

## **The Family Law Education Reform Report Completed**

**by Andrew Schepard, J.D.**

Co-chair, Family Law Education Reform Project, Hempstead, New York

*The Family Law Education Reform (FLER) Report* was created to address a question that no academic group or professional association has asked before—does the law school’s family law curriculum adequately prepare future family lawyers for the challenges of practice? Sponsored by the Association of Family and Conciliation Courts (AFCC) and the Center for Children, Families and the Law of Hofstra Law School, the *Report’s* answer is “not well,” a conclusion that requires reconsideration of the nature and purposes of legal education in an area central to the welfare of thousands of children and parents.

FLER examined current courses and teaching materials, and organized several think tank conferences in which family law professors and stakeholders in the family law system shared their views on the family law curriculum. With support from the Johnson Foundation and the JAMS Foundation, the project also systematically surveyed judges, lawyers, mediators, mental health professionals and others about the knowledge and skills required to effectively practice family law.

FLER is Co-chaired by Peter Salem, AFCC Executive Director and Andrew Schepard, Professor of Law, Hofstra University School of Law, Director of the Center for Children, Families and the Law and FLER’s reporters, Professors Mary E. O’Connell of Northeastern University School of Law and J. Herbie DiFonzo of Hofstra University, wrote a *Report* for law schools to improve their family law curricula. This column briefly summarizes their rich and thorough examination of the state of law school family law education.

### **Family Law Practice in the 21<sup>st</sup> Century**

The *FLER Report* documents the dramatic change in family law practice in the last quarter century. Virtually everything about family law has evolved—the role of the family court, the procedure for resolving family disputes, the role of the family lawyer and the substantive law. For example, in many jurisdictions today’s family court judge is more than an adjudicator. The judge may oversee a multi-disciplinary group of service providers all engaged with the children and families whose cases are before the court. Many jurisdictions have created unified family courts that group a range of issues, from divorce and custody to juvenile crime to child support, under one courthouse roof with a single judge deciding all legal issues relating to a single family. Many jurisdictions have created specialized courts for divorce, domestic violence, drug abuse, and permanency planning, which compel litigants to participate in both mental health and social services designed to serve therapeutic and rehabilitative goals.

Some jurisdictions have created multi-door family courthouses, which incorporate and frequently mandate a wide variety of dispute resolution options (e.g., mediation, family group conferencing, educational programs, parenting coordinators, early neutral evaluation for parenting and financial matters, arbitration) to resolve disputes without

adjudication. When disputes are adjudicated, family courts increasingly rely on neutral expert reports from professionals (e.g., mental health experts, financial appraisers) appointed by the court rather than hired by a party. An influx of self-represented litigants has also become part of the landscape of today's family court.

Modern family law practice is evolving rapidly as well. Today's family lawyer must be fully equipped to work with professionals from different disciplines and multiple dispute resolution processes in an increasingly complex and differentiated system. The traditional full service adversarial model of lawyer representation is being increasingly challenged by emerging models that call for problem solving, collaboration, and unbundled (limited task) representation. Many argue that family lawyers should have different ethical responsibilities than lawyers in traditional civil and criminal cases, including a responsibility to discuss alternative dispute resolution with their clients and an obligation to "do no harm" to their clients' children.

### **The Skills and Knowledge Necessary to Practice Family Law**

FLER's survey of stakeholders in the family law system presented a list of 22 skills, generated through consultation with law faculty and a review of relevant literature. Survey respondents were asked to rank each skill as "extremely important," "moderately important," or "not important at all." Over 90% of respondents identified the following as "extremely important:"

- listening
- setting realistic expectations for clients
- involving clients in decision-making
- identifying clients' interests

These responses suggest that today's family law practitioner should be equipped with strong interpersonal, collaborative and negotiation skills.

When asked to rank a list of knowledge areas by importance to family law practice, respondents placed highest priority on the understanding of:

- financial issues
- impact of separation and divorce on children
- ethical dimensions of family law practice
- relevant laws and court procedures

Several frequent responses were unique to family law and, like the impact of divorce and separation on children, are at the intersection of law, mental health and social science:

- impact of separation and divorce on parents
- dynamics of domestic violence
- dynamics of child abuse and neglect

### **What Are Law Schools Teaching?**

The *FLER Report* analyzed family law casebooks, the source that best encapsulates what law teachers regard as the fundamentals of the family law curriculum. In a review of

eight standard family law texts, the Project discovered that 79% of the pages were devoted to case material or statutes, with the bulk of those pages being case law. Although family courts increasingly hear on social science data, the mean family law text for classroom use contained 1,166 pages, only 18 (1.5%) of which involved social science. The course books contain very little material on interviewing, counseling, negotiation and ethics, and hardly anything on the impact of divorce and separation on children and child development.

### **Accessing the Report**

The Reporters will prepare a final *Report* to be published in the *Family Court Review* in October 2006 with additional commentary from legal educators, judges, lawyers, mediators and mental health professionals.

If you are interested in reading the *Report*, you can download the document from the AFCC Web site at [www.afccnet.org/about/fam\\_law\\_tf.asp](http://www.afccnet.org/about/fam_law_tf.asp). AFCC will be hosting two workshops on the research and implementation of the *Report* at its 43<sup>rd</sup> Annual Conference in Tampa Bay. More detail on these workshops can be found in the AFCC conference brochure on the AFCC Web site at [www.afccnet.org](http://www.afccnet.org) or by calling (608) 664-3750.