

# MEMORANDUM OF LAW FAMILY COURT

*Our adversarial family law system is not designed to resolve the emotional/psychological issues of divorce – including "bad behavior" of an ex-partner*

The purpose of this memorandum is to make the case that Family Court is destructive to the American family, it is inhumane and unconstitutional. There is a myriad of problems that must be solved. The adversarial family law system is not designed to resolve the emotional/psychological issues of divorce – including "bad behavior" of an ex-partner. An adversarial family law system just traumatizes divorcing parties. And “more importantly” family courts are incapable of solving any family issues concerning children, they just create bigger problems for the children that they claim to be helping. In Luke 17:1-2 God said,

*“Woe unto him that offend children it were better for him that a millstone were hanged about his neck, and he cast into the sea, than that he should offend one of these little ones.”*

## **WOE IS US IF WE CONTINUE TO IGNORE THIS PROBLEM!**

In a case involving a family of three or four or even more, how can we expect three or four lawyers to agree about anything? Lawyers are all about winning and making money. Generally speaking, judges and lawyers are incapable of being sympathetic to the damages they inflict upon the children. Because if they were, they would not be able to live with themselves until they did something about the broken system, and they haven't! As Thomas Jefferson said, “that one hundred and fifty lawyers should do business together ought not to be expected.” I have found this to be true even with two or three!

In dealing with a broken family more trauma is not what they need. Because, the de-facto family court is an adversarial system lawyers are so focused on finding fault one with another and often end up overreacting by separating the children from their siblings and parents and the traumatization of these children becomes tenfold worse than when they first enter this destructive de-facto civil law court. In most cases these people need counseling and understanding, NOT further injury! The current family law system requires radical reforms, woe upon us if we neglect to solve these problems!

The inherent problem with our current family law system is that it is not designed to therapeutically resolve the issues facing families in today's society. The breakup of marriages and the resultant issues arising with custody of children, financial support of children and spouses, and the behavior of all concerned are not properly addressed by our traditional confrontational legal system.

The courts are not designed to tell people how to be good or responsible parents. The Court can only throw people in jail or fine them, an evil act, which does not resolve the underlying issues, it just causes more pain. Courts with lengthy caseloads don't have the time to educate angry or upset parents on how to behave when their marriage has fallen apart.

Most people going through the divorce process are already traumatized by the breakdown of their marriage, and going through the courts only adds to that trauma. Appearing in front of a black-robed judge separated from the parties by a high bench is nerve-wracking.

The family court system across America has become the moral equivalent of a slave trade. Mothers and children have no rights at all, the Constitution is thrown out the window. Millions of dollars are being made by professionals off of denying domestic violence, sexual abuse of children, physical abuse of children, siding with the perpetrator instead. Loving mothers are having their children torn away from them when they haven't even been accused of anything; or where the only accusation is that they've tried to protect their children from an abusive father – exactly what the child needs the mother to do – and therefore are declared guilty of “parental alienation.”

Family courts jail fathers who fall behind in child support payments as it is clearly a civil matter, not criminal, and lacks due process. Not to mention the fact that a civil law courts not being a court of record has “no authority to fine or incarcerate.” The entire family court system is evil and should be consigned to the dust heap of history.

These monstrous courts revolve around the nexus of so-called Domestic Violence statutes. This sinister game-changer gave Big Brother carte blanche to intrude into the most personal aspects of people's lives, including their bedrooms. Family courts are the epitome of a “Star Chamber Tribunals” there is no presumption of innocence for the accused, no burden of proof for the accuser, no common law rules, no constitutional nor common law protections at all. Neither is there a right to a jury trial wherein the aggrieved true victim may seek redress nor can he file felony fraud charges against his accuser. He can try, but the wicked system will quickly “tank” them. He rapidly finds himself in a rigged game he can't win.

Allegedly formed to serve as a shield, more often than not restraining orders are used as a sword for purposes of revenge and vindictiveness. Further, for lower income people who cannot afford a private attorney (today the majority of Americans), no legal aid or legal services office in any county will refer them to a pro bono lawyer if you are a defendant in a domestic violence dispute. In fact, they won't even talk to you.

It is clear that family courts were created as another vehicle for totalitarian control of the populace and to collect revenue, period! There is no more blatant example in the legal industry of unconstitutional state power and viciousness than the family courts.

### **FAMILY COURTS DENY DUE PROCESS**

In New York, as I expect most if not all states, claim that “de-facto family courts”<sup>1</sup> are “Courts of Record,”<sup>2</sup> they are not! De-facto family courts proceed by statutes and are in fact civil law courts, whereas civil law courts are unconstitutional because they lack due process and is not the law of the land.

The Constitution for the United States in Article III §2 that was ordained by We the People established that, “THE JUDICIAL POWER SHALL EXTEND TO ALL CASES, IN LAW AND EQUITY.” Therefore, “Courts may be classified and divided according to several methods, the following being the more usual: COURTS OF RECORD AND COURTS NOT OF RECORD. The former being those whose acts and judicial proceedings are enrolled, or recorded, for a perpetual memory and testimony, and which have power to fine or imprison for contempt. Error lies to their judgments, and they generally possess a seal. Courts not of record are those of inferior dignity, which have NO POWER TO FINE OR IMPRISON, and in which the proceedings are not enrolled or recorded.”<sup>3</sup>

As per the aforesaid, family courts are “Courts Not of Record” and therefore have no power to fine or imprison, but they do, unlawfully! And, that’s a crime and creates another dilemma for the courts because every person who have suffered under these courts, and that is in the millions, have a cause of action against all the officers of the court, in a federal court of record for cause. And, because there are no statutes of limitation in a Court of Record every case where the judge and lawyers abused the plaintiffs and defendants are liable even going back ten, twenty, thirty, or more years. After all the proof necessary to win the case is in the record! There is nowhere to hide! And once the People become wise about this, the courts indeed will be over burdened with lawsuits against judges and lawyers.

AND, THINK NOT THAT JUDGES ARE IMMUNE FROM SUITS; “Generally, judges are immune from suit for judicial acts within or in excess of their jurisdiction ...; the only exception being for acts done in the clear absence of all jurisdiction.”<sup>4</sup> A judge must be acting within

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<sup>1</sup> De facto court: One established, organized, and exercising its judicial functions under authority of a statute apparently valid, though such statute may be in fact unconstitutional and may be afterwards so adjudged; or a court established and acting under the authority of a de facto government. 1 Bl. Judgm. § 173; In re Manning, 139 U.S. 504, 11 S.Ct. 624, 35 L.Ed. 264; *Gildemeister V. Lindsay*, 212 Mich, 299, 180 N.W. 633, 635.

<sup>2</sup> Article VI § 1.b: The court of appeals, the supreme court including the appellate divisions thereof, the court of claims, the county court, the surrogate's court, the family court, the courts or court of civil and criminal jurisdiction of the city of New York, and such other courts as the legislature may determine shall be courts of record.

<sup>3</sup> 3 Bl. Comm. 24; 3 Steph. Comm. 383; *The Thomas Fletcher*, C.C.Ga., 24 F. 481; *Ex parte Thistleton*, 52 Cal. 225; *Erwin v. U. S.*, D.C.Ga., 37 F. 488, 2 L.R.A. 229; *Heininger v. Davis*, 96 Ohio St. 205, 117 N.E. 229, 231.

<sup>4</sup> *Gregory v. Thompson*, F.2d 59 (C.A. Ariz. 1974)

his jurisdiction as to subject matter and person, to be entitled to immunity from civil action for his acts.<sup>5</sup> Whereas family courts being a de-facto civil law court and a court not of record thereby lack both subject matter and person jurisdiction and are therefore liable. Furthermore, because family courts, like all civil law courts, are de-facto courts, they are unlawful and deceptive because they claim to be “courts of record” and then proceed as “civil law courts” using statutes and judges in place of a jury! For when, "An officer who acts in violation of the Constitution ceases to represent the government."<sup>6</sup>

### **SOLUTION – ARBITRATION BY CLINICAL PSYCHOLOGISTS AND OTHER MENTAL HEALTH PROFESSIONALS**

Family courts should not exist these are social behavioral issues that they are not equipped to address and solve. Arbitration managed by clinical psychologists and other mental health professionals should be negotiating solutions and helping these families. Whose final decisions can be enforced by a jury if necessary. This solution will fulfill due process and justice.

The belief is that People would be more willing to comply with an expert-driven decision than a court decree from a judge who may not appreciate the effects of the complexities of divorce upon a dissolving family. Judges are not trained on how to solve family problems. If the parties have a chance to meet and discuss their issues with clinicians who have the bigger picture in mind, their experience would be more therapeutic than traumatic. And reasonable negotiations between the family members instead of hard-core court decisions will prove to be more palatable.

The ultimate goal is to shift the resolution of psychological and behavioral problems to people who know how to deal with them. The dissolution of a marriage, unlike the dissolution of a corporation or partnership, is not a legal matter, and trying to force a square peg into a round hole has not been a satisfactory experience for most divorcing couples and their children.

With this more just system, people with psychological and behavioral issues will get help or at least guidance on how society expects them to behave. Knowing that their issues will be helped by professionals with the right knowledge, experience, and skills will help countless families get through their divorce process without further trauma.

If a case involves financial irregularities or needed forensic accounting, the “Health Professional Arbitrators” could refer certain issues to an approved financial analyst. It would be assumed that only people with higher levels of assets or income would need such

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<sup>5</sup> Davis v. Burris, 51 Ariz. 220, 75 P.2d 689 (1938)

<sup>6</sup> Brookfield Co. v Stuart, (1964) 234 F. Supp 94, 99 (U.S.D.C., Wash.D.C.)

an expert. This would apply to people involved in closely held businesses or complicated financial transactions.

The setting would be informal, such as a conference room under the auspices of the court. Parties will have filled out forms to ascertain assets, income, special needs, and other issues needed to be addressed. Parties would be encouraged to try and negotiate a reasonable agreement. If either party had an exception, they could discuss it with the arbitrators. We need to eliminate the climate of “win/lose” from the process. If the parties knew what to expect the results would be less traumatic. Everyone would be subject to uniform ground rules of behavior.

Children have the right of two parents and custody should be 50/50. Often one parent or the other may not be able at times or most times to fulfill 50% the parents can learn to work that out between themselves. Court-appointed counselors should be available to help guide the parents and children through this new phase of their life. The combative nature of the divorce process would be eliminated. With uniform ground rules, there would be no need for people to feel victimized by the system.

Fathers would know what to expect, mothers would know what to expect. There should be no need for lawyers for either the parents or the children. This is not a state issue it's a family issue.

The priority with these clinicians is to help the parents learn how to problem solve peacefully and respectfully. Education and parenting classes should be mandatory. Financial counseling should be mandatory if the parties fail to comply with their arbitrated decisions. In other words, people would be given help, not unlawful fines and jail sentences. If a clinician believes that participants are willfully ignoring or failing to comply, they would be assigned to the justice court dockets for court enforcement.

**CONCLUSION:** The Family Court system has become a deceitful web of psychological destructive forces, motivated by money (RICO), taking advantage of family's vulnerability that are going through traumatic events or unexpected circumstances; as the court proceeds without due process, usurping the will of its victims under the color of law, extorting money directly from its victims and through the fraudulent unconstitutional cestui que accounts.

The de-facto family court is broken and unlawful the system needs to be replaced with compassionate and understanding social workers and clinicians. Most custody cases involve two safe and loving parents. These cases involve little or no risk. These cases constitute a large majority of the work. There can be no dispute in that, de-facto family courts are getting most custody cases involving possible domestic violence or child abuse dangerously wrong. Particularly troubling is that as more research has become available, the courts have not taken advantage of this knowledge.

Finally, the family court claims to be a “Court of Record,” but operates under statutes and therefore it is a de-facto court because it operates under civil law. A de facto court is, “one established, organized, and exercising its judicial functions under authority of a statute apparently valid.”<sup>7</sup> Therefore, the court is fraudulent, deceptive, evil, and unconstitutional and must cease to operate.

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<sup>7</sup> 1 Bl. Judgm. § 173; In re Manning, 139 U.S. 504, 11 S.Ct. 624, 35 L.Ed. 264; Gildemeist