

I N S I D E   T H E   M I N D S

# Strategies for Family Law in California

*Leading Lawyers on Navigating Key Issues and  
Cases, Integrating Creative Solutions,  
and Counseling Clients*

2010 EDITION



ASPATORE

©2010 Thomson Reuters/Aspatore

All rights reserved. Printed in the United States of America.

No part of this publication may be reproduced or distributed in any form or by any means, or stored in a database or retrieval system, except as permitted under Sections 107 or 108 of the U.S. Copyright Act, without prior written permission of the publisher. This book is printed on acid free paper.

Material in this book is for educational purposes only. This book is sold with the understanding that neither any of the authors nor the publisher is engaged in rendering legal, accounting, investment, or any other professional service. Neither the publisher nor the authors assume any liability for any errors or omissions or for how this book or its contents are used or interpreted or for any consequences resulting directly or indirectly from the use of this book. For legal advice or any other, please consult your personal lawyer or the appropriate professional.

The views expressed by the individuals in this book (or the individuals on the cover) do not necessarily reflect the views shared by the companies they are employed by (or the companies mentioned in this book). The employment status and affiliations of authors with the companies referenced are subject to change.

Aspatore books may be purchased for educational, business, or sales promotional use. For information, please email [West.customer.service@thomson.com](mailto:West.customer.service@thomson.com).

For corrections, updates, comments or any other inquiries please email [TLR.AspatoreEditorial@thomson.com](mailto:TLR.AspatoreEditorial@thomson.com).

First Printing, 2010  
10 9 8 7 6 5 4 3 2 1

**If you are interested in purchasing the book this chapter was originally included in, please visit [www.west.thomson.com](http://www.west.thomson.com).**

# “Dealing” with the Marital House of Cards

Daniel R. Gold, CFLS

*Partner*

Tredway, Lumsdaine and Doyle LLP



ASPATORE

## **Introduction**

The major focus of my practice for the past sixteen years has been family law. Under that broad definition, I have tackled the standard “divorce” cases, paternity cases, guardianships, domestic partnership dissolutions, “Marvin” cases, and prenuptial agreements.

I have had the unique opportunity to work in a full-service firm surrounded by outstanding lawyers. With their able assistance, I am able to provide clients with expertise they will not receive at a boutique or solo firm. For example, in cases where more specialized issues may arise—i.e., tax, real estate, or “probate” issues (when spouses die in the middle of a divorce)—we are able to step in with our resources and help those individuals in a knowledgeable and efficient manner.

This chapter is my own view of how our economic recession has affected the practice. Although the law moves forward, it cannot resist slamming headlong into the “brick wall” known as real life. Lost jobs, failed businesses, bad investments, and declining real estate values add considerable stress to relationships. Many couples choose to wait until they perceive they can afford to split up. For those who cannot wait, counsel must find creative ways to meet the demands created by financial turmoil. Toward the end of the chapter, I will try to project where things may be headed in various areas of family law.

## **The Impact of the Economic Crisis on Family Law in California**

As stated, there is certainly greater demand for family law attorneys because the economy has exerted pressures on family relationships. Countering that demand is the reality that, in many cases, traditional “dispute resolution” is not going to be economically viable. For example, I recently had a client terminate our firm’s services because the parties ran out of money. At the height of the real estate market, her and her husband borrowed against the equity of their condo property. That cash ended up being used to fund down payments on several out-of-state residences, which were purchased for rental/investment purposes. Then the real estate market crashed, and the equity in the investment properties the couple had purchased was nonexistent. Notwithstanding, they also had problems renting out some of

the properties. The couple had decided to get a divorce. Although both of them had secure jobs and earned a decent salary, they ended up having to pay a lot of money to keep their properties afloat, and they had no money left to keep counsel. Certainly, had they had less secure employment, bankruptcy would have been a likely option.

Therefore, while the recession may have created considerable need for professional assistance in family law matters, many clients are not capable of financing a legal matter for any extended period of time. That situation is not easily remedied, as long as the credit market stays as it is. Many clients’ legal services are funded on borrowed money—i.e., money from real estate or credit lines; therefore, when there is a crunch in real estate values or on the credit side, the cash flow needed to sustain an ongoing legal process simply is not there. In many cases, it is too difficult to find a buyer for the couple’s home or someone to loan money to the spouse who wants to stay in the house and buy the other one out. All of those factors make it harder to resolve and/or fund these cases. Such situations create a number of challenges, and they often force lawyers to be more creative, or to do things they would not necessarily want to do. For example, California law expressly allows family law attorneys to record a lien on their clients’ share of community real property. That lien has its own name—a Family Law Attorney Real Property Lien (FLARPL). See California Family Code § 2033(a). Although permissible, is it a favored course of action? My answer is no, but understandably, there may be no other realistic alternative. Taking a lien on your client’s house raises an inherent conflict of interest, even with the most careful and thorough disclosure and waivers. Further, in many instances, the client ignores their bills on the assumption that it’s going to be covered when the house sells. This “denial” only postpones the sticker shock and bad feelings that take place when escrow closes, and the law firm takes a considerable chunk of the proceeds they were counting on getting.

Family law attorneys, like any other trial lawyer, typically enjoy the thrill of going to court and being part of the energy that helps them to win their clients’ cases. Unfortunately, you do not have those opportunities when people cannot afford to pay for your services. Clients increasingly do not want to have the court docket drive the number of hours that counsel must be paid for while they watch their estate being whittled away. Unfortunately, the length of a case often depends on courtroom availability—you have to

take what you get, and hopefully you will be able to get your evidence in and be done with a case within a reasonable period of time.

From my observation, there has been no discernable decrease in hourly rates in this economy; in fact, I have sometimes seen an increase in hourly rates—which can be a problem, depending upon which demographic area you are operating in, because you may end up pricing yourself out of the market. Many couples who cannot afford litigation have decided to wait until the market goes up in order to fund their dissolution through a real estate sale. In some cases, we enter into a temporary bifurcated judgment, which means that the couple is divorced but they continue to hold assets as joint parties.

### *Utilizing Cost-Conscious Solutions*

One increasingly popular option that can save clients money in this economy is what we call unbundling—i.e., giving the client a “menu” type rather than a full-service legal option. In some cases, the client does the paperwork, but they will hire the attorney when their hearing is scheduled to talk to the judge, outline the issues, and present their position. The California bar started permitting lawyers to take on such cases provided your retainer spells out that you are working in a limited capacity, and that you notify the court and the opposing party that you are hired for a limited purpose. This option works quite well in simpler cases, but in more complex matters such a limited role is risky for both attorney and client. This is an option that some family lawyers are providing in order to give clients the services they need, without getting embroiled in a costly litigation they cannot afford to pay for.

## **Recent Trends Observed in California Family Law Cases**

### *Modifications*

There is a common adage among family law attorneys that divorce never ends. Perhaps that can be literally true in a few complex, volatile matters. In most cases, the end is just the beginning, especially where minor children are involved. For the parents (both current and former spouses), they are now trying to balance two household financial pictures along with the

normal stresses of raising children. As we close the first decade of the twenty-first century, these are challenging times. When one household is affected by the economy, an inevitable modification proceeding to increase or decrease the support amount is bound to affect the other household, which odds are is likely living at the debt margins. For those attorneys who have seen a decrease in dissolution filings, the increase in modifications has made up some of the decline in business.

Sometimes economic turmoil may force a custodial parent to relocate or move away from the area where the parents lived when they were together. I had a recent case where my client, a single mother, wanted to move out of state to escape an insecure job situation. She chose a state where she had family support (free child care) and a lower cost of living. Her ex-husband, who did not have joint custody, initially refused to let their daughter move from California.

Bear in mind my client did not have employment in the state to which she was planning to move. The father, however, reconsidered his position when he realized he did not have the resources to pay for counsel to fight nor the support system in his own new blended family to take primary custody of their child, a female. We eventually reached an agreement. I have done several move-away cases, and I believe the single most significant thing courts focus on is the nature of the existing co-parenting arrangement. In the recent exemplar, the parents did not have great communication and the daughter was not crazy about staying in California with her father.

### *“Negative” Community Estates*

Declining real estate values and the substantial increase in credit card usage has increased the phenomenon of “negative estates” where the attorneys are battling over the debt allocation. In California, “to the extent that community debts exceed total community and quasi-community assets, the excess of debt shall be assigned as the court deems *just and equitable*, taking into account factors such as the parties’ relative ability to pay.” California Family Code §2622(b) (emphasis added).

This brings us back to the couple who attempted to ride the real estate wave by taking money from their house to buy out-of-state property. On

paper, they looked secure. In reality, they were in quicksand. Without equity, the dispute boils down to which spouse is going the pay the piper.

### *Same Sex Relationships*

Probably the biggest legislative change affecting family law in recent times has been the vast expansion of domestic partnership rights, and the fact that domestic partnerships are now treated, for all intensive purposes, as any other marital relationship in California.

The fallout from the 2008 passage of Proposition 8, banning gay marriage, also remains visible. There have been constitutional challenges brought, and whether the law will remain unchanged requires enough analysis to take up another chapter. What remains under the radar is the “island” of married gay and lesbian couples who were able to take their vows and obtain licenses prior to November 2008. It was a surprise to some observers the California Supreme Court left this group married given the law’s express wording. It is unclear given the relative newness of this situation what the implications are, given the closeness between the rights married couples and domestic partners have.

### **The Importance of Spousal Financial Disclosures**

One way a contested dissolution can become a financial wreck for the litigants is costly discovery battles. California law provides that the discovery rules for all civil matters apply to proceedings filed under the Family Law Act. Attorneys are well advised to ensure that discovery is done. To that end, almost two decades ago, the legislature imposed duties on spousal parties which require as a condition to obtaining a dissolution that they disclose to each other all material information regarding their financial condition. See e.g. Family Code §§ 2104, 2105.

As part of this mandatory disclosure process, the parties must complete preprinted forms approved by the California Judicial Council. How does this interrelate to the economic pressures facing a family law practice? Simply put, the disclosure process, which some attorneys feel amounts to busy work, is intended to save the parties money by helping to identify and narrow issues without protracted discovery battles. Although the forms

appear “innocent” they can be deceiving, and an inadvertent failure to completely and accurately fill them out can have potentially devastating consequences as two seminal cases have pointed out.

### *Marriage of Feldman*

Some family law cases do not appear to be very significant when they are first decided, but can become much more significant as they begin to apply to the cases you handle. For example, *In re Marriage of Feldman*, 153 Cal.App.4th 1470 (Cal. Ct. App. 2007), which in one sense merely restates the fiduciary disclosure requirements I have mentioned previously, but goes farther than that. In the past, when one party in any type of civil litigation asked a question in an interrogatory or made some other type of discovery request, the other party could say, “I don’t have access to the material—I have looked for it, and I don’t have it in my possession,” or “I never had it, but I know that a third party has it—go subpoena them and get the information.” However, the new disclosure requirements coupled with the *Feldman* ruling say that type of response is not enough if you have any knowledge about who has certain material or where that material is—you have to disclose that information—but the ruling also goes beyond that. It states that you have a mandatory affirmative requirement in a divorce case, even if no discovery is propounded, to pull together all the information relevant to the marital estate. That includes all information regarding assets, debts, contingent assets, or intangible property—any such information has to be disclosed and accounted for in the marital estate. Simply put, you do not have to be asked for such information in order to disclose it—you have a duty to make that disclosure or you are not going to be compliant with the disclosure statutes in California and can have sanctions imposed.

### *Marriage of Rossi*

Another important family law case of recent times is *In re Marriage of Rossi*, 90 Cal.App.4th 34, 108 (Cal. Ct. App. 2001). This case is somewhat famous in California because it involves the California state lottery. A wife purchased a lottery ticket with some co-workers, and shortly afterwards she divorced her husband in an uncontested proceeding that was resolved by a stipulated judgment. After the judgment had been finalized, the husband received a letter addressed to his ex-wife with information about investment

opportunities for her lottery winnings. After some additional investigation, the husband determined that his ex-wife had bought the winning ticket prior to their separation and that she knew that she had won the lottery prior to their divorce, but she never disclosed that information. The husband then went back to court on the grounds that his wife had intentionally omitted to inform him of a key asset (her lottery winnings). The court reopened the dissolution and not only awarded the husband his 50 percent of those winnings, which is a normal community property division, but awarded him 100 percent of the winnings (including her 50 percent), because of the intentional lack of disclosure.

This was seen as a punitive remedy. Normally in a no-fault divorce case, you talk about equity—i.e., you do not typically find out who the bad actor is unless you are dealing with custody issues. However, the ruling in this case emphasizes what can happen when there is a lack of honesty in the disclosure process.

## **Personal Observations Regarding Key Family Law Issues**

### *Child Custody Issues*

As previously noted, a high percentage of California family law matters where there are custody disputes center on one part of the parties' relationship, and that is child support. In California, the timeshare custody percentage between the parties has a bearing on child support amounts. For example, if one party is a high earner—and many times that is the father in the parenting relationship—and he spends only a small amount of time with the child, then their child support is going to be relatively high. However, if that person's timeshare with the child increases over time—i.e., they spend more time with the child—then their child support as a function of that increased time will go down, largely because if the child spends more time with the parent, then that parent is actually directly supporting that child in their household in terms of food, utilities, etc. Therefore, timeshare has a bearing on a parent's child support payments.

Unfortunately, the standard parenting schedule that is often arranged in child custody cases is not always for the benefit of the child. For example,

let us say that a father who normally spends every other weekend with his children decides that he wants to spend 50 percent of his time with the children going forward. In other words, he wants to share custody with his ex-wife—the kids will be at his house for one week and at their mother’s house the next week. That may seem like an equitable arrangement, but it is not so easy from the perspective of a child who will have to keep moving back and forth from week to week. Consequently, these custody issues often become less about what is best for the child, and more about what is best for the parents’ pocketbook. All too often, we see these battles over percentages, because the parents are looking at their child support amount as being some goal in the custody process.

### *Domestic Violence Cases*

Domestic violence is a difficult topic, and there are many different perspectives on these cases. I have represented both alleged perpetrators and alleged victims. If domestic violence is alleged in a child custody case, it can create a significant problem in the custodial relationship, because the court must then look at that allegation in determining what is in the best interest of the children. I have found that judges often give too much benefit of the doubt to the alleged victim, creating a problem for the person who is alleged to have perpetrated the violence and causing judges to often be too lenient on the standards of proof that should be necessary in these cases.

Conversely, in civil harassment cases—i.e., a situation where someone is being stalked—the standard of proof that is needed to obtain a restraining order is “clear and convincing” evidence of the alleged harassment. These cases are governed in the California Code of Civil Procedure, and they involve a higher level of proof than in most civil cases, but a lower level of proof than would be necessary in a criminal case. I believe that there needs to be a similar standard of proof for domestic violence cases, while at the same time broadening the types of actions that might be classified as domestic violence.

Domestic violence creates very difficult situations for clients in a divorce case. For example, I recently finished a case involving a couple with two

children. Restraining orders were never issued or any criminal case opened, but there was no question in my mind that my client was the victim of domestic violence. Unfortunately, she agreed with whatever her husband wanted in the divorce settlement; she had persuaded herself that if she gave in to everything her husband wanted, she would be rid of him—but it does not always work that way. It is likely that her husband will continue to control her life and harass her.

In order to successfully deal with these issues, I believe that lawyers need to take psychology classes, and domestic violence training should be mandatory for all attorneys working in this area. You also gain from experience; I have been handling these cases for close to seventeen years, and in that time, I have seen both sides of these issues. I think that a lawyer in this practice area needs to have an adequate understanding of what goes on in the relationship between the perpetrator and the victim, and how it evolves. Even if the two parties are no longer living together, there is still a level of control that is necessary for the alleged perpetrator to feel comfortable in dealing with the alleged victim, and that mindset makes it very difficult when the parties try to manage child custody issues, and all the other things that have to be done in these cases.

Domestic violence training should be provided to the attorneys by a therapist or custody expert who can illustrate how the domestic violence issue works in a custody situation, and how the kids are affected, even if they never witness the violence. Understanding those dynamics helps lawyers understand how to best manage clients in these cases, and how to empower their client, if necessary. For example, I recently had a client who had been in a long-term marriage and she was willing to give up everything in order to make her husband happy, even though they no longer had a relationship. Although he is not physically violent, he is an angry person who tries to make his wife feel that his problems are her fault. As a result of his behavior, my client is having difficulties moving forward in terms of getting this family law matter resolved; she feels that she must constantly defer to her husband and make him feel that he is in control. That is a relationship that does not involve physical violence, but it is just as damaging, and it illustrates the deep, psychological damage that I have often seen in dealing with these cases.

### *Spousal Support Issues*

Another long-term family law issue that still needs to be worked through is the ongoing conflict regarding spousal support (aka alimony), and the notion of community property in California, which involves both legal and generational changes. Now that an increasing number of women are in the workforce—and in some cases, making more money than their male spouses—the notion of spousal support is being re-evaluated. This is particularly important in California, which is a community property state—i.e., each spouse has ownership of 50 percent of the estate. However, now that women are typically in the workforce, many people are questioning whether there is still a need for spousal support for the so-called “weaker” spouse. In the future, I expect that we will see more divorce cases involving long-term marriages where both parties are working, and the court will increasingly decide not to award spousal support in many of those cases.

### *Guardianship Cases*

Guardianship is an area handled in California typically in the probate court. It is largely driven by what I believe is a cultural dynamic of grandparents having to parent their children’s offspring—a situation which is often seen in the inner city. All too often, we see cases where the client gave their children everything they wanted, but there was no discipline, and their children started taking drugs and hanging around with the wrong people. Unfortunately, when those children had children of their own, they did not have the ability or maturity to be able to effectively manage them.

One notable guardianship case is *Guardianship of Simpson*, 67 Cal.App.4th 914 (Cal. Ct. App. 1998). The case involved O.J. Simpson, who was alleged to have murdered his ex-wife; her parents got custody and guardianship of the couple’s children during the time the criminal trial was taking place. Ultimately, the grandparents took care of the kids between the time of the murder, the arrest, the arraignment, the trial, and the ultimate jury decision—a period of time that was probably close to two years. When the case was over, Mr. Simpson went to court to regain custody of his children. The grandparents/guardians objected because the children had been with them for two years, and they felt that it would be better for the children if that arrangement were to continue. However, the court returned the

children to their father; in most cases, once the necessity for a guardianship ends, the courts will rule that the guardianship should terminate, and the parents should get their children back.

As a result of this case, the California legislature wrote into law that one of the things a court can look at in determining whether to end a guardianship is whether there has been a certain level of stability that the children have had with their guardian that would be disrupted if the guardianship were to end. See Family Code §3041. Consequently, if a parent has been in a situation where they could not parent their children for a period of time, it is incumbent upon their attorney to help the parent get their children back as soon as possible, because the longer a guardianship continues, the harder it is for the court to find justification to end the guardianship. Under the new law, if a child is in a guardianship that has lasted three or five years, the court may refuse to give the child back to their parents because they will have to change schools and lose their friends.

Those who are new to guardianship issues in California need to learn the rules of probate, as these cases are handled very differently from other family law cases. I do not think the probate court is as well suited for custody cases as is the family law court, but until there is a fundamental change in the way the judicial system handles these cases, we will continue to see this dichotomy between guardianships and family law custody cases. Therefore, from a strategy standpoint, it is important to learn the probate rules and how they differ from family law cases, and keep your eyes and ears open for family law cases where these issues can interplay. For example, if you represent a parent in a guardianship case who wants to regain custody of their kids, you need to ensure that you go to a family law court and ask for the court to enact custody orders upon the guardianship being terminated.

## **Strategies for the Most Challenging Cases**

### *Mistakes to Avoid*

In some cases, people are handling matters themselves, which is a disaster waiting to happen because most people do not know what they do not know—they do not know what is worth fighting for; they do not understand

the concept of “no fault;” they do not understand how child support is calculated; and they do not necessarily understand what is in the best interest of their children. They simply are not trained to address the concepts that family law attorneys and judges are guided by, and as a result, they run into a number of problems because they do not have the ability to know what is, and is not, worth fighting over. They also do not always take the time or have the energy to get all the details right and to do those things that should be done. That is why people should hire and pay lawyers to do what they do.

Good paralegals can handle those kinds of details, but they do not have that extra ability to make a judgment call and tell someone, “This is what I think you should do,” or “Here are the options that I recommend.” Many people are simply proceeding blindly in these matters, while hoping that everything will work out in the end and be amicably resolved. Months or years later, however, many couples end up spending three or four times as much money as they would have paid a divorce lawyer to handle the underlying dissolution in the first place, in order to try to undo the mistakes that they made by handling the case on their own.

### *Overcoming Challenges*

When first meeting with a family law client, I like to get some idea of their “wish list” up front. That may seem simplistic, but it is important to know what the client wants to achieve. Fortunately, many of the more challenging family law cases involve sophisticated clients who can articulate what they want to do, and that better enables me to lay out a strategy. However, if a client is undecided or passive-aggressive, it often becomes more difficult to develop a strategy that is based on a “best picture” way of addressing the client’s situation. Sometimes it is difficult to determine what needs to be done or to make sure that we have covered everything, and those are the kinds of challenging cases that are likely to go to trial, or which may result in a hearing on temporary orders.

There are many different types of complicated family law cases, although whether a case will be challenging often depends on the situation. Cases involving financial or property issues can be challenging, because they require more time and effort on the lawyer’s part to understand the facts, and to then present those facts in a reasonably understandable manner to a

judge who may not be familiar with such issues. From a personal standpoint, I find family law cases involving financial issues to be the most challenging, and you tend to get more of those cases as you become older and more experienced. The cases you typically start out with in the family law area are custody cases, because the parties often do not have any assets. As a result, such cases are typically given to a young lawyer, whose rates are lower. Such cases present their own challenges, because the emotions of the parents often run so high that they do not always understand what is in a child's best interest.

### *Minimizing Conflict in Family Law Cases*

Certainly, developing a professional, collegial relationship with the other party's attorney helps to minimize conflict in family law cases. Essentially, we need to agree that, although we have our differences, we are not going to let that affect how we communicate or upon what we agree. We are going to do what we need to do as lawyers, and ultimately we will do whatever we can to resolve our clients' issues—and that may end up being a settlement or going to trial. I have found that establishing that kind of understanding with the other party up front generally works well.

Unfortunately, some lawyers take the approach that they are not going to communicate with me in any form, other than acting as their client's trained attack dog. In such cases, you can only write letters back and forth, although that is not necessarily constructive. I find that most of the professional relationships I have with lawyers are generally conducted by phone; that is a better way of communicating, but it is not always possible to do so.

I think that making an effort to have a good relationship with the other party's attorney establishes a level of trust. It is important that the lawyers trust each other, even if the parties cannot. If the lawyers trust each other, then they know that what they are saying is going to happen, whether the results are bad or good for their client. However, if it is obvious that the other attorney is simply posturing, it is not worthwhile talking to them. If you know that what they are saying is false and misleading, then you cannot accept anything they claim as being worthwhile or beneficial for your client. In such situations, you should simply deal with the other attorney as a litigator.

Conflict exists in these cases because you generally have clients who cannot agree on anything. In some cases, however, the parties seem to have it all worked out, and you wind up simply acting as a scrivener—but I always try to offer my clients skills that are above those of a simple scrivener. My job is to try to move the client into a new phase of their life and guarantee them the best possible resolution—although I cannot guarantee them the best outcome, because in many situations the client’s standard of living is going to fall, irrespective of the economy. Therefore, my job often entails minimizing conflicts between the client and myself, as much as it does minimizing the conflict between the parties, because clients often have certain expectations in terms of what they want to achieve, but circumstances that we cannot control may lead to different results.

### **The Emergence of Collaborative Law**

Even before the current economic downturn, there was an increasing trend toward collaborative or mediation processes in family law matters. However, there is now an even more pronounced need for this type of process. The court calendar is becoming less friendly to having family law matters heard simply because there are not enough courtrooms devoted to having these matters tried. It is likely that if more clients can get their disputes resolved outside of the courtroom, and if they increasingly come out of the mediation process feeling as if they received equal treatment, then mediation is likely to become more commonly used in family law matters.

Many people go to mediation without their lawyers, however, and that can be good or bad. My own preference is to have lawyers present during the mediation in order to give the client some backstop as to what they can do in terms of settlement, and to help the mediation process along. Lawyers can be there to assure them that compromise does not rob them of principle or dignity.

Retired judges often serve as mediators, particularly if they wish to earn some extra money and want to continue to feel that they are contributing something back to the legal community.

I do not necessarily start out with a collaborative approach in my cases, perhaps because I used to do general litigation and I do not think you can settle cases unless you are ready to go to trial with them. That does not mean that I believe that there should be a needless churning of money in these matters; rather, I think that it is important for the parties and their lawyers to put everything on paper, and figure out what they really are going to fight about before they start collaborating.

First and foremost, the parties need to think about what is going to happen if they go to court—i.e., maybe a judge is not going to be interested in hearing about a certain issue, therefore maybe it is not going to be worth the time and effort to try the issue in court. If you start thinking in those terms from day one, you will be in a better position when you sit down with the other side to say, “Here is where we will compromise” or “Here is where our differences are, and can we narrow those differences?” By operating from that standpoint, the parties and their lawyers are better able to understand where things currently stand, and they can do what needs to be done in the negotiation dance to reach a settlement.

## **Conclusion**

Those who practice family law during this historical recession need to really care about what they are doing. I make it incumbent upon myself to always be the best at what I do, and to always practice at a high level. Many people are representing themselves in court these days, as previously noted—in fact, in many of the counties surrounding Los Angeles, 70 to 80 percent of the people in family law court are handling matters on their own. Unfortunately, many people are not willing to pay for legal services these days; therefore, if you are retained by a client, even in a limited capacity, you need to be a lawyer. Instead of letting your client put your name on something that they patched together, you need to do what you are trained to do, and what you do best. You need to act as an advocate and counselor, and if you are not willing to operate at a consistent high level, then you should not practice family law.

Looking to the future, I think that we are going to see an increasing number of crowded, self-represented calendars in the courtroom, because many middle-class clients have been priced out of the market for attorneys. However, I do not think any of the legal software or Web sites (e.g.,

LegalZoom) that many people have gravitated toward is an appropriate substitute for what an attorney can do.

Despite the recent economic crisis, I have not lowered my retainer amounts or my hourly rate—in fact, I have increased my hourly rate this year, and I am continuing to market to people who respect and value my services. My firm has also been more aggressive in terms of collections. Occasionally, you may sometimes take on risky clients if their predicament presents opportunities for growth as a lawyer and as a person.

In the end, the satisfaction I gain helping a person through a difficult time in their lives is better than the financial rewards...sometimes.

*Daniel R. Gold, CFLS is a partner at Tredway, Lumsdaine and Doyle LLP. Mr. Gold received his Bachelor of Arts in political science in 1984 from the University of California, Los Angeles. He received his Juris Doctorate (with distinction) from the University of the Pacific, McGeorge School of Law in 1993. That same year, he was admitted to the State Bar of California and the United States District Court.*

*Mr. Gold focused on family law practice with a small firm in Sacramento upon passing the bar. He then joined TLD in 1994. Since joining TLD, Mr. Gold's practice has emphasized family law, participating in over one hundred contested hearings and trials. Mr. Gold has been certified by the State Bar of California Board of Legal Specialization as a family law specialist. The board establishes minimum required practice, education, and trial experience to be certified. At this time, there are only approximately 1,200 attorneys out of 200,000 attorneys practicing state wide, certified to be specialists. He became a partner of the firm in 2002.*

*Mr. Gold is a member of the Los Angeles and Orange County Bar Associations Family Law Sections and the American Bar Association. He has given back to the legal community as a volunteer mediator with the Los Angeles County Superior Court for the past five years.*

***Dedication:*** *I would like to dedicate this chapter to my wife, Susan, and my three children, Austin, Amanda, and Natalie.*





ASPATORE

[www.Aspatore.com](http://www.Aspatore.com)

Aspatore Books, a Thomson Reuters business, exclusively publishes C-Level executives (CEO, CFO, CTO, CMO, Partner) from the world's most respected companies and law firms. C-Level Business Intelligence™, as conceptualized and developed by Aspatore Books, provides professionals of all levels with proven business intelligence from industry insiders—direct and unfiltered insight from those who know it best—as opposed to third-party accounts offered by unknown authors and analysts. Aspatore Books is committed to publishing an innovative line of business and legal books, those which lay forth principles and offer insights that when employed, can have a direct financial impact on the reader's business objectives, whatever they may be. In essence, Aspatore publishes critical tools for all business professionals.

## **Inside the Minds**

The *Inside the Minds* series provides readers of all levels with proven legal and business intelligence from C-Level executives and lawyers (CEO, CFO, CTO, CMO, Partner) from the world's most respected companies and law firms. Each chapter is comparable to a white paper or essay and is a future-oriented look at where an industry, profession, or topic is heading and the most important issues for future success. Each author has been selected based upon their experience and C-Level standing within the professional community. *Inside the Minds* was conceived in order to give readers actual insights into the leading minds of top lawyers and business executives worldwide, presenting an unprecedented look at various industries and professions.



ASPATORE