

FAMILY LAWYER MAGAZINE

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**The Past, Present, and Future
of Family Law**

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The Past, Present, and Future of Family Law



Eight experts offer their views on where the family law system, culture, practice, and technology was 10 years ago, where we are today, and where we are headed tomorrow.

Edited by Diana Shepherd,
Editorial Director



L-R: Kiilu Davis, Joy Feinberg Jay Fishman, Ken Friedman, Lori Gephart, Randy Kessler, David M. Lederman, and Judge Michele Lowrance (Ret.)

As part of *Family Lawyer Magazine's* Tenth Anniversary celebrations, we invited eight thought leaders in the family law arena to share their thoughts on how technology, alternative dispute resolution, diversity, self-help divorce, business valuation, and the practice of family law have evolved over the last decade, the current status quo, and where we might be 10 years from now. Read on to discover their shared views, different perspectives, and how their predictions might affect your future practice.

THE PAST

The Culture

For 19 years, Judge Michele Lowrance (Ret.) sat on the bench in Chicago's family court where she had a front-row seat to high conflict litigation in court. "High conflict litigation was the thing they made movies and wrote articles about, the thing we heard about from our neighbor down the street who had a bloodbath in court," she reflects. "I realized I was participating in a process that was eviscerating families, people's souls, people's ability to go on with their lives in a productive, healthy, resilient manner."

A decade ago, some families found it difficult to even get to court, says California family lawyer David Lederman. "About 30 to 40% of the time, litigants wouldn't show up in court for Department of Child Support Services cases because they would have to leave their job for the day, which many couldn't afford to do."

Although the 14th Amendment Equal Protection Clause took effect in 1868, a quick glance at history shows that all men and women were not to be treated equally under the law. Not everyone was thought of as being equal. "It's imperative for us to look at that statement and ask, 'Do people actually believe that?' Because if they don't believe it, then we're always going to be fighting for true equality," says Arizona family lawyer Kiilu Davis, past Chair of the AAML's Diversity Committee. "For a large part of this country, black lives did not matter for a very long time. At one point, we were only considered to be three-fifths of a person."

The Practice

When she looks back over the last 10 years, Chicago family lawyer Joy Feinberg thinks that things have improved for women in family law. "There are a lot more women in family law today, but we still have a way to go," says Feinberg, a former president of the USA Chapter of the IAML and the Illinois Chapter of the AAML. Over the last two years, she notes that COVID caused a sea change in the practice of family law. "We had to learn how to do things outside the office and courtroom – how to effectively adapt our courtroom skills to be able to tell our stories and connect with the judge over Zoom. That was not easy," she admits.



In 2011, Judge Lowrance released her book *The Good Karma Divorce: Avoid Litigation, Turn Negative Emotions into Positive Actions, and Get On with the Rest of Your Life* (HarperOne) to guide divorcing couples away from bitter courtroom battles towards a more hopeful future. "We started to shift away from high conflict litigation in court as the model towards less adversarial processes such as mediation," she says.

Lori Gephart, president of the International Academy of Collaborative Professionals and a collaborative divorce coach in Pennsylvania, agrees that interest in and knowledge about ADR methods has been rising. "Ten years ago, most people had never heard of Collaborative Divorce; they only learned about it when they came in for a consultation," she says.

Technology

When Lederman started his solo practice in 1996, he knew he would have to compete against firms that had much larger infrastructures. "I was the practice," he recalls. "I knew I'd need to rely on technology to help me maximize my efforts, and make myself as efficient as I could so I could scale up from there."

Technology also led to the introduction of the self-help divorce market. The Divorce.com platform pioneered online divorce paperwork more than 20 years ago, "offering a self-help approach to the segment of the market who needed an affordable solution to their uncontested, simple divorce," says Ken Friedman, General Counsel and Chief Industry Officer for Divorce.com.

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“In truth, the practice of family law has become much more sophisticated.”

~ Joy Feinberg



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THE PRESENT

The Culture

Many recent studies point to the damage divorce can do to children, and there is a growing awareness that divorcing couples should not fight in front of the children. “We now know the damage that does,” says Lowrance. “This is a new consciousness. There’s an effort being made to protect children of divorce.”

Today, she says, we talk about divorce as the restructuring of a family so children can be proud of – not diminished by – their parent’s divorce. “Alternative dispute resolution, whether it’s mediation or collaborative, is now a part of the conversation. Even in the really high asset or high conflict cases, the lawyers know that they have to be skilled at mediation to stay relevant.”

Randy Kessler, a family law lawyer and mediator in Georgia, believes that more and more clients are addressing their mental health issues as they go through divorce today – and with less shame about how that might affect their outcome. “When a client says, ‘Would it look bad if I went to see a therapist?’ I say, ‘Are you kidding me? The judge is going to say ‘Good for you’ for acknowledging you need some help,’” he says. “Today, when I ask clients what medications they are on and we hear about antidepressants, I don’t bat an eye.”

Davis says he’s had clients ask whether a judge ruled a certain way because of their skin color. “But how do I put that in motion for reconsideration or a motion to amend? Who do I go to? I could be viewed as just ‘another angry black man’ or as someone who wants to drag race into everything.”

The Practice

Over the last decade, as divorce has become less adversarial, there has been a marked growth in mediation and collaborative divorce.

“We’ve been seeing people coming into the office requesting collaborative divorce more and more frequently,” says Gephart. “This tells us that the collaborative process is really becoming more recognized and that the out-of-court interest-based process is really resonating with people who are considering divorce.”

The IACP’s Diversity, Equity, and Inclusion Committee is working to increase ethnic diversity in collaborative communities and professional organizations in terms of practice groups and professionals who are available to do this work. “We’re focusing on addressing racism and white privilege,” Gephart says. “We’ve also seen that many LGBTQ people prefer the support of a collaborative practice team over going to court.”

Over the last 10 years, Davis has seen more diversity on the bench: more women, people of color, cultures, and religions. “That’s obviously a plus,” he says, “But we also have to recognize that there’s a lack of understanding about cultural differences and what makes us different. We clearly have built-in cultural and implicit biases, and we must continue to educate individuals about these biases. For example, we still have some states that believe mothers should automatically be the primary residential parent, which is backward thinking.”

“Nobody comes to me today without having first checked me out on social media, on our website, and on the internet,” says Feinberg. “People ask a lot of questions and, in truth, the practice of family law has become much more sophisticated.” She adds that the language lawyers and clients use has also become more equitable and accessible. “Right now, you can’t use many words that were acceptable

10 years ago,” says Feinberg. “Wordsmithing today must take into account what the actual word is, what the connotation is, and also how younger people will see it. Our younger lawyers won’t tolerate certain things.”

On a more practical level, Kessler points to improved efficiencies for family lawyers over the past decade. “I think family law has evolved to the point where lawyers can be much more efficient,” he says. “We don’t need a lot of staff. Some lawyers are sole practitioners who are really able to do it all. Ten years ago you couldn’t do it on your own, period.”

Business valuator Jay Fishman believes the current challenges for valuation firms are both internal and external. “Internally, how do you put together a cohesive team if you’re all going to be remote? And externally, what is the future of the client’s business? It would depend on what industry they’re in and how the macroeconomic factors impact them.

“Value is a prophecy into the future: it’s the present worth of future benefits,” he adds. “You can’t just say, ‘The business did this amount this year and I’m going to multiply it by X and that’s going to be the value,’ because we haven’t reached a stable point from which to estimate the future.” He asserts that valuers must use multi-period instead of single-period models because no one knows when “business as usual” will resume. “I’m not sure that 2022 is going to be a base year from which to predict anything,” he concludes.

Technology

Lederman has two brick-and-mortar offices, but firm work is currently being done in 11 locations. “When COVID hit in 2020,” he says, “it took us about an hour to simply point the phones to cell phones. People took their laptops, stayed at home, and we had no downtime.” For Lederman to consider new technology, it “must fit the standards of speed, security, stability – and sometimes be scalable.”

The COVID-19 pandemic created the conditions and demand for videoconferencing technology to accelerate at an astonishing rate. “The increase in access to justice through the use of virtual hearings has been amazing,” says Lederman. “It’s led to efficiencies for the courts and for the attorneys, which has led to cost-savings for the litigants.” After the courts went virtual, the attendance rate for hearings has been almost 100%, he adds.

“There’s been so much pain since the pandemic began, but it forced the legal profession to adopt technology to create better lawyers and a better process,” says Lederman.

“Courts now embrace technology,” says Kessler. “I can do a mediation, take a break, pop into a court date, then go back to my mediation. Judges enjoy it. Courts love it.

They can be much more efficient.” He adds that many clients have become tech-savvy. “They come in with their own laptop and say, ‘Let me show you a spreadsheet.’” Lawyers look like they are behind the times if they aren’t keeping up with client expectations, he adds.

The reach of the self-help divorce market has also expanded over the last decade as websites became more user-friendly on the front end and more sophisticated on the back end. “We don’t have exact numbers for the self-help divorce market in 2012, but our best guess is that fewer than 50% of divorces were self-help in 2012 compared to 70% to 80% in 2022,” says Friedman.

When asked whether self-help divorce is taking business away from family lawyers, Friedman says no. “The online legal solutions industry’s primary customers are those who never would have gone to a lawyer in the first place,” he says. Although he freely admits that self-help, online divorce isn’t for everyone, he believes that their service could help solve some of the current issues with pro se litigants.

“In California,” he says, “the Judicial Council Task Force on Self-Represented Litigants reported that approximately 80% of dissolution petitioners were unrepresented by the end of their case. That’s an access to justice problem for the public, an efficiency problem for the courts, and an opportunity for those looking to help – both attorneys and companies like Divorce.com.”

THE FUTURE

Culture

The experts we spoke with all agree that attitudes towards therapy will continue to shift towards the positive. “More people are getting therapy and more people are getting their children therapy,” says Lowrance.

Gephart says she pictures families growing stronger after collaborative divorce in the future. “They’ll learn the value of working through challenges and peacefully co-parenting,” she says. “Children of divorce will feel more secure and supported with fewer negative consequences from divorce.”

Davis believes that if people are willing to be educated – about race, gender, religion, disability, etc. – then we will move towards equality. “When people decide that they don’t want to have that conversation, we become stuck in quicksand. We currently have a groundswell of people who are saying, ‘My eyes have been opened,’ and that gives me hope.” Although he doesn’t believe that we will see true equality in his lifetime, Davis is heartened by the thought that, “We’ll continue to push that rock until it gets over the hill completely. Hopefully, that will happen within my grandchildren’s lifetimes.”

Practice

When asked if he thinks the business of family law will keep moving in a more progressive direction, Lederman says he

doesn't think there's a choice. "It would be really hard to justify going backward. The increase in access to justice has been amazing."

Feinberg believes creativity is the key to a successful future practice. "When working on family law cases where there is generational wealth, businesses, and significant assets, you must be creative," she notes. "I believe the ability to be creative about something will continue to set you apart as a family lawyer."

How couples divorce will also change, predicts Gephart. "I see collaborative practice becoming the go-to method for divorce and litigation really becoming more of the rare alternative," she says. "Families with children will recognize the benefit of minimizing conflict since the high conflict between parents is one of the predictors of children who will struggle during and after their parents' divorce."

Fishman believes that family law lawyers will need to pay more attention to the forensic accounting side of the business in the future. "I think that when economics are tough, there's a lot more demand for lifestyle analysis and the calculation of maintenance," he says. "Plugging it in a program and coming out with an answer is not going to work all the time."

For Fishman, one of the most interesting things about being a business appraiser is getting to see how hundreds of businesses work. "Tomorrow, I could be looking at a law practice; next week, I could be looking at a high-tech company or a media personality. Appraisers need to spend more time understanding a business and less time cranking

out macroeconomic variables and models that say whether the specific company's risk premium is six or ten."

"I'm heartened that there are a lot of younger people getting into the profession," he says. "Those of us who have been in the business a long time have a responsibility to create opportunities for the next generation and, to the extent necessary, to counsel them."

Technology

Friedman thinks that self-help divorce will become more intuitive, easier to navigate, and more focused on providing solutions based on customers' needs. "That's why we're constantly upgrading the system and offering education, on-demand mediation."

The platform will soon offer access to attorneys. "Some of our customers can't or don't want to figure everything out themselves as they go through the paperwork. They may need to ask a few questions, limited scope help, or even full representation." He is excited to work with family lawyers who are interested in offering their services to divorce.com customers who need their legal expertise.

The experts agree that family law will continue to be enabled by technology and it is incumbent on lawyers to keep pace with the tools that will help them become more efficient. "It's only going to go forward, and it's to your benefit to adopt the technologies available to you," says Lederman. "It's really almost unconscionable not to adopt the tools that make you better at what you do."

This article has been excerpted from our Thought Leadership Interview Series of videos and podcasts. To access the full interviews, go to www.familylawyer magazine.com/articles/thought-leaders-series.

Kiilu Davis is Managing Partner of KDLaw in Arizona. The former Chair of the AAML's Diversity Committee, he is a Certified Family Law Specialist and a Diplomate of the American College of Family Law Trial Attorneys; he also sits on Family Lawyer Magazine's advisory board. www.kdlaw.org

Joy Feinberg is a partner at Davis Freidman Law in Illinois. She is a Diplomate of the American College of Family Trial Lawyers and a former President of the USA Chapter of the IAML, the Illinois Chapter of the AAML, and the AAML Foundation. www.davisfreidman.com

Jay Fishman (FASA, MBA) is a Managing Director of Financial Research Associates. He is also a recipient of the American Society of Appraisers' Lifetime Achievement Award, editor of the Business Valuation Review, and co-author of several books. www.finresearch.com

Ken Friedman is the General Counsel and Chief Industry Officer for Divorce.com and its portfolio of family law companies. He was previously vice president and Deputy General Counsel at LegalZoom.com, Inc. www.divorce.com

Lori Gephart is a collaborative divorce coach, licensed psychologist, and mediator at North Hill Psychological Associates. She is a leader in the international Collaborative Law community and past president of the Collaborative Law Association of Southwestern Pennsylvania. www.nhpa.com

Randy Kessler is a partner at Kessler & Solomiany, LLC, a family law firm in Georgia. He is an author and an adjunct professor at Emory Law School. He has served as the Chair of the ABA Family Law Section, and the Georgia and Atlantic Bar Association. www.ksfamilylaw.com

David Lederman is the founder of The Law Offices of David M. Lederman in California. A Certified Specialist in Family Law, he served as chair of the State Bar's Family Law Executive Committee. www.ledermanlaw.net

Judge Michele Lowrance (Ret.) is a leader in ADR as a mediator at JAMS in Illinois. A recognized author and thought leader on family law, she has 40 years' experience as a divorce attorney and judge, and she became a divorce mediator in 2014. www.michelelowrance.com