

ORANGE COUNTY

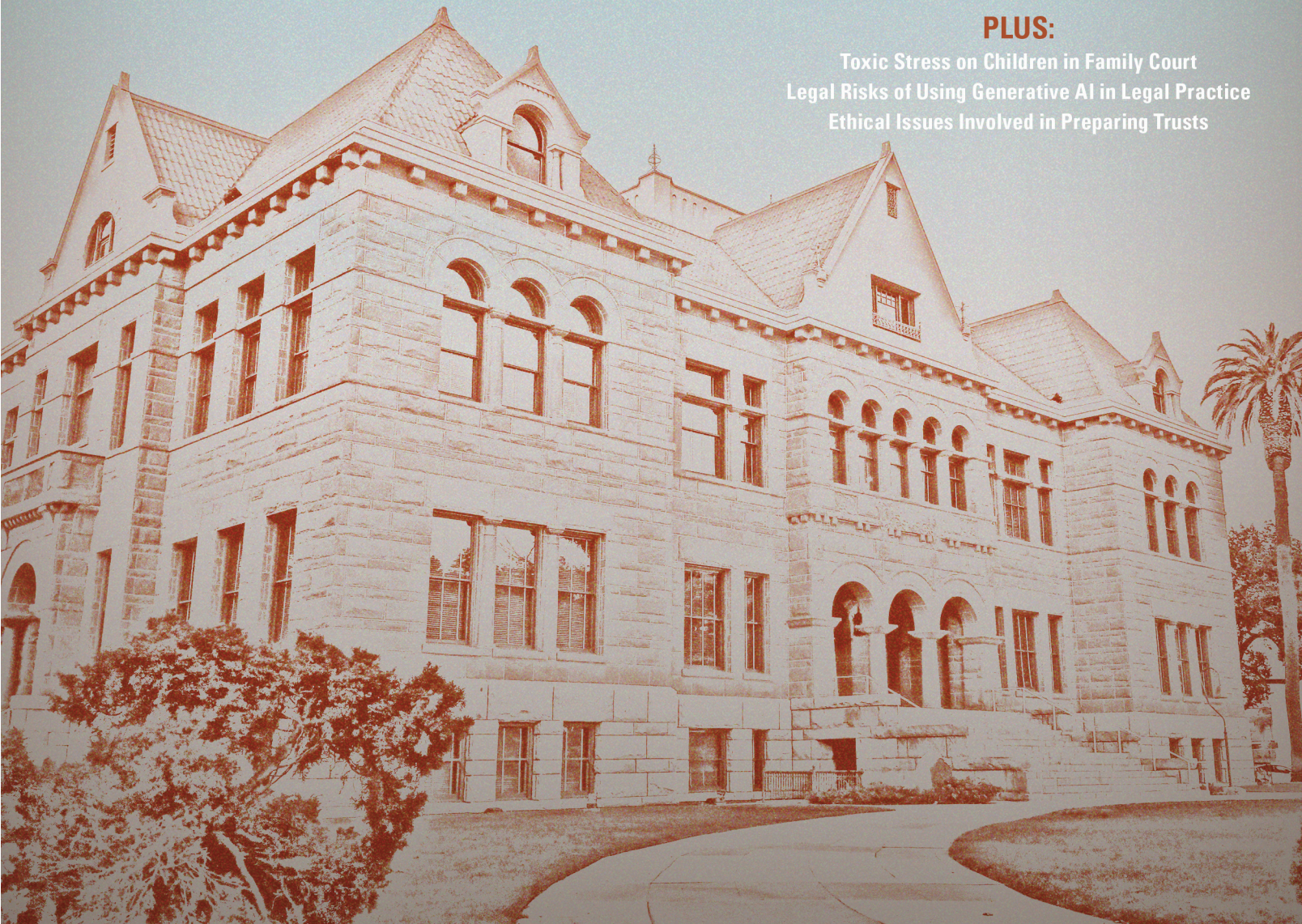
# LAWYER<sup>®</sup>



## Orange County LEGAL HISTORY

**PLUS:**

Toxic Stress on Children in Family Court  
Legal Risks of Using Generative AI in Legal Practice  
Ethical Issues Involved in Preparing Trusts



---

# JUDICIAL SHORTAGES REMAIN HIGH: TOXIC STRESS ON CHILDREN IN HIGH-CONFLICT DIVORCES

by *MARK E. MINYARD* and the *HONORABLE DAVID L. BELZ*

**T**his article reviews the Elkins Family Law Task Force recommendations relative to the allocation of judicial officers between the various departments and explores the true impacts on children that are caused by delays in filling allocated and paid for judicial positions.



## Elkins Family Law Task Force Recommendations

The Elkins Family Law Task Force was created in 2008 by the California Judicial Council. Its purpose was, in part, “to increase access to justice, ensure due process and provide for more effective and consistent rules, policies, and procedures in family court.” Interestingly, of the many people who served on the task force, not one was a mental health professional. In 2010, the task force issued its report with over 150 recommendations. In the years since the report, significant progress has been made in assisting the unrepresented. However, most of the task force’s other recommendations have not been implemented or followed by family courts.

One of the most consequential recommendations was a call for 19% of each county’s judicial officers to be assigned to family court. In Orange County today, this would mean a total of twenty-seven judicial officers would sit on the family law panel. Today, the Orange County panel has four fewer judicial officers than it had three years ago. Depending on how the judicial positions are counted, today, the Orange County family law panel is functioning with fewer than 65% of the number of judicial officers recommended by Elkins.

Consistent with Elkins, the Judicial Council, in their 2022 report, stated, “The public’s right to timely access to justice is contingent on having adequate judicial resources in every jurisdiction.” A shortage of judicial resources results in delays that are unreasonably long by any standards. It is important to put blame where it is deserved, which is not on the Presiding Judges or the Supervising Family Law Judges of each county’s courts. They did not create the problems; they inherited them.

The implications of not appointing an adequate number of family law judicial officers goes well beyond overcrowded calendars, the frustration of endless hearing delays, and excessive working hours for judicial officers. Judicial officers want to give sufficient time to resolve their cases effectively, and they deserve the time to do so. The lack of judicial resources has put the legal system at the center of what is a public health crisis—chronic toxic stress for children.

## Adverse Childhood Experiences

Lengthy and high conflict divorces often result in children continuing to live in stressful circumstances that can adversely impact

their physical, mental, and emotional health in significant and negative ways for many years. The Elkins Family Law Task Force addressed the issue of safety, which included the emotional safety and welfare of children, the silent participants in this difficult process. Experiencing their parents’ engaging in conflict can have a significant and harmful effect on a child’s brain, especially in the first five to seven years of a child’s life. The State of California recognized the significance of the first five years of a child’s life by creating the First 5 California Commission and Resource Center, advertised on television.

One of Governor Newsom’s earliest appointments after his election as Governor of California was Dr. Nadine Burke Harris as the state’s first Surgeon General. Her curiosity as to the cause of the various health problems she encountered in her practice led her to understand and appreciate the unmet mental health needs of children in both impoverished and stressful environments, which include children living through a high-conflict divorce.

Dr. Burke Harris spearheaded the Roadmap for Resilience initiative with the purpose to understand “how communities, states, and nations can recognize and effectively address Adverse Childhood Experiences (ACEs) and toxic stress as a root cause to some of the most harmful, persistent, and expensive societal and health challenges facing our world today.” Following an exhaustive eighteen months of work by a multi-disciplined professional panel, a 438-page report was published in 2020. The report “specifies a sector-specific and cross-sector roadmap for addressing ACEs and toxic stress at the state level . . . highlighting the need for enhanced coordination across the following sectors: healthcare; public health; social services; early childhood; education; and justice.” Currently, almost 30,000 clinicians have been trained to identify the signs of childhood toxic stress.

Anyone involved in child custody matters will be well served by watching Dr. Burke Harris’ webinar on this matter and sharing it with others. You can find it at “Roadmap to Resilience: The California Surgeon General’s Report Webinar.”

This report also identified a *public health crisis in children in California from exposure to toxic stress*. Clearly, a high-conflict, prolonged divorce is a traumatic and stressful event for a young child. A statistical analysis of Petitions for Dissolution and Paternity filed in Orange County over a five-year period revealed that

the majority of the children listed were less than seven years old. The most common age of a child listed in a dissolution petition was six years old. The most common age listed in a paternity action was one year old.

The researchers and scientists who contributed to the Surgeon General’s report found a relationship between prolonged toxic stress and significant health problems in children. Toxic stress can disrupt the healthy development of brain architecture and other organ systems, increase the risk of many stress-related diseases, and can result in cognitive impairment well into the adult years.

Dr. Burke Harris summarized just how dangerous childhood trauma and stress can be:

Childhood trauma increases the risk for seven out of ten of the leading causes of death in the United States. In high doses, it affects brain development, the immune system, hormonal systems, and even the way our DNA is read and transcribed. Folks who are exposed in very high doses have triple the lifetime risk of heart disease and lung cancer and a twenty-year difference in life expectancy.

## Childhood Toxic Stress and the Legal System

The legislature recognized the importance of children’s health, safety, and welfare when it enacted Family Code section 3020 which provides, in part:

(a) The Legislature finds and declares that it is the public policy of this state to ensure that the health, safety, and welfare of children shall be the court’s primary concern in determining the best interest of children when making any orders regarding the physical or legal custody or visitation of children. The Legislature further finds and declares that the perpetration of child abuse or domestic violence in a household where a child resides is detrimental to the child.

Family Code section 3023 *gives priority over other civil matters* to cases involving child custody, but that policy cannot be implemented without sufficient judicial resources. Family Code section 3020 has a very strong public policy statement: “The Legislature *finds and declares* that it is the public policy of this state to ensure that the health, safety, and welfare of children shall be

the court's primary concern in determining the best interests of children." [Emphasis added.] The health, safety, and welfare of our children, who cannot advocate for themselves, is not being adequately addressed when the system prolongs their parents' divorce cases for years.

Dr. Jodi Quas is an applied developmental psychologist and a Professor of Psychological and Nursing Science at UCI. Dr. Quas' research focuses on memory development in early childhood, the effects of stress and trauma on children's development, and children's involvement in the legal system. Dr. Quas studies the effect of stress on children's memory, emotional regulation, and physiological reactivity as predictors of children's ability to cope with and accurately recall stressful events.

In an interview, Dr. Quas shared that we have a sympathetic stress response system that deals with external events, like seeing a bear for the first time in our backyard. Our minds regulate these responses. We need to be able to respond to a crisis that we are not prepared for. After the response and after the crisis, we can relax and return to the pre-crisis mode. Our minds are not equipped to mount a huge response multiple times per day, much less multiple times per day on a daily, weekly, and monthly basis. Children's minds and their response systems are not as developed as those of adults so they are less capable of mounting the necessary responses to events that include toxic stress. Once a child's mind has been overloaded with repeated and chronic stress events, it is less able to mount a proper defense response, which can have a detrimental impact on the brain. The impact of these events is both short and long term, and the longer the period of chronic toxic stress, the harder it is for a child's mind to recover.

Dr. Quas reports that when researchers are seeking to study toxic stress, they look at maltreated children and also children engaged in high-conflict divorces. In the framework of Adverse Childhood Experiences, the maltreatment of children and high-conflict divorces yield similar impacts on children. The impact of toxic stress is most severely felt by younger children and children going through puberty.

Many of the ACEs that researchers have identified as stressful for children relate to their parents' relationship and include: divorce of parents; marital separation of parents; start of a new problem between parents; remarriage of a parent to a stepparent;

major decrease in parents' income; parent beginning work outside the home; a new adult moving into child's home; moving to a new school district; start of a new problem between a child and parents.

Dr. Quas' work reveals that many children living with parents in high-conflict households experience anxiety, uncertainty, and constant pressure—all of which can contribute to poor performance at school, ADHD-like symptoms, insecurity, and confusion. Children who experience *chronic* toxic stress are also far more likely to experience sleep deprivation and more frequent illnesses. In an interview, UCI Professor of Psychologic

---

At a minimum,  
children should  
have a voice in  
toxic stress cases.  
Their stress can be  
somewhat reduced  
by simply having  
been heard.

---

Science, Dr. Elizabeth Cauffman, explained that high-conflict divorces have been linked to a wide range of serious, far-reaching problems among children, including depression, aggression, precocious sex, and dropping out of school. This is particularly pronounced when children attribute feelings of insecurity or self-blame to their parents' conflict.

Dr. Quas noted that it is important to recognize that divorce itself is not necessarily a problem for a child's health or development. Divorce may actually be a positive for children in some situations. The problems arise from the conduct of the parents. Typically, the problems that children

experience are not due to the actions of one parent but rather by the interaction of the parents with each other.

Dr. Kimberly Lake, a professor at UCI School of Pediatrics, reported that young children have not developed the coping skills necessary to deal with a high conflict environment. A young child's emotional reaction to a high conflict environment can impact the development of a child as well as the biology of the brain. Dr. Lake further reported that studies have shown that executive function can be severely inhibited, which can lead to problems with self-control, working memory, and emotional security, as well as managing aggressive expressions and impairments in social and academic functioning.

Toxic stress related issues are also not isolated to children. One study reported that 62.3% of Californians have experienced toxic stress at least once. The impact of this health condition on California's resources and the economy in general runs into the billions. In 2019, Governor Newsom and the legislature recognized this serious issue and set a goal to reduce toxic stress by 50% in one generation.

The California Legislature unanimously passed Assembly Concurrent Resolution No. 155 in 2014, urging the Governor to reduce children's exposure to adverse childhood experiences, address the impacts of those experiences, build and promote resilience and protective factors, while investing in preventive health care, mental health, and wellness interventions.

### **Association of Family and Conciliation Courts (AFCC)**

In 2008, the AFCC issued a very detailed DECLARATION OF PUBLIC HEALTH CRISIS in which it stated, among many other things, there are approximately 175 "full-time equivalent judicial officers hearing family law cases and responsible for the one-half million new filings and petitions in family law every year, as well as all the cases still in the court system. The Administrative Office of the courts estimates a need for 459 full-time equivalent judicial officers: 2.6 times as many judicial officers as currently serve in family law." Within that declaration, the AFCC passed a resolution that stated, in part:

NOW, THEREFORE, BE IT  
RESOLVED THAT, The Board . . .  
[of the AFCC] declares that there  
is a clear and present danger to the

public health of the children of this State based on our society's failure to adequately address the impact of child custody proceedings upon children as a chronic, system-wide, statewide public health crisis which impacts the previous, current and future generation of California's most precious resource—its children.

NOW, THEREFORE, BE IT RESOLVED THAT, The Board . . . [of the AFCC] calls upon the Governor, the State Legislature, and the Judicial Branch to devote adequate resources to meet the needs of the children who are impacted by this public health crisis.

Relative to the availability of judicial resources to family law matters, since 2008, when the Elkins Family Law Task Force was established and when this resolution was passed, the circumstances have not only not improved, they have gotten worse. This is due to a reduced number of judicial officers and an increased workload because of more legislatively mandated required findings after hearings.

## Solutions

As Dr. Quas reminds us, the issues relative to toxic stress in high conflict family law matters are not new, but now they have a label that gives them visibility and a higher profile to child's risk factors. With that higher profile, solutions may be more urgently and effectively pursued.

A start toward finding a solution to toxic-stress related issues would be for Governor Newsom to fill the legislatively authorized and funded vacant judicial positions. A path forward to help relieve chronic understaffing in family courts can come from Chief Justice of California, Justice Patricia Guerrero. Justice Guerrero has the authority to change the rules and authorize retired judges who are serving as privately compensated judges to return to the Superior Court to hear family law matters from time to time.

We should fast-track a study of the benefits of giving the courts the authority to require parents involved in a high-conflict divorce who have minor children to participate in an educational program focused on ACES and toxic stress. Incorporating such a program, perhaps in the form of a video as a part of the mandatory child custody mediation, could be a practical, expedited approach to educating the parties.

To address the problem of toxic stress in

high-conflict divorces, we must also increase efforts to educate both the bench and the bar as to the serious impact of toxic stress on children. The education could include instruction on how to “ensure that the health, safety and welfare of the children are the court's primary concern in determining the best interest of children.”

Additionally, we should reconsider how strong the 50/50 custody policy should be. Practitioners are taught that, generally, children should have equal access to their parents and that a 50/50 equal time share custody is in a child's best interest, or at least is the right starting place. However, if we are all working to ensure that “the health, safety, and welfare of children shall be the court's primary concern” then a parent who is the primary cause of a child's chronic toxic stress should be a candidate for far less than a 50/50 equal time share order. Sometimes “best interest” and “frequent and continuing contact” are in conflict.


Dr. Quas suggested that an examination of this potentially deeply impactful issue should start with the consideration of an important question: Should the 50/50 policy be more carefully evaluated in matters where toxic stress is chronic? Can we conclude that in every unique case, the quantity of hours spent is the same as the quality of the hours spent with a child? Should the analysis of the level of stress that a child is experiencing impact the timeshare schedule in a custody order? In a high-conflict divorce, does more frequent exchanges of a child increase or decrease the child's anxiety? Would a week on and week off schedule decrease the conflict of the parents, decrease the child's opportunity to be exposed to the conflict, or increase the child's stress by being away from the other parent for an extended time? Should the 50/50 policy be modified to make orders that are essentially equal in terms of “quality” time versus actual hours? For example, if a child is stressed because of sleep arrangements at one parent's house and that parent is the primary cause of the child's toxic stress, it may be in the child's best interests to spend the nights, or at least the majority of nights, at the other parents' home. Sleep deprivation is harmful to people of all ages. Dr. Quas posed the question: Should children be able to sleep where they sleep best?

Of course, a judicial officer would need sufficient trial time and evidence to be in a position to learn the cause of a child's toxic stress and to which parent it should be attributed.

As it exists today, the family law courts are so impacted, and the judicial resources are so limited, that in most cases they cannot devote the amount of time necessary to address these issues thoroughly. At a minimum, children should have a voice in toxic stress cases. Their stress can be somewhat reduced by simply having been heard.

## Conclusion

Is the health, safety, and welfare of our children, who cannot advocate for themselves, being addressed when the system prolongs their parents' divorce cases for years? Evidence demonstrates that the longer the divorce process, the longer a child lives in a toxic environment that contributes to chronic health problems.

The insufficient number of family law judicial officers certainly contributes to this public health crisis. We must increase the number of judicial officers in family law courts to better protect the most vulnerable—children who are stuck in a process outside their control, and quite literally forced by judicial vacancies, calendars, and delays to endure continued exposure to chronic toxic stress. These children deserve to have more judicial officers so that decisions about their lives can be made with adequate time and resources to thoroughly evaluate each situation. We need more judicial officers and a better understanding of chronic toxic stress to serve the essential *health, safety, and welfare* needs of children. See <https://www.roadmaptoresilience.org/> as an excellent resource and audio series. 

*Mark E. Minyard is a partner at Minyard Morris and served on the Elkins Family Law Task Force.*

*The Honorable David L. Belz is a Superior Court judge in the County of Orange. He was assigned to a family law court from 2010 to 2015 and currently is assigned to a probate court where he handles long cause trust trials and guardianship cases.*

*This article first appeared in Orange County Lawyer, December 2023 (Vol. 65 No. 12), p. 32. The views expressed herein are those of the author. They do not necessarily represent the views of Orange County Lawyer magazine, the Orange County Bar Association, the Orange County Bar Association Charitable Fund, or their staffs, contributors, or advertisers. All legal and other issues must be independently researched.*