

**The Fifth Annual Conference of the Association of Divorce Financial Planners
New Rochelle, NY on Sept. 28, 2007**

“The Changing Landscape of Divorce”

by

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This year’s conference has the theme of change – change in the landscape of divorce. So what makes this year different? What changes affect our clients and us as professionals? What are the new challenges we face?

There are noticeable new trends in divorce that affect both the legal process as well as financial planning strategies employed to help clients move past divorce. Recent developments include a novel modality for alternative dispute resolution called collaborative divorce, a shift in court’s attitude for prioritizing children’s best interests in divorce, focus on the costs of divorce, unique financial planning requirements for divorcing baby boomers, and growing recognition of integrating divorce financial planning in divorce. More than ever, we face a challenge of coordinating an interdisciplinary skill set of team of experts to help divorcing families.

The changing landscape of divorce should be examined from two viewpoints: the technical side and the more impassioned, human side. What should be clear to all of us that *while* we specialize in a unique niche of financial planning, we also are responsible for being competent generalists. We are in a position to offer full service to individuals who require help rebuilding their lives. We help them take a renewed look at their lives and goals, and we foster confidence in them to face the future.

We now have bodies of literature that conclude families do better with the care of a team of specialists. This team must be a center of excellence based on knowledge, skill set and experience. For us to engage in problem solving in divorce, we must pursue with vigor: learning, technical skills, team building with our peers, and never loose our passion to protect the well being of our clients going through divorce.

Let me begin by pointing out what has noticeably changed about the practical side of divorce:

- Digital tools are presenting new forms of sophisticated forensic evidence where usual forms of privacy in divorce are no longer guaranteed. To quote the President of AAML, Guy Ferro, electronic evidence has completely changed the legal field.
- Economic opportunity is a significant factor in divorce. With no-fault divorce laws, essentially a married person can get a divorce for any reason or no reason at all. The probability of divorce goes up the higher the wife’s income and the closer that income is to her husband’s.
- Alimony may no longer be disproportionately biased in favor of women receiving alimony from men. Recent studies indicate that 1 in 3 women now out earn their spouses or are the sole breadwinner in their families. Yet, less 3% of these breadwinning wives earn more than \$75,000. Women increasingly paying alimony are a fairly recent phenomenon, and it is a surprise for many.

There remains the social stigma for a woman to pay and a man to receive alimony which, over time, will diminish out of economic necessity and equitable divorce laws. This will become a middle class phenomenon in the near future.

- The percentage of marriages ending in divorce has been slowly declining ever since 1980 to around 31% in 2005 in large part to changing attitudes toward marriage and family. We have an increasing percentage of people who are adults living alone as well as a growing number of unmarried, cohabiting couples. Fewer couples are tying the knot, so fewer are untying the knot. What will this mean for support that may be terminated by cohabitation?
- The forum for alternative dispute resolution called collaborative divorce is making strong gains among both practitioners and the public alike. In 1999, there were fewer than 100 collaborative practitioners. Today, it is estimated over 20,000 have been trained in collaborative practice and the IACP has over 3,000 members in over 14 countries. Just this month, the IACP announced its efforts in drafting a Uniform Collaborative Law Act.

In February 2007, Chief Justice Judith Kaye of New York in her annual address on the judiciary, announced plans to create a new family law center in New York City that is intended to make divorce faster and cheaper for couples who want amicable settlements. The Collaborative Family Law Center will serve as a pilot project on alternative approaches to divorce when it opens. Judge Kaye stated: “We anticipate that spouses who choose this approach will find that the financial and emotional cost of divorce is reduced for everyone involved, which is surely a step in the right direction.”

- There is a growing ground swell in New York state that has fault divorce laws to become a no fault divorce state.

Chief Justice Judith Kaye of NY champions the idea of overhauling NY’s fault divorce laws which have been stalled in the Legislature for years.

- Finally, there is a growing awareness and recognition of divorce financial planning by the public, professionals and media. There exist over 55,000 CFPs presently and about 3,000 CDFAs. Our recognition expands with each new certificant as well as with changing trends in the legal process. The Collaborative movement has put us squarely at the center of the team as a neutral party. As alternative dispute resolution gains momentum, so do we.

And why is the alternative dispute resolution movement gaining ground so quickly? Because it speaks to the other side of divorce: the human side. We are critical to the healing of families going through divorce.

In divorce, there is no question that we must and often deliver “heart” to our clients. With the weighty dilemmas that challenge them, we are called upon to help them navigate a process that they do not fully understand. I venture to say that these critical problems are not addressed by our technical expertise, but rather by how we support the *process* that protects the wellbeing of divorcing families.

It is apparent that not all changes move in the same direction at the same time. Some are happening with subtlety and others are seismic only in hindsight. With respect to the family care aspect of divorce, here are my observations:

- Divorcing couples are terrified by the potential cost of divorce and are very much price shopping their divorces to find low cost divorce alternatives: do-it-yourself, mediation, collaborative, litigation. And, they increasingly are looking for ways to pre-empt the future cost of divorce (prims and post nups). Are these efforts penny wise but pound foolish?
- Acrimonious divorces are staggeringly expensive and there seems to be no monetary limit according to top matrimonial attorneys.

Four of America's most prominent family law attorneys were quoted in Sept. issue of Worth magazine and see divorce becoming more acrimonious, more expensive, and more time consuming. A Scorch the earth mentality is pervasive.

- Regrettably, an overwhelming 71% of America's top divorce attorneys say that divorces are more contentious when children are involved. Over a third of the AAML lawyers reported a sharp increase in custody battles in the last 5 years. Parent alienation has become a very popular theme and it is probably one of the most difficult things to prove to a judge.
- The court seems to be the least satisfactory way to resolve these kinds of matrimonial disputes. However, given this reality, there has been a significant shift over time in our courts' attitude and philosophy about children. The court is taking the view that final decisions are being prioritized with the *best interests of the child in mind*.

The growing shift in child custody cases within the last 5 years reflects a growing and stronger bias in the system for *joint legal custody*.

In many ways, as both parents increasingly share day to day responsibilities of child rearing and income contribution to the family, the court system is reflecting this trend and striking a more balanced tone on this issue.

Some believe that the acceptance of *joint physical custody* may reduce divorce. States whose family law policies, statutes, or judicial practice encourage joint custody have shown a greater decline in their divorce rates than those that favor sole custody.

The AAML also is being proactive about children. It has come out with a model parenting plan to help map out a family's post divorce parenting issues. The Model Parenting Plan is aimed at facilitating both communication and advance planning for families.

- Grandparents still do not have visitation rights.
- Heart wrenching relocation issues are more common for a variety of reasons: job opportunities are more global, job loss is prevalent, people cannot afford to support two households and move

in with aging parents, etc.

- The fact is, is that the divorced family is not a minor variation of the intact family any more. Today, one- quarter of all households now contain only one adult. Married couples with children now represent only 25 percent of all households and 40% of cohabiting couples involve children.
- Greater social acceptance of out of wedlock births, divorce, and single parenting reinforce the evolving trends. It suggests that these percentages will likely increase in the future. Young adults who contemplate marriage may be less inclined to do so because they were raised in home where divorce occurred. These changes in attitudes and changes in the structure of marriage and family have created a very different family in the twenty first century.
- One writer imagines the confusion children will feel in this futuristic scenario:
“On a spring afternoon, half centuries from today, the Joneses are gathered to sing “happy Birthday” to Junior. There’s Dad and his third wife, Mom and her second husband, Junior’s two half brothers from his father’s first marriage, his six stepsisters from his mother’s previous unions, 100 year old Grandpa, all eight of Junior’s current “grandparents”, assorted aunts, uncles in law and step cousins. While the robot scoops up the gift wrappings and blows out the candles, junior makes a wish....that he didn’t have so many relatives....”

What impact can we have on the lives of divorcing families? What can we deliver? What should we imagine?

With social change, our laws also must change to reflect real circumstances. But because change is slow to happen in law, we must be pragmatic and hold our clients to reasonable expectations of what the process can and cannot do now.

We must build upon our strengths and identify what is most meaningful for our clients. To raise our visibility, we must spread the word of why we are needed and partner with allied professionals and *the court* to *serve* the public in the most genuine sense. We have to define how we are to be engaged in the process and why we are needed on the team. As we join the specialist team, we must ensure it is a seamless process with our allied professionals. Our team must be easily accessible to all divorcing families so they can find quality service and humanity in divorce. As a specialist and generalist in the arena for personal financial planning, we have a role in bridging critical gaps in the delivery of both technical expertise and holistic guidance. And given this role, we must guarantee to uphold integrity and ethics in our practice.

We must better support the process so it biologically heals divorcing families. We hope to be expert practitioners in two sides of divorce: the head and the heart. We are ambitious and this is our mission.

1