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# Family Law Symposium Introduction

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## INTRODUCTION

by DR. MARVIN M. MOORE\*

Each of the following three articles provides a comprehensive examination of a serious problem besetting the family unit, and each considers the merits of a recently-enacted or proposed reform designed to respond to the particular problem. The timeliness of the articles is disclosed by the fact that the reforms being evaluated have all attained enactment or serious consideration subsequent to 1980.

The piece by Ms. Solomon, which advocates divorce mediation, argues with persuasiveness that the increased frequency of marital failure in recent years calls for a new, more effective means of dealing with the problems associated with divorce. She points out that the failure of a marriage is a traumatic experience under the best of circumstances and that the legal disputation that commonly occurs over the terms of the divorce tends to render an intrinsically stressful situation even more difficult to bear. The tension and emotional instability thereby created are not only distressing to the parties themselves but are detrimental to their children and their employers and are burdensome to the social agencies that are often called upon to deal with the impaired individuals. Although a divorce necessarily involves some conflict and anxiety, Ms. Solomon contends that much of the animosity and lingering bitterness and most of the post-divorce litigation (over asserted breaches of the decree, etc.) can be prevented by the use of divorce mediation. The focus of such mediation is on the basic, fundamental causes of the disputed issues and on the avoidance of assessing fault and culpability. Frequently an attorney and a social worker or psychologist work as a mediating team. Since the mediators emphasize understanding, real-issue-focusing, and conflict resolution, the chances of reaching an equitable and mutually acceptable agreement are significantly enhanced. A number of states, including Ohio, remain unwilling to approve non-court-sponsored mediation, primarily because of the Code of Professional Ethics' prohibition of an attorney's representation of clients with conflicting or potentially differing interests. However, Ms. Solomon believes that the advantages of such mediation will eventually become sufficiently apparent to induce these jurisdictions to modify or re-interpret the relevant provisions of the Code. Obviously mediation will not prove successful with all divorcing couples, but it appears to be a worthwhile and badly needed social-legal tool.

Ms. Blank's article discusses House Bill 695, which deals with abused, neglected, or dependent children.<sup>1</sup> She notes that the Bill's purposes are laudable

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<sup>1</sup>This law became effective in October, 1980, to amend six sections of the Ohio Revised Code and to enact three additional sections.

— to provide for the reunification of abused, neglected, or dependent children with their parents whenever feasible and to facilitate the taking by the state of permanent custody when reunification is not possible or desirable. However, in actuality the commendable goals of the Bill have in large part been frustrated. This result is ascribable principally to the unfelicitous wording of some provisions of the Bill, to the 1982 United States Supreme Court decision in *Santosky v. Kramer*<sup>2</sup> requiring an action to extinguish parental rights to be supported by clear and convincing evidence, and to some recent Ohio Court of Appeals decisions interpreting the Bill in ways that one would not have anticipated. One unfortunate consequence is that many children remain in a limbo status — the temporary custody of the state — for prolonged periods, thereby being deprived of any “real” family. Another regrettable result is a great disparity in the Bill’s application among Ohio’s judicial districts. Ms. Blank recommends that pending amendment of the law, Ohio courts interpret the Bill’s provisions in a manner that gives less weight to the efforts of county children’s service agencies and to the apparent progress of abusive or neglectful parents, and more weight to the best interests of the child.

In her article on Ohio’s Domestic Violence Act, Ms. Grim observes that violence within the family is a problem that has plagued society over the centuries, having probably begun when the family unit was first formed. Until recent years, however, society’s reaction has commonly been to justify or minimize the phenomenon. As a consequence, the remedies available to victims of domestic violence have long been inadequate. In Ms. Grim’s assessment, the Domestic Violence Act, which became operative in 1979, is a well-motivated and potentially effective law which has, in practice, failed to achieve some of the aims intended by its drafters. She attributes this partial failure to a variety of causes, such as many attorneys’ unfamiliarity with the civil domestic violence protection order, the unavailability of such a protection order outside normal court hours, and a reluctance among judges to exclude the abuser from the parties’ residence. In addition, there have been some deficiencies in the application of the Act’s criminal provisions; for example, domestic violence defendants have sometimes been allowed prearrest release when there were clear indications that such release might endanger their spouses or children. Ms. Grim argues that the adoption of several corrective measures discussed in her article would measurably increase the effectiveness of the Act. Even with the existing imperfections in the Act’s application, the legislation represents a praiseworthy and significant reform.

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<sup>2</sup>102 S. Ct. 498 (1982).