statewide Office of Family Court Services and whose research is of direct relevance to the California court system. Examples of high-priority topics are:

- The effect of supervised visitation on child-parent relationships and child adjustment.
- The effects of various custodial arrangements on parents and children.
- The impact of relationships with noncustodial parents on children's adjustment to the post-separation environment.
- Interventions (educational, therapeutic, etc.) for separating families that would assist them in learning new strategies for communication and negotiation.
- Dynamics of domestic violence pertinent to custody and visitation.
- Interventions for children from families who have experienced domestic violence.
- Effect of geographic distance on the relationship between a child and a non-custodial parent.
- Studies of adult children of divorce that

- specially emphasize which aspects of the legal system were most helpful and which were hurtful.
- Secondary analyses of national databases to examine child outcomes and family functioning in divorced families.
- Descriptive studies of the interface between family and juvenile court.
- Parents' evaluations of different modalities of dispute resolution.
- Descriptive studies of the case management systems in family courts.

Applicants must complete each of the forms in the grant application packet, which can be obtained by calling the California Statewide Office of Family Court Services at (415) 396-9293, or by downloading the application from the CJC website: www.courtinfo.ca.gov.

Deadline for receipt of submissions is February 17, 1999.



Editor's Perspective

Tipping Points

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Ruminations expressed in Tipping Points are solely those of the author and should not be attributed to ACFLS or its members.

How should California strike a balance between the privacy rights of individuals and the public's right to scrutinize court proceedings? Soon the contents of family law files may be available to anyone over the internet.

The Family Law Advisory Committee of the Judicial Council has begun considering the issues of litigant privacy and court accountability. The Family Law Section of the L.A. County Bar has also formed a subcommittee to explore the complex issues raised by the clash between individual privacy and the need for public accountability.

Should the fact of a divorce make all of one's personal information, from social security number to parenting plan, from nature and value of assets and debts to income and support obligations available to the public without one's consent? What are the alternatives?

Today anyone can walk up to the clerk's counter and review a family law file, but not a parentage or juvenile court file. Ordinarily, one has to have a fairly compelling reason to take the time to visit a courthouse,

wait for a file, review it and either take notes or purchase copies of documents from the file. Consequently most people don't find their private information scrutinized by others. Once the data is available on the web, little effort will be required to obtain it. Within short order such data may be extracted from on line court files through an automated program, building data bases of information about thousands of individuals which would be private, but for the end of marriages. That information could then be resorted in an endless number of ways, and distributed for various purposes.

Should I be able to purchase such databases for purposes of marketing a product or service, soliciting members for a non-profit group, or studying the demographics of divorce? Should lenders be able to go on line and pull up a loan applicant's Schedule of Assets and Debts, Income and Expense Declaration, or findings, orders and judgments from the family court? Should competitors have access to detailed financial information of divorcing business owners? Should prospective buyers of an asset being sold due to divorce be able to

review the finances of the parties (and pick up much incidental information about their private lives) to aid them in framing an offer? If I am writing a biography of a public figure, should I have free access to her divorce file? What if I am her prospective employer? Political opponent? Fiancé? A stalker? What if I'm a con man engaged in identity theft? Should anyone who is curious have access to the schedule setting forth when a child will be in the care of each parent? Should I be able to pull the dissolution file of my child's new stepparent?

Our present approach to this dilemma is somewhat patchwork. Earlier this year, ACFLS questioned



whether the Court of Appeal should have protected Jaycee Buzzanca from the risk that she will learn the details of her conception, and the actions of her parents from a playmate or the press. Anyone can obtain copies of declarations in custody cases containing every possible nasty allegation, but the curious cannot pull the report of the psychiatrist or psychologist who assessed those allegations, since such a report is sealed. In rare cases, generally those involving the children of public figures, Courts restrict access to custody files, often only for a limited period of time.

By creating bifurcated judgments, we can record claims to real property, support orders, orders for the payment of money, etc., without also recording the details of parenting plans. By settling cases out of court, and exchanging all of the assets before a judgment is entered, we may restrict some of the detailed financial information available about particular individuals. But the next file in the stacks is apt to contain account numbers, legal descriptions, social security numbers, detailed information about the health of a spouse (relevant to need or ability to pay support), and claims of fraud or domestic violence. The advent of the technologically driven information age has exacerbated existing dilemmas, but the problems have faced us all along.

Should family law files be put on line at all? Should all family law files be sealed? If so, what would be good cause for granting access? Should portions of them be redacted (at whose cost) before public access is granted? If so, what portions and why? Should the workloads of family law judges be increased to include screening access requests? Should court forms be rewritten to exclude information which could be used for identity theft?

It is difficult to look at all of the dimensions of this dilemma and the implications of various alternatives at once. For example, the LACBA subcommittee examining these issues was concerned about identity theft. One solution they came up with was rewriting forms and judgments to exclude social security numbers, birth dates, account numbers and similar information. However, in the area of interstate and international custody enforcement, we are working to increase the amount of such identifying information in custody decrees. Often such information is essential in property judgments, to specifically identify an asset or an obligation, for example.

I don't have the answer to this dilemma, but here are some of the important factors which should be considered by the Family Law Advisory Committee and others addressing this problem.

1. The purposes for which members of the public access the family law files of others are seldom related to scrutiny of the fairness of the judicial system.

2. The only way one can end a marriage is to become a litigant. Should the end of a marriage make one's private information public domain?

3. What will it cost to set up a mechanism for either redacting information or screening requests for information?

4. Would the cost and delay associated with requesting access for legitimate purposes (if we can ever agree what those purposes are) have a substantial chilling effect?

5. What are legitimate purposes for gaining access to the family law records of another?

6. Should litigants be restrained from disseminating such private information from their own files if revealing the information

comprises the privacy interests of others?

7. Might accountability purposes be served by affording access to information about court proceedings while withholding identifying information?

8. Should internet entrepreneurs who will obtain and market this data pay the Court for access?

Accountability also has its costs. The advent of information technology raised related questions concerning cameras in the courtroom. Televised proceedings may prevent corruption and educate the populace, but they may also influence a judicial officer to pander to public fads and fashions rather than act out of conscience, particularly when the rationale for a decision is too complex to be rendered in a sound bite or an internet byte.

I am equally disturbed by the prospect of reduced public scrutiny of the courts, and by the consequences of free access to otherwise private information. The dilemma is made more acute by the breakdown of social norms about intrusiveness and respect for personal privacy.

The family law bar should reflect deeply on all of these questions, and participate in the debate and brainstorming which will be necessary for the decisions ahead.

Watch for
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ACFLS wishes to apologize to A. Peter Trombetta of Sonoma County whose name was inadvertently not included in the 1998 Referral and Membership Directory. Included in this Newsletter is a peel-off containing all pertinent information for Mr. Trombetta, as well as instructions on how to add his name to the 1998 Directory in your possession. Again, sincere apologies for this oversight.

Congratulations to Stuart Walzer, cfls, recipient of our 1998 acfls Hall of Fame Award.



What Helps Make You a Great Family Law Specialist?

Send articles, reviews, news reports, announcements in WordPerfect or Word on disk to:

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Membership Application

Patricia A. Parson, ACFLS Administrator
1884 Knox Street, Castro Valley, California 94546

Membership applications should be mailed to the ACFLS Administrator at the above address. Please complete the following information and enclose your check payable to ACFLS as follows: \$150 for single membership; \$100 for each subsequent membership from your firm.

Name: _____

Address: _____

City/State/Zip: _____

Telephone: _____ Fax: _____

Email: _____ Web Site: _____

Date Certified by BLS: _____ SBN: _____

Applicant's Signature: _____

ACFLS NEWSLETTER

Patricia A. Parson, ACFLS Administrator
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