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Rev. Robert F. Drinan, S.J.

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# THE FIRST DECADE OF THE FAMILY LAW SECTION

REV. ROBERT F. DRINAN, S.J.\*

**D**URING THE EARLY 1950's many lawyers and most bar associations in America became increasingly concerned over the distressing breakdown of family life which had occurred in the years subsequent to World War II. In the years immediately following the war the divorce rate rocketed up to 600,000 divorces each year. In the late forties and early fifties the divorce rate leveled off to a persistent 400,000 divorce decrees granted each year by the courts of America.

The Family Law Section of the American Bar Association, founded in 1955, resulted from the fact that post-World War II America had a divorce rate which was greater, numerically and proportionally, than that of any other nation of the world. Due in large part to the thoughtful writings of Judge Paul Alexander of Toledo, Ohio, the Family Law Section was authorized by the House of Delegates and the Board of Governors of the American Bar Association in the mid-fifties.

Lawyers familiar with the structure of the American Bar Association will recognize the fact that the formation of a new section is an event of the greatest consequence. There are only nineteen sections within the structure of the American Bar Association, which now has a membership of 118,000 attorneys.

At the early meetings of the nine-man Council of the Section of Family Law it was decided that this section would take as its responsibility all aspects of the administration of justice which have any bearing on or relevance to the marriage contract. The Section of Family Law made a commitment to do all that it could to promote the solidarity of the family and to protect the rights of spouses and children who might be adversely affected by the dissolution of a marriage or the breakdown of an existing family. The Section of Family Law was, of course, bound by the rules of the American Bar Association which stipulate that recommendations of each section must be forwarded to the Board of Governors and the House of Delegates before such recommendations can be said to be approved by the American Bar Association.

During the decade of its existence the Section of Family Law has seen substantial achievements in its efforts to improve the administration of justice in the family area.

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\* Chairman-elect of the Family Law Section of the American Bar Association.

Possibly the most important achievement of the Section of Family Law is the statement reproduced as an appendix to this article. This document sets forth in a unique and notable way the responsibilities and reciprocal relationships in adoption procedures of both the lawyer and the social worker. At a later point in this article comments will be made on this statement.

### **The Section of Family Law Committees and Their Achievements**

The Section of Family Law of the American Bar Association conducts most of its work through committees and subcommittees. This, of course, is the usual procedure for most sections of the American Bar Association.

Among the committees of the Section of Family Law which have made significant recommendations and progress are the following:

1. The Committee on Adoption has consistently taken positions with respect to federal legislation on all aspects of adoption procedure. This committee, and subsequently the entire American Bar Association, endorsed a bill which became law in 1964 prohibiting contracts of a commercial nature in interstate commerce with respect to unregulated adoption.

2. The Committee on Custody has devoted a substantial amount of its time to the writing of a uniform or model act of custody. One of the principal purposes of this statute would be to prevent "child snatching" across state lines. The Uniform Act on Custody will seek to discourage the practice of one spouse taking a child without permission and possibly will provide criminal sanctions. Delicate constitutional questions concerning the full faith and

credit clause are obviously involved in drafting any law designed to protect the rights of parents with custody and the rights of children to stability in their surroundings.

3. The Committee on Juvenile Courts has collaborated with the Section of Criminal Law of the American Bar Association. The Committee on Juvenile Courts conducted a most successful program on narcotics and delinquency at the regional meeting of the American Bar Association in San Juan, Puerto Rico in May 1965.

4. The Committee on Inter-professional Liaison has collided over a long period with the American Association of Marriage Counselors. In the spring of 1965 a significant conference was conducted in Detroit between members of the Section of Family Law and the officials of the AAMC. The two questions involved in this unprecedented dialogue centered on the standards that should be set for the qualifications of those who are to be marriage counselors as well as the question of required registration of these counselors by an appropriate state agency.

5. The Committee on Liaison, together with the Section on Taxation, has regularly conducted programs on the many tax consequences of alimony support decrees and separation agreements at the regional and annual meetings of the American Bar Association.

6. The Committee on Marriage Law, of which this author was Chairman, for a significant period has been working on the writing of a Uniform Marriage Licensing Law. The Committee on Marriage Law has proposed a preliminary draft of this law which in due course may be presented to the national organization of Commissioners on Uniform Laws.

Another most significant project of the Committee on Marriage Law has been its successful work in encouraging many states to comply with the national standard of filing statistics on divorces granted within the individual states. All but ten states are now in compliance with standards set by the Department of Health, Education and Welfare in Washington. As a result of this compliance lawyers can much more easily discover the circumstances of a divorce decree for a person involved in proceedings with their client.

The Section of Family Law during the past decade has not taken a clear-cut position on common-law marriage. Although the American Bar Association more than a generation ago enacted a firm disapproval of common-law marriage, the Section of Family Law seems to feel that those few states which still have common-law marriage should be encouraged, on an individual basis, to provide some form of solemnization and registration.

7. The Committee on Support has through extensive research produced a document which may well have lasting significance. Surveying more than 1,500 Family Court judges and comparable officials the Committee has prepared a study of the average and medium amount of support decrees. This study will be published in the fall, 1965 issue of the *Journal of Family Law* issued at the University of Louisville Law School. This journal was instituted through the efforts of the Section of Family Law of the American Bar Association.

The Committee on Support, with the full approval of the American Bar Association, continues to press for the enactment of legislation which would authorize the appropriate federal officials to release the

social security number and, hence, the whereabouts and employment of spouses who have absconded. Existing federal law prohibits the revelation of a social security number for the purpose of locating husbands who are in arrears on their payments to their divorced or separated wives.

8. The Committee on Research has been instrumental in arranging a study, conducted by the American Bar Foundation, of all the reconciliation machinery now existing in America.

The Chairman of the Section of Family Law for 1965, Morris N. Hartman, Esq., of Elizabeth, New Jersey, is Chairman of the Advisory Committee which consults periodically with officials of the American Bar Foundation who are making a nationwide survey of the techniques and procedures of the twenty or more court systems which employ some type of conciliation machinery for spouses with domestic problems.

Those giving counsel and those doing research on this project are anxious to discover the most efficient techniques by which the law and its judicial machinery may give lasting assistance to those couples whose marital difficulties have led them to take the initial steps in securing a divorce. It is hoped that the present study undertaken by the American Bar Foundation may be followed by one concentrating on techniques available to the legal profession and various local authorities which would give advice and counsel effective in aiding couples even before they seriously consider a divorce.

### **The Marriage Contract— An Official Philosophy?**

As can be seen from the foregoing brief description of the activities of the several

committees of the Section of Family Law the members of the Section are anxiously looking for solutions to the present dilemmas in the area of family law. It is fair to say that the Section of Family Law has not in any way adopted an official philosophy with respect to the meaning of the marriage contract or the desirability or disaster of divorce. The Section, in other words, brings together American lawyers, all of whom are confronted with an increasingly serious and unique dilemma—the erosion of family life which has resulted in the fact that every fourth marriage ends in divorce.

In addition to the work of the committees noted above, the Section of Family Law sponsors five programs of a forum nature at each annual meeting of the American Bar Association. Each year the papers delivered at these programs and at regional meetings of the American Bar Association are published in the Annual Proceedings of the Section of Family Law—a valuable document which is distributed to each of the 1,400 members of the Section.

One of the most important developments in which the Section of Family Law was instrumental has been the formation of the National Conference of Lawyers and Social Workers. This Conference has been authorized by the House of Delegates of the American Bar Association and consists of eight representatives appointed each year by the President of the American Bar Association and eight members appointed by the President of the National Association of Social Workers. This group has become the official liaison unit between the lawyers and the social workers of the nation. The current Chairman of the National Conference is Sol Morton Isaac, Esq., the past National President of the Family

Services Association and presently President of the National Conference of Social Welfare. The National Conference of Lawyers and Social Workers drafted the document attached as an appendix to this article. This document has now become the official policy of the American Bar Association as well as of the National Association of Social Workers.

In framing such a document it was intended that the final result would be applicable and useful in each of the fifty states. As a result, some of its statements may seem somewhat general. On the whole, however, the statement outlining the responsibilities and reciprocal relationships in adoption proceedings of the lawyer and social worker is the first nationally recognized statement of a set of principles on this important subject.

The document discourages unregulated adoption. Some may be disappointed that the document does not emphatically outlaw all adoptions in which social agencies have not been the controlling party. It must be remembered, however, that in many states unregulated or third party adoptions are permitted by law, and, in some of the rural areas of the country such adoptions are in fact the only means available to arrange for the placement of an adoptable child.

It is to be hoped that the statement on adoption agreed to by the nation's lawyers and social workers will be discussed and approved by state and local bar associations.

It is to be hoped also that Catholic Lawyer Guilds throughout the nation might initiate discussions of this document with a view towards its improvement and, of course, to its ultimate implementation in the law or practice of each community.

This last point leads us to the question of participation of Catholic attorneys in the work of the Section of Family Law.

Catholics are members of the legal profession in the same proportion that they exist in the general population of America. This phenomenon is not present in other fields as, for example, in the number of college professors. Most Catholic attorneys, however, have for several reasons had little contact with the practice of family law. For understandable reasons some Catholic attorneys do not participate in any divorce proceedings or do so on a very limited basis. One of the results of the absence of Catholic attorneys from the practice of family law in America has been the paucity of Catholic attorneys who have become members or participants in the Section of Family Law of the American Bar Association.

There are, it seems to this writer, several reasons why Catholic attorneys should consider very seriously the advantages which would accrue to them and to society in general by their becoming active participants in the work of the Section of Family Law. Among these several reasons are the following:

1. A practical benefit which members of the Section of Family Law receive derives from the fact that the names of all of the members of the Section are printed each year in the proceedings of the Section according to the state where they practice. Referrals among lawyers resulting from this list are not uncommon.

2. Catholic attorneys would be challenged in the Section of Family Law to rethink the principles which they have adopted with respect to the lawyer and divorce proceedings in a pluralistic society. Catholic jurists who would be active in

the Section of Family Law would be required to confront dilemmas which all too frequently Catholic attorneys resolve by simply absenting themselves from the entire area of family law.

3. Catholic attorneys could do a great deal within the Section of Family Law to enunciate their own principles with respect to the role of law in strengthening family life and promoting the solidarity of the family structure within America. The viewpoint of Catholic attorneys in this respect might not differ substantially from the purposes of the Section of Family Law.

4. Catholic attorneys could learn from the work and programs of the Section of Family Law about various new legislation and modernized judicial procedures which in many parts of the country are being utilized to strengthen family life. The Wisconsin Family Code, for example, adopted in 1960, was influenced, to some extent, by members of the Section of Family Law. The preamble to this most important and highly regarded Wisconsin Family Code includes a restatement of the necessity of the civil law promoting and fostering in every feasible way the solidarity of family life.

Within the next few years the Section of Family Law of the American Bar Association will almost inevitably be required to take positions on complex and difficult legal-moral questions such as abortion, artificial-insemination, divorce by consent and relaxation of criminal sanctions against certain forms of sexual conduct. It is to be hoped that Catholic attorneys will be increasingly active and articulate within the Section of Family Law so that the great moral traditions of Western culture will be reaffirmed in the resolutions and recommendations of the Section of Family

Law of the American Bar Association.

## Appendix

### *Responsibilities and Reciprocal*

#### *Relationships in Adoption:*

#### *Lawyer and Social Worker*

This statement is not designed to establish a comprehensive set of principles and practices pertaining to adoption and adoption procedures. Rather, it is intended to set forth the frame of reference within which lawyers and social workers may appropriately bring to bear their respective skills in discharging society's over-riding obligation to protect the welfare of all children. Such broad legal-social principles as appear herein are illustrative of the reciprocal relationships and responsibilities of the two professions — law and social work.

Relevant considerations which should prevail in adoption:

1. The placement of children for adoption should have as its main objective the well-being of children. The needs of the child should be paramount with full recognition of the relevant needs and interests of the natural parents, adoptive parents and society.
2. In addition to a framework of law that recognizes adoption as a method of establishing the legal relationship of parent and child between persons not so related at birth, the community or state provides adoption services through a duly-organized, legally controlled and licensed social agency in or through which the several professions essential to a sound adoption service work together—law, social work, medicine. Social agencies are not generally involved

in "relative adoptions," *i.e.*, cases in which minor children are adopted by close relatives including step-parents, except as called upon by the courts. Nonetheless, in all "relative adoptions" courts should obtain a social investigation as a condition precedent to approval of a petition of adoption.

3. Such an adoption service must be so organized that it affords the child, natural parents and adoptive parents the help and protection which each must have:

The child should be protected from unnecessary separation from his parent(s) so long as they are capable of fulfilling, or may be expected with supportive service, to fulfill, their parental role; from placement in a home that may be unsuitable or detrimental to his well-being; from intervention of natural parents after his placement in the adoptive home; and from loss of his right of a legal guardian of his person. Parental rights of the natural parents should be safeguarded. They should be free from duress or undue pressure in making a decision about the child, and should have the opportunity to consider alternative plans. They should not be re-involved after legal relinquishment of the child, and should have assurance of confidentiality.

A couple seeking to adopt children ought to be assured complete equity with others seeking children.

The adoptive parents should be protected through reasonable assurance by the adoption agency that the child is one for whom adoption is a suitable plan and that the placement is likely to be secure and stable. Moreover, they are entitled to the further assurance

that the child is legally separated from his natural parents and that their identity is not known to the natural parents.

4. While recognizing that, in some jurisdictions, individuals, as such, may place or otherwise facilitate the adoption of minors, it should be emphasized nonetheless that social workers and lawyers, individually or jointly, when acting as individuals and not in cooperation with a qualified child placement agency, as aforesaid, do not have the facilities and resources necessary to provide protection and services needed by all persons affected by the adoption.

From the above it follows:

1. In recognition that adoption involves serious legal and social consequences, and that society quite properly insists on the highest degree of protection of, and consideration for, the rights, obligations and responsibilities of all parties to the adoption—the child, the natural parents and the adoptive parents—it is essential that all measures be taken to assure such reciprocal protection and consideration.

To this end, the respective parties are entitled to counsel of their own choice, through whom they may be advised of the *legal* consequences of their act and assured of the legality of the proceedings.

The attorney for the adoption agency, who may be either outside counsel or a full or part-time staff member, represents essentially the interests of the child, in recognition of the role of *loco parentis* which his employer—the child placement agency—fulfills, and in further recognition of the legally-sanctioned authority and responsibility

which the agency assumes to safeguard, protect and further the well-being of the child. It is not appropriate for the agency's counsel to represent all the parties to the adoption in respect to their respective legal rights, duties and responsibilities.

In the application of the foregoing principles it is essential to take into consideration the following factors:

- a. Adoption, by and large, is not an adversary proceeding;
- b. Generally in an adoption, the legal obligations and responsibilities assumed by the adopting parents outweigh the rights relinquished by the natural parents.

With this in mind, it is suggested that the following considerations with respect to *legal* practices be observed:

1. Adoption agency counsel is responsible for assuring that the natural parent, or parents as the case may be, are advised, generally by the agency's social workers and through any written documents, that:
  - a. legal consequences appertain to the surrender of their child, or children, for adoption; and to the act of adoption;
  - b. the natural parent, or parents, may wish to consult with counsel of their own choice for the purpose of being *legally* advised in this regard;
  - c. if such parent or parents wish to avail themselves of independent counsel but either cannot afford to do so or do not have such counsel, the agency will make referral to the local legal aid society or bar association referral service, as the case



may be—assuming such a service exists in their community;

- d. if the natural parents are unable to obtain independent counsel in the community, the social worker will suggest that in view of the fact that legal consequences attend the act of surrender, they should consult with the agency's counsel in this respect.
2. Upon surrender of the child for adoption, agency counsel is responsible for seeing to it that all legal requirements are met.
3. Agency counsel is responsible for seeing to it that the agency provides general information to adoptive parents of the legal duties and responsibilities they will assume, and of problems concerning rights of inheritance. However, because he recognizes that he cannot properly represent the natural parent, the child, the agency and the adoptive parents, he makes certain that the adoptive parents are represented by counsel of their own choice. Together, agency counsel and the adoptive parents' counsel make certain that the adoptive parents fully understand the legal implications of the adoption, that statutory requirements are carefully followed through the placement and adoption proceedings and that the preparation of the necessary pleadings and legal documents are such that the adoption decree, once granted, will be unassailable.
4. In all instances in which surrender is an involuntary act on the part of the natural parent, or parents, agency counsel should recognize this as an adversary proceeding and should, through whatever means may be available to him

and to the agency, see to it that the parent, or parents, are properly represented by independent legal counsel.

The social workers' function is to:

1. Help the natural parents with the distinctive social and emotional problems connected with considering the future of their child, consideration of alternative plans as well as giving him up for adoption.
2. Provide any casework help related to the natural parents' own problems and need for rehabilitative help.
3. Help individuals seeking to adopt children determine whether adoption meets the needs of the prospective adoptive parents.
4. Find and select adoptive couples and place children for adoption in relation to the child's particular needs and characteristics.
5. Provide interim care for the child, including study of the child in collaboration with other disciplines.
6. Provide assistance to the child and parent during the period of adjustment between placement and legal adoption.

Both the lawyer and the social worker, jointly and severally, individually and through their respective professional associations and other appropriate bodies, have an obligation and responsibility to devote their skills and their efforts to an improvement of adoption laws, principles, practices and procedures, and agency and institutional facilities and resources, so that society's concern for the well-being of the family may be reflected in the quality of community services provided in its behalf.