Ask the Experts

from the AFCC eNEWS:

Guidance from Leading Family Law Professionals

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Ask the Experts from the AFCC eNEWS: Guidance from Leading Family Law Professionals

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ASSOCIATION OF FAMILY AND CONCILIATION COURTS

Ask the Experts

Introduction

Ask the Experts from the AFCC eNEWS: Guidance from Leading Family Law Professionals

Since 1963, the Association of Family and Conciliation Courts (AFCC) has provided an interdisciplinary forum for judges, lawyers, mental health and dispute resolution professionals to convene, innovate and share information on practice, research, programs and policy.

Members are AFCC's most valuable resource, and ever since the organization was founded, AFCC members have been at the forefront of change, innovation and reform in family law. Many concepts now commonplace, such as joint custody, mediation, collaborative law, unified family courts, parenting coordination, differentiated case management, parent education and alternative dispute resolution, evolved because of the dedicated work, expertise and leadership of AFCC members.

A willingness to share and collaborate in developing new approaches to challenging issues is a hallmark of AFCC membership. This happens through conferences, journals, think tanks, listservs, and newsletters.

This publication represents decades of expertise contributed by AFCC members to the *AFCC NEWS* and *AFCC eNEWS*. Published primarily as *Ask the Experts* columns, this compilation of columns provides practice tips for family law professionals in areas including intimate partner violence, alienation, high conflict, parenting coordination, mediation, parent education and more.

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Editors: Andrea Clark, MSW, and Larry Swall, JD.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
February 2008

Top Ten Tips for New Parenting Coordinators

Christine A. Coates, MEd, JD, Boulder, Colorado, Robin M. Duetsch, PhD, Boston, Massachusetts, Barbara Jo Fidler, PhD, Toronto, Ontario, Joan B. Kelly, PhD, Corte Madera, California, Arnold Shienvold, PhD, Harrisburg, Pennsylvania, and Matthew J. Sullivan, PhD, Palo Alto, California

1. Avoid burnout
Don't let your caseload of parenting coordination (PC) cases exceed half of your overall caseload. Take regular vacations making sure that you are not available during those periods.

2. Never accept a PC case without a court order or consent agreement
Always try to have input into the contents of the Stipulation and/or Order before issuance or signing.

3. Payment
Get as much of a retainer as the parties can pay up front and bill against it for your work. The beginning of a case is very time intensive. Keep a client "trust account" to hold unused retainer moneys, so that you don't get caught taking a loan to reimburse clients.

4. Boundaries, boundaries, boundaries
Set up the communication structure immediately. Set time limits on your sessions and stick to them. Remind yourself that the clients own the problems.

5. Document, document, document
Document all of your work carefully and completely.

6. Screening
Screen for domestic violence (intimate partner violence) and power imbalances.

7. Calendar
Have the parents transpose the words of the parenting plan/order for parenting time (usual and holiday) into calendar form for at least 6 months, preferably for one year, in the early stage of the work and quickly address any scheduling conflicts, ambiguities, loop holes at the outset to preempt nth hour conflicts, "crises."

8. Conference call service
Get a reliable, affordable conference call service to facilitate conference calls in your work.

9. Hybrid ADR process (remember, it's efficient!)
Parenting coordination is a hybrid ADR process, not therapy, advocacy or evaluation. Take advantage of all the functions as appropriate: assessment, education, coordination, conflict management, mediation, arbitration. Also, make a clear distinction for the clients when you begin to arbitrate a conflict and are making a decision.

10. Networking
Have a mentor or at least a few other professionals to consult with about parenting coordination cases. It will save your sanity. Join the AFCC Parenting Coordination Network (group email networking list for AFCC members to connect with each other, ask questions and share techniques) for stimulating discussions.

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April 2008

Top Ten Tips for Interviewing Children for Custody Evaluations

Kathleen Clark, PhD, Galion, Ohio, Leslie M. Drozd, PhD, Newport Beach, California, Jonathan Gould, PhD, ABPP, Charlotte, North Carolina, Kathryn Kuehnle, PhD, Indian Shores, Florida, Mindy F. Mitnick, MEd, MA, Edina, Minnesota, and Philip M. Stahl, PhD, ABPP, Queen Creek, Arizona

1. Differences
Understand the differences between clinical/therapeutic and forensic interviews. Clinicians without specific forensic training should not engage in forensic interviews. If an issue arises during the interview that requires training more specialized than basic forensic interviewing, report it to the proper agency or refer it to an expert in an appropriate area.

2. Sound forensic interviews
Establish rapport, explain the interview purpose and discuss interview "ground rules." Explain the limits of confidentiality and how the information obtained will be used in a way the child will understand. The interviewer should explain to the child that it is acceptable to tell the interviewer they don't know the answer to a question or don't understand it. Furthermore, they should correct the interviewer if s/he is mistaken. The interviewer should provide children with practice responding to open ended prompts when describing their experiences.

3. Understand child development
In conducting forensic assessments of children, it is critical that the interviewer determines any factors that may impinge upon the child's ability to comprehend, recall accurately and report past events. To understand this, the interviewer should be trained in child development including memory, suggestibility, language and communication.

4. Truth or lie
The interviewer should let the child know that they will not be able to help her/him answer questions and that it is important to tell the truth. Ask questions early in the interview that will determine if the child knows the difference between the truth and a lie.

5. Open-ended questions
Research has shown that open-ended questions produce better results than specific "risky" questions. Examples of open-ended questions include: tell me, what, where, when, how. Examples of risky questions to avoid, if possible, include: why, did, was, can you tell, or.

6. Follow-up
Follow up with questions such as "tell me more" and "what happened next." Avoid yes/no and forced choice questions unless necessary.

7. Ask one question at a time
Wait until the child is finished responding before asking the next question or commenting on what the child has said. Avoid repeating the question, as this may make the child feel that her/his first answer was wrong.

8. Understand admissibility
Evaluators should be familiar with the Federal Rule of Evidence 401 and similar rules of evidence in their state, as well as, case law, including but not limited to Frye, Daubert, and Kumho. Forensic practice is specialized and requires specialized training and knowledge.

9. Remember these are children
Speak to a child in words s/he will understand. Avoid abstract, vague and legal terms. Some children may be more open and communicative if they are allowed to play or draw as they are interviewed.

10. Respect the children
Listen and make sure that you understand the child's point of view apart from the view of the parents. Let them know that their views are important but they are not responsible for the outcome—their parents or the judge are.

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June 2008

Top Ten Tips for Reducing Work Stress

Vicki Carpel Miller, MS, LMFT, Scottsdale, Arizona, and Ellie Izzo, PhD, Scottsdale, Arizona

Vicarious trauma is what happens to us when we listen to clients' trauma stories day after day. We listen to these stories, while controlling our empathic response. This puts an enormous strain on our brain, leaving us vulnerable to physical, emotional and spiritual disturbances. Take a look below to read our top ten tips to reduce your brain strain and protect you from the ravages of vicarious trauma.

1. Schedule your day realistically
Your work is not meant to envelop your life. Make sure you have breaks or down time. Go to the bathroom, call a friend, step outside and breathe.

2. Schedule difficult clients in between less challenging ones
Working with difficult clients is draining; don't see them back-to-back. Your tolerance will be reduced and you might get impatient or irritable.

3. Know your triggers
We all have a personal history, our childhood. Reveal your history to yourself or someone else you trust so you remain aware and conscious of your own personal triggers and impasses. This will allow you to function more competently and professionally.

4. Schedule exercise, lunch and frequent breaks as though they were regular work day appointments
These balancing activities are as important to you as you are to your clients. Our physical health is paramount to providing clear thinking and ethical practice.

5. Debrief or talk with other professionals in a safe, confidential setting
This is essential for releasing stress from our work and preventing Vicarious Trauma.

6. Take care of your health
Schedule check-ups routinely with your doctor and dentist. Don't put it off and set yourself up to worry about some unaddressed physical symptom.

7. Pay attention to your visceral reactions, such as a gut kick or positive Gorney Reflex (hair standing up on the back of your neck)
These are internal red flags to take notice of something coming from the client that warrants your attention. Ignoring gut level reactions can lead to more complicated circumstances later on in dealing with difficult cases or clients.

8. Stay within your scope of practice
Our desire to help can sometimes lead us astray. Don't be afraid to ask for support from adjunct services.

9. Don't procrastinate and put off completing important paperwork or less desirable tasks required in your work
Worrying about completing these tasks is far more stressful than completing them on a regular basis.

10. Spend time in spiritual activities that access the higher left side of your brain
These are activities that elicit positive emotions such as joy and calmness for you. These activities are different for everyone, but essential for all.

Vicki Carpel Miller, LMFT, and Ellie Izzo, PhD, are co-directors of the Vicarious Trauma Institute in Scottsdale, Arizona. They have recently co-authored Day After Day the Price you Pay: Managing Second-Hand Shock *and* The Second-Hand Shock Workbook*. For more information, please visit their Web site at www.vicarioustrauma.com.*

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August 2008

Top Ten Tips for Mediators to Move through Emotions

Sue Bronson, MS, Milwaukee, Wisconsin

1. Make emotions a standard part of the discussion
When you paraphrase, include the feeling being expressed. It may be a feeling word, an image, or a metaphor.

2. Separate emotions from thoughts
Emotions are energy in the body. Thoughts are how we make sense of events in our head. If you can change the word "I/You feel…" to "I/You think…" it is probably a thought. Without attention to emotions in mediation, we run the risk of missing something central to a dispute and its resolution.

3. Feelings are simple and universal
We all share common human emotions. The rhyming basics are mad, sad, glad and afraid. Our common experience of emotion is the foundation of empathy. Look for emotions in mediation and how they affect decisions.

4. Feelings are complex and individual
Each emotion has an intensity—annoyed, angry and rageful are increasing intensities of mad—and can blend with other emotions to create a unique array for each of us. We may also have contradictory emotions in rapid succession. When acknowledging an emotion in mediation, slightly overstate the intensity of emotions more difficult for the individual to express, allowing them to correct down if necessary.

5. Recognize your own feelings
Mediators need to be comfortable with our own emotions so we don't usurp the process. Knowing your own emotions can help you better understand what is happening to others and see the early cues in mediation.

6. Watch carefully
Emotions are expressed through facial expressions, breath, voice tone and volume, and body movements, among other ways. Notice changes to unmask emotion as it presents itself. Provide your observations without judgment or interpretation.

7. Venting is NOT useful
Venting is generally a repetition of old statements and reinforces negative patterns. True emotional expression happens in the present moment. We can see/feel the actual physical sensations in the body. The body is a source of information, strength and a resource for solutions.

8. Label it and move on
Sometimes it is enough to acknowledge an emotion simply by naming it and moving on. Name the feeling and connect it to needs and interests, pair it with a question for clarification, provide another way to express the need, or follow with silence.

9. Slow down to experience the emotion
At times it may be important to capture a brief moment when a new spontaneous response occurs. Was it seen and understood? This could be an opening of new doors for resolution.

10. Be genuine
It is not enough to learn stock phrases and use them liberally. We must be authentic.

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September 2008

Ten Ethical Considerations for Parenting Coordinators

Linda B. Fieldstone, MEd, Miami, Florida, and Nina M. Zollo, Esq., Tallahassee, Florida

The parenting coordinator's (PC) ability and commitment to act ethically is a fundamental part of the parenting coordination process and is a vital aspect of the quality of the service offered. The PC's ethical behavior preserves the integrity of the parenting coordination process, provides protection for each participant and helps maintain the sanity of the PC in dealing with these high conflict cases. AFCC members Linda Fieldstone and Nina Zollo offer their ten ethical considerations for parenting coordinators.

1. Know your limitations
Decline the appointment or refer the case back to the court for the appointment of a new PC, if there are issues such as domestic violence or abuse, mental illness or substance abuse, or any other issues in which you are not specifically trained to address in the parenting coordination process.

2. Screening is a process, not an event
Screening for domestic violence, mental health and substance abuse should occur throughout the parenting coordination process. You may be the first person to recognize that such issues are impacting the family.

3. Know the law
Stay current with and adhere to all statutes, rules, administrative orders, regulations and procedures in your state or jurisdiction.

4. Know the legal history of the family
Be familiar with all orders, pleadings and other court documents relating to the parents, the children, and any extended family, if relevant.

5. Educate your clients on the PC process (*or* let your clients know what they are getting into)
Provide an oral and written explanation of the parenting coordination process to the parents during your first meeting so that they are aware of the scope of your authority, what the PC does and does NOT do, and any limits on the confidentiality of the process.

6. Explain your fee structure
Explain the basis of all of your fees, how and when each parent incurs charges, including time spent to read information provided by the parents or obtain information from their court files, responses to emails, fax and telephonic communications between meetings, and any additional charges for depositions and testimony.

7. No dual roles and learn to say NO!
Refrain from acting in any role not directly related to the parenting coordination process, such as acting as attorney, therapist, financial advisor, custody evaluator, mediator, advocate, supervised visitation observer, investigator or JUDGE. Educate the court on the role of the PC by declining to perform tasks that are beyond the scope of your duties, or are unethical according to any other professional standards to which you must adhere. (The AFCC Guidelines for Parenting Coordinators may be a helpful resource to provide the court when there is a general question of propriety).

8. You are not an enforcer
Since you are NOT the judge, and parents have due process rights, you cannot impose penalties if the parents do not adhere to your recommendations, court ordered authority, or payment plan.

9. You are not a miracle worker
No matter how skilled you are as a PC, there are cases where parenting coordination should not occur (we have all had them!), or should be terminated and referred back to the court.

10. You can't learn too much
Continued training is the key to enhance your knowledge base and helps you to enhance the knowledge base of other PCs in your community. To make it easier for you, AFCC offers trainings for PCs at conferences and other venues periodically throughout the year!

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October 2008

Ten Tips for Judges and Judicial Officers in Matters with Self-Represented Parties

Hon. Emile R. Kruzick, Toronto, Ontario, Canada, Hon. David R. Aston, Toronto, Ontario, Canada, Hon. Peter Boshier, Wellington, New Zealand, and Hon. Hugh E. Starnes, Fort Myers, Florida

Self-represented parties present a great challenge to judges and judicial officers and are growing in numbers throughout the world. This distinguished international (Canada, New Zealand and US) panel of judges has compiled a list of tips to help the judiciary fairly and equitably treat clients who may be representing themselves and to guide them smoothly through the judicial process.

1. Maintain order
It is the role of the judge or judicial officer to control the courtroom and the proceeding. The judge should maintain that control with both the parties and the lawyer(s).

2. Inform of rights of parties
The judge or judicial officer should ensure that the self-represented person is aware of his/her right to counsel. If the person wants to be represented by a lawyer the person should have reasonable opportunity to get legal advice or hire a lawyer.

3. Ensure clarification
The judge or judicial officer should ensure the specific issues before the court are clarified and that the judge or judicial officer understands what the litigant is asking.

4. Understand the role
The role of a judge or a judicial officer is as a judge and not that of counsel. However the judge or judicial officer should ensure, without educating the litigant, that the person understands that the procedural and evidentiary rules will be followed and that it is the obligation of the self-represent to respect those rules and procedures.

5. Maintain boundaries
The judge or judicial officer should not engage in conversation with the litigant or the lawyer(s). The judge should not engage in argument and should terminate any such disagreement dispassionately.

6. Exhibit fairness
The judge or judicial officer should ensure that the person leaves the courtroom with the sense that he/she was dealt with fairly and had an opportunity to be heard.

7. Treat both sides equally
The judge or judicial officer should be sensitive to the difficult position of counsel as well as the litigant, but treat both sides equally.

8. Be cognizant of emotions
The judge or judicial officer should be sensitive to tone, vocabulary and body language. Attempt to use questions rather
than assertions in the dialogue with the self-represented person.

9. Maintain balance
It is important that the judge or judicial officer not say or do anything that reflects perception of familiarity with the lawyer on the other side.

10. Record if possible
It is advisable to have a record of the exchange and therefore consider having everything recorded.

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November 2008

Ten Tips for Separated and Divorced Families for the Holidays

Peg Libby, Executive Director, Kids First Center, Portland, Maine

When asked to write 10 tips for the holidays in the Ask the Experts section of the AFCC newsletter, I decided to ask the REAL experts, the kids who attend our divorce support groups at the Kids First Center. Here is an excerpt from the Holidays and Celebrations chapter of our new book, *Kids First: What Kids Want Grown-ups to Know about Divorce and Separation*.

1. Plan, plan, plan
Planning and predictability help kids cope, especially with events like holidays that are often ripe with emotion and expectations.

2. Begin early
Don't leave the complicated scheduling logistics until the holiday is close at hand – take it seriously and make decisions early (when parents begin writing out their separation plans is a good place to start).

3. Be specific
Though future events can never be foreseen entirely, kids want to know what to expect year after year at holiday time. Specific and detailed holiday plans will provide kids with the security of knowing they have a plan they can count on.

4. Include the kids
Based upon the ages of the kids, parents are wise to include kids in discussions of new holiday traditions, while making it clear that the final decision will be up to the parents.

5. Be open and flexible
Though parents are urged to specify a very detailed schedule for holiday events, it is also unrealistic to block out the possibility of changes. However, the same rules of planning, specificity, predictability and inclusion of kids apply.

6. Give kids permission to discuss their experiences at the other home
Parents respect their kids' need for privacy by not asking probing questions about the other parent's home. However, kids may want to discuss their holiday experiences and they will feel comfortable if they are free to do so.

7. Create new traditions
It is OK, even important, to acknowledge that "something has changed this year" as families go through the first holidays following separations. Each parent can play a role to help create a new, personalized tradition that honors the old traditions.

8. Introduce no surprises
Introduction of surprises or emotionally charged information, such as new partners, or moving, is best delayed until a quieter time. When parents keep in mind the child's point of view during holidays, they can avoid bad perceptions of otherwise good news.

9. Don't discuss issues
Refrain from the temptation to use holiday drop-off and pick-up times to review past problems and areas of tension. Parents can easily project their own feelings onto their child.

10. Give yourself a break
It should be expected that difficult feelings and behaveiors will arise around holidays and special events. Unfortunately, parents do not have a guide-book that tells them what to do for every such event. There is only a right solution for a specific family and specific kids. Informed, caring parents work together to figure out what works to put kids first.

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December 2008

Ten Risk Management Tips for Child Custody Evaluators

David A. Martindale, PhD, ABPP, St. Petersburg, Florida

Risk is most effectively managed when we practice well and practicing well requires that we set the bar not at the lowest acceptable point (defined by enforceable standards and regulations) but at the highest point (found in the guidance that is offered by respected colleagues and by professional organizations). Risk reduction procedures are, in many respects, anger reduction procedures. Litigation exacerbates anger, and anger often gives rise to complaints. Litigation-related anger is reduced when litigants and others involved in the evaluative process are treated fairly.

1. Be fair
Evaluators are fair to litigants when the evaluators provide clear, complete, written information to the litigants concerning the evaluators' policies, procedures, and fees and employ a balanced approach; are fair to children when the evaluators provide children with age-appropriate information concerning the pro-cess; are fair to family members and to collateral sources when the evaluators make clear the ways in which information gathered will be used and identify those to whom the information is likely to be disclosed; are fair to attorneys when the evaluators provide information reasonably needed by attorneys in order to effectively counsel their clients; and, are fair to judges when the evaluators offer advisory input that has been developed in a sound manner.

2. Have a data base for your opinions
Evaluators offer only those opinions that are based upon sufficient facts or data and are the product of reliable principles and methods that have been reliably applied to the facts of the case.

3. Keep records
Evaluators create records the completeness and quality of which reflects anticipation of their scrutiny in an adjudicative form and take reasonable steps to maintain those records.

4. State your limits
Evaluators describe the known limitations to their data without awaiting requests that they do so.

5. Know your local legal environment
Evaluators acquire knowledge of the legal and professional standards, laws, and rules applicable to the jurisdictions in which their evaluations are performed.

6. Avoid dual relationships
Evaluators recognize that objectivity is impaired when an evaluator currently has, has had, or anticipates having a relationship with those being evaluated. The dynamics of c
ognitive bias that characterize concurrent relationships also operate in sequential relationships.

7. Don't make interim recommendations
Evaluators refrain from making interim recommenddations. Temporary orders often written in response to interim recommendations transform previously level playing fields into precarious slopes. Evaluators who have all the information needed in order to responsibly offer recommendations should conclude their evaluations and prepare their reports. Evaluators who have not yet obtained all the information needed in order to responsibly offer recommendations should not offer recommendations. Information needed by the court in order can be imparted without opinions being offered.

8. Do not speculate
Evaluators do not speculate. Carefully developed inferences may be useful when appropriate emphasis is placed upon the limits of such inferences, but speculation offered by experts in the course of giving testimony may be assigned weight that is not warranted, with harmful results.

9. Focus on parenting skills
Evaluators conceptualize parenting as a job; utilize peer-reviewed research to ascertain what attributes, behaviors, attitudes, and skills have been reliably associated with the demands of the job; focus attention on those characteristics; and, demonstrate that their opinions rest upon the knowledge base of the mental health fields by citing in their reports the research upon which they have relied.

10. Support your statements
Evaluators base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings and provide opinions of the psychological characteristics of individuals only after they have con-ducted an examination of the individuals adequate to support their statements or conclusions.

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January 2009

Top Ten Tips on Court Program and Community Collaborations

Linda B. Fieldstone, MEd, Miami, Florida, Hon. Sandy Karlan, Miami, Florida, and Hon. Judith L. Kreeger, Miami, Florida

An increasing number of domestic relations courts are recognizing that the needs of family litigants are often non-legal child related issues and are best served outside of the family court arena. Family Court Services of Miami-Dade County Domestic Relations Division was developed to fill the gap between the court and the community and bridge parents and children to the most appropriate providers in their neighbor-hoods. In this era of "do more with less," this function of the court has become even more crucial to the families we serve. These Top Ten Tips will help you build strong links between your court and community:

1. Define the need
Let the judges define their needs and develop a system that meets their expectations; create easy forms and meaningful procedures to structure a program to meet the expectations of the court first. Remember that a court services program would not exist without the confidence of the court.

2. Know your customers
Understand the types of services that are best suited for these families and search for them in various parts of the community; if you don't find what you are looking for, help to create them.

3. Tailor each referral to the unique needs of each family
Administer a comprehensive intake to ascertain needs of the family, including location, language, affordability/ fee structure, insurance, date/time restrictions, gender preferences, domestic violence and abuse history, special training required, prior services utilized and special needs of any family member.

4. Don't forget the vet
Remember to check if either parent is eligible for veteran's benefits; collaborate with your local Veteran's Administration to provide a strong link to the appropriate provider.

5. Be aware of cross cultural issues
Make sure that the services that you offer are cross cultural in nature so to avoid frustration and further barriers to healing for the parents and children that are referred.

6. Be on guard when referring families with domestic violence and abuse issues
Check if referral sources have appropriate safety precautions in place before referring families with domestic violence and abuse history, such as separate entrances and waiting areas, security cameras, security guards, specific security procedures in place, detailed verbal and written orientation to policies and procedures and special training for providers.

7. Be prepared for crisis intervention services
Develop the capacity to assist the court with a parent or child that requires immediate attention, threaten to hurt themselves or others. Provide a link to the most appropriate agency and/or law enforcement to ensure the safety of those in proceedings.

8. Support your community providers
Provide networking opportunities and on-going trainings for community providers regarding the challenges in working with family court litigants, differentiation in high conflict and domestic violence and abuse cases, appropriate interfacing with the court and specific court procedures to follow. Invite judges too. Trainings provide a special link between the court and community; providers feel appreciated and supported.

9. Create a family court council
Coordinate a meeting with the Chief Judge of the Division (or designees) and the service providers in your community to open the dialogue between the court and the community providers. This will eliminate unfulfilled expectations of one another and provide a smooth working relationship.

10. Establish quality control

Develop measures for quality control management and assessment of the providers that the Court is using, as parents will trust the program because the Court sent them. The providers are interested in working with the Court and getting our business, so don't be afraid to thoroughly verify their credentials and accomplishments.

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February 2009

Top Ten Things a Family Court Judge Should Remember

Hon. William C. Fee, Angola, Indiana, and Hon. Denise Herman McColley, Napoleon, Ohio

Judges who hear domestic matters need all the skills of other judges plus some special interpersonal skills. Some of the top things that family court judges should remember are:

1. Humility
Take your job seriously, not yourself. Don't ever become overly impressed with yourself. You are not God or the President, and you are definitely not infallible.

2. Equanimity
Try not to become angry at litigants. Treat them as you would like to be treated. You are often seeing good people at their worst.

3. Appreciation
What other job allows you to get up each morning and remind yourself that what you do each day helps children lead a better life?

4. Creativity
Keep an open mind. Look for new ways to settle problems. Each family's problems are unique.

5. Listening skills
Really listen to others – litigants, lawyers, children, witnesses – it's amazing what you will learn if you really listen to what is being said.

6. Firmness
Be firm about requiring lawyers to prepare adequately for trial, for mediation and for other legal processes. It will save time and anxiety for everyone in the long run.

7. The self-represented litigant is not a lawyer
Have an easy plan of court access for self-represented litigants, who are increasing in number.

8. Know the affiliated professionals
Know your local mental health professionals and mediators. They can help you do a better job and make life easier for you.

9. Know the developmental stages of children
You are not expected to be a child psychologist, but it is important that you know what can be expected of different age children, and what developmental needs have to be met at each stage.

10. Set the tone
Make your courtroom one where cooperation, not litigation, is supported for parents in custody/parenting time disputes.

Oh, yes, and:

11. Have an unlisted phone number

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
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March 2009

Ten Tips for Parents about Children and Divorce

Jennifer McIntosh, PhD, North Carlton, Victoria, Australia

1. Parents have a large influence on children's divorce outcomes
To a great extent, your child's outcomes after divorce are in your hands. That's the good news, and the challenging news as well. The way you go about divorce will make a difference to your children's ability to cope with the family separation, as well as their long term well-being.

2. Warmth, availability and emotional safety
It's important during and following divorce for parents to be available and responsive to their children. That means warm, real time parenting, not good time overcompensating. Let your children know you are willing to hear about all of their feelings – not just the ones that feel good or seem fair.

3. Doing the emotional work
Being available to your children means clearing a space in your own mind for thinking clearly about them. Sadness, anger or confusion are normal and necessary emotions for children as well as parents after divorce. Adjustment and working it through is what matters.

4. Keeping it predictable
Just like before divorce, infants and children after separation need predictability, routines, practical support, and emotional scaffolding from Mom and Dad. They need parents to stay attuned and be responsive to their needs. Make sure your parenting arrangements enable this to happen.

5. Cleaning up the conflict
Parents may take a while to sort through the conflict that came with the separation. Get all the support you need to sort it through as early as possible and go back to your mediator or counsellor for "tune-ups" as needed. While you are in the thick of parenting decisions and settlements, your children shouldn't be. Reassure them you are working to resolve things.

6. Divorcing your spouse, not your child's other parent
Building a parenting alliance with your ex-partner is crucial to your child's emotional security after separation. That doesn't mean being best friends, but it does mean agreeing on how to communicate safely and effectively about your child's needs. Enlist the support of a good mediator if that is hard to achieve on your own.

7. Don't drag it out
The longer parents' take to build an alliance and resolve their disputes, the more energy a child has to use to cope with strain and stress in the family. That can drain a child of energy they need to get on with their normal development: learning, building their identity and esteem, having good friendships, and achieving their goals.

8. Legal advice versus legal action
Many parents benefit from the advice of lawyers, to inform them about their rights and responsibilities in making parenting plans and resolving financial settlements. Be aware that getting legal advice is very different from taking legal action. Adversarial processes are necessary for a small percent of the population who have serious risks and issues that cannot be resolved otherwise. Research shows that engaging in court can do further and long term damage to your relationship with the child's other parent. Take good legal advice, but try to minimize the need for legal action.

9. Letting your children have a safe voice
Research also shows it can be beneficial for everyone if children are given safe opportunities, free from loyalty burdens, to express how things are for them, and for their parents to better understand that. This is very different from asking children to make decisions – never a good idea. Some court and mediation pro-grams have specially trained social science professionals who can assist with safely including children's views in your planning for post-divorce life.

10. Permission and support for safe relationships with both parents

Despite the acrimony that many parents feel for each other during the divorce process, most children want to keep their relationships with each parent and need support to do that. Loyalty conflicts are common when children see and feel a lack of respect and cooperation between their parents. Worse still is the child who survives emotionally by distancing one parent in order to keep sides with the other. Effective management of the adult emotions involved means everything for children's well-being, especially their need to preserve supportive relationships with both parents.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
April 2009

Top Ten Things to Consider When Developing a Parenting Plan

FLAFCC Parenting Plans Taskforce

The AFCC Florida Chapter Taskforce on Parenting Plans has looked to current research to provide for the development of empirically advised parenting plans. The Florida Chapter hopes to post more information, including a substantial bibliography, on its web site at FLAFCC.com soon.

1. There is no one size fits all parenting plan
Parenting plans should be constructed to meet the unique needs of each family and each family member.

2. Children's developmental needs must be considered
Children of different ages need and benefit from different parenting arrangements. Parenting plans need to include time-sharing arrangements that reflect children's developmental needs and individual requirements as much as possible. As children get older, these time-sharing arrangements will need to be more flexible.

3. Children grow and families change
A good parenting plan takes into account developmental changes as children grow and life cycle events that will occur in the lives of their parents. Parenting plans should not be static, and should anticipate the need for adjustments to the parenting plan in order to avoid potential conflict when these changes occur.

4. The best parent is two parents
When parents construct their plans, it expresses their acknowledgement that both parents, whenever reasonably possible, are important to their children. Children retain the feeling of family when they have pleasant, free access to both parents and both extended families. The best plan allows ample time for each parent to develop meaningful ongoing relationships with their children.

5. Maximize relationships
The disrupting effect of divorce or parental separation can have profound consequences for children. Children are likely to feel more secure and experience less disruption in their lives when allowed to remain in safe, consistent, supportive, and familiar environments. A good parenting plan encourages the relationships that existed between children and others that were established before the divorce or parental separation.

6. Minimize loss
Children often experience a series of significant losses as a result of their family's changing structure. They may lose their home, familiar schools, access to friends, access to extended family members, regular contact with a pet, and daily access to a parent. Parenting plans that anticipate these changes and minimize losses for their children can be very beneficial.

7. Protect children from conflict
It is well documented that children are harmed when exposed to the conflict between their parents. A good parenting plan builds in structures to avoid children's exposure to parental discord. Some parenting plans may help increase the level of cooperation between parents and other plans may specify the use of an outside party or "intermediary" if parents are unable to resolve their parenting disputes without exposing the children to conflict. Plans can also include that a specific mechanism such as counseling, mediation, and parenting coordination be attempted to resolve issues before parents resort to court action.

8. Protect children's feelings and promote their sense of well being
Children are harmed when they hear one parent say bad things about the other parent. A child's identity is tied to being a product of both parents and their extended families. Parenting plans that build in children's rights to love both parents without fear of reprisal and eliminates blame helps keep children out of loyalty binds and minimizes their feelings of guilt for their parent's separation.

9. Parenting style, gender, and culture makes a difference

Each parent has different and valuable contributions to make to their children's lives. Parenting plans that acknowledge and respect differences in parenting style, the need for gender development for each child, and the importance of maintaining cultural norms helps promote healthy development and a sense of continuity for children.

10. Communications is essential

Communication and cooperation between parents is important. Consistent rules and routines in both households and sharing of knowledge of events create a sense of security for children of all ages. Parenting plans should specify a detailed plan for constructive and effective communication between parents about the children.

The FLAFCC Parenting Plans Taskforce: Debra K. Carter, PhD, Chairperson; Michelle Artman-Smith, Esq.; Eric Bruce, Esq.; Linda Fieldstone, MEd; Hon. Diana Moreland; Jack Moring, Esq.; Roxanne Permesly, LMHC; Laurie Pine-Farber, LCSW; Magistrate Lee Schreiber; Deborah Silver, PsyD; Robert Silver, PhD; Nina Zollo, Esq.

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May 2009

Top Ten Tips for Managing Personality-Disorder People

William A. Eddy, LCSW, Esq., CFLS, President, High Conflict Institute, San Diego, California

1. Don't be surprised
People with personality disorders are normal in many ways, yet they can be shockingly abnormal in intimate relationships and during crises. Don't be surprised that a seemingly reasonable, intelligent and successful person (in their work, etc.) may suddenly be extremely angry, self-centered, manipulative, and lacking in empathy in a close relationship.

2. Don't try to talk logic
When a personality-disordered person is emotionally upset, they may be physiologically unable to access their logical, problem-solving skills. Research suggests that some people with personality disorder may have a smaller corpus callosum, which makes it harder for their brains to process highly upsetting emotions and problem-solving at the same time.

3. Learn the dynamics of personality disorders
People with personality disorders have chronic internal distress and/or ongoing impairment of social functioning in many settings. They are characterized by an inability to reflect on their own behavior and an inability to adapt their behavior to changing circumstances. This is part of who they are. There are at least ten different types of personality disorders.

4. There is treatment
While traditionally most mental health professionals have viewed personality disorders as unresponsive to treatment, some methods are having success these days – especially those that emphasize cognitive-behavioral skills rather than seeking deep in-sights about the past. Dialectical Behavior Therapy, developed by Marsha Linehan in Seattle, has become the foremost, research-based successful method for treating borderline personality disorder. Schema Therapy, developed by Jeffery Young in New York, in another method which is having researched-based success with borderline and narcissistic personalities.

5. It's not about you!
People with personality disorders now represent approximately 20% of the general population, at least in the United States, according to a recent controlled study of over 35,000 people sponsored by the National Institutes of Health. They attack the people they are closest to or people in authority. They chronically blame others, as a defense mechanism against feeling the unbearable pain of being consciously responsible for their actions. Their constant blaming behavior is about them, not about you.

6. Their problems go way back
One of the diagnostic mental health criteria for personality disorders is that the disorder is a long-standing problem dating prior to adulthood. In many, perhaps most, the troublesome behavior it dates back to very early childhood, when something went wrong in establishing a "secure attachment" between an infant and his/her parent(s). If the child develops an "insecure attachment," research shows that the child is at much higher risk of developing a personality disorder as an adult. However, life events can help avoid this or increase this risk.

7. Use empathy, attention and respect
While this is the opposite of what you feel like doing, E.A.R. works surprisingly well at calming down any upset person. It doesn't cost you anything and it doesn't mean that you agree – it just means you want to connect with them to help them. You will have to re-peat this often with personality-disordered people.

8. Their emotions are contagious
Research shows that emotions are contagious, and that fear and anger are particularly contagious. Personality-disordered people generally have less control over their emotions, so that intense fear and intense anger are common occurrences – and professionals often get "emotionally hooked," if they aren't aware of this.

9. Respond to hostility with BIFF
Whether in emails, letters or in person, personality-disordered people attack and blame those closest to them and people in authority. Avoid the urge to retaliate or criticize them. Instead, make your response Brief, In-formative, Friendly and Firm.

10. You can't reach everybody
Regardless of what you do, there will be some clients you cannot help. It's not about you. Avoid taking responsibility for their problems or decisions. You're just responsible for your part. Sometimes by letting go of the outcome, they become more responsible. Pay attention to any gut feelings that you may be in danger, and get help when necessary. Get support and consultation when working with personality-disordered clients. You're not alone!

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Top Ten Ways to Protect Your Kids from the Fallout of a High Conflict Break-Up

Joan B. Kelly, PhD, Corte Madera, California

1. Talk to your children about your separation
Studies show that only 5 percent of parents actually sit down, explain to their children when a marriage is breaking up, and encourage the kids to ask questions. Nearly one quarter of parents say nothing, leaving their children in total confusion. Talk to your kids. Tell them, in very simple terms, what it all means to them and their lives. When parents do not explain what's happening to their children, the kids feel anxious, upset and lonely and find it much harder to cope with the separation.

2. Be discreet
Recognize that your children love you both, and think of how to reorganize things in a way that respects their relationship with both parents. Don't leave adversarial papers, filings and affidavits out on your kitchen counter for children to read. Don't talk to your best friend, your mother or your lawyer on the phone about legal matters or your ex when the kids are in the next room. They may hear you. Sometimes kids creep up to the door to listen. Even though they're disturbed by conflict and meanness between their parents, kids are inevitably curious – and ill-equipped to understand these adult matters.

3. Act like grown-ups: keep your conflict away from the kids
People with personality disorders have chronic internal distress and/or ongoing impairment of social functioning in many settings. They are characterized by an inability to reflect on their own behavior and an inability to adapt their behavior to changing circumstances. This is part of who they are. There are at least ten different types of personality disorders.

4. Dad, stay in the picture
Long-term studies show that the more involved fath-ers are after separation and divorce, the better. Develop a child-centered parenting plan that allows a continuing and meaningful relationship with both parents. Where a good father-child relationship exists, kids grow into adolescence and young adult-hood as well-adjusted as married-family children. High levels of appropriate father involvement are linked to better academic functioning in kids as well as better adjustment overall. That's true at every age level and particularly in adolescents. Fathers, be more than a "fun" dad. Help with homework and projects, use appropriate discipline, and be emotionally available to talk about problems.

5. Mom, deal with anger appropriately
In their anger and pain, mothers may actively try to keep Dad out of the children's lives – even when they are good fathers whom the children love. When you're hurting, it's easy to think you never want to see the ex again, and to convince yourself that's also best for the kids. But children's needs during separation are very different from their parents. Research reports children consistently saying, "Tell my dad I want to see him more. I want to see him for longer periods of time. Tell my mom to let me see my dad."

6. Be a good parent
You can be forgiven for momentarily "losing it" in anger or grief, but not for long. Going through a separation is not a vacation from parenting-providing appropriate discipline, monitoring your children, maintaining your expectations about school, being emotionally available. Competent parenting has emerged as one of the most important protective factors in terms of children's positive adjustment to separation.

7. Manage your own mental health
If feelings of depression, anxiety, or anger continue to overwhelm you, seek help. Even a few sessions of therapy can be enormously useful. Remember, your own mental health has an impact on your children.

8. Keep the people your children care about in their lives
Keep the people your children care about in their lives. Encourage your children to stay connected to your ex's family and important friends. If possible, use the same

babysitters or child-care. This stable network strengthens a child's feeling that they are not alone in this world, but have a deep and powerful support system – an important factor in becoming a psychologically healthy adult.

9. Be thoughtful about your future love life

Ask yourself: must your children meet everyone you date? Take time, a lot of time, before you remarry or cohabit again. Young children in particular form attachments to your potential life partners and, if new relationships break up, loss after loss may lead to depression and lack of trust in children. And don't expect your older kids to instantly love someone you've chosen – this person will have to earn their respect and affection.

10. Pay your child support

Even if you're angry or access to your children is withheld, pay child support regularly. Children whose parents separate or divorce face much more economic instability than their married counterparts, even when support is paid. Don't make the situation worse. In this as in all things, let your message to the kids be that you care so much about them that you will keep them separate, and safe, from any conflict. They will appreciate it as they get older.

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Top Ten Ways to Assess "Is Collaborative Practice Right for Me?"

Nancy Cameron, LLB, Vancouver, British Columbia, Canada

1. I want a confidential, private process

Collaborative Practice includes a commitment not only to confidentiality, but also to resolving matters outside of a contested court setting. This commitment ensures privacy, since it does not create documents that are filed in court (except the final, uncontested divorce filing). Unlike court-based processes, where financial statements, tax returns, and affidavits are routinely filed in court even if the parties do not end up in a (very public) trial, Collaborative Practice allows participants to engage in private negotiations.

2. I want to be involved in the negotiations, with the support of my own lawyer

Collaborative Practice is a client-centered dispute resolution model. This means that one needs to be willing to engage personally in the negotiations – to articulate one's needs, interests and desires, to engage in the conversations necessary for negotiation, to brainstorm possible solutions or to listen to one's partner and understand his or her needs. This can be daunting work at a time when communication with the other participant may be difficult, and where conflict-laden, entrenched communication patterns come to the fore. Collaborative Practice lawyers are trained to support you in your negotiations and to give legal advice within the collaborative process in a manner that informs clients but does not derail negotiations. They work to assist their clients in evaluating possible solutions, taking into account: their client's needs, the children's needs, feasibility, the law and analyzing both the benefits and risks of agreeing to proposed settlements.

3. I want to have input into, and some control over, the process

Since Collaborative Practice is a client-centered process, the process can be modified to meet the needs of clients. The disqualification agreement, the agreement that neither lawyer (nor any other collaborative professionals retained) will act for the clients in the event either party begins a contested court proceeding, is the core, nonnegotiable, process component of Collaborative Practice. Within this boundary, the process can be tailored to meet individual needs. It can involve a coordinated team of mental health professionals to work with communication and parenting plans, a child specialist to make certain that the voice of the child is heard, and a neutral financial specialist to assist in compiling and understanding financial information, tax consequences and future projections.

4. I want to have input into, and control over, the outcome

As a voluntary process, no agreement is concluded unless and until the parties are in agreement with the settlement. No one will impose a settlement on you. The advantage of this is that you have the opportunity to craft a settlement that meets your needs. The disadvantage of this is that you will not have a resolution unless it meets the needs of both you and your spouse, and you are both prepared to enter into the agreement. Research across North America indicates that approximately 95% of cases that are begun in the court system settle without a trial. Given this level of non-trial settlements, it makes sense to choose a process that is built on moving towards resolution, as opposed to moving towards trial.

5. I want non-adversarial advocacy support

Collaborative lawyers are trained in interest-based negotiation, in working in a team setting with the other lawyer (and any other collaborative professionals) and at the same time supporting you as your advocate. Unlike traditional litigation lawyers, collaborative lawyers commit to negotiating in an environment that is respectful of both parties, that does not employ litigation strategies, and that works towards creating a safe negotiation environment for both people involved.

6. If other professionals are involved (mental health professionals, financial professionals) I want them to work as a coordinated team with the lawyers, and I want there to be a free sharing of information between professionals

Collaborative Practice is the only dispute-resolution process where all professionals have been trained in

the same model of resolving disputes, and all commit to the same principles. This involves an open sharing of information between professionals, so that the professionals are all working together to the same end – a resolution that works for both parties. Although it is not unusual for people to work with both mental health professionals and financial professionals as they go through separation and divorce, this coordination of services is unique to Collaborative Practice. We believe that the open sharing of relevant information between professionals and the careful coordination of their involvement increases the likelihood of client success.

7. I believe my partner and I have a good chance of resolving matters outside of a courtroom, and we are both willing to commit our resources and efforts to an out-of-court settlement

If you are not successful in reaching a resolution through Collaborative Practice and decide to start a contested court proceeding, then both you and your partner must engage new lawyers. This obviously will mean incurring additional legal fees. Current research indicates that approximately 90% of collaborative cases result in a settlement. It is important, when meeting with your lawyer, to discuss factors that are likely to increase or decrease your chance for success. What does conflict look like between you and your spouse? Do you have concerns about disclosure? How does your collaborative lawyer suggest dealing with these concerns? Is it important for you to continue to have an on-going relationship with your partner?

8. I believe my partner and I continue to have enough trust to be able to engage in good-faith negotiations and full disclosure

It is sometimes difficult to assess trust at the end of a relationship, especially when the deep trust necessary to preserve a healthy, intimate relationship may have been broken. If you have a profound distrust of your partner, then collaborative practice may not be the right choice for you. Do you have enough trust to be able to negotiate in good faith? What support might you need in order to do this? Do you have trust that all necessary disclosures will be made? Are you trusting enough to make these necessary disclosures yourself? If trust is an issue, be certain that you talk to your lawyer about this. Collaborative Practice has the advantage of being able to work with a team of trained professionals to assist in trust building. However, profound distrust may be an indicator that collaborative process is not the right process for you.

9. I am willing and able to take my partner's needs and interests into account in developing process and outcome, and believe he or she will do the same

Collaborative process can be hard work. It requires insight at a time when one may feel particularly vulnerable. It requires give and take at a time when some people feel they have given all they can. It requires listening at a time when you might not want to listen. It requires articulating your fears and understanding your partner's fears. It means that both people must work together to create a negotiation pace that works for both of them. And finally it requires the ability say, "this is a resolution that I can adopt," and commit to signing a final agreement.

10. I want a process that can incorporate the specific needs of our children, and works to improve communication between the parents

For many parents, this is the number one reason for choosing Collaborative Practice. If you have children, what kind of a co-parenting relationship do you want to build? As you navigate into a two-household family, how important is it for you to create an environment for your children where they can continue to cherish their relationship with both parents, and know that their parents have done everything possible to take the children's particular needs into account? If you believe that the end of a marriage does not have to mean the end of a family, talk to a collaborative practitioner about whether or not Collaborative Practice is the right choice for you.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Top Ten Features of Models of Brief Focused Assessments

Linda M. Cavallero, PhD, Shrewsbury, Massachusetts

1. Some family matters involve issues limited in scope

BFA models presume that in some family court cases there are discrete issues, limited in scope, that do not require a comprehensive family evaluation to assist the court in judicial decision-making.

2. Specific referral questions must be identified by a judicial officer

A BFA addresses specific referral question(s) identified by a judge or designated judicial officer in a court order. These narrowly defined issues can be assessed at different stages in the legal process, whenever the judge requests a focused assessment.

3. BRAs are by nature more limited in scope than CCEs

A BFA differs from a comprehensive child custody evaluation in its narrower scope, more descriptive reporting of data and, consequently, more limited inference making. Comprehensive evaluations, by contrast, are designed to provide data on more broadly based questions about general family functioning and parenting capacity that are not appropriate to a BFA model.

4. BFAs can be an efficient as well as timely tool for addressing time sensitive issues

A BFA can be an efficient and cost effective tool to assist in judicial decision-making in family situations. By their nature, BFAs involve more circumscribed inquiry into family issues, and are therefore likely to be less intrusive to the family than comprehensive custody evaluations. BFAs can provide information to the court more quickly than a comprehensive evaluation, avoiding some of the delays in the resolution of issues that can exacerbate tensions in families. A BFA can be used to assist judicial decision-making when there are acute questions regard-ing individual or family problems, especially those related to time sensitive, child safety issues.

5. BFAs best address well defined questions that require clinical judgment

A BFA best addresses questions that are well-defined, narrow in scope and require clinical judgment, e.g., to what degree is a child's custodial preference based on developmentally appropriate reasoning?; is supervised visitation needed to protect a child's safety or well-being while with a parent in light of some aspect of the parent/child relationship?; whether and under what conditions to reunite an estranged parent and child-(ren).

6. The assessor or their agency must be named in a court order for assessment

Prior to commencing a BFA, the assessor must secure a court order that includes a well-defined referral question(s) and specifically names the clinician or their agency to conduct the assessment.

7. Assors select data gathering methods to address the referral questions

Assessors should design the BFA by selecting data gathering methods designed to provide sufficient information to address the referral question(s) of the court.

8. Clinicians interview family members, consult relevant collaterals and review records

In a BFA, an appropriately trained clinician, in a court, agency or private setting, conducts interviews with parents and their children, observes parent-child interaction, reviews relevant records and consults relevant collateral contacts. The assessment process is guided by the focused question(s) provided by the court or judicial officer.

9. Qualified mental health professionals with appropriate education and training can conduct BFAs

BFAs should be performed by qualified mental health professionals who are independent practitioners or part of a family court system, by court services employees

or by individual practitioners or teams qualified by statute or court rule. Brief focused assessors should possess appropriate education and training.

10. Assessors provide relevant information making clear its limitations

As impartial assessors, clinicians who perform BFA's must strive to provide reliable, relevant information to the court in a timely fashion, make clear the limitations of the assessment and to identify important issues not assessed.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
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Ten Tips for Setting Up A Court Connected ADR Program

David P. Levin, JD, Albuquerque, New Mexico

1. Judicial partnerships are fundamental
Courts are constitutionally created institutions which judges are mandated to lead. The same litigant population will visit the courtroom and the dispute resolution office. Beyond being the administrative authority who determines whether and how a court connected ADR program will or will not happen, judges are essential day to day working partners to effectively serve a common public.

2. Cultivate understanding with persistence, patience, and empathy
ADR providers, judges, court staff, the public, and the legal community all live in different worlds. ADR program leaders should assume that others, both the court divisions and the identified population of litigants that the program is serving, may not understand what an ADR process offers and how it works. The same is true for ADR providers regarding needs and interests of the legal system and the target population. Identify players and plan the time for mutual learning.

3. What does "ADR" mean for you?
"ADR" may mean anything. Identify core values and their boundaries. Is a process time limited or open ended? How does self-determination by participants intersect with the pressure to close cases through evaluative methods? This on-going assessment is essential for guiding the direction of program development.

4. Start slow and small, and be open to adjustments
Designing a program is a process, not an event. Learn from early cases. Be open to the unexpected. Allow for a "pilot project" period of time to learn what works, what is problematic, what makes a difference and what has been unforeseen.

5. Keep a "road map"
Start a never ending list of ideas. Log everything that you think of – the notion may not come again! From time to time, use a copy of the list to review and revise goals, tasks and priorities. Periodically review the list to rediscover great ideas.

6. Discover the legal and professional context
Learn to know the specific laws that apply to your program, as well as the model national standards. This requirement is particularly important for a court connected program. Know the context within which the program will be operating.

7. Design screening and an option to return cases
Design the criteria and process for screening potential cases, and include the option to decline a case which is unamenable for the offered type of ADR. This essential step will clarify for yourself and others the scope and boundaries for the program.

8. Capture early data and evaluate outcome results
One day you may have a sophisticated computer program and evaluation protocols. At the onset of the program, create even a crude way of tracking cases and outcomes. Early data will be difficult to retrieve later, and early outcome evaluation will provide important insight for how the program is developing. Planning these steps will help clarify program goals and expectations, along with the indicators of whether the program is on track.

9. Build a program policies and procedures manual as you go
Keep archive copies of forms, policies, procedures, and other documents. Design an outline of topics for a program manual. Insert the documents in the outline, and develop documents for unfilled sections. Describe program mission, goals, objectives and processes. Ultimately include enough detail to allow the program to be replicated.

10. Keep the faith
Program development takes time. Avoid being paralyzed by studying the situation to death, but also do not leap blindly over the cliff for immediate success. Be patient, thoughtful and flexible. Plan for set-backs and for unexpected successes. Work hard in the short term to help the long view happen.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
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Ten Tips for Success in Resolving Parenting Disputes

Hon. Harvey P. Brownstone, LLB, Toronto, Ontario, Canada

1. Be child-focused

Parents must learn to love their children more than they dislike each other. Children need peace more than their parents need to win. Make your child's well-being the focal point of every discussion you have with your ex-partner. Before taking a position on any issue, ask yourself, How will this affect my child? Ask your ex-partner to do the same. Never let a discussion with your ex-partner be about your needs or his/her needs; it should always be about your child's needs.

If you cannot agree on which solution would best meet your child's needs, ask yourself how you and your ex-partner would have decided this issue had you remained together as a couple. In most cases, the answer would be to consult an expert. For example, if you and your ex-partner have a disagreement about your child's health, or educational needs, or extra-curricular activeties, you should both be meeting with your child's doctor, school, a family counsellor, or parenting coach. There are many professionals with special expertise to help parents resolve their disputes in a child-focused way. The first step to being a mature, responsible co-parent is to always put your children's needs ahead of your own.

2. Learn to distinguish between a bad partner and a bad parent

The fact that your ex-partner was a bad partner does not necessarily mean that he/she is a bad parent. In my experience, most people who have been unfaithful to their spouses have actually treated their children very well. The way that a person treats his/her spouse in an unhappy relationship when no children are present may not be a good indication of how that person treats his/her children. It can be extremely difficult for a parent who has been mistreated by the other parent to accept that the child might see that parent differently and have a good relationship with him/her. Your child is entitled to get to know the other parent in his/her own right and to have a relationship with the other parent that is independent from your own. Even if the other parent is flawed, and even if restrictions or limitations must be placed on his/her contact with the child, your child can still have a safe and beneficial relationship with that parent. If your feelings about the other parent are standing in the way of your child's relationship with him/her, you should seek help from a counsellor or therapist.

3. Never speak negatively to the child about the other parent

Your child has a right to a loving relationship with each parent, free of any influence or brainwashing. Moreover, your child needs and deserves emotional permission from you to enjoy his/her relationship with the other parent. It is unfair and cruel to place your child in a conflict of loyalties and make him/her choose between you and your ex-partner, as this deprives the child of an important relationship. Keep your thoughts and opinions about the other parent to yourself; never share them with your child. Never draw your child into your disputes with the other parent. And while I'm at it, you should never criticize the other parent's family, new partner, or friends in front of your child. Nor should you tolerate your relatives, new partner, or friends denigrating or berating the other parent in front of your child. Make it clear to them that your child is to be shielded and protected from adult conflicts. Besides, it makes absolutely no sense to criticize people that your child is going to have a lot of contact with — what exactly do you want a child to do with this information? Most of the time a child will go right to the person who has been criticized and repeat everything you have said! Trust me, I've seen it happen thousands of times. One thing I have trouble understanding is why parents criticize each other's new partners. If you were attracted enough to your ex-partner to have a child with him/her, why does it surprise you that someone else finds him/her attractive? In most cases, a new partner had nothing to do with the breakup and is going to have considerable contact with your child. You gain nothing by making an enemy of that person.

4. Never argue or fight in front of your children
No exceptions. If you and your ex-partner cannot behave civilly in front of your child, then don't be to-gether in front of your child. It's that simple. I cannot understand why so many parents have trouble pretending to get along with each other for the few minutes it takes to pick up or return a child at access exchanges. It's called acting, and it's not that hard to do! Parents — even those who live together — pre-tend in front of their children all the time. It is even more important to do this after separation, because children need to be reassured that their lives will be happy and stable even though their parents live apart. Why are parents able to behave well in a courtroom in front of a judge (at least the vast majority do) but not in front of their own children? Don't they love their children enough to say "hello," "good-bye," and "have a nice day," and make small talk for the sake of keeping things peaceful and pleasant? Apparently not. This is shameful. There are lots of ways for parents to communicate with each other without the children being present: they can meet in person, or use telephones, faxes, letters, e-mails, and, of course, they can communicate through their lawyers. There is absolutely no good reason for parents to expose their children to their conflict. Parents who continually fail to heed this advice should be prepared to welcome the child protection authorities into their lives. (See Chapter 11.)

5. Listen to the other parent's point of view even if you don't agree with it
If you are going to communicate directly with your ex-partner, remember that communicating with maturity starts with listening. You must learn to really hear what your ex-partner is saying, and understand his/her point of view. In any disagreement, try repeating back to your ex-partner what his/her position is, and the reasons why he/she is taking that position. I often do this in court and am frequently amazed by many people's inability to correctly repeat back to me what their ex-partners have just finished telling me only a few seconds before! For that matter, I am equally amazed at how often I am accused of saying things I did not say — thank heavens we have transcripts in court that record exactly what was said! The point I am making is that you cannot decide whether you agree with someone if you have not clearly understood what he/she is saying. You must put your emotions aside and listen with your brain. Even if you end up disagreeing with the other parent, you should at least be able to convey to him/her that you have understood his/her point of view. Many times I find that once two people have clearly understood the other's position, they are not as far apart as they first thought they were. Good listening skills are not acquired overnight, but post-separation counselling can be very helpful in speeding up the learning process.

6. Consider mediation before giving the decision-making power to a judge
Too many parents react in a knee-jerk way to each other's conduct by running to family court without first getting legal advice or considering the impact of starting a court case. It is essential to consult a family law lawyer before taking any steps to resolve a conflict with an ex-partner. Your lawyer will explain your options and advise you on which one will best fit your situation. It may not be necessary to turn the decision-making power over to a judge. With the right help, you and your ex-partner may be able to arrive at compromises that will be better for your family than a court-imposed decision. Many thousands of parents have found mediation to be a beneficial problem-solving mechanism, so it is definitely worth exploring. For all the reasons given in Chapter 2, going to court should be a last resort, except for the special circumstances set out in Chapter 3.

7. Separate your financial issues from your parenting issues
In any family breakdown, there are two types of issues to be resolved: financial issues and parenting issues. These are completely separate matters and should be dealt with that way. With the exception of the intersection that might occur between access and child support (see Chapter 9), you should not allow your discussions and disagreements over property and money to enter into your co-parenting relationship. Your relationship with your children should have nothing to do with financial transactions or property transfers. Even if your ex-partner's conduct regarding financial matters is making life difficult for you, this should not interfere with his/her role in your child's life. It can certainly be a challenge to behave civilly with someone whom you think is trying to cheat you financially, but the ability to keep parenting issues separate from financial matters is a hallmark of maturity.

8. Be flexible and reasonable in making access arrangements
By far the greatest area of conflict between separated parents is that of organizing, carrying out, and enforceing access visits. Family courts everywhere are swamped with parents complaining of each other's frequent cancellations, lateness, and a myriad of other misbehaviours. In a great many of these cases, a little

common sense and fairness from both parents would have gone a long way toward resolving the problem. Do your best to follow the four simple tips about access given in Chapter 12. Be flexible and reasonable in accommodating your ex-partner's work schedule and travel concerns, as well as changes in your child's routines. Be considerate when dealing with access on special occasions and during vacation periods. You never know when you might need your ex-partner to extend the same consideration to you. Remember that access schedules must be adjusted to accommodate changes in the parents' and children's lives. This is not only normal but is to be expected, so go with the flow, don't make a big deal out of every minor deviation from your access schedule, and be willing to make compromises for your child's sake.

9. Your children still see you as a family, so communicate!

As I have mentioned, you can be an ex-partner, but you are never going to be an ex-parent. If you truly accept that your children are innocent and bear no responsibility for your separation, then you know that they are entitled to be part of a family and to have their parents behave like family members, even though they live apart. Children who have contact with both parents need them to communicate with each other. I have had situations in which a child's health suffered because one parent didn't tell the other about the child's medical problem, so the child didn't get the proper medical attention in the other parent's care. This is unforgivable. When a child is going frequently from one parent's home to the other's, it is vital that each parent know about anything important that has happened to the child while in the other parent's care, especially an illness. It is also important for parents to have each other's addresses and telephone numbers, unless there is a very good reason to not disclose this information — and even in that case, there must be some way for parents to contact each other (for example, through a third party) in the event of an emergency. Parents should have equal rights to obtain information about their children from schools, doctors, and other service providers. Parents should have equal rights to attend important meetings such as parent-teacher interviews or key medical appointments. Both parents should be able to attend special events in the children's lives such as religious ceremonies, school events, sports tournaments, and music recitals. Even if there is a restraining order (or criminal court no-contact order) prohibiting contact, speak to your lawyer about the possibility of amending the order to permit at least some minimal form of communication regarding your child, even if it is in written form (for example, by using a communication book), or through a third-party intermediary. Your children need you to know what's happening in their lives even when they're with the other parent. If possible, find a safe and legal way to make this happen.

10. Don't hesitate to get help

Family breakdown is one of the most stressful and painful experiences anyone can go through. The challenge of overcoming a failed partnership while at the same time developing a good working relationship with an ex-partner can be overwhelming. You do not have to do this alone. There are specialized counsellors and therapists who can help you, your ex-partner, and your child. Many community organizations offer excellent programs to help separated parents and their children make the necessary transition from ex-partner to co-parent. There are social workers and parenting coaches with the expertise to help you and your ex-partner develop a workable parenting plan. There are many books that offer great ideas (see "Suggested Reading"). Speak to your family doctor about a referral to a counsellor or therapist. It's worth attending one meeting just to find out what services might be available to you and your family. Finally, remember that your family law lawyer is there to help you and can refer you to a number of community resources. Family law lawyers, like family court judges, know only too well that post-separation parental disputes are about much, much more than the law. Don't let the legal aspects of your dispute interfere with the critically important human aspects. If you do, you may be doing a disservice to your children.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
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November 2009

Top Ten Resources of the National Council of Juvenile and Family Court Judges

1. The NCJFCJ website at ncjfcj.org offers a multitude of resources for judges and other professionals for improving practice in the fields of juvenile delinquency, child abuse and neglect, domestic violence and family law. For more information on any of the resources listed here, please email staff@ncjfcj.org.

2. Integrating problem-solving court practices into the child support docket
By presenting practical examples of how judges can improve practice in child support cases by utilizing a problem-solving approach, this tool shows how problem-solving principles can help build a culture of compliance in which parents will support their children voluntarily and reliably.

3. A practice guide: Making child support order realistic and enforceable
This tool covers retro-active support orders and offers guidelines for determining income, along with worksheets and checklists.

4. Website of the National Center for Juvenile Justice, the research department of the NCJFCJ. A "one stop shopping" place for the latest statistics and data on juvenile crime and victimization, statutes analysis, and applied research practices with probation and providers. Visit ncjj.org or link from ncjfcj.org.

5. State profile website
This website provides the most comprehensive information currently available on the juvenile justice systems and laws in each of the 51 US jurisdictions and is adding new content in 2010 relating to each jurisdiction's implementation of strategies under the four core requirements of the JJDPA.

6. Judicial Guide to Child Safety in Custody Cases
Because custody cases involving abuse have intermingled issues of safety and access, judges require effective and accessible information and tools to aid their decision-making. The Judicial Guide contains 14 bench cards which provide an easy-to-use checklist system for judges at critical decision-making points throughout the case, as well as a supplemental guide which provides additional information about in- and out-of-court behaviors, best interest of the child, and order issuance and enforcement.

7. Reasonable Efforts Checklist
Domestic violence in dependency cases often goes unrecognized and unaddressed. This checklist includes easy reference bench cards for judges to consult during removal, adjudication, disposition, review, permanency, and termination hearings involving domestic violence. It is designed to aid judges in making reasonable efforts findings that are required by federal law in dependency cases involving domestic violence.

8. Navigating Custody and Visitation Evaluations in Cases with Domestic Violence: A Judge's Guide
This publication is intended to serve as a practical guide for judges on how to interpret and act on professional child custody evaluations when domestic violence is involved in family law cases. The Guide includes four bench cards and supplementary material that are intended to guide a judge chronologically through the custody evaluation process.

9. The Adoption and Permanency Guidelines Improving Court Practice in Child Abuse & Neglect Cases
Presents best practice recommendations for use in dependency cases involving abused and neglected children who cannot be reunified with their families. They serve as an adjunct to the NCJFCJ publication Resource Guidelines. The Adoption Guidelines assist juvenile and family courts in assessing and implementing improvements in the handling of child abuse and neglect cases through the termination of parental rights and adoption process.

10. Building a Better Collaboration
This publication outlines the key elements and strategies that support effective and sustainable systems change, and uses the experiences of Project Sites to illustrate ways in which these theoretical concepts can be implemented in the real world of child welfare reform.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
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January 2010

Ten Practice Tips from the AFCC Task Force on Court-Involved Therapists

Lyn R. Greenberg, PhD, ABPP, Task Force Reporter, Los Angeles, California

1. Develop and maintain expertise
Acquire and maintain current knowledge of research on divorcing/separating families and their children, as well as issues such as child abuse, domestic violence, alienation and high conflict dynamics, children's suggestibility and interviewing, and child development. Such knowledge is essential to court-involved therapeutic roles, and is just as important for court-involved therapists as for other experts. Even therapists who work only with adults should develop and maintain sufficient knowledge of child-related research to address parenting issues.

2. Informed consent
Detailed informed consent is more important when the client or family is involved in a legal process. Provide detailed informed consent documents; make every effort to ensure that your clients, or the parents of a potential child client, understand the nature of the services to which they are consenting, any limits on confidentiality, and the clients' or parents' responsebilities toward the process (including financial arrangements).

3. When treating children, know the legal custody situation
A parent with apparent authority to consent to treatment may not have actual authority, or may be required by court order to consult with the other parent about treatment decisions. Request a copy of any custody order establishing and clarifying parents' rights to involve their children in mental health treatment, and any decision-making processes that the parents are to follow. If no such order exists, assume the parents have joint legal authority. While it may be legal for one parent to consent to treatment without consulting the other parent, treatment effectiveness may be sabotaged if one parent is excluded.

4. Maintain professional objectivity and multiple working hypotheses about case dynamics and treatment needs
Remember that the information you are getting may be one-sided or incomplete. Use caution in forming or communicating therapeutic opinion based on one-sided information.

5. Know the limits of your role and work within them
Provide clinical feedback as appropriate to treatment and clinical opinions when properly requested. Support your client's therapeutic progress, but avoid becoming engaged as a legal advocate or expert.

6. Use methods supported by available research
Avoid methods, or interpretations of therapeutic information, that would not be consistent with research on issues such as child interviewing, child development, parental conflict, or the use/misuse of play or other behaviors as diagnostic indicators.

7. Release treatment information only with appropriate authorization
If you are working with a parent, be sure that the parent has authorized release of treatment information and has been informed of the potential consequences of such disclosure. If working with a child, clarify the expectations regarding confidentiality, and who has authority to waive or assert the child's privilege.

8. When a child is involved in treatment, maintain balanced procedures
Attempt to obtain information from both parents and to engage both in treatment if possible and appropriate. Avoid unilateral communications with either parent's counsel. Remember that a biased approach to treatment may also be perceived by the child.

9. Convey opinions and information responsibly
Be cognizant of the potential power and misuse of therapist information and opinions. Limit any opinions expressed to those that can be clearly supported by treatment data and are within the scope of the therapist's role. Avoid expressing opinions on psycho-legal issues, even if asked. Avoid psychological jargon; convey information/opinions in language that can be clearly understood by non-mental-health-professionals.

10. Respect the legal system and your role within it; expect accountability
Be respectful of the rights of the parties. Expect a higher level of accountability; maintain records and procedures that will allow you to support your actions. Respect the roles of other professionals, some of whom may be asked to review or assess the progress or effectiveness of therapy.

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February 2010

Top Ten Useful and Possibly Distracting Websites

Annette T. Burns, JD, Phoenix, Arizona

1. Meetways.com
As a parenting coordinator, I find this helpful to create solutions about halfway meeting places. It even designates nearby coffee shops, restaurants and malls that are the most convenient to the halfway point between two addresses.

2. Kindle
I love my Kindle (I have the Kindle 2, the paperback book-sized one). The newer Kindle DX is larger (about the size of a legal pad), giving it more utility with document review and books that have tables and graphs. PDF documents can be easily emailed to your Kindle so you can review your own documents as well as read books. If you are a serious reader, go to amazon.com and check out the Kindle and give it some thought. I have saved about half the price of my Kindle just through book savings in the last six months.

3. HighConflictInstitute.com
I can't tell you how many times a month I refer someone – either a private client or a parenting coordination client – to read the books *High Conflict People* or *It's All Your Fault*. Some people I speak with are desperate to know that they are not alone in dealing with someone that they believe is ruining their life. These books (and related articles) are invaluable in letting someone know (a) they are not alone, and (b) there are strategies they can use to ease both their own stress and the stress of the other person. Note: When I refer these readings to a parenting coordination client, I always refer the readings to BOTH parties. And my "referrals" are usually done in mass mailings to all PC clients, so it doesn't appear that I am singling out certain people or couples.

4. Academicearth.org
Albert Einstein said, "Learning is not a product of schooling but the lifelong attempt to acquire it." With that in mind, you can watch a "Financial Markets" course online, taught by Robert Schilller at Yale University; or Communication and Conflict in Couples and Families, a UCLA course; or even a Princeton Political Science course on "The Bin Ladens." A bonus: Aristotle said, "Education is the best provision for old age."

5. Passport information
This website offers the basics that attorneys, custody evaluators and parenting coordinators need to know about passport issuance for children.

6. Virtual visitation ideas
This website has some good general concepts about virtual visitation, including information about online chats, Instant Messaging, and "6 Ways to Make Virtual Visitation Work."

7. MrCustodyCoach.com
I include this mainly because the website compiles some interesting news and articles; secondarily because family law professionals should know what's out there on the internet, and what our clients/patients are reading. A recent (October 2009) good article is "Be Smart for the Children: Post-Divorce Best Practices."

8. Stayhitched.com
Articles, seminars and advice for couples getting married, including specific financial advice. I particularly like their suggested reading list.

9. Zillow.com
This is a down-and-dirty estimate of home values. It's probably not admissible in court, but it can be helpful in speaking with a client informally, especially if the client believes there is significant equity the marital residence that could potentially solve everyone's problems. Zillow may tell you the house is actually under water, leading to different settlement strategies.

10. Google Reader
I recently learned that I can't live without Google Reader. I had several blogs saved in my "Favorites," or on my personalized iGoogle home page, but don't remember to click on them often enough. Google Reader puts them all together so when I finally remember to access it, I can scroll through and see recent blog updates in a row. I can scroll quickly or I can go more slowly and read each update in detail. It's a great, organized way to read blogs you're interested in and want to keep up with.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
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March 2010

Top Ten Tips for Fostering Children's Resilience after Divorce

JoAnne L. Pedro-Carroll, PhD, MA, MEd, Rochester, New York

How children fare during and after a divorce depends largely on how parents handle changes and create quality of life for their children over time. Many factors influence their resilience; research and clinical practice have shown these to be among the most important.

1. Tell and show them you love them—Repeat very often
Reassure children that the love you have for them will never end—and then back it up with your behavior. Children crave parents' physical expressions of affection along with words of love, encouragement and reassurance.

2. Prepare children for changes
Begin by telling them about what *will* and *will not* change for them as a result of the divorce. "Telling" is not a one-time event. Continue the conversation over time, as family changes continue to occur. An open line of communication is a life line for children, especially during turbulent times.

3. Strengthen your relationship with your children
Do not allow your divorce from your former partner to become a divorce from your children or your role as their parent. Create frequent, regular, one-on-one time with each child. Use play and other enjoyable activities to build closer emotional bonds and express your love and reassurance. Noticing and expressing appreciation for your children's positive behaviors and acts of kindness creates good will that fuels hope, optimism, and loving relationships.

4. Help your children identify their emotions and respond with empathy
Children often hide their real feelings about a divorce, but by listening carefully, you can help them to explore, understand, and label their emotions. Neuroscience research has shown that labeling emotions has powerful therapeutic effects in the brain. Your empathy for what they are experiencing also helps children cope with powerful feelings.

5. Contain conflict
On-going conflict is poisonous for children, emotionally, socially and physically, and it erodes positive parenting. Never let your children witness violent or hostile behavior or hear you denigrate your former partner. Avoid putting your children in the middle of your problems or creating situations where they feel they must choose between their parents.

6. Share parenting, if it is safe to do so
Your children benefit from two responsible parents. Reframe your relationship with your former spouse as a "business" partnership whose sole focus is your children's well-being. Use legal options and experienced therapists to help you and your former partner keep your children's needs a top priority and create effective parenting plans.

7. Support and encourage your child's safe and healthy relationship with both parents
Nurture your children's healthy relationship with their other parent. When problems arise between them, help your children discuss it respectfully and help them find ways to ease their distress and learn to problem-solve. Do not burden children with adult problems that contribute to loyalty conflicts and alliances with one parent at the expense of a healthy relationship the other.

8. Focus on what is in your control and strive for consistent, quality parenting
Research shows that warmth, nurturing and empathy along with effective and consistent discipline, rules and limits is related to better adjustment for children and teens. Children need and want consistent limits in both of their homes. Knowing how they are expected to behave gives children a sense of control over their own behavior and their lives. They feel a basic sense of trust and security, even as they learn new skills within a loving structure.

9. Teach and model resilience skills
The skills that influence resilience are well defined. Explain and practice: age appropriate understanding and acceptance of family changes, problem solving, coping skills, understanding and managing emotions, differentiating between what can and cannot be controlled, expressing empathy, and fostering hope, competence and confidence. A supportive relationship with caring adults is an essential contributor to resilience. Reach out for support and get help when needed. Resilient children are connected through faith, friends, family, nurturing communities and supportive resources. Support your child's healthy relationships with other caring adults and mentors.

10. Provide household structure, routine and traditions that children enjoy—including family time together
Reducing the number of major changes in a child's life and having consistent structure at home helps children to feel safer and more secure when their lives have changed dramatically. Regular bedtimes, meals together, limits on "screen time," and plenty of quality time as a family are all factors that have proven to positively influence better social and emotional adjustment.

JoAnne Pedro-Carroll, PhD, MA, MEd, is a clinical psychologist and child specialist based in Rochester, New York. She is the author of Putting Children First: Proven Parenting Strategies for Helping Children Thrive after Divorce*, Avery/Penguin, 2010.*

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
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Top Ten Tips for Using an Unbundled Approach to Expand Your Services and Build Your Practice

Forrest S. Mosten, JD, Beverly Hills, California

If your family practice is currently so overwhelmed with clients that you are turning people away, then read no more. If, on the other hand, you are interested in further building your practice, the following tips may help you develop additional unbundled approaches that meet the needs of divorcing families. Rather than self-representing due to their desire to maintain control and reduce fees, many clients will pay for affordable innovative limited scope services.

1. Let clients know that you unbundle
Tell clients in the first meeting or even on your website that you are available and enjoy helping them on a limited scope basis: you will meet for short sessions (30 minutes), by telephone or Skype rather in person; or can help them for just one issue (summer vacation) or task (ghostwriting letters to their parenting partner).

2. Before a client signs up for full service, offer a comparison with an unbundled approach
Information is the essence of client informed consent. Compare and contrast a full service approach with limited services by discussing the benefits and risks of an unbundled approach using following variables: clients' ability or willingness to handle part of the work themselves, the difference in stress, cost differential, and the ability of the client to later convert to a full service approach after starting on a discrete task basis.

3. Offer stand-alone orientation services
Unbundle your role as a client educator from that of a service provider. Develop services that can inform divorcing parents individually or together about the legal or parenting issues and available process options in your community—then refer the clients to others rather than providing the services yourself

4. Turn your office into a divorce family classroom
By creating a client library with DVD's and computerized information, handouts, and access to community resources, you can empower client's informed decision-making by giving them information to help themselves or keep their costs down within a full service context.

5. Be a shadow coach
Clients appreciate having you prepare them for negotiations with the other party at Starbucks or a court mediation session and having you available on-call if they need your ideas, advice, or support during the session itself. Your involvement can remain confidential so that the client can get your help without provoking or frightening the other party.

6. Attend sessions as a consultant
As a professional trained and supportive of mediation and collaborative law, you can attend sessions as a client resource rather than an advocate.

7. Limit your services to be a conflict manager
Some matters are not yet agreement-ready and clients may need help to gather information, handle immediate issues, or locate/engage other experts. Be available for these pre-settlement tasks and be open to the client utilizing another mediator or representative to actually negotiate the deal when the time is ripe.

8. Endorse confidential mini-evaluations (CME)
Put as many barriers as possible between the family and the courthouse—and still get necessary expertise and recommendations to resolve impasse. Offer CME's within the mediation and collaborative processes and recommend the use of CME's with other neutrals when you already have another professional role.

9. Suggest and offer second opinions
Oncologists often insist that their patients obtain a second opinion before commencing or continuing treatment. So should we. Make such unbundled second opinion recommendations a standard part of your practice and consider offering second opinions yourself.

10. Be an unbundles preventive conflict wellness provider

After successfully resolving a family conflict, conduct an unbundled future conflict prevention consultation to discuss methods to resolve future disputes, regular parenting meetings, and options to monitor and avoid future family conflict. Helping clients maintain family conflict wellness may be the most important contribution that we make to the divorcing families we serve.

Forrest (Woody) S. Mosten has been a family peace-maker in Los Angeles since 1979 and is recognized as the "Father of Unbundling." He is the author of Unbundling Legal Services *(ABA, 2000) and* Collaborative Divorce Handbook *(Wiley, 2009),* Mediation Career Guide *(Wiley, 2001), and* Complete Guide to Mediation *(1997). Woody can be reached at www.MostenMediation.com.*

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Top Ten Mediation Screening Questions

Grace M. Hawkins, MSW, Tucson, Arizona

Prior to conducting mediation it is important to screen the case to determine whether or not mediation is appropriate and, if it is, what the best way to proceed might be, whether that is to bring the parties together, or to conduct shuttle mediation. The following questions are based upon an individual face-to-face screening conducted with each of the parties who have been court-ordered to attend mediation. The screening is conducted immediately prior to the start of mediation.

1. Are your carrying any weapons or recording devices?
It is important for people to feel physically and emotionally safe in mediation. This question allows the mediator to establish that no weapons are allowed and that the mediation process is confidential. It also gives the mediator a way to discuss the exceptions to confidentiality in regard to reportable child abuse, duty to warn and any observations of physical altercations between the parties.

2. Do you have any physical or mental health concerns either for yourself, the other parent or for any of the children who are involved?
By asking this question, the mediator is be able to determine if there are any special needs of either the parents or the children that might need to be addressed in their custody and/or parenting time plan or in the mediation session itself. It is also important for a mediator to determine if there are any physical or mental health conditions present that might make mediation inappropriate. We often follow this question by asking parties if they are on any medications in order to make sure people are not currently taking any medications that might interfere with their ability to think clearly and make decisions.

3. Do you have any concerns either for yourself or for the other parent in regard to any alcohol or drug abuse?
Since substance abuse concerns are often present, this question allows a parent a chance to express the concern and for the mediator to become aware if this is an issue for the case. If a parent has a concern, the mediator can ask the party what if anything might alleviate their concern and the answer to that question can be the initial proposal for the area of concern.

4. Has child protective services ever been involved with your children?
On occasion, child protective services may be involved in an active investigation and it would not be appropriate to proceed with the mediation until the investigation can be completed. Parents will often share information as to how or why CPS has been involved in the past and whether or not the allegations were substantiated.

5. From the first day that you met, up until today, has there ever been any hitting, pushing, shoving, kicking, hair pulling or slapping that has occurred between you and the other parent?
This question is important in order to ascertain whether there has been any physical violence between the parties and whether it has occurred throughout the relationship. We believe it is better to ask specifically about such behaviors rather than a general question about whether or not there has been domestic violence because people will often say no to a question about domestic violence but when asked about specific behaviors respond in the affirmative that those specific things have happened. Often times people will respond that there has been no physical violence but tell of emotional abuses that have occurred.

6. Has there been any destruction of property, thing thrown at each other, holes punched in the wall, car damaged?
This question again gets to whether or not there has been domestic violence between the parties, but in a different way.

7. Have the police ever been called out for any altercations between you and the other parent?
The answer to this question will provide the mediator with information as to whether the police were involved, how often and for what. As a follow up to this question it is important to inquire whether anyone was arrested as people will not always share that unless asked directly. The police may have been called out for custodial interference issues, domestic violence issues or for issues between extended family members and the other parent. Knowing why and who was involved alerts the mediator as to the extent of police involvement and to what other issues may be present in the mediation case.

8. Are there currently any restraining orders or orders of protection in place?
It is important to know if these are in place and who filed what against whom. If there are restraining orders in place, if a child care plan is developed, it will need to take that into account. The mediator will also need to have people leave separately after the session.

9. Do you currently feel like there are any threats, intimidation, coercion or harassment happening between you and the other parent?
By asking this question, the mediator often gains information on past threats, harassment and intimidation as well as current threats, harassment or intimidation. Sometimes a parent will state that they used to be intimidated by the other parent but are no longer afraid of that parent.

10. Do you have any fears or concerns about being here?
Sometimes, people will respond to this question that they are fearful to leave or that they were fearful about being here, but as long as they are not left alone with the other party they will be okay. We follow up this question with two others*: **Do you feel like you can sit in the same room with the other parent? Can you stand up for yourself; say no if you feel strongly about something?*** All of these questions help the mediator determine whether or not the client feels empowered and is able to advocate for themselves, both of which are needed in order for mediation to be appropriate.

Grace M. Hawkins, MSW, is the Director of the Family Center of the Conciliation Court in Tucson, Arizona.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
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July 2010

Top Ten Tips to Have a Successful Collaborative Practice Outcome in Family Cases

Sherri Goren Slovin, JD, President, International Academy of Collaborative Professionals, Cincinnati, Ohio

1. Share available dispute resolution process options with your client in a respectful, realistic way.

2. Help your client determine whether the Collaborative Process (CP) will effectively meet his or her goals and interests.

3. Before CP is chosen as a process option, inquire about how conflict with the spouse has been resolved in the past so that you have insight into both your client and his/her spouse.

4. Prepare your client for the challenges that come with resolving conflict so that expectations are realistic.

5. Be an active participant in your local Practice Group so that you can develop a solid trust relationship with the other Collaborative Professionals you work with.

6. Recognize the value of working with mental health and financial professionals. Family in transition are complicated and the value of a team can't be underestimated!

7. Prepare for meetings and debrief, both with your client, and the other professionals.

8. Stay the course. When things get tough, don't slip into the comfort of letters and positions.

9. Recognize the power of deeply understanding interests and creating interest-based option and the reality that negotiations have a distributive component.

10. If thing feel stuck, take a breath and ask for help. You will find wisdom in the clients, the team, your practice group, and in the worldwide Collaborative community.

Sherri Goren Slovin, JD, lives in Cincinnati, Ohio and is the President of the International Academy of Collaborative Professionals.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Top Ten Biases Often Overlooked by Child Custody Evaluators

David A. Martindale, PhD, ABPP, St. Petersburg, Florida

None of us is free of bias. Biases come in various forms, but as the term is used here, it will refer either to any tendency to process the information that we gather in a manner that is strongly influenced by our personal and professional beliefs (attitudinal biases), thereby impairing our objectivity, or to the methods utilized by us in processing information (cognitive biases).

The task of the evaluator is to take all reasonable steps to (a) identify all foreseeable sources of bias, (b) eliminate those that can be eliminated, (c) minimize those that cannot be eliminated, and (d) be alert to the ways in which both attitudinal biases and cognitive biases can impair our ability to formulate sound opinions.

This article will provide a brief discussion of ten often over-looked biases. The phenomena involved in these will be easily recognizable, but our collective failure to discuss them may be attributable to the fact that they have gone unnamed.

1. The first of the "newly named" biases makes its appearance during the data gathering process and shall be dubbed the *Jiminy Cricket Bias*. It is the *Jiminy Cricket Bias* that leads otherwise rational evaluators to believe that they can detect deception in custody litigants as easily as Jiminy Cricket detected lying by Pinocchio. It is this bias that leads evaluators to ignore the research that documents our inability to discern who is being candid and who is not, and, as a result, neglect to obtain verification of data relied upon.

2. It is during the data integration stage that we encounter the *Troxelogical Bias*—named by me for the deliberative process employed by the Superior Court trial court judge in the *Troxel* case, who decided that, in making sense of the issues before him, it would be useful to "'look back at some personal experiences. . . .'" [*Troxel v. Granville*, 530 US 57 (2000), at 61.] Looked at broadly, the *Troxelogical* bias is a tendency to make sense of what is going on in the lives of others by examining the events in their lives as though what we have learned in our own lives can be applied to the lives of others.

3. The third of the "newly named" biases operates during the closing stage of the evaluation—the stage at which many evaluators formulate their recommendations. It is the *Neuman Bias*, named after Alfred E. Neuman of "What, me worry?" fame. This bias is reflected in recommendations that are little more than expressions of naive optimism for which no basis can be found in the record. A common example is the joint custody recommendation—the foundation for which is the unsupportable prediction that parents who have been unable to agree on the day of the week for the last five years will develop the motivation and skills needed to engage in cooperative co-parenting.

4. The *Imperium curia* bias is a baseless belief in the power of the court; specifically, the belief that anything that the court orders can be accomplished. The example that follows has been taken from a report. A recommendation for joint custody is followed by this statement: "The authority of the court should be used to get Mr. and Mrs. X to engage in cooperative co-parenting. Each parent is intelligent, each parent is educated, and each parent presumably respects the legal system."

5. The *UPAE* bias* [*Unfortunate Past As Excuse] refers to a tendency to permit sympathy for parents with unfortunate pasts to influence evaluators in the formulation of their recommendations. Example, from a report: "The Court's attention is called to the historical information appearing on pages X – X+12 of this report. During the period in the lives of young girls that most are enjoying their emerging sexuality, Sally's childhood was marred by . . . ." It is not within the scope of evaluators' authority to grant absolution to parents whose deficiencies are attributable to their mistreatment at the hands of others and to censure those whose deficiencies seem to have been self-cultivated. The evaluative task is descriptive in nature: It is to assess the parenting strengths and deficiencies in each parent as they relate to the needs of the specific child(ren) whose custodial placement is in dispute, to describe those strengths and deficiencies, and to articulate the ways in

which they relate to each parent's ability to meet the needs of the children.

6. Intervention bias refers to an inclination to provide therapeutic intervention in the midst of a forensic evaluation. An example follows. The quoted words have been taken from an evaluator's deposition. In the midst of a lengthy evaluation, an evaluator endeavors to "arrange a deal [with the children]." Under the terms of this deal, the evaluator will submit an interim recommendation suggesting that the children "not have to spend as much time [with their father]." In exchange, the children would have to "behave, be lovely children... [and be] respectful and courteous" when with their father. The evaluator described the negotiations with the children as an "effort in a therapeutic-type basis..." and added: "I'm trying to improve the circumstances between the children and their father…."

What the evaluator has described is an effort to improve the interpersonal dynamics between the children and their father. This "therapeutic-type" undertaking compromises the evaluator's ability to perform the assigned task—to function as an impartial, objective evaluator.

7. Those affected by the *coniectura interdictum* [prohibited influence] *bias* seem to believe that there's no such thing as too much information. As a result, they tend to accept and consider all information provided by litigants without considering the possibility that some of it may have been illegally obtained or altered and of a type that evaluators should not consider. We are obligated to articulate the bases for our opinions. In many jurisdictions we would be prohibited from alluding to inadmissible material in order to meet this obligation. If an evaluator who has already been influenced by inadmissible information were to be prohibited from discussing the information, s/he would be unable to meet the obligation to articulate the bases for his/her opinions, and a motion might be made to preclude his/her testimony.

8. *Associative bias* refers to a positive bias that develops when evaluators discover that they share beliefs, interests, or experiences with one of the litigants but not with the other.

9. Evaluators display *empathy bias* when they disregard parental behaviors that have negative consequences for children simply because the evaluators have empathy for the parents who have engaged in the behaviors and because the evaluators can imagine themselves behaving in a similar manner. [*Empathy*: the intellectual identification with or vicarious experiencing of the feelings, thoughts, or attitudes of another.] Mrs. Hurt, angered by her husband's sexual rejection of her and his use of videos of other women as a masturbatory inspiration, installs a hidden video camera in Mr. Hurt's den, videotapes him as he masturbates, copies the tape, and distributes the tape to Mr. Hurt's co-workers. Mr. Hurt loses his job. He is the sole breadwinner in the family. The female evaluator states that she "can understand why Mrs. Hurt did this." There is no further discussion of Mrs. Hurt's actions.

10. Evaluators display *marital mindset bias* when their attention is focused on each litigant's strengths and deficiencies *as a spouse*, rather than on each litigant's strength and deficiencies *as a parent*.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
September 2010

Ten Tips for Cross-Examining a Child Custody Evaluator*

Timothy M. Tippins, JD, Albany, New York

1. Ask only leading questions
By using leading questions—and only leading questions—you can limit the possible answers to "yes" or "no" (or "I can't answer") and thereby limit the witness's ability to deflect or divert or, worse yet, give a speech that hurts your case. You limit the damage the witness can do with the answer. Leave "who," "what," "when," "where" and "how" questions to your direct examinations.

2. Never allow the witness to explain
This limits the witness's ability to volunteer damaging information or opinions.

3. Use "tie-down" questions to close all doors before asking the payoff question
Your objective is to "force" the witness to answer the ultimate question in your sequence in a particular way. You need to close off all avenues of escape or diversion before reaching the payoff.

4. Know as much or more than the expert
Do not attempt to cross-examine an expert witness unless you know as much as or more about the witness's discipline than does the witness—or at least the slice of that discipline that is relevant to the case. How do you do this? The same way you (presumably) got through law school: study, study, study. You must read the literature of the expert's discipline. Where resources permit, engage an expert as a trial consultant to give you a crash course on what you need to know and to help you construct your cross-examination.

5. Educate and persuade
You must keep in mind that the overall purpose of your cross-examination is to educate the fact-finder as to those elements that are favorable to your side of the case and to persuade the fact-finder that those elements compel the conclusion that your client should prevail. Thus, if a question or a line of questioning does not contribute to these objectives, then you must ask yourself whether you really want to use that particular material.

6. Keep your eye on the fact-finder
In the communications field there is a concept known as audience analysis. You need to keep your eye on the fact-finder as you cross-examine to gauge the impact. Be prepared to abandon a line of questioning if it is not having the desired effect on the court. Remember, as they say in show business, "If they ain't laughing, it ain't funny!"

7. Start strong, end strong
There are a couple of more well-entrenched principles of communication that the cross-examiner should keep in mind. These are the principles of primacy and recency. Research suggests that when the mind is exposed to a sequence of data, greatest weight is placed on what is heard first and what is heard last. So, decide which of your points are the strongest and position them first and last in your cross, sandwiching less important lines of questions in between.

8. Use repetition
With attribution to Thomas Aquinas as well as to the Apache tribe, it has been said that "repetition is the mother of learning." Use repetition to make your point as strongly as possible. Obviously, you can't just keep repeating the same question to get the repetition you want but you can build it into related questions, using it as an anchor, so the fact-finder hears the damning statement several times.

9. Be aggressive—not obnoxious
Pursue the content of your cross-examination aggressively but do not be obnoxious. If you have carefully designed each question, the witness will pretty much be held to "yes" or "no" responses. You must deal with witness resistance aggressively, moving to strike and even cutting off the witness when it is obvious that something other than "yes" or "no" is at hand, and by seeking admonitions from the bench that the witness must be responsive. But this does not mean that you go out of your way to demean the witness. Treat witnesses with respect and courtesy unless they prove themselves undeserving of same. Let them be the ones who jump ugly.

10. Keep your ego out of it

Difficult though it may be, you need to keep your ego out of the process. If the witness gets snarky, do not respond in kind. In fact, be glad when you encounter such boorishness as it only detracts from the witness's credibility.

**Excerpted with permission from Tippins, T.M.,* Cross-Examination: A Trial Prep Checklist - 37 Principles of Cross-Examination*, published by MatLaw Systems Corp. 138 LeBarron Road, Hoosick Falls, NY 12090 (1-800-416-8477).*

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Ten Tips for Surviving Cross-Examination

Timothy M. Tippins, JD, Albany, New York

1. Do a good job—right from the start

Contrary to what many seem to think, effective cross-examination has nothing to do with "trick" questions. An effective cross capitalizes on mistakes that the expert has made long before coming to court. Failure to conform methodology to professional guidelines, failure to anchor inferences in the published research, and failure to safeguard against bias through exploration of multiple hypotheses are just a few of the recurring weaknesses observed in the evaluation and report process. These are deficiencies that need to be avoided as part of the evaluation process. Once they have occurred, the "facts are frozen," the witness is vulnerable, and embarrassment is likely. Therefore, your most important safeguard against embarrassment begins long before you ever go to court by avoiding such mistakes. Start thinking about cross-examination at the very outset of your evaluation process and keep thinking about it with every step you take. "How can I defend this if challenged?" is a question you should ask yourself at every turn in the process.

2. Tell the truth

Obviously and thankfully, outright perjury by custody evaluators is relatively rare. But there is more to "telling the whole truth" than simply not lying outright. This can include overreaching the data, trying to evade direct questions, rather than acknowledging weaknesses and, perhaps most prevalent, refusing to utter the three most dreaded words of all: "I don't know." There ought to be no embarrassment is saying those words, particularly when you can honestly say: "I don't know because the empirical research of my discipline does not have the answer to that question."

3. Be open to new information

Cross-examiners are entitled to ask you to assume certain facts hypothetically. So long as the premises are taken from record evidence, such questions are proper. It may be that you never heard these assumed facts before. Even if that is the case, do not fight the premises in the hypothetical. Assuming that no objection to the question has been made and sustained, you are required to answer. Quarreling with the premises of the question is beyond your role as a witness; doing so makes you appear argumentative or evasive and it detracts from your credibility. Importantly, don't be so wedded to your conclusions that you refuse to consider new facts that logically would or could change your conclusion.

4. Know the weaknesses in your analysis

Few evaluations are "perfect," assuming we could even define what "perfect" means. It is not unusual that the information supporting the conclusions is weak or that the research supporting the inference is controversial. Thinking through these problems, recognizing them in advance, avoiding the over-reach in the first instances, and knowing the contrary literature are essential if you are to be ready and able to confront these challenges under cross-examination.

5. Anchor your inferences

Given what has been said above, probably the most valuable step an evaluator can take to survive cross-examination—and the step that in the writer's experience is most often overlooked—is to read and apply the empirical research of the behavioral science discipline. If the evaluator wants to say that parenting behavior A causes child behavior B, he or she should be able to point to the empirical research that demonstrates that to be true demonstrable knowledge, as opposed to untested theory or subjective belief. In sum, before forming your conclusions and putting them in your report, go to the library.

6. Bring your entire file to court

Whether or not you receive a *Subpoena Duces Tecum*, bring your entire file to court. Be sure to bring all notes, testing materials, drawings that may have been made, tapes, transcripts, and anything else that you received in the course of your evaluation. Remember, you must preserve everything precisely so they can be made available at the time of testimony. Also bring all of your time sheets and invoices to support whatever you have charged for your services in the event that becomes an issue.

7. Organize everything in your file
If you have to fumble around every time a document is requested you will be perceived as disorganized and less than careful. The argument can be made that you were no more careful in forming your conclusions. Review your file and organize it in a way that allows you to retrieve what you need with dispatch.

8. Approach the task with humility
Understand that every word that you utter—in your report or in your testimony—has the potential to alter the lives of the litigants profoundly. Any error that may underlie your conclusions is one that you may soon forget but which may alter the trajectory of the lives of those you are evaluating.

9. Don't fight the process
Experienced cross-examiners will largely hold you to "yes" or "no" answers. They are entitled to do so under the rules. Don't fight the process. If you can't answer yes or no then simply say that. Don't try to evade or avoid the question, or sneak in damaging speeches that are not responsive. Such tactics only make you appear to be a partisan and detract from your credibility.

10. Protect your credibility
The best way to do this is to protect your integrity right from the jump. This may be more of a challenge when you are functioning in the role of testimonial expert for one side rather than as a court-appointed evaluator. Not all attorneys are as scrupulous as they should be and may want you to "stretch" to give them what they feel they need in the case. Don't. Also, make sure your fees are reasonable relative to the time required by your assignment. If the payments you have received are inordinate to the task, it may appear that you are selling something more than your time.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Ten Steps on the Path to Stepfamily Happiness

Leslie Todd, LCSW, ACSW, Baton Rouge, Louisiana

1. Educate yourself before you commit
All stepfamilies are unique. Even if you grew up in a stepfamily, your new stepfamily will be different. Preparing for your new stepfamily will save countless hours of confusion and disappointment for all involved. Understanding the children's positions is as important as understanding the roles the adults will play.

2. Talk about money before you commit
Stepfamily failures are largely attributed to childrearing and money issues. Stepfamily finances are complicated: child support money may be flowing in and/or out of your home. Be very clear with your partner about your prior financial obligations. Talk with your attorney regarding spousal support, child support, or educational fund responsibilities. Figure out how you're going to handle "his, her, and ours" money issues.

3. Lower your expectations
The first marriage is about "us." The next marriages are about "them" — the children, the sets of grandparents, the former spouses' households, maybe even the court. The more people, the more likely that somebody somewhere in the system will be less than happy much of the time. Don't expect to please everyone, or for everyone to please you.

4. Respect your unique perspectives
Empathy and curiosity are the traits that distinguish the best-functioning stepfamilies. Members are genuinely interested in listening and understanding each person's unique perspective. Members do not flinch when their viewpoints differ, but engage in conversation that builds trust and appreciation.

5. Have a life outside of your family
Your personal needs for love and validation are normal and good. Rather than overloading your stepfamily with expectations (conscious or unconscious), share yourself with a larger community. It relieves your stepfamily of having to "care too much" and also gives you more outlets for your talents and feelings.

6. Do regular stuff together
Stepfamilies find their way by doing the normal stuff—eating together, doing chores, enjoying sports or a movie. Kids and adults will learn how to interact with one another over time.

7. Let the children love their whole family
This sounds easy, but if it were, family courts wouldn't exist. Children will test out whether it's okay to love their parents in other homes, or may feel they have to "prefer" your new stepfamily in order to make it work. Show your children you are neither competitive nor threatened; help them grow big hearts.

8. Get creative: experiment with new rituals
Rather than competing over whose rituals will win out in an awkward hybrid, try something entirely different now and then. A new vacation destination or a non-traditional holiday menu allows everybody to enjoy creating a new experience together. The experiments that don't turn out well will be one-shots; the others may grow into your new family's cherished rituals.

9. Be sure each child has one-on-one time with the biological parent in your home
Loss of this special time is the number one complaint of children in stepfamilies. Especially in the early phase, don't let your anxiety about "blending" override the need to acknowledge and nourish blood-tie bonds.

10. Make time for the new marriage
Plan some regular date nights and get away from the munchkins. You'll be doing your kids a favor by not focusing on them ALL the time. Your new marriage deserves nurturing, and is the foundation on which your new stepfamily will flourish.

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Top Ten Ways to Reach Out to the Self-Represented

Pamela Cardullo Ortiz, JD, Executive Director, Maryland Access to Justice Commission, Annapolis, Maryland

1. Use a variety of means and media

The self-represented come from all walks of life, with a range of experiences. Whether you are a court, an attorney or a service provider, they will seek your assistance through a variety of media. Some are low-income individuals with limited access to technology; others have the means and inclination to seek information over the web or via text. Provide information through a variety of delivery mechanisms to reach potential beneficiaries of all ages, education levels and income.

2. Consider technology with which you may not be personally adept

Ask an intern or a teenager at home what they do first when they have a problem. My children have learned everything on YouTube, from how to make paper machine guns to how to play the theme from *Benjamin Button* on the piano. My teenager uses Facebook to collaborate with friends on math homework. Many seek social networking groups before turning to the web. This year's teenager may be a respondent in a juvenile matter with appointed counsel, but 2 to 5 years from now may be an unrepresented parent in a custody or child support matter. Continually reinvest in emerging technologies for your court or court-related business to address the needs of ever-evolving court users.

3. Provide a toll to aid users in identifying the forms they will need

A list of forms by number or name, in legal terminology, is not enough to guide non-lawyers. Provide an interactive tool, or even a list of scenarios users can scroll through to identify which fits their situation, so they can identify the group of forms or written materials they need. Online survey tools, like SurveyMonkey.com, can be used to develop a simple decision tree to guide individuals looking for forms or other materials.

4. Pay attention to the physical environment from the perspective of the uninitiated or those new to the culture or language

When you walk in the door of many fast food restaurants, the floor plan physically channels you precisely where you need to go to order that burger. I visit a well-designed museum where everyone has an identical, comprehensive experience because you are physically required to follow a particular path as you go through the building. Most courts are a free-for-all where bewildered individuals gaze about for room numbers and signage. Consider building a physical interface that guides visitors to key locations. Provide signage that is designed to guide users in plain English and in key languages.

5. Ensure online resources are in a screen-readable format

The blind use screen reading software to make full use of the Internet, a real world-expanding resource for the otherwise sensory impaired. Unfortunately, ordinary web-content, including PDFs, may not be readable by most screen reading software. Consult with organizations serving the blind to ensure your documents are screen readable. And don't forget to post descriptions of photos and scripts to accompany videos and audio material online to ensure they are accessible to all.

6. Run a usability and accessibility software tool to verify online resources are indeed accessible

There are software tools you can use to check materials before posting to ensure that they meet readability guidelines and to improve their accessibility.

7. Investigate providing online chat for your court or business

Improve the experience of web users by answering questions in real time, through online texting. There are several low-cost easy ways to provide this through your site. A number of statewide legal content web-sites provide legal advice online. It can also be used to answer simple questions or direct users to appropriate sections of the website. Do you offer a hotline? Consider expanding the service to answer inquiries via online chat in addition to the phone.

8. Reiterate in writing what was discussed to aid those who are stressed or have memory limitations or impairments

Many disabilities are "invisible." Individuals may have memory impairments as the result of injury or illness. Others may be on medication that affects their cognitive functioning or ability to remember temporarily. All of us are more prone to forget things when stressed; and pretty much everyone involved in a family court case is stressed. After providing information orally, give the user a reminder in writing of what was dis-cussed to aid them in following through.

9. Provide a feedback loop for clients, court users, including use of an ombudsman

Listen continually to those who use your services. Provide an online survey on your website for feedback about the site. Provide post cards in your office or at the counter users can pick up and drop off or mail in later. It does not have to be a scientific survey and you do not need to publish the results. Just listen and be aware of the issues your clients or court users face every day and how your service is perceived. Courts might consider providing an ombudsman who can field concerns confidentially. Newspaper ombudsman often maintain a blog where they respond on behalf of the organization to debunk myths and reflect back to the community how the organization plans to respond to genuine issues. Courts might emulate this practice.

10. Institutionalize, rather than educate, for change

Often we hear, "If only we could train our staff," or "If only we could educate our judges" how to better deal with the self-represented. The truth is, if we have to depend upon education to affect meaningful change, we will have to do it over and over again, every few months, to reach new employees and to reiterate the culture we are trying to build. If there is a procedure or practice that can be mandated to support that culture, that is more likely to be uniformly adopted and to support a meaningful improvement in the way the "system" interacts with the self-represented.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Child Support—Did You Know?

Cindy Holdren, Senior Consultant, Center for the Support of Families, Silver Spring, Maryland

Employers often have questions concerning the income withholding orders they receive that are not being enforced by state child support enforcement agencies. These orders are usually issued by the court, an attorney or in some cases, by the custodial party.

The Federal Office of Child Support Enforcement (OCSE) assists employers in finding answers to their questions, including the ones most frequently asked below. The list of questions and answers along with statutory references when appropriate may be helpful to assist the judiciary in ensuring prompt payments to families with children.

1. Are attorneys and courts required to use the Office of Management and Budget (OMB)-approved Income Withholding for Support (IWO) form?
Yes, all entities issuing income withholding orders or notices are required to use the federal form (42 USC. §666 (b) (6) (A) (i) and (ii)) promulgated by the Secretary of Health and Human Services. A fillable PDF version of the IWO may be found on the OCSE website here.

2. Must all employer-withheld payments be sent by the employer to the state disbursement unit (SDU)?
Yes, child support payments payable by income withholding must be sent by employers to the state's centralized facility for collection and disbursement of child support payments, also known as the state disbursement unit (SDU), for the receipt of child support (42 USC. §666 (b) (5) and (b) (6) (A) (i)). The obligor may be ordered to make direct payments to the obligee; the employer, however, may not be ordered to make payments directly to the obligee.

3. May the amounts ordered for child support payments be expressed as percentages?
No, payment amounts must be expressed as "sums certain." This allows accurate accounting of amounts owed and paid through the SDUs. The OMB-approved IWO form allows only dollar amounts to be entered in the appropriate fields for current support, arrears, etc.

4. How should we handle orders with variable terms or those mandating changes for different time periods or levels of visitation?
Requirements that payment amounts change during the year or as a result of visitation work well when ordering direct payments from the noncustodial parent to the custodial party. However, frequent or manual handling of payroll exceptions each pay period are onerous to employers and should be avoided; the Social Security Act requires that states simplify the income withholding process (42 USC. §666 (b) (6) (B)). Any changes to payment amounts or other terms must be done by issuing an amended IWO to the em-ployer.

5. What does this order say?
Non-standard orders may be difficult to read and understand. Use of the OMB-approved IWO form alleviates this concern since employers are familiar with the form and understand how to read and apply the information in that format.

6. How important are child support payments to families?
In 2009, the child support enforcement program collected $24.7 billion that was distributed to families and children.

Urban Institute researcher Elaine Sorensen found that "in 2007, among custodial families who received child support, family earnings accounted for, on average, 43% of total family income, child support accounted for 40% of total family income, and other income accounted for 17%."

The U. S. Census Bureau data shows that in 2007 one quarter of single-parent households had family income below the poverty level. The child sup-port enforcement program, along with Earned Income Tax Credits and the Supplemental Nutrition Assistance Program (formerly the Food Stamp program), is a major source of financial stability to families.

7. How important are employers/income withholders in ensuring that payments are withheld from the earnings and income of noncustodial parents and sent to the children and families?
Employers/income withholders remit nearly 70% of all child support payments collected nationally through the SDUs. Within 2 days of receipt from employers, the SDUs send payments to families and children—making it the most efficient method of ensuring speedy payment delivery to families.

8. Where may I obtain more information about the child support program in general and about specific information targeted to the courts?
Information about the child support program may be found by visiting OCSE's website. Court-specific information can be found here. The National Electronic Child Support Resource System (NECSRS) is available here and is an Internet search engine that helps users rapidly access resources from the federal, state and tribal child support programs, state and tribal contacts and includes a glossary of child support related terms.

For more information, please contact Cindy Holdren at (240) 676-2808 or cynthia.holdren@acf.hhs.gov.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Top Ten Things Family Law Professionals Should Know about Child Development

David Finn, PsyD, Rolling Meadows, Illinois

1. Children are hearty
Ok, admittedly not a scientific lead off, but one that addresses something most of us forget in child custody cases—common sense! Most children are handed from one relative to the next shortly after birth and after a short maternity leave, most are bundled up for day-care within weeks of returning home. The idea that we must build cocoons around very young children of divorcing parents and restrict their contact to one primary caregiver is inconsistent with the experiences of most children.

2. Children can sleep at Dad's house (part 1)
Assuming that both parents have been involved (versus paternity actions where one parent is a stranger to the child), sleeping at the non-residential parent's house (usually dad's) is fine. An important developmental task for very young children is to build trust, and having the experience of being rocked/soothed/cared for by both parents helps them to accomplish this task.

3. Children can sleep at Dad's house (part 2)
Back to common sense—children around the world are put down for naptime (and comforted when they awake) by their daycare providers. Children, from a young age, are shipped off to grandma's house when mom and dad want to get some sleep. The idea that young children of divorce will be traumatized by a night at dad's house, again, is inconsistent with the experience of most children.

4. Children are traumatized by traumatic events
Seeing both parents is not traumatic. Being abused is traumatic. Being withheld from a parent due to false accusations of abuse is also traumatic. If a child is being traumatized, the court should act immediately to provide that child safety and protection. If not, the child deserves to have quality time with both parents.

5. Children need predictability
Young children (under 12 years old) are concrete thinkers. This is why they don't understand conceptual ideas such as "being good" or "clean your room." Very young children (under age 7) likewise don't understand "typical" parenting time allocations (once or twice weekly and every other weekend). These children benefit from parenting time plans that are regular and routine. Give them a calendar or chart in clear view with different colors for "days with mom" and "days with dad" to help them understand.

6. Stress hurts children
Children are neurologically and developmentally impacted by stress and tension from a very early (preverbal) age and possibly in-utero, as well. The court process accommodates the needs and rights of the parents to a greater degree than it does for children who are distressed and need help NOW. Work with your family court system to implement interventions for distressed children and parents while litigation is ongoing to facilitate stress relief and reduction. Be aware of your local resources, such as Rainbows, that work with children who have experienced divorce.

7. Separation anxiety is normal
As very young children (12 to 18 months) gain an understanding that people and objects exist even when they're not present (this is when you can't merely hide the keys or cell phone anymore!) they become anxious at separations. THIS DOES NOT (necessarily) REFLECT ON THE PERSON THEY ARE BEING TRANSITIONED TO. Daycare staff and kindergarten teachers see this on a daily basis. The better a parent handles the transition, the better the child will handle the transition.

8. Parenting plans need some flexibility and creativity (part 1)
We all know that a 6 month old has different needs than a 6 year old or a 16 year old, but we are stuck within a system that requires a parenting plan be identified for RIGHT NOW. These plans are important, but we

should build in some provisions (parenting coordinator, parenting therapist) for revisiting the plan at specified intervals (yearly) to make minor (not sweeping) adjustments. While it should be clear that this revisiting is not for the purpose of modifying custody, an extra night with mom or dad for an adolescent child is something that may be worthwhile to consider accommodating.

9. Parenting plans need some flexibility and creativity (part 2)

Be willing to think "outside the box" for your parenting plans. Some of these non-standard arrangements may include isolating overnights (i.e. 6pm until 9am) for very young children or allowing each child in a 2+ child family to have separate "alone" time with each parent during the week/month.

10. Violence damages a child's development

Violence, either observed or experienced, has profound effects on a child's emotional and psychological development. If there are allegations of violence, these should be assessed by a professional trained in domestic violence immediately and offending parents should be required to enter appropriate treatment. The children should also receive counseling if indicated. Educated and caring professionals routinely misunderstand domestic violence. Rely on your local experts with specialty training in this area to make assessments and recommendations.

Dr. David Finn, a licensed clinical psychologist, is the owner and director of the Associates in Human Development Counseling in Rolling Meadows, Illinois. He specializes in working with high conflict families and is regularly appointed by local courts to conduct custody evaluations or facilitate therapeutic intervention. Dr. Finn has expertise in assessing claims of alienation, domestic violence, and other forms of abuse. He has been privileged to have served as a guest speaker on these and other related topics including child development and working with high conflict never married litigants to various local and national groups. When not working, Dr. Finn enjoys spending time with his spouse and young children in their Chicago-area home.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Ten Points of Consideration for Family Law Professionals about the Voice of the Child

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1. The "voice of the child" has come to synonymous with the views and preferences of the child
It should have a larger meaning and should include the child's experience of the parental separation and its aftermath.

2. When seeking the voice of the child, we need to ask whose needs we are meeting
Are they the court's or the needs of the litigation process? Shouldn't the needs of the child be considered first?

3. The protection vs. rights debate
Some practitioners believe children need to be protected from the parents' conflict and the adversarial nature of litigation and should not be drawn into the fray. Others believe, just as strongly, that children have the right to have their voice heard and cite the UN Convention on The Rights of the Child which has codified this right. In fact, most jurisdictions have included this right in one form or another.

4. There is no consensus on whether there is quality research to support children's participation in family law proceedings
Some researchers think there is, others do not.

5. Memory can be inaccurate, views of children can be influenced by many factors
Therefore, a single interview at one point in time is likely to not be reliable.

6. Context is everything
The complexity of the child's family situation, history, attachments, alignments and the nature of the interviewing dynamics all contribute to a child's voice.

7. How should the voice of the child be sought?
Through judicial interview, the lawyer for the child, child testimony, the custody evaluator, the mediator? How, rather than if, seems to be the status of the current debate.

8. What should be done with the information once it has been gathered?
Is it to be entered as evidence? Can it be entered as hear-say? If a child testifies, should a parent be able to cross-examine?

9. Does the level of conflict between the parents and/or a child's refusal to see a parent influence the weight to be given to the child's voice?
A good assessment should be conducted to determine the extent to which (if) the parents' conflict is influencing the child's voice. If the child is resisting or refusing contact, the reasons for the strained relationship need to be explored.

10. Interview skills are critical when interviewing children of all ages, but particularly young children
Specifically, it is very important that the interviewer avoid any display of attitudes or beliefs about the child or the event(s) in question and is accepting of any type of response the child provides, regardless of whether the response conforms to the beliefs or opinions of the interviewer.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Ten of the Toughest Challenges in Parenting Coordination Work

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1. Fees, please!
Never commence work on a case until you have retainers in the bank. Never continue to work on a case when one or both parents have exhausted that retainer. Have an office policy that demands that the retainer is refreshed when it falls below four hours of your hourly rate. If you cannot adhere to these rules, you should probably not do PC work. We are there to help our clients with boundaries and need to model how to do that.

2. One parent who continually violates custody orders, agreements between the parents, and PC rules and directives during the process
When both parents are non-compliant, PC is not a process that will serve that case, and chaos and anarchy will reign. When only one parent is non-compliant, the work is challenging as the PC's sanctions and decisions are one-sided (leading to a perception by the offending parent that you are biased), and the other parent is often frustrated that you allow their co-parent to get away with the breaking rules that the non-offending parent is following.

3. Having a parent file a complaint with your professional licensing board/professional organization while you are still active in their case
Can you continue to act in an objective, unbiased manner in the PC role? If not, you must withdraw from the case. If you think you can, consider how the reviewing agency will view the fact that you are now in multiple roles—PC and subject of professional review.

4. Not having the support of the judiciary
Not infrequently, clients object to a PC's recommendations and decisions or make grievances to the judicial officer who is involved in the case. Knowledgeable and supportive judges are able to keep parents from undermining the process and the authority of the PC. Make it a point to reach out to judicial officers in your jurisdiction and educate them about the nature of PC work. This will help reduce the likelihood of being undermined.

5. Having an attorney who is not collaborative
The first place an unhappy client voices concerns is to the attorney. Thinking of attorneys as part of your "collaborative team" means educating them about the process and informing them prior to contact from their client when you know the client is becoming hostile. This is an effective way to keep the client in the process.

6. Dealing with a "true" domestic violence case
The AFCC Guidelines for Parenting Coordination take great care to urge caution in taking on domestic violence cases where intimidation, power and control continue to be evident post-separation. The engagement between perpetrator and victim in a less-formal alternative dispute resolution process, such as parenting coordination, can actually facilitate ongoing domestic violence in such cases.

7. The helping hand strikes again
PCs occasionally need to address problems created when a child's therapist has been procedurally biased (only dealing with one parent and the child) or who is completely aligned with one parent in the case. These therapists can be part of the problem and should be confronted with their biases and possibly asked to end their roles. The new AFCC Guidelines for Court-Involved Therapy can be a useful tool in confronting therapists with such problematic professional conduct.

8. One parent is uninvolved
In most jurisdictions, and in most private consent agreements, the PC cannot force or mandate participation in the PC process. Often the PC feels pulled by the participating parent who is raising real concerns but cannot get any communication going. It is tempting for the PC to rule without the input of the uninvolved parent. If one parent refuses to participate, the PC should resign and/or the other parent can seek assistance from the court.

9. The antisocial parent
This parent will often not comply (unless it benefits his or her agenda), will recount an event with a spin that makes him or her look good, will deny what others have observed, will have no remorse, and will present themselves as charming until challenged. Managing this person requires clear limits and expectations, and clear sanctions for noncompliance.

10. Balancing the work load
Do not have too many active cases at a time as individual case demands can vary significantly over time. Before accepting a case, inquire into the immediate needs of the parents. If you have a lot on your plate already, regretfully decline the case. You'll be glad you did. Self-care is very important to avoid burnout and to be an effective PC.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
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Ten Tips for Legal and Mental Health Professionals Involved in Alienation, or Alleged Alienation Cases

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1. Screen and identify parent-child contact problems early

Just as there are different types and degrees of intimate partner violence and high-conflict, there are many reasons for a child to resist or refuse contact, including an age or gender appropriate affinity, initial alignments due to anger related to the separation, adaptation to the situational factors caused by the separation, or a justified rejection (realistic estrangement) due to violence, child abuse or neglect or inept parenting. Alienation is a child's expression of un-reasonable and persistent negative feelings and beliefs (such as anger, hatred, rejection, or fear) toward a parent that is disproportionate to the child's actual experience with that parent. Many cases have elements of both alienation and justified rejection. Intentional and unintentional parental alienating behaviors by mothers and fathers are common in high-conflict separations; however, despite such parental conduct, many children do not become alienated from either parent.

2. Triage, for an expedited and differentiated response

Delays and ineffective legal and mental health interventions are likely to entrench family problems and make them more difficult to remedy. A differentiated response is required, depending on the reasons for and the severity of the strained parent-children relationship and the factors that are contributing to the contact problems, including the degree of parents' intentionality and responsiveness to the child's needs. If a child's resistance to visitation results from parental abuse or neglect, this needs to be identified as early as possible with appropriate protection plans put in place for the victimized parent and child. Mild and some moderate alienation cases may respond well to early intervention involving education and therapy, while these are likely to be ineffective in more severe cases and may even exacerbate the problem. In severe alienation cases, the alienating parental conduct is emotionally abusive, often resulting from personality disorders and destructive enmeshed parenting. In these severe cases, where less intrusive remedies have failed and the rejected parent can adequately care for the child, a custody change may be warranted. This is similar to child protection cases, where children may be apprehended from a parent due to severe mental health issues that significantly interfere with parenting capacity. To permit the child to reestablish their previously loving relationship with the rejected parent, the change in custody is likely to require temporary suspension of, or supervised contact with, the alienating parent, and may require therapeutic support.

3. Listen to the voice of the child

Often, children benefit from being heard and, while not determinative, their wishes and preferences are one important factor in the best interests test. Most children, though, do not want to choose between their parents. In alienation cases, children are unduly influenced by the favored parent, although the children will insist on the independence of their perspectives. Children's preferences often reflect the immediate future and do not always reflect their long-term best interests. Even within the complexity of these cases, it is important for children's voices to be heard.

4. Employ a two-pronged approach, involving both the court and the mental health practitioner

When parent-child contact problems are identified, a case should be referred to effective case manage-ment by a single family law judge at the pre-resolution, resolution and enforcement stages of the court process. Mild and moderate alienation cases are likely to benefit from judicial exhortation and encouragement towards counseling and settlement on a basis that has both parents involved in the child's life. Often, the judge will need to include clear expectations and consequences for noncompliance, which can include specific sanctions or a custody reversal in the most severe cases.

Accountability for behavior is less unlikely if the parents face different judges throughout the process. Some degree of reporting back to the court by therapists is necessary to ensure treatment compliance and resolution of the contact problem.

5. Judges need to effectively enforce all orders
Many alienating parents have personality disorders or related characteristics. Judges must follow through on violations of orders with appropriate responses to failures to comply. Not doing so only reinforces the parent's narcissism and disregard for authority and rules, characteristics that can be mirrored by alienated children.

6. Involve all family members in treatment, not only individuals
If abuse and violence have been ruled out, intervention for mild and moderate cases usually needs to include both parents and all children. While more than one therapist may be necessary, individual therapy for the child alone is unlikely to resolve the parent-child contact problem, and may well exacerbate the problem.

7. Maintain open communication between all professionals to avoid professional alignments
Many professionals (e.g., therapists, child protection workers, lawyers, teachers, physicians, etc.) are typically involved in cases involving high conflict or alienation. Mirroring the dynamics in the family, alignments amongst these various, well-intentioned professionals are common. To minimize this risk and to better assist the family, the order or treatment contract must indicate that there is no confidentiality and the treating professionals are permitted to exchange information with each other and the courts. Sometimes, a parenting coordinator or case manager is necessary to facilitate this process.

8. Avoid dual roles
Often, mental health professionals are asked by the court or lawyers to make recommendations about a parenting plan that will promote the best interest of the child. Those who have been involved in providing therapy to a parent or child may be called as witnesses, but because of their therapeutic allegiances, they should not perform a custody or visitation evaluation, or express global views about the child's best interest. Once it has been determined by a court or agreed by the parents that it is indeed in the child's best interest to have contact with the rejected parent, irrespective of the cause of the problem, the therapist's role is to implement a previously agreed to or ordered schedule. Putting the therapist in the role of offering therapeutic support and then offering opinions as to the child's best interest compromises their role and effectiveness. An order or consent order for therapy accompanied by a treatment contract is required. (See the AFCC Guidelines for Court-Involved Therapy.)

9. Interdisciplinary training and collaboration are best
Specialized training and ongoing continuing education in high-conflict, alienation and intimate partner violence is imperative. Cross-disciplinary training will assist professional collaboration and recognition of the unique roles and responsibilities of each professional, thereby promoting an open-mind to different perspectives. Effective multi-disciplinary collaboration can prevent professional alignments and splitting.

10. More research and further development of interventions are needed
While there has been a significant increase in knowledge, there is clearly a need for more empirical studies to explore the etiology, prognosis and factors that contribute to strained parent-child relationships after separation. With the growing number of options for intervening in alienation cases, much more attention is needed to develop efficacy and effectiveness-based evaluation to determine what works, for whom, and in which circumstances. A greater emphasis on evidence-based approaches would provide for better individualized decisions by integrating empirical evidence with practice wisdom and the unique contextualized factors of each case.

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Creating a Circuit-Supported Family Program

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Specialized services, such as social investigations, evaluations and parenting coordination, provide assistance to parents and children involved in court proceedings and better inform judicial decisions on those cases. It is possible to provide these services through a court-based program, utilizing minimal funds and/or community-based support. The following details should be considered when planning and developing a court-based program:

1. Assess the needs of the court and of families serviced to develop a program that takes minimal time from court staff.

2. Support from the judiciary is essential. Schedule a meeting to describe the program benefits to parents and children, as well as the court. Once they see the advantages, they can help to gain support from the Administrative Office of the Court.

3. Designate a court program manager or liaison if an outside entity will be running the program. Thinking small can make a big difference. If the service cannot be provided by court staff, staff could keep a list of organizations in the community that can provide that service.

4. Uniform procedures will ease implementation of the program. Create a Standard Order of Referral in which the judge determines the party responsible for payment.

5. Make sure that the order takes into account the current conflict level of the parties, considering history of domestic violence and abuse, and addressing potential safety concerns.

6. Develop a program manual with policies and procedures to avoid conflicts of interest and other ethical dilemmas.

7. Create an application process where professionals who apply as providers must meet certain qualifications.

8. Create an advisory committee, review board or oversight committee to provide guidance and support.

9. Develop mandatory circuit-specific training and facilitate ongoing training for providers. Create a listserv for providers so they can give each other support.

10. Keep the channels of communication open between the judiciary and families served in order to get comments and feedback about the program and providers. Use this feedback to make adjustments.

Those interested in starting a program in their court system might be interested in the AFCC publication, Innovations in Court Services, which chronicles six court programs designed to address the challenges presented to courts in providing quality services to families in conflict. This volume details program design and provides the framework to develop and implement each program.

Order now. The appendices for this book are available online.

Linda Fieldstone, MEd, Supervisor of Family Court Services of the 11th Judicial Circuit in Miami-Dade County, Florida and Michelle Artman-Smith, Esq., ADR Director of the 12th Judicial Circuit in Manatee County, Florida, contributed to the Florida Chapter Task Force on Social Investigations and Parenting Plan Evaluations by developing a step-by-step guide to implementing a court-based program.

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Ten Reasons the Hague Abduction Convention May Not Be Enough

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In cases where a child may travel, visit or move outside the United States, family law professionals usually ask whether the destination is a signatory to The Hague Convention on the Civil Aspects of International Child Abduction. That is not enough to know, if one is assessing the risk that the child will not be returned to the United States. Here are ten reasons why knowing that the destination is a "Hague country" may not be enough.

1. Not every country that is a signatory is a US treaty partner

As new nations adopt the treaty, there is a process by which each country decides whether to accept a country's accession to the convention. Until the US accepts a new signatory's accession, the treaty is not in effect between the US and that country.

2. The treaty does not require recognition and enforcement of custody orders

The Convention has no provisions for recognition and enforcement of custody orders. It applies whether or not there is a custody order in place. The treaty creates the summary remedy of "return" (similar to extradition) to compel the return of a child who has been wrongfully removed or retained back to the country of the child's habitual residence so custody can be determined under the laws of that country.

3. The treaty does not protect children age 16 and older

Once a child reaches age 16, the Convention no longer applies. If the child reaches age 16 during return proceedings, the case must be dismissed.

4. When the child moves, the treaty offers little or no remedies for a left-behind joint custody or non-custodial parent

The Convention is based on the premise that the place of the child's "habitual residence" should decide custody. Even if there is a court order or agreement, identifying a particular country as the child's "habitual residence," it is not binding. Rather, at the tribunal hearing a Hague Convention petition must look to the facts and circumstances at the time of the child's removal to determine the habitual residence. Some countries have held that when parents have joint custody, habitual residence shifts each time the child moves back and forth. This means that if the child is with Parent A, the courts of that country can ignore the joint custody orders and make new custody orders. If Parent A has moved abroad with the consent of the other parent, or court approval, the country where the child lives will exercise child custody jurisdiction.

5. The exceptions to return under the treaty are increasingly being broadly construed

The Convention was drafted 30 years ago with a focus on abductions by non-custodial fathers. However, it turned out that the Convention is used more often by left-behind fathers after custodial mothers move abroad with the children. There have been several trends unanticipated by the drafters. Although the Convention offers the remedy of return only in cases where the child's removal violated the left-behind parent's "rights of custody," the definition of "rights of custody" has been greatly expanded. Similarly, although the exception to return where the child has been gone for more than a year and is settled in the new environment, has a mature preference not to return, or where return would place the child at grave risk of physical or psychological harm are being more broadly construed to prevent return.

6. Many Hague signatory countries have poor Hague compliance

Experts estimate that only about half of the petitions for return brought under the treaty result in orders for the child's return. This estimate does not include voluntary compliance. The US State Department publishes an annual report for Congress detailing compliance statistics and patterns for the US and its Hague Abduction Convention partners. Those reports are sometimes criticized for minimizing problems.

7. Only about half of the Hague return orders are actually enforced
Many countries have no effective mechanisms for enforcing their own custody orders. Experts estimate that only about half of the orders for return under the treaty are ever enforced.

8. Litigation under the treaty can be costly and go on for years
Some countries offer legal services to left-behind parents and others do not. While return proceedings are intended to be summary in nature, some cases drag on for years. Moreover, if the parent takes the child to yet another country, the entire process must begin again (and there is no real remedy if the child is taken to a non-Hague country).

9. The "access" provisions of the treaty have no teeth
The Convention contains provisions permitting a left-behind non-custodial parent to petition for "access" (visitation). However, the treaty provides no criteria for access petitions, and essentially "access" petitions are merely requests for visitation under the laws of the habitual residence.

10. In cases where a child is wrongfully removed to the US, the UCCJEA often provides better remedies
The Uniform Child Custody Jurisdiction and Enforcement Act requires US states to recognize and enforce many, if not most, foreign custody and visitations orders without modifications. Defenses to UCCJEA enforcement are narrow. Enforcing a foreign custody or visitation order in the US is often the most effective remedy when a child has been brought to or kept in the US in violation of that order.

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Top Ten Tips for Judicial Interviews of Children

Hon. Denise Herman McColley, Napoleon, Ohio

In most jurisdictions, judicial officers are allowed to interview or speak with children in the process of their parents' divorce or custody litigation. Ohio is somewhat unusual in that judicial officers are generally required to interview children upon the request of either party or at the court's discretion. As one might imagine, this law results in judicial officers interviewing children of all ages. Positive aspects of interviewing children include allowing the judicial officer to actually meet and learn first-hand about a child for whom he or she is about to make life-changing decisions; permitting the child to meet the judicial officer; and allowing the child to feel he/she has been part of the process of determining his/her future.

Although certainly not exhaustive, here are a few pointers that may be helpful to a judicial interviewer:

1. No matter what the law is regarding interviewing children in a particular jurisdiction, it is important to focus on the purpose of the interview. In general, an interview is not to determine what the child states that he or she wants, but rather to determine his/her wishes and concerns.

2. Consider developing a "script" of topics that you will use for interviews. It is helpful to ask similar questions of each child. Once you have developed the questions you wish to ask, it becomes easier to follow the script. In doing so, you insure that you do not miss something that is important to discuss with the child.

3. Remember the age and the cognitive abilities of the child. Even though you will want to follow a script of some sort, the interview may be very different for each child, depending upon his/her age, cognitive abilities, and maturity. For instance, a very young child might be asked to draw a picture of and tell the interviewer the names of everyone who lives in daddy's house and everyone who lives in mommy's house. An older child may just be asked that question.

4. Some issues you may want to consider with a child are as follows:

- Who does the child identify as being in his/her family?
- Where does he/she go to school? Is he/she involved in other activities? What does he/she enjoy or dislike about school, extracurricular activities or church? Are there activities in which he/she wants to be involved in the future?
- Who participates with him/her in various activities or who takes him/her to appointments to school, or to church?
- What are the child's goals and who is best able to assist the child in obtaining those goals?
- What sort of rules does each parent have?
- Do the child's parents communicate with one another?
- Is it important to a child that his/her siblings have the same parenting arrangements? How would he/she feel if the arrangements were different?
- Besides the parent, who else lives in each household?
- What is each parent's home like? Is it a house, apartment, mobile home? Is it in town or in the country? How many bedrooms? Who stays in each bedroom? Where does the child study, play, eat, etc.? Does the child have friends in the neighborhood? Does the child have pets?
- How does the child get along with the individuals in each household?
- What work/school schedules does each individ-ual in the household have?
- Who takes care of the child when the parent or other adults in the household are gone?
- What things does the child enjoy doing with each parent, with the other individuals in each parent's household, or by him/herself when he/she is in a parent's household?
- What things would the child change in each household if he/she were able?

- Does the child have relatives or friends he/she visits or with whom he/she has an ongoing relationship? What do they do together?
- If the child were able to make three wishes (to his/her fairy godmother/father or a genie) for his/her family, what wishes would the child make?
- If the child were able to live anywhere in the world, where would it be? Who would live with him/her? Ask the child to draw a picture of the house/castle/home in which he/she would live and everyone who would live in the house with him/her.
- If the child were scared, had a nightmare or needed advice, to whom would he/she turn or who would he/she prefer be there to help?
- Who obtains or helps the child obtain or purchase clothing or personal items?
- Who obtains or helps the child obtain or purchase school supplies?
- Who attends school activities, parent-teacher meetings, etc.?
- Is there anything the child is afraid of? Is there anything that makes the child angry?
- Who is most likely to help the child with his/her homework or school projects?
- Is the child able to identify his/her present sche-dule for spending time with each parent?
- If he/she were able to make his own parenting plan, what would it look like? Has he/she discussed this with his/her parents?
- What sort of punishment does each parent or other adult in the home(s) use if a child misbehaves?
- What questions does the child have about the process or what is happening?
- Is there anything the child would like the judicial officer to tell his/her parents?
- Is there anything a parent or another adult reminded the child to tell the judicial officer?
- How does the child get to and from school when he/she is at each parent's house?

5. Allow enough time to conduct the interview of a child. Depending on his or her age or maturity, the interview could be as short as 20 minutes or as long as 1-1/2 hours. Allowing one hour for each interview would be a good rule of thumb. If there are several children, each should be interviewed alone. If there is more than one child, less time might be set for the individual interviews as basic information can generally be verified with the second or third child interviewed—e.g., "Your sister told me that you live in a house with three bedrooms and that you share a room–is that right?"

6. If there is a guardian *ad litem* and/or child's attorney, he or she should always be present for the interview. If the child has a therapist or if there is a court counselor on staff, you may consider involving that individual as well.

7. Even though it may be permissible for parents' attorneys or even parents to attend the interview, consider excluding them. The presence of so many adults, especially unknown individuals, is very intimidating to a child. If requested, allow attorneys for the parties to submit questions they would like to have answered or concerns they would like to have addressed during the interview. Of course, whether you ask those questions or address those concerns or the manner in which you do so is entirely up to you.

8. Refuse to interview a child the day of the hearing, even though an attorney or party may request it. Set the interview several days before the hearing. If the child is school-aged, make every effort to schedule the interview after school or during a school holiday. The last thing you want is to have a child sitting in the hall waiting to speak to the judicial officer while his parents and any witnesses called for the hearing are also gathered at the court.

9. Do whatever you can to make a child comfortable. Make sure you explain the reason for the interview and your role in the court process. Indicate how the interview will be used and when and under what circumstances his/her parents may learn of what has been discussed. In making arrangements for the interview, be cognizant of the child's age and maturity. Consider making special arrangements for younger children, who are generally not able to sit in a judge's office and answer one question after another. Decide if it is appropriate for you to wear a robe for the interview or if that will make the child more uncomfortable. Older children may be interviewed in the judicial officer's office while it may be best to interview younger children in a specially-prepared playroom. During interviews with younger children, reading books about parental separation, playing games, coloring, drawing pictures and other activities are more likely to promote conversation about the child's family.

10. Record the interview so you are prepared in the event there is an appeal.

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Top Ten Questions to Ask When Selecting a Supervised Visitation Provider

Joseph J. Nullet, Executive Director of Supervised Visitation Network (SVN), Jacksonville, Florida, and Judy L. Newman MSW, SVN Board Member and Manager of the Supervised Access Program, Ministry of the Attorney General, Toronto, Ontario, Canada

1. Why is supervised visitation needed?
Courts will sometimes order that a child only have contact with a parent when a neutral third person is present during the visitation. Before considering a provider, it is important to have a complete understanding of why supervised visits may be necessary. Some of the reasons may include helping to reintroduce a parent after a long absence, allegations or a history of child abuse and/or neglect, substance abuse, or domestic violence, concerns about the mental fit-ness of one parent, or threats of abduction.

2. Why not use a friend or relative rather than a professional service, particularly when there is a fee involved?
While there may be circumstances when friends or family can serve as “supervisors,” the high level of conflict in most cases requiring supervised visitation will make it difficult for friends and relatives to refrain from taking sides. Once neutrality is lost, then the credibility of the "supervisor" will come into question and much of the feeling of security and safety will be gone. It is also unlikely that family members will have sufficient training in the areas of domestic violence, conflict resolution, child abuse, and substance abuse to provide a safe, secure environment.

3. Does the provider have the training and experience to handle the specific issues of the family needing supervised visitation?
The qualifications, training and experience of the provider are important in determining if they can safely provide service to the family. For example, if there have been issues of domestic violence or child abuse, the service provider should be trained to be aware of and sensitive to domestic violence and child abuse in the context of supervised visitation. The provider should have security measures in place to keep children and parents safe. This can include staggered arrival and departure times to prevent parents from having contact with each other, checking bags and parcels, security cameras, separate entrances and parking lots, written emergency procedures, and security personnel.

4. Does the provider conduct an intake interview during which parents have an opportunity to express their concerns and the policies and procedures are clearly explained?
An intake interview is the basis of service excellence and safety. The intake interview sets the tone for all future interaction. It is an opportunity to give and receive information about the family and the circumstances leading to supervised visitation. It is also a time to learn about the service provider such as their policies and procedures, their experience and qualifications for meeting the needs of your particular case.

5. Does the provider have a clear set of written guidelines?
Providers should have written guidelines for service. They should have a service agreement for each parent/guardian to sign that sets out what is expected of the parents and what the parents can expect from the provider. There should be a form for each adult party to sign authorizing release of information and to whom the information is to be released. Policies should include clear notice of fees for service and reports; a policy to keep personal identity information (e.g. addresses and telephone numbers) confidential; the limits of confidentiality; and consequences of not following policies and procedures.

6. What are the provider’s policies on documentation?
A provider should have written policies and procedures regarding writing and submitting reports to the court or referring source or other entity. And if the provider submits reports to the court, they should ensure all reports are limited to facts, observations, and direct statements made by the parents and not personal conclusions, suggestions, or opinions of the provider.

7. Where will visits take place?
The provider should have a secure location where visits are conducted that is designed to protect the safety and security of participants. If the visits are to be conducted off site in a community setting, the provider must have detailed procedures in place to insure safety of all participants, and also be prepared to decline the case if an offsite location is not suitable for the risks presented.

8. Does the provider have a clearly defined grievance procedure?
Visitation providers like any other service should be accountable for their services. They should have a way for you to express your concerns about the service you are receiving. The procedure should be in writing. If you are not satisfied with the response you receive, you should contact your local court or whoever referred you for supervised visitation. Some local areas and states may have governing bodies that regulate or oversee supervised visitation.

9. How much will services cost?
All providers should have established written policies and procedures regarding fees for service, including the amount and collection of fees and consequences for failure to pay. The provider's policies regarding all fees must be discussed with each parent prior to the beginning of service. Providers may also have a sliding scale structure available for parents with financial hardships.

10. Is the provider prepared to handle an emergency situation?
While it is impossible to prepare for every possible situation, a provider should have an active collaboration with local law enforcement to facilitate a rapid response; they should review security measures on a regular basis and have established written protocols for emergency situations.

For more information and tips about supervised visitation please visit the Supervised Visitation Network website: www.svnetwork.net.

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Ten Tips for the Holidays

Robin M. Deutsch, PhD, Wellesley, Massachusetts

1. Have a very specific plan for the holidays so there is no opportunity for confusion or conflict
Parents may alternate or split holidays, but when there is disagreement about this plan, consider the longer view of alternating holidays by even and odd years. Holidays are often a time of heightened emotions, and the reality of the loss associated with separation or divorce is no more apparent than when parents must spend a holiday without their children or without old traditions.

2. Try to continue traditions of the past for the children
If they are accustomed to spending Christmas Eve with one extended family, try to continue that tradition, if not every year then in alternate years. Parents should consider maintaining some of the family traditions the first year after the separation, and alternating beginning the following year.

3. If you can continue some traditions together, make them clear, attending to details of who, what, where, when and how
Some families are able to be together without conflict arising, but parents often have different expectations about the experience itself, as well as the amount of time they will be together. The most important thing for the children is that they do not experience conflict between their parents.

4. Create new traditions that feel special to the children and family
This is an opportunity to establish new practices for the adult who does not have the children, such as time with friends, volunteering, movie days and travel. This is an opportunity for the newly formed family, as well.

5. Think long-term—what do you want your children to remember about holidays when they have their own children?
For children, holidays are magical. It is often the little rituals and practices that are most memorable, such as baking a pie, playing a game or lighting the fire.

6. Remember, children's memories include all senses—what they saw, heard, smelled, tasted and touched
To the extent possible, create a memory that involves each of these senses and describe it, e.g. we always listen to this music, eat cranberry sauce, watch this movie, read this book, take this walk and cut these branches. Do not allow conflict to enter into these memories.

7. Self-care is very important
Life for the adults has significantly changed. Find new ways to care for yourself, e.g. exercise, friends, books, movies, clubs, martial arts, dance, classes, activities that bring new energy and attention. You want to rejuvenate yourself and refocus on something to help you reconstitute yourself in your new life.

8. Keep your expectations small and be flexible
Focus on one thing that matters most to you during the holidays, e.g. some sense of connection to your family, having some time with extended family or close friends, creating a new tradition, continuing a tradition. Your holiday time will not be the same, but you can decide that you will have one small goal that you will work toward creating or preserving. Holidays may be accompanied by unmet needs and dashed hopes. By thinking small you can manage disappointment and decrease stress.

9. Though you, the parent, may feel disoriented and lost in the changed family, keep your focus on the children and the new family constellations
Make the holidays about your children, which means helping them to feel good about spending holiday time with the other parent.

10. In ten or 20 years, what do you want to see when you look back on these years of change?
From that long view you can highlight the tone and experience of these transformed holidays.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
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Top Ten Tips for Dealing with Relocation Cases

Philip M. Stahl, PhD, ABPP, Queen Creek, Arizona

Relocation cases are often perceived as the most difficult to deal with, regardless of your role. These tips are specific to the various professional roles in a relocation case.

If you are a mediator:

1. Recognize that these cases are very tough to settle. Try and encourage each parent to formulate a proposed parenting plan that maximizes each parent's time with the children. Encourage the away parent to communicate with the children via Skype and encourage the parent who has the children to communicate regularly with the distant parent about the children and how they are doing. Strongly encourage the present parent to keep the distant parent positive in the children's memories.

2. When considering the parenting plans, recognize that recent research coming out of New Zealand and Australia suggests that the biggest burdens of travel fall on the children. Encourage the distant parent to consider traveling to see the child at least for several of their times together. Not only does this reduce the burden of travel for the children but also allows the distant parent to meet the children's teachers and friends, and participate with the children in extra-curricular activities. Help the distant parent recognize that this will help the children feel more connected to the parent.

If you are a child custody evaluator:

3. Familiarize yourself with all the research and psychological literature on relocation and become familiar with relocation statutory and case law in your state/province. This is critical when considering how to approach a relocation case as a child custody evaluator. Recognize that the psychological literature identifies a number of relevant risks and protective factors to be considered in a relocation case. If the request is for an international relocation, research whether the country that the moving parent is relocating to is a signatory to The Hague Convention and whether or not the US State Department has identified problems with the courts in that country supporting a valid US custody and visitation order.

4. Many relocation cases are "close calls," i.e., some significant factors might favor the children moving and other significant factors might suggest against the children moving. When it is a close call, the evaluator needs to identify the risks and benefits of primary custody with the mother in one location and the risks and benefits of primary custody with the father in the other location, and avoid making an actual recommendation. Weighting of those factors is to be left up to the court. The evaluator is encouraged to give alternate recommendations depending on the weighting of the court.

If you are an attorney for the parent who wants to move:

5. Be sure that your client's reasoning for wanting to move makes sense. Ensure that your client will be a responsible gatekeeper and continue to encourage and support the children's relationships with the other parent. Develop with your client a plan in which they will continue to communicate with the other parent about the children and keep the distant parent's memory alive with the children.

If you are an attorney for the parent who wants to prevent the children from moving:

6. Ensure that your client is prepared to be the primary custodial parent in the event that the other parent moves and the court does not allow the children to move.

If you are an attorney, regardless of which parent you are representing:

7. Consider using a psychological consultant who can help you learn the psychological research and literature, and identify which risk and protective factors are

likely to apply in your case. Such a consultant can assist you in determining the helpful and non-helpful facts of your case and can hopefully assist you and your opposing counsel in settling the relocation without litigation. If the case must be litigated, your consultant can assist you in arguments to the court. If need be, you may want an expert witness to testify about relevant factors to the court.

8. Recognize that recent research suggests that children adjust to moves most easily when both parents are supportive of the outcome and remain child-focused. Encourage your client to stay child-focused and work with the other parent even after the case has been litigated.

If you are the judge:

9. It is critical to approach each case without bias; either the bias that a parent should not move because children benefit when both parents are actively involved in the children's lives or the bias that a parent with primary custody should be able to move for any good reason. Recognize that each case is unique and must be considered on all of the relevant factors in that particular case.

10. Like the custody evaluator, learn the psychological research and literature on relocation and understand the multiple factors that result in increased risk of children's adjustment or may serve as a protective factor and help the children's adjustment in the event of a move. Integrate that understanding with the expected legal considerations as identified in your state's statutory and case law.

Philip M. Stahl, PhD, ABPP (Forensic) is a past AFCC Board Member and is a psychologist in Arizona specializing in consultation and child custody evaluations in relocation cases. He is the author of Conducting Child Custody Evaluations: From Basic to Special Issues and Parenting After Divorce*. Dr. Stahl is also the director of forensic programs for the Steve Frankel Group.*

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
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Top Ten Tips for Handling Child Custody Cases Involving Domestic Violence

Loretta Frederick, JD, Winona, Minnesota, and Gabrielle Davis, JD, Minneapolis, Minnesota

Recent research confirms what many experienced practitioners know: intimate partner violence can have serious effects on children who are directly exposed to the violence or who are simply living with parents who use violence and coercive controls to manage family relationships. Increasingly, practitioners recognize that they need to know whether these potentially damaging qualities are present in families and to handle cases in a way that decreases future harm to children and victim parents. But not all domestic violence affects children or adult victims in the same ways and, therefore, parenting arrangements must be tailored to reflect the actual experiences of each family member, especially each child. The following are tips for ensuring that children exposed to domestic violence have safe and healthy futures.

1. Determine the context and full meaning of the violence to the family

Recognizing that not all domestic violence is the same, it is important to find out: (a) what the perpetrator intended by the violence, including whether the purpose of the violence was to terrorize, dominate and control; (b) what meaning the victim parent takes from the violence; and (c) what effect the violence has on the victim parent and the children. Identifying coercive controlling abuse is particularly critical because such abusers often parent in ways that have lasting negative effects on children and make joint parenting very problematic.

2. Screen every case for domestic violence

Even though it seems counter-intuitive, many true victims (even those who have experienced ongoing and serious domestic violence) decline to disclose the fact to custody practitioners, even their own attorneys. Some victims feel that no one will believe them, some do not understand why it would be relevant, some have been told not to raise the issue, and some fear the repercussions of disclosure. Many will disclose only after time and following the establishment of trust in the practitioner, so screening at various points in the case can be helpful.

3. Use screening tools or guides to help you screen for domestic violence and to assess the full implications of the violence for future parenting arrangements

Recent research confirms that relying on one's own clinical instinct or "gut feeling" to decide whether domestic violence is an issue in a case is not a trustworthy screening method, even for experienced professionals. Asking behavior-specific questions is more likely to uncover domestic violence and elicit full disclosure than asking general questions. There are many screening tools and guides available to practitioners, some of which have been designed to meet specific needs, such as risk or danger assessment, or to be applied in limited practice settings, such as mediation.

4. For the purpose of considering what dispute resolution methods will be most appropriate and helpful in a case, understand the features and characteristics of the domestic violence

Not all cases are equally well-suited for certain dispute resolution alternatives. For example, coercive controlling abusers focused on domination may be ill-suited to participate in facilitative processes that require good faith negotiation, full disclosure, and centralizing the interests of the children. Domestic abuse may also affect decisions about the best timing for moving from one stage of dispute resolution to another in the case.

5. Ensure that parenting arrangements account for the connection between the features of the domestic violence (including its severity and context) and the parenting of the abusive parent

Because the decision to use violence against a partner may also signal problematic or even dangerous attitudes and beliefs about parenting and children, it is critical to explore the extent to which the abusive parent has engaged in behaviors that have negative effects on the children. Familiarize yourself with the groundbreaking writing that has been done in the last few years on this topic. Learn about how adult victims of domestic violence can have parenting problems that

may relate directly to the abuse and what kinds of interventions can have the most benefits to the children's long-term welfare and the welfare of the other parent.

6. Recognize and account for the fact that families that have experienced domestic violence are often drawn into multiple, sometimes conflicting systems

Domestic violence cases are simultaneously or serially processed across multiple systems, including the criminal justice system, civil legal system, child protection system, healthcare system, government benefit system, and various social service systems. The interventions offered across these systems are often fragmented and poorly coordinated. For instance, the criminal justice system often expects a victim parent to leave and testify against her abuser. The child protection system often expects that same victim to obtain a protection order to keep the abuser away from the children. At the same time, the family court system might expect the victim parent to foster a close and continuing relationship between the children and their other parent. These competing expectations can create impossible conflicts for the abused parent. The parent cannot simultaneously insist on having no contact with the abuser and maintain close and continuing contact with the abuser at the very same time. Practitioners must be mindful that multiple intervention systems have the potential for creating conflicting expectations for parties and sending mixed messages to all family members.

7. Be mindful of the past, focused on the present and realistic about the future

Longstanding patterns of abuse and coercive control are rarely altered in the absence of appropriate and proven interventions. Some abusers never change, although many can with help and as an outcome of accountability measures which encourage them to think differently about how they relate to their children and partners. It is important to resist the assumption that parenting problems related to domestic violence will evaporate simply because the relationship between the parents is dissolved. Instead, help to create a parenting arrangement that is realistic and workable and considers all relevant factors, including the behavior and characteristics of the abusive parent and what it says about his or her likely future approach to parenting.

8. Centralize and focus on the real life experiences and needs of each parent and child, including the risks presented or faced by each of them

Attempt to see the system and the world from the perspectives of each parent and child and account for their actual concerns in resolving the matter instead of succumbing to the temptation to jump to conclusions about what the child and parent have experienced and what they need.

9. Respect people's ability to make their own critical life decisions…

…including the methods for current and future dispute resolution they prefer. Facilitate the restoration of a domestic violence victim's agency and autonomy by providing full information and helping them to weigh their options.

10. Make referrals to appropriate services, includeing detailed risk assessment and individualized safety planning whenever domestic violence is identified

About half of all domestic violence deaths were not foreseen or feared by the victim, and information about risk factors can make all the difference in a victim's ability to protect herself or himself from serious injury.

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Ten Things to Enhance Social Media Success for Family Law Professionals

Annette T. Burns, Phoenix, Arizona

Here are ten things you can do to enhance your online experiences, even if you "don't believe in" social media.

1. Wade into something. If you've wondered about Facebook, take the leap and sign on. Nothing bad will happen, and you might find something interesting.

2. LinkedIn is a good starting point for folks who don't want the chatter and goofing around of Facebook. LinkedIn is for business. You'll receive links that might be of interest to you (easy to click and read).

3. Offer some content for free. Whether it's in your emails or on a social media site you're already using (Facebook, Twitter, LinkedIn or the like), offer an interesting article that you think will be of use to the friends you talk with online. Give away information. The more you give, the more you get out of online activity. Social media should be 92% giving and 8% getting.

4. General information is fairly common on the web. If you can offer specific information you will stand out. Don't post about mediation in general; post about a specific mediation issue, such as resolving impasse.

5. Online activity of any kind is just like a conversation. Whether you're emailing colleagues, engaging on a listserv, or using a social media site, just write like you're talking with friends over coffee.

6. Never, ever, ever think of simply using social media as a way to get business. If you're planning to use social media as a form of advertising for yourself or your practice, don't even start. While social media is a GREAT way to get business, it won't work if you're trying too hard.

7. Never get engaged in a discussion of anyone's specific case online, whether on a listserv (even with people you trust), LinkedIn or Facebook. Professional communications online are for discussion of general issues, theories and resources that are helpful to a wide group of people. Individuals may try to get you to talk about a specific case, and that's always dangerous, even in a closed group.

8. Go for quality of contacts (people you talk to online) and not quantity. It's better to engage with six people who are really interested in the same things you are than to have 500 contacts who are too general to be of help or interest to you.

9. Social media is just like anything else: the more you put in, the more you get out. If you spend 5-10 minutes a day reviewing and updating things like your Facebook or LinkedIn status, or tweeting even once a day, you will see the value in less than a month. Consistency is key—along with quality over quantity!

10. Social media is the world's largest focus group. Listen and read—don't preach.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
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Top Ten Tips for Psychological Testing in Child Custody Evaluations

David Medoff, PhD, Suffolk University, Private Practice, Boston, Massachusetts

1. Ensure competence

Forensic psychological testing is a specialized area of practice that is profoundly different in many ways from psychological testing conducted for clinical purposes. Forensic practice occurs within a unique legal culture comprised of specific evidentiary rules and case law regarding the admissibility of information into the legal process (e.g., various rules of domestic relations; factors related to Daubert). Forensic work is also guided by specific expectations regarding professional standards and ethical codes of conduct. All of this must be considered before, during and after psychological testing, therefore, this type of work requires specialized education, training and experience.

2. Have a well-reasoned a priori model of assessment in mind

There are two primary models for integrating psychological testing within a more comprehensive child custody evaluation. The first model involves testing by child custody evaluators themselves as one of several activities undertaken in that role. This model would be limited to psychologists who have the necessary training to conduct psychological testing. The second model involves psychological testing as a separate and independent service by a psychologist with requisite competence. Under this model, the tester would typically consider a more circumscribed information base stemming almost exclusively from the administration, scoring and interpretation of psychological test data. The child custody evaluator receiving the test report would then integrate test results into their broader based evaluation.

3. Know your role and stick to it

The more circumscribed role of psychological tester may face challenges and potential intrusions which will most likely stem from attorneys attempting to advocate for their clients. This role will thus require protection against such potential intrusions, and maintenance of a strict focus on information needed to perform psychological testing is required. It will therefore serve the tester well to decline any offers of information or other input from attorneys, other than as directly related to the referral question, that do not specifically address the mandate of performing psychological testing.

4. Obtain a court order

If specific authority from the court for psychological testing has not been included in a prior court appointment or court order, get it. Although this may at times be portrayed as somewhat cumbersome or time consuming, acquisition of a court order can typically be easily obtained by an assented-to motion or stipulation signed by a judge. Acting under the authority of a court order accomplishes two major goals. First, it eliminates any potential legal argument to exclude a psychological test report levied by a displeased party claiming either a lack of authority for the testing or that the testing goes beyond the scope of the original evaluation order. Second, a court order may serve to add a layer of legal protection for the psychological tester should a complaint of some sort be filed against them.

5. Identify your client

Differences between forensic and clinical practice can at times obscure a clear understanding of the identity of the client. In most instances, if operating under a court order or appointment, the court itself is your client. This however, is not always the case. While it may be understandable that litigants view themselves as the client, particularly because they are often paying for the services rendered and they are the subjects of the testing itself, litigants are actually the least likely of all parties concerned to be the identified client in this context. Because ownership and control of information is commonly related to the identity of the client, a clear understanding of client identity is necessary. This in turn facilitates the provision of informed consent, core elements of which include the clear delineation of the tester's role, a full disclosure of the limits of confidentiality that likely exist, and a description of how test results will be distributed.

6. Obtain a clear referral questions
Psychological testing can be most effective when conducted in response to specific questions posed by the referral source. In some instances, naïve or uninformed parties making a referral for testing may be seeking information that cannot be acquired from this method of assessment. Thus, regardless of the referral source, clarification of the reason for referral is an essential aspect of psychological testing. This may require formal communication with the court or a more casual brief conversation with the referring child custody evaluator. Nevertheless, clear referral questions can facilitate important decisions regarding test selection and can direct an important focus on specific areas of function as may be indicated.

7. Select appropriate test instruments
There are virtually thousands of symptom rating scales, "structured interview scales" and "clinical methods" purporting to be accurate and consistent psychological tests. Don't believe it. As mentioned above, forensic psychological testing requires thoughtful consideration of specific legal rules and regulations, many of which form an essential foundation upon which test selection takes place. To that end, the psychological tester places a premium on standardized and empirically supported test instruments. Findings based on anything less allow for the introduction of error that can negatively impact test results and/or risk of the exclusion of test results from legal proceedings.

8. Engage sound testing practices
Even the most highly standardized psychological testing procedures are only as systematized as the practices employed by the individual tester. It is imperative that the well-defined rules developed for forensically acceptable tests are as strictly enforced as possible. Every reasonable effort should be made to avoid potential deviations from these standards of operation, and violations of these procedures should be kept to an absolute minimum. Should these standards be altered for some reason, an explanation for this deviation should be provided and any potential impact upon or limitations of obtained data should be describeed. To the extent possible, a multi-method process of psychological testing should be employed, thus making use of a behavioral observation and both self-report and performance-based measures.

9. Police your language
Report writing is a learned skill that can greatly impact the use and/or potential misuse of psychological test data. Due to the adversarial nature of the legal system, it is critically important that one write in as clear and concise a manner as possible, thus minimizing potential ambiguity. A high level of scrutiny is typically applied to forensic report writing, for good reason, and avoiding the use of words that could have multiple meanings is advisable. Summary labels such as technical terms and professional jargon should be avoided. Phrases such as "abuse" or "neglect" should be either excluded entirely or further described in clear functional descriptive terms regarding the frequency, duration and intensity of the phenomenon being detailed. Together, this can serve to reduce the intentional or unintentional misinterpretation of intended meaning while protecting the integrity of one's written statements.

10. Stay within the limits of your data
Psychological test data, by definition, allows for more circumscribed impressions and conclusions than might be formulated from a more expansive information base. Despite various pressures that might be brought to bear, it is incumbent upon the psychological tester to resist any temptation to provide opinions or statements that go beyond the limitations of their data. Conclusions regarding custody, parenting time, visitation and/or vacation planning, for example, require information that falls well outside the scope of psychological test data alone, and should therefore be avoided. Psychological testing can provide detailed functional descriptions of an individual's emotional, behavioral and psychological capacities that are directly related to parenting abilities, but are not direct measures of parenting. This is a critical distinction that can at times be subtle.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
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Ten Tips for Our Most Challenging Family Mediation Cases

Christine A. Coates, MEd, JD, Boulder, Colorado

Challenging cases come in many varieties. A case may be difficult because of the complexity of the issues, the personalities of the parties, or the extremity or dysfunction of the situations. What is challenging for one mediator may be a stroll down the Seine for another. These tips are aimed at circumstances and cases that the individual mediator experiences as the most challenging and are offered as suggestions that can be used to help us prepare for all tough family mediation situations.

1. Be a reflective practitioner

Prepare in advance, but don't pre-judge the case from pre-mediation statements, evaluations or other documents that the attorneys or parties submit to you. Remain curious and open to learning new information in the session. Cases that come with warnings that settlement will not occur are often the ones that resolve the most elegantly in mediation. Learn from your mistakes. Debrief with a colleague or yourself after the session to see what worked, what could have been done differently and what you could do next time in a similar situation to be more effective. Our most powerful learning comes from our mistakes, so embrace error as a masterful guru. Know which cases and situations are your most challenging, be prepared, mindful and present during and introspective after the session to build your capacity for artful mediation.

2. Schedule enough time

In court-ordered mediation, attorneys and parties often pessimistically schedule the minimum amount of time in order to comply with the court order. Tough cases take a lot of time to work through. The dynamics are often entrenched; basic facts of the case are unknown or in dispute; and prior negotiations between parties and/or attorneys may have bred hard feelings. In mediation, it is axiomatic that slower is faster. Go as slow as the slowest person in the room, for example, when working with financial issues, so that each party clearly understands what is happening. Take the time necessary to put ideas, facts and proposals on the white board, flip chart or projection screen. Engage the parties in all discussions, which is especially important when attorneys are doing most of the talking. The mediator must take the time necessary to allow creative problem-solving to emerge from the chaos that enters the mediation room.

3. Use your intuition

A mediator brings the whole package of self to the conflict: a brain, body, spirit, background, training, education, skills, biases (yes, we all have them), ethics and intuition. The best work in challenging cases occurs when the mediator is prepared, open, curious and in-tune with his or her own perceptions, intuition and internal nudgings. Strategy and technique can only transport the mediator so far; the art of mediation relies on accessing the entire self in the quest to reach the destination of peace.

4. Remember to breathe and to help your parties breathe, too

I received this tip from my pal, Bernie Mayer, and it has served me well many times. Sometimes I just sit quietly and breathe, distinctly and somewhat loudly. This can remind the other people around the table to also take a few deep breaths. Sometimes I actually ask folks to sit quietly and breathe while I breathe loudly, in and out, to establish the rhythm. Focusing on our breath allows mindfulness and calm to enter the situation. Quiet time in mediation is like the white space on a magazine page that allows the message and art of the article to be seen and understood. When you don't know what to say, be quiet and listen to your inner guidance.

5. Take breaks as needed (and even more often than folks ask for)

The field of neuroscience suggests that people who are making decisions need "vacations" from the issue to allow their brains to make complex decisions. Locking folks in a room until they are worn out and will agree to anything is abusive and does not result in sound and lasting decision making. When people are tired, schedule another session. The mediator, too, needs more

than just minimal comfort breaks to be at his or her best. Allow yourself to be alone and present and mindful for even a minute during a session. Don't rush back to the room. A brief rest allows your creativity to bloom.

6. Ask lots of questions and listen to the answers!
I heard the late, great John Haynes say that a perfect mediation for him would be one in which the mediator only asked questions and made no declarative statements. Asking thoughtful questions is much more helpful than telling clients something you know and that you think they need to hear. Coupled with listening, the basic communication tool of reframing allows the parties' needs and interests to see the light of day. The mediator can then use a previously unexpressed or even unrealized need as a basis for generating creative options that everyone may have been missed in the dark maelstrom of emotions, conflict and failed expectations.

7. Name distrust when you see it
Let the parties know that not trusting their soon-to-be ex-spouse is normal. The mediator can help the clients come up with objective and realistic plans that allow trust to develop over time. Focus the parents on the child's experience of the situation whenever possible. The mediator can remind clients that each person's actions are more important than imputed and suspected motives of the other. Actions truly do speak louder than words—BUT we also remind our clients that words certainly can hurt them and their children. Gently modeling and teaching respectful communication skills helps the clients in our most challenging cases rise above pettiness and disrespect out of love for their children. Hold the hope for the family by remaining optimistic with parents that things can get better for the family.

8. Understand the dynamics of high conflict families
Some of our most challenging cases are with difficult people engaged in long-term and intractable conflict. Understanding when to use techniques geared toward "high conflict families" in which one or both parents may have personality disorders is needed. For example, often a difficult client cannot see the point of view of the other party or understand the needs of the children because s/he has no ability to be empathetic. In caucus the mediator can compassionately reframe the issue in terms of ways in which the client can get his or her own needs met. Keeping the needs of the children and the other parent in mind, the mediator uses "enlightened self interest" to allow the difficult client who does not have empathy for others (it's all about me, me, me!) to make decisions in his/her self interest that also benefit the children and other parent.

9. Be a life-long learner
This brave new world of instant communication and online access to information offers mediators magnificent opportunities to become more artful practitioners. For example, I am currently fascinated with neuro-science and the information about decision making, motivation, and the difficulty of making choices, which is available. Other ways of learning include participating in mediation consultation groups and by attending seminars and conferences (such as the thoughtful, challenging and inspiring ones that AFCC offers). Through listening and discussion, we glean ideas from each other and from the most innovative practitioners and researchers among us. We can then apply this new information to our most challenging cases. Remain open to learning about new techniques, styles of mediation and hybrid processes to use in our tough cases. Immerse yourself in learning about something that intrigues you, whether it is, for example, spirituality, brain science, cultural differences, or how earthworms move through the dirt. Metaphors, techniques, strategies and insights will spring forth to enlighten you and improve your practice.

10. Remember that the parties are responsible for the decisions—not the mediator
Not all cases settle. Not all cases should settle. If you have done your best and the parties decide not to resolve the issues, their decision does not mean that you have failed. Cling to the belief that self-determination is the hallmark of mediation. Trust yourself and the process. The committed and inspired mediator and the tried and true mediation process are a powerful team!

These are my top ten tips for my most challenging cases. I'd love to hear yours: coatesc@aol.com.

Christie A. Coates, MEd, JD, an experienced family law attorney, now emphasizes ADR and has been a mediator in private practice since 1984. Her professional passion is helping families reduce conflict; her private passion is helping people find their spirit and joy through music. Christie is a popular national speaker, trainer, teacher, author and consultant in conflict resolution, high-conflict families, parenting coordination, hybrid processes, professionalism, ethics, and family law. A former president of AFCC, she is active in many organizations and has been honored for her work as a mediator, lawyer and child advocate, including receiving Colorado's Mediator of the Year Award, the AFCC John Van Duzer Distinguished Service Award, and the Association for Conflict Resolution John Haynes Distinguished Mediator Award. She has co-authored two books, Working with High Conflict Families of Divorce *(Jason Aronson, 2001) and* Learning from Divorce *(Jossey-Bass, 2003).*

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
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Top Ten Tips for Professionals Appointed to Conduct a Child Custody Evaluation Accompanied by Allegations of Child Sexual Abuse

Kathryn Kuehnle, PhD, Indian Shores, Florida

1. The mental health professional should do an appraisal of his/her competencies

Prior to accepting a court appointment, the evaluator must determine if he/she has the training, experience, and expertise to conduct all or only some of the components of a child custody evaluation with one parent's allegation that the other parent has sexually abused their child. The mental health professional may decide to:

(a) Conduct all components of the child custody and child sexual abuse evaluations, with or without consultation with another expert;
(b) Conduct all components of the child custody and child sexual abuse evaluations, with the exception of a psychosexual evaluation of the alleged sexually abusive parent, which would be conducted by another expert;
(c) Conduct all components of the child custody evaluation, with the child sexual abuse evaluation conducted by another expert or experts;
(d) Decline to take the case altogether.

2. A court order must identify by name the appointed mental health professional, delineation of the specific role of the appointed professional, and identification by name and role of other experts involved in the evaluation of the parties and their children

A court order that is vague or does not specifically identify the evaluator by name and describe the evaluator's role should be returned to the parties' attorneys for revision.

3. Court appointed mental health evaluators must strive to protect themselves from unconscious biases when conducting a child custody evaluation accompanied by an allegation of child sexual abuse

To avoid confirmatory bias, evaluators must approach the evaluation with multiple hypotheses and identify the data they gather as supporting or opposing the various hypotheses. This organizing format allows the evaluator to systematically analyze data and upon completion of the evaluation to present information to the court in a clear and logical manner. Possible hypotheses include:

(a) The child is a victim of sexual abuse and is credible;
(b) The child is not a victim of sexual abuse, but a sincere, hyper-vigilant parent inaccurately believes the child is the victim of sexual abuse;
(c) The child is not a victim of sexual abuse, but a parent is using the allegation of sexual abuse to manipulate the court system during child custody litigation;
(d) The child is a victim of sexual abuse, but due to misguided loyalty will not disclose his/her abuse;
(e) The child is a victim of sexual abuse, but due to limited language skills cannot credibly report the abuse experiences;
(f) The child is not a victim of sexual abuse, but has developed a tainted memory and believes that he/she has been engaged in sexual activities by the alleged abuser;
(g) The child is not a victim of sexual abuse and is credible, but is estranged from the identified parent perpetrator and has misperceived an innocent or ambiguous interaction.

4. Child sexual abuse is an event or a series of events, not a psychiatric disorder, and the potential symptoms that sexually abused children may exhibit vary significantly

The broad range of behaviors exhibited by child victims varies as a function of Personal Factors (e.g., age, gender, cognitive attributions); Familial Factors (e.g., parental history of CSA, family discord, family violence, parental reaction to disclosure); and Abuse-Specific Factors (i.e., sexual acts, duration of abuse, co-occurring forms of abuse, victim–perpetrator relationship).

Sexual abuse is not an experience leading in some basic and systematic manner to a single symptom or syndrome. Although re-search shows an association between children's aberrant sexualized behavior and experiences of sexual abuse or exposure to a highly sexualized environment, all behaviors and symptoms, including aberrant sexual behaviors, are nonspecific and also associated with a variety of other disturbing life experiences and stressors.

5. A large body of research accumulated over the past several decades has led to the emergence of research consensus on factors that facilitate or impede the accuracy of children's reports of experienced events

Age is the most reliable predictor of the accuracy of children's memory. Both cognitive and social factors are associated with age differences in children's suggestibility when presented inaccurate information. Passage of time may alter the strength of the child's memory, past suggestive interviews may have tainted the child's memory, and the child's present resistance to suggestibility will all influence the accuracy of the memory narrated by the child.

6. Interviews typically include several types of questions and children's suggestibility varies across question types

Regardless of the type of direct question, children's errors increase when they are asked direct rather than free-recall questions. Recall questions produce the most accurate information, while recognition questions produce the most unreliable information. Children's accuracy declines as questioning moves from free recall (e.g., "Please tell me everything that happened."; "Then what happened?"), to more focused questions (e.g., "Did he take your clothes off?"), to questions about a specific detail (e.g., "What were you wearing ?"), or to questions that offer the child limited options (e.g., "Did he touch your pee-pee?"; "Did he tell you not to tell?"; "Were his pants on or off?").

7. A neutral interviewer, open-ended questioning, absence of repeated suggestive interviewing, and no induction of a motive for the child to make a false report are conditions that increase the accuracy of even very young preschool-age children

When interviewers are supportive but do not selectively reinforce the child's responses and ask open-ended questions, they garner information that is based on the child's memory of an experience and lessen the risk of inaccurate statements. However, open-ended questions can elicit inaccurate reports if a child has incorporated as part of his or her memory misinformation through previous suggestive interviews.

8. There is no consensus among researchers that audio recording or videotaping the child's interview is the most accurate method of recording the specific questions of the interviewer and answers of the child

Note-taking fares very poorly compared to either audio or video recording and evaluators who rely on note-taking are found to miss a significant amount of important information. Videotaping provides the most accurate and detailed form of recording CSA interviews, audio recording provides a less adequate system of recording than videotaping since nonverbal demeanor and behavior is lost, but both are better than note-taking.

9. Similar to a comprehensive child custody evaluation, conclusions and recommendations regarding child sexual abuse evaluations do not solely rely on the verbal report of the child

The evaluator's summary of findings encompasses a myriad of information including parents' childhood histories, parents' mental health and presence of any personality disorders, timing of and motivation for disclosure, results of the psychosexual evaluation, medical evidence for or eye witness evidence to the sexual abuse events, collateral information, and other relevant documents and observations.

10. It is not within the psycho-legal role of the evaluator to offer an opinion on the ultimate issue

The evaluator's role is to assist the court by providing data on the strengths and weaknesses of the allegation, not to determine the truth of the sexual abuse allegation.

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ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Top Ten Ethical Issues in Forensic Consulting

Robert A. Simon, PhD, Del Mar, California

1. Know your role
Provision 3.05 of the APA Ethical Principals of Psychologists and Code of Conduct states that psychologists should refrain from entering into multiple relationships when doing so could compromise objectivity, competence or effectiveness.

Forensic Psychology Consultants who are engaged by attorneys to provide expert testimony and who also engage in "behind the scenes" discussions with attorneys regarding issues such as case development and case strategy or who engage in discussions that are unrelated to the proposed testimony may be engaging in multiple relationships that are not ethical. Since the efficacy of the expert witness depends, in part, upon their credibility and their ability to be neutral with regard to case outcome no matter who they are working for, engaging in work as a "behind the scenes" consultant may compromise efficacy as a witness as well as their objectivity, or perceived objectivity.

2. Know your client
Principle B of the APA Ethics Code, Fidelity and Responsibility, advises the psychologist to "Establish relationships of trust with those with whom they work", and to "Clarify their professional roles and obligations, accept responsibility for their behavior, and seek to manage conflicts of interest that could lead to exploitation or harm."

Be clear about who your client is—whom you work for, take direction from and are responsible to. Do you work for the attorney or do you work for the litigant? Define this explicitly and communicate this understanding to the attorney and the litigant.

3. Be honest
Principle C of the APA Ethics Code, Integrity, states in part, "Psychologists seek to promote accuracy, honesty and truthfulness in the science, teaching, and practice of psychology. In these activities, psychologists do not cheat, steal, or engage in fraud, subterfuge or intentional misrepresentation of fact."

Consultants and testifying experts remain true to the science of the field even when the retaining attorney may be displeased by the realities of the science. Consultants and testifying experts offer guidance and information that is accurate, even when doing so may run counter to what the attorney's position is or what the litigant wants to hear.

4. Be aware of and control for bias
This Principle D of the ethics code, Justice, states in part, "Psychologists exercise reasonable judgment and take precautions to ensure that their potential biases...do not lead to or condone unjust practices."

Everyone has biases. Biases can be based in personal belief systems, a preference for certain theoretical or conceptual approaches to psychological work or personal experiences. The ethical and professional forensic consultant engages in ongoing efforts to recognize his/her own biases so as to assure that these biases are not operating and influencing conclusions and testimony. The ethical and professional consultant has processes in place, such as multiple hypothesis testing, that help control for bias and help assure accurate conclusions and opinions.

5. Know relevant law
For the forensic psychologist, Standard 2.01(f) of the Ethics Code is uniquely relevant. This standard states "When assuming forensic roles, psychologists are or become reasonably familiar with the judicial or administrative rules governing their roles."

In addition to engaging in ongoing psychological training and maintaining state-of-the-art psychological competence, forensic consultants must commit themselves to learning relevant law and to maintaining ongoing psycho-legal education.

6. Do not draw conclusions about those not directly assessed
Provision 9.01(a) of the Ethics Code states "Psychologists base the opinions contained in their recommendations, reports and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings." Provision 9.01(b) adds, in pertinent part "Psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions."

Although a testifying consultant may be asked by the retaining attorney to offer opinions about the litigants, the ethically informed expert will not do so. Since the testifying consultant does not conduct his/her own assessment or investigation, offering testimony about psychological aspects of the litigants or the children involved is unwise. One can offer general educative comments about issues discussed by the evaluator (for example, information about what bipolar disorder is in a case where one of the parents has been identified as bipolar). However, the testifying expert consultant must stop short of offering opinions directly about the individual in question.

7. Use caution with psychological testing
Standard 9.02(a) states "Psychologists administer, adapt, score, interpret or use assessment techniques, interviews, tests or instruments in a manner and for purposes that are appropriate in light of the research on or evidence of the usefulness and proper application of the technique." Standard 9.02(b) states "Psychologists use assessment instruments whose validity and reliability have been established for use with members of the population tested. When such reliability and validity has not been established, psychologists describe the strengths and limitations of test results and interpretation."

When commenting upon the use of psychological tests, the ethically informed consultant keeps in mind the requirement to articulate the limitations of the data and, therefore, the degree to which the data are generalizable to those assessed. Since it is the case that there are no psychometrically valid/reliable tests that were normed on a population of child custody litigants or that were designed with this specific population in mind, it is best to use testing to generate hypotheses rather than to reach any conclusions about the individuals being assessed.

8. Beware of computerized test interpretations
Standard 9.09(c) states "Psychologists retain responsibility for the appropriate application, interpretation, and use of assessment instruments, whether they score and interpret such tests themselves or use automated or other services."

It is not at all uncommon for child custody evaluators to send psychological tests to scoring and interpretive services. Frequently used tests such as the MMPI-2 and MCMI-III are often scored and interpreted by computer-based services. While this may seem intuitively appealing on first blush and may seem to protect against bias introduced by manual interpretation of tests by an evaluator, a closer inspection reveals flaws in this point of view. Yes, computers are blind to the individual taking the test, the purpose for which the test is being administered and blind to any outcome bias on the part of the psychologist. Yet, there are fundamental problems with the belief that the "blindness" of the interpretations fosters accuracy. Moreover, the psychologist must maintain responsibility for the interpretation used. Since the psychologist cannot know the algorithm used by the computer to interpret the test, the psychologist cannot assert that they actually know how the inferential conclusions are reached.

9. Clearly detail fee arrangements
Standard 6.04 is related to fees and financial arrangements. In all activities, the psychologist takes care to specify costs and fee arrangements regardless of the psychologist's role. When serving as a consultant or expert witness in child custody litigation, this responsibility remains important. Parents involved in child custody litigation quite readily feel vulnerable and believe that the stakes in the litigation could not be higher. Given their emotional vulnerability, such individuals are more easily exploited financially than other individuals may be. When parents believe that the well-being of their children is at stake, they are often willing to do things and take on expenses they might otherwise avoid.

The ethically informed consultant recognizes the vulnerability of the litigant (who after all, through the attorney's client trust account is paying for the consultant's fees). The ethically informed consultant and expert witness clearly describes and documents, in writing, the financial and fee arrangements attendant to involvement in the case so as to create reasonable and accurate expectations on the part of the client. Because the consultant and the expert witness operates

ethically, the specification of fee arrangements also includes a discussion of how the consultant and expert witness are not being paid for their particular opinion or their point of view that supports a litigation position but, instead, is being paid for their work and the proffering of the accurate and honest professional opinion.

10. Less experienced professionals need not apply

Provision 2.01(a) refers to the requirement that psychologists practice within boundaries of their competence. Note that by its inclusion in the APA Standards, it becomes mandatory and not only aspirational that psychologists stay within areas of their competence.

Only senior professionals with many years of experience actually conducting custody evaluations should undertake working as a consultant or testifying expert in child custody litigation. While it may be tempting to place oneself in this role when one is less experienced, the work of a consultant or testifying expert is a truly expert role. Gaining such expertise not only requires proper education and ongoing training, it requires the kind of experience that can only be gained by having worked in the field over a period of many years.

Robert A. Simon, PhD is a licensed psychologist who is a recognized expert in forensic psychologist consulting with over 20 years of experience in the legal domain of family law and domestic relations. Dr. Simon is licensed in California and available for consultation throughout California and the United States. He has a book coming out in early 2013 published by the American Bar Association Section of Family Law, tentatively titled: Forensic Work Product Review, Case Consultation and Expert Witness Testimony in Child Custody Litigation with co-author Philip M. Stahl, PhD.

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Ten Tips for Practitioners Using Social Science Research

Marsha Kline Pruett, PhD, MSL, Northampton, Massachusetts

1. Research results point to probabilities and potentialities only, not individual realities

A statistically significant research result means that it is unlikely to have occurred by chance in the general population. If a group of children were given the same parenting intervention and those children were "significantly less likely to develop mental health difficulties," that means the intervention worked on average for more children in the sample than it did not. It does not mean that the intervention will work for every child. Even when results are statistically significant, each individual situation must be considered, as a variety of factors (some studied, some not) can affect whether a probability is likely to become a reality in any given family situation.

2. Not all significant findings are created equal

Statistically significant findings are often reported or interpreted as though they were equally strong, but this is not usually so. The p-value (or probability value) measures the strength of the evidence that a relationship exists between two variables. The chance of finding a significant relationship depends on several aspects of the study, notably the sample size. A "trend" is described when the result does not quite reach a significance level that is accepted as solid evidence in the field. A statistic of $p<.05$ means there is less than a 5% chance of the result occurring by chance, considered statistically significant. Other p-values are $p<.01$ (less than a 1% chance) and $p<.001$. Studies with small sample sizes that report many findings increase the risk that some finding will be significant. Be cautious about small studies that look at many variables (apropos for family law studies) without addressing this issue.

3. Significant is not the same as important

Studies with a large sample size may show statist-ically significant findings that are still relatively small in occurrence or importance. Two variables may show a significant relationship (A and B are likely to be related or co-occur) and co-occur only 2 out of 10 times. In science, that may be significant, but in practice, a legal decision would not best be made on such a small likelihood. If you plan to rely on a study's finding, note whether the statistically significant finding is clinically relevant in terms of the size of the effect (you may have to check with a social scientist/psychologist). When similar results are found across studies, confidence in the results grows.

4. What is not significant may be as important as what is significant

Many studies tout statistically significant findings but the researcher may fail to point out that many other variables studied were not significant. Much can be learned from those non-significant results, as well, and these should be noted by the practitioner, although the researcher may or may not discuss them. For example, a child may have a negative result from making a transition between two homes, but only one of five variables may have been significant, suggesting caution when making generalizations from the data about the impact of such transitions.

5. Correlations are not causality

A statistically significant relationship between variables indicates that they are co-occurring. The result says nothing about which variable is causing the other. Causality can only be addressed in a longitudinal study with a control group, in which participants are randomly assigned to groups (not assigned based on any characteristic or preference of the participant). For example, practitioners often make the mistake that if a child with inconsistent parenting schedules has more difficulties, the difficulties are a function of the schedule. It may be that parents with difficult children create inconsistent schedules in an attempt to manage the child's behavior in an ongoing manner. Or, it may be that parents in higher conflict or with fewer economic resources create more inconsistent schedules, and those factors explain the child's behavior better than the schedule.

6. Theory provides a lens for understanding: overlapping lenses provide a clear vision

Researchers try to be objective in the ways they conduct their research, but social psychological research also shows that people interpret what they see through the lens of their own biases. Which theory is selected to explain or investigate psychological phenomena influences? Which questions are asked and which variables are studied? In addition, findings may be interpreted differently based on the theoretical perspective of the interpreter. As researchers from different theoretical perspectives reach consensus about the implications of results, the field is converging, and social policy drawn from the results will more reliably represent the current state of empirical knowledge. Conversely, policy cannot be reliably made when results are sparse and there is lower consensus in the field about their interpretation or implications.

7. Always go back to the original source

One problem results from researchers citing each other's work based on what they read from other researchers' summaries. A game of "telephone" occurs where each researcher changes a few words and passes along a study, until it is not fully recognizable or accurate several citations later. It may be misinterpreted or something gets lost in the translation. Always check original sources before relying on a second-hand account or quoting it.

8. Natural bias can be subjected to strict scrutiny; place of publication matters

Social science journals are abundant, and much is published in lesser-known journals, which are often written for highly specialized audiences. These journals generally have lower level peer review than higher level journals. Publishing in someone else's book rather than one's own also usually affords a higher standard of review. Social science journals are reviewed and edited by other professionals in the field. Google "Social Science Journal Impact Ratings" and you will find out which journals are rated most highly. You can also look for impact ratings among psychology or social work journals, for example.

9. Cherry picking is unfruitful for all

Beware of presentations, reviews, or experts who cherry pick articles or passages within articles to illustrate a point. When a review is genuinely thorough and unbiased, not all studies reported should come out in a similar direction. There are always studies that contradict each other, usually because they have used different instruments or variables to examine the same question. Check the original article if a conclusion is reached based on a paragraph or less from another author. Make sure the illustrated point or result accurately reflects the outcomes, as well as the nature and spirit of what was written.

10. Social science depends on tearing down what has gone before to make room for the new; that tendency gets misused and overstated in legal contexts

While social scientists love to point out how they are not supporters of the adversarial system of law, they have their own form of adversarial system. Science builds on new information that modifies or disproves past knowledge. Therefore, studies routinely point out the weaknesses of prior research or gaps in prior research to make the point that their study is new and important. Know that every study can be analyzed for its weaknesses, since no study can control for all the possibilities in nature or human nature. However, distinctions can be made between studies while emphasizing each one's strengths as well as limitations based on available data and resources at the time. Indeed, that is the only way social science becomes foundational and substantively useful to law.

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Top Ten Tips for When to Withdraw as Parenting Coordinator

Siri Gottlieb, MSW, JD, Ann Arbor, Michigan, Gary Direnfeld, MSW, Dundas, Ontario, Canada, and Christine A. Coates, MEd, JD, Boulder, Colorado

The following list was assembled by the authors from a session they presented, "Getting out of Dodge: When to Pull the Plug on Parenting Coordination Clients," at the AFCC 49th Annual Conference in Chicago in June 2012. The Honorable George Czutrin also participated in the workshop. The list is based on a questionnaire completed by members of the AFCC Parenting Coordination Network listserv.

1. The Parenting Coordinator (PC) feels unsafe because of a client's rage or threats of violence
These threats may be real, implied or just the PC's perception. In any case, the PC has the right to feel safe. The degree of risk should be analyzed as carefully as possible, preferably with the aid of peer consultation. If the PC decides not to withdraw, s/he should ensure that questions about safety do not impact the PC's objectivity and neutrality.

2. The PC believes the case needs a fresh perspective
Clients can tug us emotionally in different directions and try to pull us into their drama. It's an ongoing challenge not to get inducted into one client's perspective to the detriment of the other client. If the PC feels his/her perspective has become clouded, it is advisable to step back and allow another professional to take a new look at the situation.

3. A client is not paying
Parenting coordination is typically a paid service. PCs should be compensated fairly and appropriately for this demanding work. It is reasonable to step down from a case if a client is not meeting his or her financial responsibility, and this right of the PC should be clearly set forth in the order appointing the PC and in the PC's retainer agreement.

Many PCs require the parties to maintain a retainer to avoid the situation of money running out while the family remains in crisis. No PC wants to abandon parents because of failure to pay. Protect yourself and the clients by always having a retainer equivalent to at least several hours' work.

4. The PC is concerned about a possible board complaint, having a grievance filed or being sued
Because parenting coordination is an ADR intervention with high conflict parents, it is not unusual for at least one parent to be disgruntled. A process for complaints about the PC's services or conduct should be clearly stated in the order appointing the PC or in the PC's contract with the clients. Such language could include a provision requiring that before the complaint is filed, the client meet with the PC and attempt to resolve the issue and then, if allowed, attend a meeting with the parties, the PC and the judge.

A PC has a right to avoid threats to his or her integrity, role and professional status by withdrawing when a grievance or lawsuit is likely.

5. The client refuses to work with the PC and has asked the court to terminate the appointment or has simply stopped paying in order to force the PC to withdraw
At times the relationship between the PC and a client is intractable and has become unworkable. In such circumstances it may be best to withdraw to avoid the appearance of bias. The order appointing the PC or the PC's contract with the clients should include a process for selecting a successor PC that allows the exchange of information between the former and new PC.

6. A client is non-compliant with the PC's recommendations, decisions or established protocols
Given that parenting coordination is a voluntary process, client non-compliance may preclude an ability to continue to serve fairly and effectively. The PC should take inventory of his/her emotional reactions and assess their impact on providing appropriate service.

7. Both clients are hostile to the PC and to the process

There is no point in continuing what is a voluntary process with people who don't want to participate. However, it's not uncommon for the parties to "take turns" being angry with the PC. This can often be worked through. If they're both antagonistic, sometimes humor can be effective: "Well, at least your anger at me is one thing you two agree on!" If neither wants to proceed, then a letter to the attorneys or court is in order, explaining that the parties are opting out.

8. The litigation between the parties is not abating and/or the attorneys are overly adversarial

Parenting coordination does not occur in a vacuum. While there may be some matters subject to resolution by the PC, other issues may need to be litigated. In addition, the parties or lawyers may still be trying to litigate matters that were intended to be addressed in parenting coordination. These dynamics may undermine the role and function of the PC. If a lawyer is acting in a manner that impedes the parenting coordination process and the customary goals of parenting coordination (improved communication, problem-solving, and quick resolution of disputes), then the PC may be rendered ineffective. If a heart-to-heart talk with the offending attorney is not productive, termination may be indicated.

9. When the PC feels so negatively about a client that it impairs the PC's ability to be effective

Countertransference, a long understood therapeutic principle, is always present in human relationships, including that between the PC and client. It may be that the PC feels so very strongly (positively or negatively) about a client that these feelings inappropriately influence his/her interventions and decisions. Under such circumstances the PC should self-reflect and make every effort to manage the countertransference in a responsible way. Supervision can help. If the PC's work continues to be compromised, withdrawal is indicated.

10. When the case feels like it's sucking the very ectoplasm from your soul

This tip was offered by one of the responders to our survey and made us chuckle, both from the hyperbole and also from the identification with the feeling expressed. If you are totally drained by the service to your clients, protect yourself and your clients by a prompt withdrawal and substitution of a successor PC.

Get out fast, but get out responsibly. Make sure your PC agreement outlines the process for early termination, and follow it carefully. Send letters to clients and their attorneys explaining your inability to continue serving and reminding them of the contractual protocol for termination. Discharge your duties responsibly, but save your soul!

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Research in a Strained System—When and How Can it Be Useful? Top Ten Tips to Help Professionals Use Research Effectively

Lyn R. Greenberg, PhD, Los Angeles, California, Leslie M. Drozd, PhD, Newport Beach, California, and Mary Catherine M. Bohen, Esq., Los Angeles, California

Nineteen-month-old Johnny and his three-year-old sister Sally need a parenting plan. Both are having difficulty with transitions. Father alleges that Mother is limiting his access to the children and interfering with the crucial development of the children's bond to their father. Father believes that his parenting time should be increased, to include overnight time with the children. Mother distrusts Father's parenting skills. Mother has read that children should never be separated from their mothers before the age of 5. Each parent has brought an article from a website to court, suggesting that "science" supports that parent's position.

As thousands of families pass though courtrooms every day, can research be of use to the court in determining what to do for these children? What core concepts will help professionals to use the available research most effectively?

1. Avoid believing that "If it's published, it must be quality research"

Based on a critical appraisal of 60,352 articles from 170 journals, McKibbon, Wilczynski, & Haynes (2004) found that only 6.8% of published articles were deemed "high quality" studies. Not all studies are created equally. Published reports can make erroneous claims that may not be based on high quality evidence. Contradictions in research findings may reflect differences in the quality of the research, the populations studied, the sample size, the research design used, and the accuracy with which it is reported. With the increased use of open source publishing (e.g., publishing material on the internet), it is easy to find at least one "study" to support just about any theory. Science can help us understand complex relationships so it should neither be discounted nor used without critical appraisal (Drozd, Olesen, & Saini, 2012).

2. Avoid the twin temptations of adopting oversimplified rules and disregarding science altogether; if it looks too simple to be true, it probably is

Legal professionals often prefer simple, clear statements, and may perceive mental health professionals who present nuanced statements to be waffling or defensive. Social science is complicated, because children and families are complicated. Care is essential to determine which findings best apply to the family at hand. It is prudent to be cautious when polarized or politically driven extremes are presented (Johnston, 2007; Gelles, 2007). Research allows one to discover the full continuum of solutions as a means to navigate around ideological wars (Saini, 2012).

3. Summaries of the research can be handy, but are often misleading

Because summaries may not accurately reflect the findings in the primary studies, they should be used with great caution (Saini, 2012). Does the author who conducted the review have an evident bias or agenda? Is the author articulating the limits of the research in the summary or acknowledging findings that point in different directions? Popular press articles and brief research summaries often present oversimplified re-sults with considerable overstatement. They may fail to distinguish between research findings and statements of theory or opinion—presenting findings that support the author's perspective as immutable facts and even omitting limitations cited by the original researchers (Greenberg, Drozd & Bohen, 2012). For example, it is no less misleading to say that "the research" supports overnights for young children than it is to say that "the research" establishes that young children below age 5 should never spend the night away from their mothers. Studies suggest different conclusions and different issues to consider, depending on the family's situation and characteristics. A closer look at the details can guide us to the issues most important and relevant to a particular child and family.

4. Look for experts and authors who put the limitations of their results out front, from the outset
Banner headlines and broad, uncomplicated statements may be appealing but are often misleading. Many families do not have the funds to challenge material presented as "sound bites" or "headlines." Harm can be done to families in between the overly broad statement and the presentation of context or amplifying material. That is one reason why psychologists have an ethical obligation to articulate the limitations of opinions they present and to take steps to mitigate any misrepresentation or misunderstanding of their work. Which expert would you find more credible—one who notes the limitations immediately, or one who is forced to do so under challenge from other experts or a cross-examining attorney?

5. Avoid considering research in a vacuum
Consider the other variables, such as general child development issues, that may impact or inform the immediate issues. If the allegation in the case involves alienation, it is essential to also consider what we know about child development, violence, maltreatment, parent-child relationships and attachment. This approach will minimize the risk of neglecting the whole child in favor of focusing on contested issues.

6. Findings that appear to conflict may actually provide context or applicability
When the expert looks more deeply at the findings, the various factors at play that provide the different findings may become evident and, in turn, may help the expert, and ultimately the court, see the family before them more clearly and accurately. Caution must prevail, given that the factors found in other domains related to child custody may not take into consideration the confounding effects of separation, conflict, and involvement with the family court system (Saini, 2012). Thus, extrapolating the evidence needs to be tentative and framed within the context that a given family finds itself in.

7. Push back from overgeneralizations and cookie-cutter approaches to solve complex problems
Determine whether the studies cited are similar to the family and children in the case before the court. Consider the context and complexity of individual experiences of children and families in assessing the applicability of research findings (Drozd, Olesen, & Saini, 2012; Greenberg, Drozd & Bohen, 2012.). If children in the case under consideration are ages 3 and 5 and the subjects in the studies looked at are teenagers, one might question the generalizability of the study to the children in the instant family.

8. Avoid phrases like, "the research says" given that the research rarely speaks with a single voice; instead consider "the trends suggest…"
Even when there is broad agreement on general issues, details vary. Rarely is there agreement across all research on a given topic. The findings of individual studies are more likely to differ than to be identical. The differences in the research findings may be critical to crafting plans and interventions for a specific family. By way of example, while there is general agreement among mental health professionals that exposure to parental conflict may be harmful to children; the best plan for a family will depend on the type of conflict presented, the resources available, and the strengths and weakness of each family member (Kelly, 2007).

9. Seek research to inform about the possibilities, rather than narrowly looking at research to support one view; seek research that challenges your preliminary opinion
When an expert, an attorney, or even a judge has a pre-existing view, the temptation is to consider and give weight only to information that supports that point of view. "Check yourself before you wreck yourself." Experts may present more polished versions of the material that Johnny and Sally's parents found on their preferred websites, though experts can be effectively challenged about their choices of source material, and whether they sought information about other possibilities. Systematic bias can be even more harmful at earlier stages of the process when a consultant's report of the research may impact a family's decision to settle or pursue litigation.

10. Therapy, parenting coordination and other interventions should also be "scientifically informed"
Too often, we expect a research base for the "big issues" that are the focus of litigation, and neglect the available research when deciding how to assist families. Controlled studies of specific interventions may not be available, but we can draw on research about domestic violence, children's development and adjustment, components in children's decision-making, suggestibility, and other related issues in crafting or providing interventions. There is a broad knowledge base in the mental health professions about many of these issues, and research from a variety of perspectives about what is essential or useful to promote behavior change in adults and progress in children. "What works" (and does not work) from the available research can help in assessing whether it may work as part of the interventions stipulated to by the parties or ordered by the court (Greenberg, Doi Fick, & Schnider, 2012; Greenberg, Gould, Gould-Saltman & Stahl, 2003).

While the volume of social science literature has increased dramatically over recent decades, important questions persist about applicability and whether the research can offer anything to Johnny and Sally's family. Undoubtedly, there are some findings that can be helpful in decision-making, if used appropriately. Skilled professionals can provide context to splash headlines on websites, educating parents to more accurate information relevant to their family. This may provide the basis for compromise and cooperation, with professional assistance. If the decision must be made by the court, research presented in the context of the family may assist the court. Conversely, decisions based on splash headlines or biased summaries may do more harm than good for the family.

Conscientious custody professionals look for consistent findings and themes across the professional literature. They look at the strengths and weaknesses of the studies, and the relevance of the findings to a particular family. They make deliberate attempts to contain bias, by seeking material inconsistent with their own prior opinions. Practitioners providing services to these families also have a responsibility to be familiar with the research that is relevant to their work and to practice in a scientifically defensible manner (AFCC Guidelines for Court-Involved Therapy, 2010). Failure to do so risks enormous harm to the children and family. The applicability and implications of various studies may be debated for years in professional meetings and journals, with each new finding augmenting or complicating what was known before. Occasionally, but rarely, the bulk of available research will point in a single direction; just as rarely, a new finding will lead professionals to rethink prior assumptions and change practice.

Generally, the best use of psychological research is gradual, cautious, and nuanced. Used carefully and throughout the process, research may have much to offer to families. As with most tools, irresponsible use can lead to harm. Please see the following page for a list of references.

The authors will present on these issues at the upcoming AFCC 10th Symposium on Child Custody Evaluations*, along with Hon. R. John Harper, Kathryn Kuehnle, Nancy Olesen, Michael Saini, Hon. Harvey Silberman, and a host of other distinguished experts.*

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ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Ten Tips for Judicial Officers Dealing with Self-Represented Litigants in Family Court

Michael J. Dwyer, JD, Portland, Oregon

1. Accept responsibility for the fairness of the process

The overwhelming majority of people who appear in the family courts around the country are self-represented; their numbers are increasing and they are with us to stay. Your primary ethical obligations are to ensure parties the right to be heard according to law and to be impartial. The absence of lawyers challenges us on both of these obligations. The civil litigation system was designed by lawyers to be used by lawyers. When both parties are capably represented, it is reasonable to presume that the design of the system will help to insure that the resulting decision is a fair one. That presumption does not apply when one or both parties lack counsel. In such circumstances, it is your duty to remain impartial while giving each party the right to be heard.

2. Make information about court and its processes available to parties

Self-represented litigants (SRLs) need information about law and procedure. While many jurisdictions have made great strides in this area in recent years, it remains your responsibility to insure that parties have the information they need. The single biggest obstacle to providing needed information to SRLs is the fear of giving legal advice. It is inappropriate for you or your staff to give legal advice, so be certain that the difference is understood. Providing information about the legal elements of a claim, which statutes apply and how to access them, about statutory and local procedures is information, not advice. The hallmarks of legal advice are telling a party what claim to make, what strategy to adopt or what outcome to accept. A great deal of useful information can be provided short of that and it is important that you and your staff to know the difference and freely provide information.

3. Be prepared

Review the file before the hearing. When the parties see that you have read and considered the relevant items they have submitted, they get the unmistakable message that you care about the case and take it seriously. You should also be prepared for these hearings to be mentally and, possibly emotionally, taxing. Take care of your health so that you are up to the physical challenges of the work.

4. Treat parties with respect

This is both obvious and difficult; suffice it to say that some SRLs are easier to work with than others. You are responsible for the tone in your courtroom; patience and a sense of humor are mandatory. You must speak in language that the parties understand; refrain from using legalese. Sarcasm and exaggeration should be avoided and above all, control your temper—has anything good ever come from losing your temper on the bench? Judges have different personalities and styles of interaction; a friendly businesslike manner is the ideal, but it's important to adopt a style that suits you so you will use it consistently.

Remember also, that the case is not about you; intervene with restraint so that ownership of the case remains with the parties.

5. Clearly explain what will happen at the start of every hearing and explain why

In order for a SRL to tell their story, they must understand the issue that you are deciding on and what that party is required to show to get the result they desire. Parties must also understand the order of proceedings. If you intend to ask questions during the hearing, tell parties in advance and explain why. A sincere assurance given to a party that they will have a chance to tell you their side will go a long way to calming a nervous SRL. If you are comfortable with doing so, and the parties do not object, you can ask initial questions of both parties without compromising neutrality.

6. Remember that 60% of meaning is conveyed non-verbally
A SRL's perception is their reality. Even if you are scrupulously impartial, giving the impression that you are bored, unintentionally skeptical, or impatient, will cause the SRL to not FEEL heard. The importance of tone of voice, posture, eye contact, forms of address, and what you do with your hands cannot be underestimated. Consider videotaping yourself in a hearing to see how you appear to others.

7. Actively seek the facts to insure that cases are tried on the merits while remaining impartial
You need the facts to decide an issue. SRLs do not know what you need to know or how to provide you with that information. You have broad discretion in how you conduct the fact-finding process. The scope of your authority is illustrated by your undisputed ability to, among other things, modify the usual order of procedure, ask questions of witnesses, determine the admissibility of evidence, grant continuances, appoint experts, and even call witnesses. Provided that is done consistently and with restraint, you can fully retain your impartiality and obtain the evidence you need to make your decision. You should not mistake passivity and lack of involvement for neutrality.

8. Do not let the rules of evidence prevent a fair hearing
You have broad discretion concerning the admission or exclusion of evidence. You are the fact-finder in family court and are trained in weighing and assessing the credibility of evidence. There are many exceptions to rules that require the exclusion of evidence, including the catchall rules that allow the admission of evidence found to have circumstantial guarantees of trustworthiness comparable to the many exceptions to the rules of exclusion. It is rare that a SRL will raise an evidentiary objection. The cases that are most challenging to judges are those in which one party is represented and the other is not. In most circumstances, if there is valid objection to a significant item of evidence, explaining the requirements of admissibility, and granting a continuance to allow the party to correct the defect can overcome the objection. Except in the rarest of circumstances, the represented party will not want to pay the lawyer for another court appearance, especially when the evidence is relevant and will be admitted at the adjourned hearing because the proponent now knows what is required. Keep in mind that the purpose of the rules of evidence is to aid in the search for truth and that the rules are vestiges of a fully lawyered system. They should not deprive you of the ability to conduct a fair hearing.

9. Give reasons for rulings and decisions
Parties who believe that the decision making process was procedurally fair are more likely to be satisfied with the outcome, even if they are not successful. Parties must be given the opportunity to understand the reason that you are deciding the way you are. An explanation in plain language of your rulings is required, and if possible, you should obtain confirmation from both parties that they understand the ruling and your reasons for it.

10. Take responsibility for preparation of the order
Perhaps the most surprising feature of civil procedure to a non-lawyer is the practice of having the prevailing party, rather than the court, prepare written orders. SRLs have no idea how to prepare an order, and, while explaining what one is and how to prepare one is information rather than advice, it is the very rare SRL who is capable of using the information correctly. Many courts have changed the traditional practice and begun to prepare their own orders. If you intend that parties follow your orders, it is important that you prepare the order and deliver it to the parties before they leave the hearing room. Doing so concededly puts a burden on the court and staff, but any burden is outweighed by the benefits.

Michael J. Dwyer, JD, is a circuit court judge in Milwaukee, Wisconsin. He has been on the bench since August 1997 and is currently assigned to the Children's Court hearing dependency and delinquency cases. He was previously assigned to the Family Division where he was the presiding judge. Before that, Judge Dwyer served as the presiding judge of the probate subdivision, was the small claims judge for a year and served terms in both Family and Children's Court. His current interests include trying to understand what can best be done to mitigate the harm children suffer at the hands of abusive and neglectful parents. His family court interests include insuring the quality of GALs in family cases, addressing the problems presented by self-represented litigants in family court, improving the way family court processes cases by facilitating co-operation at all stages, and improving the family court mediation. Judge Dwyer received his legal education at Georgetown University Law Center, graduating in 1975, and his undergraduate degree from the University of Wisconsin-Madison in 1972. Prior to taking the bench he was a general practitioner in Milwaukee County for over twenty years.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
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Ten Tips for Developing Parenting Plans for Special Needs Children

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The authors presented a workshop at the AFCC 50th Anniversary Conference in Los Angeles entitled, "Parenting Plan Considerations for Special Needs Children."

The term "special needs children" is an umbrella designation that encompasses a staggering array of children who suffer from learning disabilities, profound cognitive impairment, serious medical illness, developmental disorders (such as autism), physical disabilities, or severe psychiatric disturbance. Family law professionals face complex challenges when assisting separating and divorced families with special needs children. Below are some general and specific tips for family law professionals who are helping these families develop appropriate parenting and child safety plans.

1. Develop a basic knowledge base about the most commonly seen special needs children encountered in family court

While one cannot be an expert about every type of special needs child, family law professionals need to have information about the defining characteristics of the most commonly occurring childhood conditions and the specific parenting challenges involved in raising such children. The most commonly seen childhood conditions encountered by the family courts are: autistic spectrum disorders; attention deficit/hyperactivity disorder; learning disabilities, and, especially with teenagers, serious depression. Therefore, consult the current literature and empirical research regarding these disorders when assisting a family with a special needs child.

2. Familiarize yourself with more unusual types of special needs children

If working as a mediator, judge, parenting coordinator or child custody evaluator, you will also likely encounter less frequently seen types of special needs children, such as those with cerebral palsy, Down syndrome, visual or hearing impairment, or high risk medical conditions. In these cases, understanding a child's best interests with regard to custodial arrangements requires a grasp of the specific nature of the illness/condition and the specialized parenting skills needed to optimize the child's well-being. Educate yourself on the nature of the condition and the specific demands on parents.

3. Use "developmentally appropriate parenting plans" with caution

Many of the research based "developmentally appropriate" parenting plans for children of different ages may not be best for special needs children. Some of these children (i.e., those with mental retardation, Down syndrome, autism) may function significantly below their chronological age. In many instances, the need for stability in residential placement and consistent routine may outweigh a custodial schedule that provides significant time with both parents.

4. In addition to parenting skills, consider which parent has the most time and means to care for the special needs child

Considering each parent's personality, parenting skills and temperament for caring for a special needs child is important. However, determining where a child should primarily reside can come down to the simplicity of which parent has the most time and means to care for the child. Many special needs children attend special schools, have ongoing physical or occupational therapy, counseling or frequent medical appointments. Thus, when considering a physical custody arrangement, it is important to determine whether both or only one parent has the ability to follow-through effectively with the child's ongoing services.

5. Understand which evidence-based treatments may be necessary, and which parent will be willing to attend and participate

Current trends in evidence-based treatments for multiple childhood conditions (i.e., autism, AD/HD, LD, and even adolescent depression, where the risk of suicidal or self-harm behavior may be high) include a parent

participation component. Thus, it is important to determine which parent will be an active participant in such treatment. This includes each parent's relative support for a medication regimen if medical or psychiatric professionals have recommended this.

6. For children with autistic spectrum disorders, be sure there has been a differential assessment or understanding of the home environments with regard to structure, consistency and safety

Many autistic spectrum disorder children have excessive need for environmental consistency and routine. They may become highly stressed or volatile when routines are disrupted and there are too many transitions. Such disruptions can lead to significant anxiety, often resulting in behavioral problems such as severe tantrums, or even self-injurious behavior. Consider which parent is best able to maintain highly structured schedules and is attentive to physical dangers and childproofing. Some autistic children may want to sleep only at one home, and parents may need to accommodate this basic need, realizing that it arises out of the disorder and not from a parent-child relationship problem. If an autistic child is capable of transitioning between homes, adjustment after such transitions may take longer than for children who do not suffer from the disorder.

7. Always seek information from key medical, educational and mental health providers

When crafting the best parenting plan for a special needs child, seek collateral information from professionals who have a history of working directly with the child and family. These service providers can offer valuable information about the child's specific needs, the parent's history of understanding and meeting those needs, as well as the parents' ability to collaborate with each other and treating professionals.

8. Children with AD/HD and learning disorders need clear and consistent expectations and routines and parents who can closely monitor completion of schoolwork

Children with these disorders have a wide range of characteristics and symptoms, with different levels of severity. In addition, there is a high incidence of children who suffer from both AD/HD and a learning disorder. To understand the behavioral and cognitive profile of a particular child, professionals should always review school reports and psycho-educational testing. In general, these children need a great deal of consistency within and between homes, including firm but fair limit setting and predictability with regard to transitions. Many of these children also have at least one parent who has a similar disorder. Collaboration between parents is essential for maintaining routines and close monitoring of schoolwork. In situations where parents are unable to work collaboratively, behavioral symptoms may worsen and true joint physical custody may not be in the child's best interest.

9. With depressed teenagers, preservation of life and participation in mental health treatment takes priority over child sharing

It is critical to determine the extent to which each parent understands the teenager's problems and is willing and able to actively support the youth's participation in treatment, including compliance with taking prescribed medications. If the teenager is chronically suicidal or engages in self-injurious behaviors, it is also important to determine whether both, or only one parent, can provide effective supervision and maintain safety precautions. If the teen is unable to function within their usual school environment, assess each parent's openness to alternative and appropriate educational plans.

10. Consider the above tips with caution, as research conclusions are drawn from data about groups of children, not an individual child

Though we recommend that family law professionals familiarize themselves with current relevant research, never lose sight of the fact that each case is unique. While children and teens within a particular "special needs" category may have similarities in behavior and underlying emotional issues, diagnostic categories are not "one size fits all." Therefore, while the above tips are based upon empirical research regarding treatment efficacy and environmental factors predicting more positive outcomes, there are some special needs children who may function well with shared parenting plan arrangements. Successful shared parenting of a special needs child is related to the level of severity of the problem and the ability of the parents to communicate about the child and provide as much consistency as possible between homes.

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Robert Kaufman, PhD, ABPP, is a clinical and forensic psychologist whose work in family law includes child custody evaluation, mediation, co-parenting counseling and consultation to attorneys. For over 25 years, he has also conducted psychological and neuropsychological assessments with children, teens and adults, has taught and supervised assessment in San Francisco Bay Area graduate programs. He serves on the editorial board of the Journal of Child Custody and is past-president of the Family and Children's Law Center Board of Directors.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Ten Tips for Doing Forensic Addictions Evaluations

Robert L. Lang, LPC, LAC, Delta, Colorado

Forensic addiction evaluations come in different varieties, from federally regulated Department of Transportation (DOT) Substance Abuse Professional (SAP) evaluations to court ordered custody and parental fitness evaluations. Although these serve different purposes, there are common elements that need to be included to make the evaluation process a success. Different from clinical treatment-driven and diagnostically-oriented addictions assessment, these types of evaluations need a more objective, substantiated and confirmatory orientation to hold their weight. The following ten tips are common elements needed to provide an effective forensic addictions evaluation.

1. Cover all bases

Disclosures, disclaimers, client rights and responsibilities, and confidentiality statements should be the starting point for any forensic evaluation. Legal safeguards such as these can provide a layer of protection in the litigious arena of forensic evaluations and act as an educational guide post for the evaluative process. Do these documents really protect you from liability? This type of question is best referred to legal experts, but the purpose of these papers is largely to document your informing the client and the subject of the evaluation of the process. It is better to have a record of this if you ever have to justify or defend your role as an expert witness or forensic evaluator in court.

2. Find the gaps

Biopsychosocial formats assist in establishing a well-rounded foundation for the evaluation process. There are many structured interviewing formats, first outlined by Engel (1977), that provide a broad sample of the overall level of functioning. These should include the three primary life domain areas that can be impacted by an addiction: the biological sphere, including medical and disease history, surgeries, medication use, current treatment, illnesses and family history of illness; the sociological sphere including family history, living arrangements, relationships, finances, work, school, home life, hobbies and activities; and the psychological sphere including psychiatric and treatment history, environmental stressors, mental status exams, and all other risk factors. As the interview progresses, be sure to highlight problem areas that might be attributed to an addiction that you can revisit later. It's helpful to have a clinical view of the client before you begin the addictions evaluation.

3. Test the waters

Prescreening and screening questions provide a good way to transition into the addictions assessment. As the evaluation starts to unfold, this information can be used to highlight any discrepancies in the client's narrative. Using reliable and valid addiction screening tools is imperative. The eight questions created by combining the four Screening, Brief Intervention, and Referral to Treatment/ Alcohol, Smoking and Substance Involvement Screening Test (SBIRT/ASSIT) and four CAGE-Adapted to Include Drugs (CAGE-AID) screening questions provide a normed and standardized set of questions that set the stage for the developing addictions evaluation. The screening process portion of the evaluation can be expanded by using other addiction screening tools like the Alcohol Use Disorders Identification Test (AUDIT) for alcohol and Drug Abuse Screening Test (DAST) for drugs.

4. Fill in the gaps

Standardized addictions interviewing formats assure an objective and thorough evaluation process. The Addictions Severity Index (ASI) is the most commonly used addictions assessment tool and was the first standardized assessment tool of its kind to measure the multiple dimensions of substance abuse. There is also a "lite" shorter version of the assessment tool that can be used. Addictions can be assessed across seven different life domains with this tool, including alcohol and drug use, psychiatric status, employment status, medical status, legal status, and family/social relationships.

5. Take a closer look

After the foundation for the addictions evaluation has been established, it's time for a closer look at the details. Testing the depth, breadth, clarity and content of the addiction requires more substantive measures. The

Minnesota Multiphasic Personality Inventory-2 (MMPI-2) may be used for this process. It has three substance abuse scales, which along with the validity scale may be used effectively as part of a more comprehensive evaluative process. The Substance Abuse Subtle Screening Inventory (SASSI) and Stages of Change, Readiness, and Treatment Eagerness Scale (SOCRATES) are two effective addiction testing tools are. Make sure you know the tests you use, as well as the research that backs them up, inside and out.

6. Investigate the facts

Any evaluative process worth its weight backs up the evidence with collateral sources and this holds true for addictions assessments, as well. Talking with friends, family, employers, and professional contacts can shed light on areas of the addictions evaluation that are at times over looked by screenings, self-reporting and testing. This process helps to corroborate and validate the findings; collateral reports are rarely contrary to the information gathered during the evaluation. When they are, this provides additional information about the underlying addictive processes. Structured and standardized formats such as the Collateral Interview Form (CFI), outlined by Miller and Marlatt (1984), can be useful to get the most information from your questions. Remember that being prepared is the key for successfully interviewing collateral sources.

7. Build the report

When crafting the evaluation it's important to understand the audience and to tailor the report to their needs. Addiction evaluative reports can be written to serve many different agencies that often have varying needs. Make sure you know the referral sources and that you build these collaborative relationships so you can develop an understanding of what information different agencies need to have included in the report.

8. Do the research

Back up your report with relevant and current research. The integrity of the report comes from your ability to link your findings with the corroboration from collateral sources and support it with objective measures that are substantiated by research. Professional, peer-reviewed journals are a valuable asset in the addictions evaluation process. Much of this research can be accessed online; just be sure you evaluate the source, and, as with any research, make sure that the methodology is sound. The National Institute on Drug Abuse (NIDA), the Substance Abuse and Mental Health Service Administration (SAMHSA), and the Association for Addictions Professionals (NAADAC) are all valuable resources for current research on addictions.

9. Double-check the details

It is critical to review your findings and conclusions. Evaluations should follow a standard where the logic model builds on the information gathered and links this information to other sources, then substantiates the findings and uses these findings to formulate conclusions. Evaluations that overlook this process are full of surprises and the outcomes often feel out of place. A good addictions evaluation should have a smooth, steady flow that can be easily followed; even a non-expert should understand how the conclusions were reached. Make sure all pieces of the evaluation fit together and formulate a solid clinical picture of the addiction process. Eliminate free floating conclusions or recommendations that are not supported by the details of the evaluation. All of the results of the evaluation must to be supported by the evidence—the backbone of a good evaluation.

10. Account for individual differences

When writing the report it's important not to lose sight of the fact that each individual is unique. While all addictions may have similar clinical components, using a "one size fits all" approach to the complexities of each evaluation can lead the process down a slippery slope. While the above tips are based on empirical research and sound procedures, there are cases that may fall outside these parameters. Successful addictions evaluations should be able to account for variables while ensuring that the report is individualized for its purpose. While we should look for commonalities and themes, we must also consider that not all addictions or individuals are alike.

Bob Lang, LPC, LAC, is a co-occurring forensic expert who conducts addictions evaluations, custody evaluations, mediations, and clinical services. He is a professor of Social and Behavioral Sciences at Colorado Mesa University in Grand Junction. Bob has over 30 years of experience as a co-occurring specialist, trainer and educator. He has published articles in the areas of divorce, loss and addiction, and has published a new book titled, Becoming a Better Parent: Ten Things We Need to Know About Parenting.

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Addiction Severity Index (ASI)
http://adai.washington.edu/instruments/pdf/Addiction_Severity_Index_Baseline_Followup_4.pdf

The Association of Addictions Professional (NAADAC)
http://naadac.org/

Alcohol Use Disorder Identification Test (AUDIT)
http://www.integration.samhsa.gov/AUDIT_screener_for_alcohol.pdf

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CAGE-AID
http://www.hopkinsmedicine.org/johns_hopkins_healthcare/downloads/CAGE%20Substance%20Screening%20Tool.pdf

Collateral Interview Form (CFI)
http://casaa.unm.edu/inst/CIF.pdf

Department of Transportation (DOT) Substance Abuse Professional (SAP)
http://www.dot.gov/sites/dot.dev/files/docs/ODAPC%20SAP%20Guide%20Aug09.pdf

Drug Abuse Screening Test (DAST)
http://www.emcdda.europa.eu/attachements.cfm/att_61480_EN_DAST%202008.pdf

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Stages of Change Readiness and Treatment Eagerness Scale (SOCRATES)
http://casaa.unm.edu/inst/SOCRATESv8.pdf

Substance Abuse and Mental Health Service Administration (SAMHSA) http://www.samhsa.gov/

Substance Abuse Subtle Screening Inventory (SASSI)
http://www.sassi.com/

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
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Ten Tips for Professionals: Using Online Communications in an Ethically Responsible Manner

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Many mediators, parenting coordinators, attorneys and other family-court-related professionals are using online technologies to facilitate communication between themselves and their clients. Online communication technologies may take the form of online video-conferencing or teleconferencing (e.g., Skype), text messaging, voice messaging, online chat-rooms, e-mail, online calendars, online social networking (e.g., Facebook) and online programs designed to facilitate conflict resolution, communication, problem-solving, or implementation of parenting plans or financial arrangements. The following strategies are intended to help you navigate the ethical issues that arise should you decide to use one or more of these technologies.

1. Determine the most appropriate means of communication for a given purpose

As both professionals and clients embrace various forms of online communication in their private lives, it may seem appropriate to use these same forms of communication for professional interactions. Before using online technology for professional purposes, however, make sure your choice is deliberate—think about the ethical issues that may arise maintaining confidentiality, creating a digital record of events that could be used in court, responding to crisis situations, ensuring effectiveness of the intervention when facilitated through online technologies, and maintaining appropriate boundaries in the professional-client relationship. Consider a situation in which clients live in different cities. Videoconferencing may be more convenient and less expensive than bringing everyone to the same location; if you are mediating, however, will the process be as effective online as it would be with everyone in the same room? How will you determine whether asynchronous or synchronous communication is more effective?

2. Consult information and computer technology experts, and take responsibility for understanding the technology you are planning to use

Family professionals may need the assistance of computer experts to understand the options avail-able for online communication, as well as how to manage various risks to the integrity of your com-munication (e.g., hacking, worms, malware, IP spoofing). Be careful about accepting the advice of experts without understanding the reasons for their advice. Make sure you educate yourself, as you are the one who is ultimately responsible for ensuring that your professional communications are safe and effective.

3. Practice privately before using online communication professionally

Rather than experimenting with clients, practice the use of online technology privately. If you are planning to videoconference, set up a practice conference with friends or professional colleagues. Role-play a session to see not only how the technology is operated, but also how you will manage factors such as lighting, location of microphones, angles of the camera, and colors. You may find out that a certain camera angle makes you appear angry, or certain lighting washes out your facial expressions. You can enhance the effectiveness of your professional interactions and avoid certain embarrassing situations by practicing with others prior to using the technology for professional purposes.

4. Consult the research literature for best practices, effectiveness, and risks of using a particular online strategy

Although there is relatively little research on the use of online technology for mediators and other family-court-related professionals, there is a growing body of literature on the use of online communication for medical and mental health practice (e.g. “tele-health”). Look for research that has gone through a scholarly review process. Be careful about how to interpret claims made by private companies trying to sell their products (e.g., web-based programs designed to facilitate problem-solving or conflict resolution, online calendars for managing parenting plans, etc.). Consider, for instance, an online program that allows family law professionals to monitor the pick-up and drop-off times as outlined in the parenting plan or mediation agreement. The provider may suggest that this program is “an essential tool” for mediators and parenting coordinators, claiming that it “reduces conflict and helps parents focus on

the best interests of their children." However, does the use of online monitoring fit within the role of a mediator? Or if a parenting coordinator plans to use such a program, how does s/he know that this is an effective tool… or whether it might incite greater conflict between the parents, to the detriment of the child?

5. Assess benefits and risks for particular situations

When determining whether to use a particular form of online communication, consider the particular situation. Just because it may be appropriate for some clients and some professional functions, does not mean that it is appropriate for all. You might be comfortable communicating with clients using email in order to set dates for meetings. You might want to restrict email communication for discussion of other issues (e.g., communication of crises… which may be emailed to you in the middle of the night, or on a weekend when you are not working or checking email). You might decide to use a blog to educate clients about children's reactions to separation and divorce; on the other hand, you might decide it is too risky to use a blog to discuss how to handle "difficult clients' situations."

6. Develop and implement risk management strategies for the risks you have identified

When clients enter your office for a private session, you close the door to ensure confidentiality. This safeguard is a risk management strategy. Similarly, determine which risk management strategies that you should adopt when using online communication. For email, consider the use of encryption. Also, make sure the client is the only one who has access to the email. Be careful about using a client's work email address, for instance, as the employer may have a right to access to this email. If your client is in an abusive relationship, you may want to forgo email altogether, as the perpetrator of abuse may try to gain access to emails that you send to the client.

7. Develop and implement a system to monitor and respond to risks

Assume that you want to allow clients to share information about how to cope with separation and make use of community-based resources. If you develop a discussion board, consider risks such as the use of vulgar language, sharing private information about the child or other parent, or suggestions that seem inappropriate. Rather than allow clients to post suggestions themselves, you could have clients send you suggestions and take responsibility for screening them and posting ones that are appropriate.

8. Keep abreast of the most current communication technology, ethics protocols, and research

Note that the best knowledge today could be outdated tomorrow… or perhaps within a few months. Technology changes quickly. Threats to the integrity of technology change. Best practices and our understanding of the appropriate use of technology change. Agencies, professional associations, and governments may also change their views on whether and how to use a particular form of technology. Do you know, for instance, your professional association's policy on the use of smart phones for communication with clients? Further, what are the relative risks of using landlines versus smart phones?

9. Maintain clear and appropriate boundaries between personal and professional communication

If you allow clients to text or call you on your cell phone, they may assume they have 24/7 access to you. If you answer text messages or phone calls from home, you also need to consider whether you are providing clients with the same confidentiality as you would provide if you responded from your office. Make sure you establish clear and appropriate boundaries concerning the use of online communication— for yourself and for your clients. Do you use the same cell phone for work and personal purposes? If so, have you considered the use of different phone numbers on the same phone? Also, have you taken precautions with family members to ensure that they do not intentionally or accidentally gain access to private client information on your phone?

10. Ensure clients have an opportunity to provide informed consent to the use of online communication

When using certain forms of online communication with clients, you may need to explain the technology, how it is being used, its risks and benefits. Ideally, offer the client a choice so that there is a true opportunity for informed consent. Allow the client to ask questions, and consider meeting individually and in person with each client first before relying on online technology. Consider a situation in which there is a history of intimate partner abuse. How can you ensure that you have assessed for power and safety issues before engaging the clients online and how can you allow the parties to share their concerns in a safe, confidential manner? By offering, rather than imposing, the use of online technology, the clients are empowered to determine whether to accept or reject its use. Although family law professionals have their own ideas about the appropriateness, safety and effectiveness of online communication, we certainly need to listen to our clients.

Dr. Barsky will present a workshop on this topic, Ethics of Online Communication *at the AFCC 50th Anniversary Conference in Los Angeles on May 31, 2013 at 3:30 pm. Dr. Barsky is a professor of social work at Florida Atlantic University, a family mediator, and Chair of the National Ethics Committee of the National Association of Social Workers. His book credits include* Conflict Resolution for the Helping Professionals*,* Clinicians in Court*, and* Ethics and Values in Social Work*. For further information, see www.barsky.org/publications/publications.htm.*

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
April 2013

Ten Rules for Settlement Negotiations

Gregg M. Herman, JD, Milwaukee, Wisconsin

It should be easy. Both parties have a lot to lose. There are substantial risks and certain substantial costs. There is (usually) a lot of room for compromise. But it's not easy. The emotional aspects cloud the rational ones. Marriages usually end due to the lack of the exact attributes that make settlement easier: trust, communication and cooperation. The legal system does not help as it is, by its very nature, adversarial. So lawyers need to help their clients get past the emotional impediments—past the lack of communication, cooperation and trust, to find common ground. Perhaps some basic rules would be helpful. Like all rules, they have exceptions. But, if generally followed, it is submitted that they would make a peaceful outcome in an adversarial process more likely.

1. Be cordial

This is not as simple as it sounds. Many clients believe that lawyers should posture and put on a show for their clients. Of course, that is rarely conducive to a peaceful resolution.

Lawyers need to carefully explain to the client at the outset the reason for a cordial atmosphere with opposing counsel. The explanation may be as simple as increasing the likelihood of settlement. After all, most clients want their cases settled. But, sometimes, clients need to be reminded that settlement is more likely if both sides behave with cordiality, rather than with threats and intimidation.

Other clients can be reached through their pocketbooks. If lawyers maintain civility towards each other, it is far easier to pick up the phone and discuss issues. If they cannot do so, then the result is innumerable court hearings. It is, obviously, far cheaper to have a phone conversation than to go to court.

The method that gets the understanding through to the client will, obviously, depend on the individual client. What is important is that the lawyers explain the strategy to the client at the outset.

2. Do not give ultimata

Which of the following tactics are more likely to bring about a measured response leading to discussions of settlement and compromise?

> *Approach A: Here is a settlement proposal. You have 48 hours to accept it or it is withdrawn.*
>
> *Approach B: Here is a settlement proposal. It contains what we believe to be reasonable positions on all issues. If you or your client disagree, please provide us with the reasons you disagree and what you think would be reasonable under the circumstances.*

Clearly, Approach A puts the other side on the defensive. It is essentially asking for a fight and most lawyers do not need more than one invitation. On the other hand, Approach B is far more likely to bring out the type of reasonable discourse that can lead to a settlement.

3. Do not give deadlines

On occasion, I have received settlement proposals with a deadline for a response. A deadline is really a threat and usually brings out the type of response discussed in number two. Usually, these are not great proposals anyway or there would be no need for the deadline. After all, if the proposal was really that great, it would speak for itself and there would be no need for the accompanying threat.

When the other side gives a "Friday at 5 pm" deadline, try the following response:

> *Dear Joe:*
>
> *My client was going to accept your proposal on Friday when she noticed that is was 5:10 pm.*

If you want the case settled, do not use deadlines any more than you would use any other type of threat or ultimatum.

4. Make full disclosure voluntarily and freely
Ask yourself: Are you more likely to settle a case where the other side has given you everything you need voluntarily, freely and openly, or where they stone-wall discovery? The answer is obvious. Where the other side treats financial information as if it were a highly classified government secret, it makes settlement less likely. This tactic brings out the "What are they trying to hide?" question. This sort of mistrust is not conducive to settlement.

When you represent the side with all the information, give it to the other side before they ask for it. After all, you know what they will need in order to settle the case. By providing this information even before a request is made, you will have accomplished at least two positive things. First, if any court intervention is requested by the other side regarding discovery, the court will be impressed by the voluntary provision of large amounts of financial documentation. Family courts dislike discovery motions and routinely order everything to be provided unless absolutely outrageous. Second, and more important, providing the information voluntarily creates the type of atmosphere which allows opposing counsel to enter into settlement negotiations without the paranoia inherent in the cases where the stone-wall approach is used.

5. Don’t be afraid of taking the first step
Some lawyers seem to have a fear that making the first step toward settlement is a sign of weakness. As result, some cases sit and wait, whereas a settlement conference can begin the process of resolution.

Someone has to take the first step or no case will ever be settled. To view this first step as a sign of weakness is a sign of insecurity on the part of the lawyer. On the other hand, taking the first step can be a sign of strength: The lawyer is so confident in his or her case, that the supposition is that the other side will want to settle to avoid the embarrassment of the eventual defeat in court.

In addition to the simple concept of just getting the ball moving, there may be a psychological advantage of making the first proposal. Psychological research shows that “branding” plays a large role in decision making by creating an expectation of likely results in people’s minds. By making the first proposal, not only can it get the process started, but it may even improve the final negotiated result.

6. Never negotiate backwards
Backwards negotiating is what occurs when a subsequent offer is worse for the other side than a previous offer. There are times when new facts may alter settlement positions. However, assuming discovery was conducted before settlement (as it should be), once a proposal is made, subsequent proposals should be closer to the other side's position, not further away.

Backwards negotiating is a form of intimidation. It tells the other side that they are idiots for not jumping at the initial offer and that subsequent offers will be less unless they jump at the present offer. While the other side may in fact be idiots, it is not conducive to settlement to educate them to that fact. Moreover, it is not good faith negotiating and the response of a party who receives a backwards offer should be to stop negotiating.

7. Never refuse to negotiate
True, some cases are harder to settle than others and some cannot be settled. But you will never know unless you try. Unfortunately, a certain amount of legal services later turn out to have been avoidable, but were utilized in the event that it was thought necessary at the time. Settlement should be attempted in every case, no matter how remote the prospect might seem. As Winston Churchill once said, "It is better to jaw, jaw, jaw than to war, war, war."

This does not mean, of course, that it is never proper to walk out of a negotiating session, suspend negotiations or even stop them. It does mean that is improper to never enter into negotiations to begin with. Sometimes, the reluctance to call reminds me of the teenage boy afraid to call the girl for fear of rejection, while the girl sits by the phone, hoping for the call, but too timid to call on her own.

8. Never get personal
There is a scene in *The Godfather* where a character is about to be wiped out by the mob. One of the henchman tells the victim that the Godfather wants him to know that it is nothing personal, it is just business.

Clearly, much of what is happening in the divorce is personal between the parties. It should never be personal between the attorneys, no matter how sensitive or important the issues.

9. Never get angry at a settlement proposal
If a settlement proposal comes in writing, we, of course, immediately send it out to our client. It is not unusual that our client calls us after reading, livid with anger at how outrageous the proposal is and how far from what the client perceives as fair.

True, some proposals are so low or so high as to be insulting. Some lawyers ask for the stars hoping to get the moon. Others misinterpret the parameters of reasonable settlement. Whichever is true, at least there is an attempt at settlement. Rather than get angry, if the proposal is in the stars, then start subterranean (or whatever is the opposite of the stars!). If the proposal is unreasonable due to a misunderstanding of reality, then educate the other side. But never get angry—any proposal, even a bad one, is better than no proposal at all.

10. Be prepared!
Going into settlement negotiations without a prior face-to-face meeting with your client is as wrong as going into trial without such a meeting. Worse, it wastes the time and money of not only your client, but the lawyer and client on the other side. Spend time with your client to discuss starting points and ending points for negotiations. And, it wouldn't hurt to discuss these rules!
In conclusion, following these rules does not, of course, guarantee a settlement. They do, however, create the type of atmosphere that makes a settlement more likely. As with many other things in life, improving the odds is often the best we can do when we do not have full control over the circumstances. And we owe it to our clients to do the best we can.

Gregg Herman is a family law attorney with the Milwaukee, Wisconsin, law firm of Loeb & Herman, S.C. He is a long time member of AFCC and is currently co-chair of membership for the Wisconsin Chapter of AFCC. This article is adapted from his newly published book by the ABA Family Law Section: Settlement Negotiation Techniques in Family Law: A Guide to Improved Tactics and Resolution.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Ten Tips for Engaging People in Conversation

Sue Bronson, MS, Milwaukee, Wisconsin, and Rebecca T. Magruder, MSW, JD, St. Charles, Missouri

Regardless of which professional hat we wear when working with clients, in order to help the families we serve we need to engage them and others, as well, in conversation. On the surface this may sound like a very simple concept, but we all struggle with the complexities of understanding what is really important to clients. The following ten tips are designed to help you provide opportunities to have the meaningful conversations where debate turns into dialogue.

1. Be fully present

The external distractions in our environments as well as the thoughts rattling around in our heads interfere with our ability to listen carefully and form a connection with another person. It's extraordinarily challenging to be fully present in a conversation when a small electronic device is buzzing or blinking in your pocket or on the table. Giving your full attention to the speaker is a gift that tacitly invites the speaker to stay engaged in the conversation. Your full attention suggests that you are truly interested in hearing more.

2. Stay in the moment

So often, our minds race ahead of the speaker's words and before we know it, we are three steps ahead of where we think the speaker is going, which makes it much more difficult to connect. You may begin to think of strategies for solving the problem, or likely outcomes. Even if you are correct in your assessment of where the speaker is going, the speaker may lose interest in telling you much more because you have usurped his or her ideas and the speaker no longer has ownership. A few slow deep breaths help to slow the mind. Staying in the moment allows you to pick up on the nuances of the speaker's thoughts and emotions, which will yield much more information about what is really important.

3. Talk less, listen more

Let the speaker be most important. Be respectfully curious, yet purposeful in the questions you ask and the statements you make. Hear the speakers' feelings and values as well as their thoughts. Have compassion for their journey, which is unique to them. Most ideas you think you want to share with the speaker can wait until later in the conversation, or you may find out that they need not be addressed at all. When we hold back and listen more, we can avoid the occupational hazard of falling in love with our own seemingly wonderful ideas, and, instead, be dazzled by the brilliance of the speaker's ideas.

4. Listen without judgment or defensiveness

Being in a judgmental frame of mind, which happens to all of us from time to time, prevents us from hearing what is truly important to the speaker. When you notice your judgments or defenses come up, seek a deeper understanding of the speaker's experience by asking questions motivated by genuine curiosity. Ask open-ended questions about the speaker's perception of the situation. Ask how the situation has affected the speaker on a personal level. Ask about the speaker's thoughts for rectifying the situation if the situation is still ongoing and still causing problems. In converting your judgmental thinking to genuine curiosity, you may quickly find that your judgments and defensiveness vanish into thin air because you can now see the speaker in a totally different light. Even if your judgments are confirmed, you will understand the speaker at a deeper level.

5. Be a witness to the conversation

Be mindful of the whole communication, the verbal messages, as well as the non-verbal messages, of the speaker and the reactions of everyone in the room. Reflect what you have heard and seen as well as what you have not heard. Be clear about your actual observations versus when you are "filling in the blank." Ask the speaker to let you know if you correctly stated what was going on.

6. Engage with people's emotions

There is valuable information in the expression of emotions, so don't discount the emotions as mere venting. Acknowledge the emotions and validate why the speaker's emotions would make sense from his or her

perception of the situation. Normalizing emotions allows the speaker to be more open to discussing his or her values, real concerns, and the meaning of what he or she has experienced. Understanding the emotions will help you to understand what is important in the big picture, as well as in the specific situation.

7. Ask more questions, make fewer statements
Ask lots of open-ended questions. Ask about what is important to the speaker. Ask questions about their life experiences. Ask about thinking, values, beliefs, and emotions. Ask questions that help you understand what motivates the speaker. Be brave in asking about the elephant in the room, the dynamics driving the conflict, and the unspeakable. Gently shine a light on the situation. The client's job is to decide what to do. Your job is to keep shining the light and supporting people in difficult and painful conversations.

8. Empower people
Encouraging people to act on their own behalf helps them to feel in control of their own lives, which in turn allows them to make decisions in their best interests. We empower people by listening closely, reflecting their words and emotions, summarizing the big picture, and checking in to see what the next step should be. Reflection helps the speaker to hear him or herself in a new way and allows for self-correction as necessary. Summarizing clears the fog, reveals the big picture, and makes clear what is really important. Checking in gives control to the speaker in determining the next step. As a result, people become calmer, clearer, focused, confident, articulate, decisive, and more accepting of the other person's perspective.

9. Be inclusive of different perspectives
There are many right ways to do things. Encourage clients to think more broadly. Speak to the clients' strengths and encourage them to think outside of the box. Encourage the notion of "Yes, and…" instead of "yes, but." "Yes, I see your perspective, and at the same time, I see the situation a little differently." Encourage appreciation in the richness of their differences and ask how their differences can be merged to create an outcome that is greater than the sum of its parts.

10. Take responsibility for your own behaviors
Realize that you are as human as your clients and that you will make mistakes from time to time. Apologize when you have wronged others and change the hurtful behavior. Ask clients what you can do to put things right. Ask if they would prefer to work with a different professional. Assess with another professional in a consultation what triggered your behaviors and what steps you might take to have a different outcome the next time your buttons are pushed in a negative way. The important thing is to learn the lessons that the mistake has to teach.

Sue Bronson and Rebecca Magruder will present a full-day pre-conference institute, Engaging People in Conversation: Getting Out of the Fight and into Meaningful Dialogue *as part of the AFCC Regional Training Conference,* There's No Place Like Two Homes: The Complexities of Separation, Divorce and Co-parenting*, November 7-9, 2013, at the Westin Crown Center in Kansas City, Missouri.*

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Professional Self-Care: Ten Tips for a Quality of Life Check

Leslie Todd, LCSW, ACSW, Baton Rouge, Louisiana

Most of us are responsible for accruing a number of continuing education hours in ethics. One of the topics which "ethics" should cover is self-care. After all, when are we most likely to make serious errors in judgment? When we are suffering from compassion fatigue, vicarious traumatization, or when we are in denial that we are not functioning well.

Since I also work with my husband, Alan Taylor, I know that boundary-keeping between personal and professional lives is also a challenge. Each of us tries to monitor our balancing act by occasionally asking the other, "Quality of life check?" and listening carefully to the answer. We may do this in celebration, for example when we are savoring a nice meal on the patio: "Quality of life check?" "Excellent!" or when we are working on custody evaluations on a Sunday: "Quality of life check?" "Terrible! We need to take a break and get this workload under control!"

This column is dedicated to helping you monitor your own quality of life. You ARE your instrument of peacemaking and you are constantly barraged with the emotional toxic waste of distressed clients, and maybe a little bureaucratic dysfunction too. Add to that a few rough patches in our personal lives and there we are: somewhere between frazzled and burnt out. So here are ten tips for a quality of life check:

1. Take an overall assessment of your life to establish a baseline of your strengths and deficits
Set aside thirty minutes and go to www.realage.com to take a broad inventory of what you are doing to help and to harm your health. An even broader range of questionnaires is available on www.sharecare.com.

2. Start with a good understanding of your own temperament to find a baseline for your emotional health
If you're not well-grounded in personality types, take the Myers-Briggs Personality Type Indicator or a similar test. Although the Myers and Briggs Foundation website recommends going to a qualified professional, you can take a "quick-and-dirty" test online. Oftentimes professionals without mental health backgrounds don't understand just how differently introverts and extraverts process stress. This is also very important in managing our personal and professional relationships. Are you working "with the grain" or "against the grain" of your own personality?

3. Exercise
Exercise demands conscientious effort in our sedentary world. Be honest with yourself about how much exercise you get. Is your exercise regular? Is it vigorous? There are plenty of good smartphone apps like MapMyWalk, NikePlus or Couchto5k to help you start walking or running and there are gadgets like Fitbit to monitor your progress. At the very least, get up and stretch! Your eyes and neck need a break from that computer or phone screen, and your neck and you need to get your circulation moving. Walk up and down a flight of stairs for extra points—without your phone!

3a. But really—stretching won't cut it—you have to work out
If that made you yawn, get a coach or a trainer. You can cut the hourly rate in half by sharing with a friend. I've worked out with my coach for five years because I'm inherently lazy and I consider this health insurance. Now I'm in better shape than your average fifty-year old—which is good, because I'm sixty.

4. Be honest about your eating and drinking
The surveys in #1 will help you determine how well you are nourishing your body. But I bet you already know what you could do better—beware if you know you are drinking to relieve stress. Search "Nutrition Tracker" in your smartphone app store and choose one of the many apps to help you monitor your food for a week. According to the Pennington Biomedical Center, tracking your food accurately is one of the best ways to ensure compliance with any food plan.

5. Secure the perimeter
Check how well you're maintaining the boundaries between your work and personal lives. (You have a personal life, right? Ask your loved ones if you're not sure.) Establish non-working hours and non-working zones. At work, train your clients: Use your phone's alarms to set a nice chime to go off five minutes before the end of a client's allotted time and tell your client about it at the beginning of the session. Explain politely that you value their time and want to be sure they have time to cover everything; the 5-minute alert is to cue them to be sure they get all the important issues covered. Then cut them off graciously when their time is up. They won't run over a second time. Use another alarm to train yourself to only check your emails at designated times and another alarm to remind you to get up from your desk and stretch. Then turn the darn thing off at home.

5a. Define a sanctuary and do not allow phones or other infernal tech devices into your sanctuary during designated periods
Your sanctuary is whatever area you designate on any given day—but it should always include your bedroom—sleep and intimacy are too important. Put a message at the bottom of all outgoing texts and emails saying, "I will return all non-emergency messages during regular office hours" to remind people of what regular office hours are.

6. Have a creative outlet
You give all day, and what you receive is often the client's anxiety or negative emotion. Have a creative outlet—gardening, cooking, painting—whatever lets you receive the good energy that comes from the creative part of your brain. When you stop a creative exercise, you feel refreshed. Bet you don't say that after playing Candy Crush or posting pictures on Facebook for an hour.

7. Take a financial inventory
Money is a form of energy and sometimes we are not so great at saving, spending or sharing it in healthy proportions. Many young professionals are overwhelmed by their educational debt and many older ones aren't great business managers. Money problems are marriage-killers and among the guiltiest of our secrets. Therapy clients will talk about their sex lives more easily than they will their finances. Please be honest with yourself about your financial competence and health.

8. Nurture your social network
Even the most introverted among us need social connections. Happiness, especially in later years, is very much tied to social stimulation. Make time for old friends. Make time for new friends. You don't have to be a party animal; you just need to give and receive friendship and affection. Go where you are cherished.

9. Laugh a lot
Find at least one thing that's guaranteed to make you belly laugh. It may be a video or a best friend. For me, it's www.damnyouautocorrect.com (warning: language!), but even after the most difficult parenting coordination session, I can look at this and laugh until I cry. Much better than just the crying!

10. Nurture your spiritual life…
…to metabolize that emotional toxic waste you pick up at work. This is essential in preventing compassion fatigue and burnout. Remember, you are not only a giver, but a receiver and a lot of what you receive is stress. Consider your spiritual hygiene as you would physical hygiene: make time for daily prayer or meditation, connection to kindred spirits, and retreat into reflective time. These are the things that break down that negative energy and help you process it to leave your body, mind and spirit.

AFCC members are working with colleagues at the Association for Conflict Resolution (ACR) on the Eighth Rocky Mountain Retreat, July 17-20, 2014, at the Shambhala Mountain Center, Red Feather Lakes, Colorado. For the past seven years, ACR's Spirituality Section, founded by Nan Waller Burnett, Lakewood, Colorado, has sponsored the retreat. Leslie Todd, Baton Rouge, Louisiana and Christine Coates, Boulder, Colorado, are also involved with the event. A pioneer in body-mind science and author of more than twenty books, Dr. Joan Borysenko is the keynote speaker. Space is limited to thirty members from each organization and members of either organization may register online.

Leslie Todd, LCSW, ACSW, works as a therapist, parenting coordinator, domestic mediator and custody evaluator. She was the founding president of the Louisiana Chapter of AFCC and currently serves as secretary, webmaster and newsletter editor. Her new quality of life blog for those in family court and helping professions can be found here. Her professional website is LeslieTodd.com, and her paintings can be viewed on Facebook.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Top Ten Tips for Interviewing Adolescents

Mindy F. Mitnick, EdM, MA, Licensed Psychologist, Edina, Minnesota

1. Be aware: Adolescent brains are "under construction"

Brain development continues through adolescence into the early 20's. The prefrontal lobe, which regulates judgment, planning and problem solving abilities, impulse control, organization and priority setting, is the last to complete development. The combination of brain immaturity and hormonal changes often results in decision-making driven by emotions, all-or-none thinking and desire for immediate reward.

2. Expect adolescent reasoning to differ from both children's and from adults'

Adolescents are typically not concrete and literal in their thinking as are younger children. Nevertheless, they may have difficulty taking others' perspectives—including their parents' and siblings'—because they remain self-focused. Younger teens are less capable than older teens in imagining the consequences of their choices. When making decisions, adolescents differ from adults in considering fewer options, generating and using less information, and determining the importance of the information they do use. Teens often overestimate their ability to handle challenging situations and make informed thoughtful choices.

3. Understand the need for control

A common theme you may hear from adolescents is "it's my life." Some adolescents have been told that they can decide the residential arrangements at a fixed age, such as 13. These teens may present what appears to be a "canned" statement about their preference. Be careful about jumping to the conclusion that this statement results from undue parental influence. Some teens rehearse what they want to say in their interview because they feel strongly about the outcome of the parents' dispute. On the other hand, when you hear statements such as "we think," and "we want," the adolescent may be aligned with a parent and you will want to assess whose needs are represented by this alignment: the parent's or the teen's. Some adolescents may express a strong preference for a particular parenting schedule, while other adolescents will tell you they want flexibility, meaning they get to decide on an ongoing basis where they reside. Explore with them other decisions they have made to assist in determining whether "flexibility" is a way to avoid structure and accountability. For instance, you might ask whether or not they follow a curfew, and whether they have been in any trouble at school and/or in the community.

4. Avoid pressuring adolescents to state a preference

Some adolescents actively avoid offering their own wishes. They may deny having a preference for a variety of reasons: they don't want to hurt either parent's feelings, they fear the consequences of expressing a preference, sibling(s) or others have encouraged them to remain neutral, and/or they are protective of a parent who is emotionally dependent on them. Adolescents may be focused on what is "fair" to one or both parents instead of what they really need. Some teens are acutely aware of the financial ramifications of where they live, or what schedule they follow, because a parent has shared information about child support, possession of the family home, and/or the possibility of having to move to more affordable housing.

You may be able to gently assist an adolescent in expressing their own wishes with a statement such as, "If we could just talk about you for a little bit, I wonder what the schedule would look like?"

5. Building rapport is essential

Interviews should typically begin with a "settling in" phase to accomplish three goals: 1) Convey to the adolescent the interviewer's sincere interest in listening to them; 2) Inform the interviewer about the teen's communications style and abilities; and 3) Explain the purpose of the interview. One way to start the interview is to introduce yourself and explain your role, for instance you might say, "My name is ____ and my job is to talk to/listen to family members to help gather information about what would be best for the family."

You may want to ask the teen if they know why they are talking with you. Don't be surprised if they say they do not, since early on in the interview they may be afraid of making a mistake. Sometimes teens think they know why they are meeting with you, but don't have it exactly right, thinking something along the lines of, "you're going to decide where I live." Unless you are the judge, a simple correction is helpful, such as "I'm going to make some recommendations, but I'm actually not the person who decides. If your mom and dad don't agree, the person who decides will be the judge." Depending on your role, you may need to explain the limits of confidentiality before you begin questioning, a statement like, and "What we talk about today is not private. I will be writing a report/talking with your parents telling the judge, etc." is sufficient.

6. Engage the adolescent's attention

Ask the teen questions about what's important to them, such as sports or other after school activities, music they enjoy or video games they play. This demonstrates your willingness to listen to them, rather than only to gather information to do your job. Be careful about sharing personal information. Some adolescents will appreciate hearing about the sport you played in high school; others will think you are not really interested in them. Depending on your role you may want to ask what they like about, or would like to change about, each parent, their relationships with siblings, their school performance, and any risky behaviors. "Some of the teens I talk with have tried alcohol/marijuana…Tell me about your drinking/smoking…"

7. Invite narrative reports

Using open-ended questions will encourage the adolescent to provide information from their perspective. When you ask yes/no questions, you will limit the information coming from the teen and maximize the information coming from you: "Tell me about calling 911" vs. "Did you call 911 because you were scared?" Questions that begin with "Tell me about…", "Tell me more about…" and "Then what happened?" tap into free recall memory, the most accurate source of information. When the teen begins a narrative answer, avoid interrupting them as it can disrupt the memory. You can go back and ask for details after they are done, by following up with something like, "You said your mom was really mad at your sister. Tell me more about that."

8. Understand their time perspective

Although adolescents understand the meaning of time concepts such as "last year," their focus tends to be in the here-and-now and the immediate future. Asking questions about who usually helps them in various ways, with homework for example may only generate answers about this current school year. Similarly, asking them to project into an unknown future, ("what if" questions) may simply produce an "I don't know", response, rather than encourage them to think through possible outcomes.

9. Signal what your topic is

You may know all of the topics you plan to cover, but the teen will do best if you let them know what you are talking about. Statements such as, "Now I want to talk about how you've been doing in school" and "I want to talk about something different now" reduce confusion and enhance the teen's sense of competence in the interview.

10. Pay attention to how you end the interview

Ending the interview on a respectful note will help reduce the teen's anxiety about what they said and didn't say. Thank them for working hard and answering so many questions. Consider an open invitation to tell you more, when you're wrapping up you could say "I've asked a lot of questions today, but I might have missed something important. Is there anything you want to tell me?" Also, consider offering the opportunity to ask any questions they might have, such as "Since I've asked you so many questions, it seems only fair that you could ask me something." By asking this question, you may learn something that has been on the teen's mind through the whole interview, for instance, "When will this go to court?"

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You can learn more on this topic at a workshop, Approaches to Hearing from Adolescents on Saturday, November 9 at the Regional Training Conference in Kansas City. Kirsten Lysne, PhD and Kevin McGrath, JD of Minneapolis, Minnesota will present with Mindy Mitnick. More information.

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Ask the Experts
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Ten Tips for Developing and Drafting Effective Parenting Plans in Mediation

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A mediation process that is thoughtful, respectful, and paced to fit the communication style and needs of the parents will increase the chances of crafting a clear and comprehensive parenting plan. Such a process offers a supportive and cooperative context, promotes direct communication between the parents, empowers the parents to make their own decisions, remains sensitive to their unique couple dynamics, and maximizes a tone of flexibility for future modifications to their agreement. While this context is very important, even more is needed to develop an effective parenting plan. The following ten tips will ensure a well-drafted product.

1. Set the stage for the mediation process

Explain to the parents the purpose, contractual and functional nature of the parenting plan, and that a judge will sign the agreement and that it will become a court order, enforceable by the court. Help them understand that they can control the outcome of the mediation, while you will control the process. Inform them that a parenting plan is an organic document that can (and should) be modified as the children get older and as their respective life circumstances change over time. Let them know the logistics of the ways in which they can modify their agreement in the future. Request that they follow basic rules of good communication; e.g. use "I" statements and active listening, no interrupting, no cursing at each other, etc.

2. Gather essential information

Reduce gathered information to behavioral and observable form, as much as possible. Base any recommendations on specific information included, rather than on vague "impressions." The information gathered should separate that which is essential from that which is non-essential. For example, essential information might include questions about the parents' work schedules, the child's adaptability, and the pre-divorce parental pattern of time-sharing with the child. Non-essential information is usually offered spontaneously by each parent in hopes of positioning himself or herself with the mediator in a more favorable light. Non-essential information includes such things as how many affairs he/she had, how he chose bowling over spending time with the children, or how she didn't feed the children healthy foods. Distinguishing essential from non-essential information can be accomplished by asking the right questions (with relevant focus on developing a parenting plan for the future) and deflecting wrong answers. Essential information requires getting both parents' views on everything.

3. Incorporate the developmental needs of the children

This includes the ages of each child and the developmental, psychological, physical, social, and emotional functioning of each child, before the parental separation and currently. It is also important to ask about any special needs of each child (i.e. medical, developmental disorders, psychological/ behavioral disorders); these are often overlooked by mediators (and judges) when developing parenting plans (Saposnek, et al. 2008). Asking also about unique temperament differences and challenges of each child (Saposnek, 1998; 2006) can help guide a discussion that leads to creating a maximum "goodness of fit" with each parent. For example, it may lead to more time with a parent who has greater tolerance for standout temperament challenges, such as a child with a very high activity level. Or, it may lead to less school-day time in a household with lots of people and noise, for a child with a very sensitive temperament who would be overwhelmed trying to do daily homework in such a setting. Interviewing the child, who may well know what is in his or her best interests, can assist these inquiries. While only a minority of mediators ever interview children (Saposnek, 2004), it is very helpful in gathering accurate information. In fact, judges have been interviewing children quite successfully (Birnbaum and Bala, 2010).

4. Assess information for feasibility and enforceability

The clauses in parenting plans need to be feasible, that is, realistic in a way that parents can actually carry out what they intend to carry out, and enforceable as a court order. For example, including a clause that states

something like, “In five years, Little Richard will live with Father full-time” or, “Mother agrees to never drink alcohol again,” are non-feasible clauses. For one, the best interests of Little Richard will realistically need to be reassessed in five years and, at that time, living with Father full-time may not be in his best interests. Such a clause is not feasible since the statute can override the parents’ best intentions. And, alcoholics cannot promise to never drink alcohol again; perhaps they can agree to not drink today! Again, such a clause is not feasible and does not belong in a parenting plan. A mediator can include a clause that states the parents’ intent, but the parents should be very clearly informed that some clauses cannot and will not be enforceable by the court. For example, a court cannot enforce clauses like, “No bad-mouthing of each other in front of the children.” However, the parents should be informed of the consequences to their children in doing so.

Feasible clauses that can be documented and enforced are ones that describe things such as factual pick-up and drop-off times, each parent’s rights to contact the child’s school and to obtain educational, medical, and psychological records of the child, etc.

5. Create a comprehensive structure of the parenting plan

Minimally, the essential elements of a comprehensive parenting plan should include the following sections: designation of legal custody, a regular school-year schedule, a summer schedule, a holiday and vacation schedule, a series of special, specific clauses and conditions. These special clauses can include statements that describe the agreed-upon rules of communication and conduct between the parents (e.g. “The parents agree to use text messaging for regular scheduling matters and phone calls for emergency situations, such as…”). This section can also contain agreements about offering the first option for childcare to the other parent, who the parents agree can and cannot care for the child if neither parent is available, etc. A procedural statement should be included for how future modifycation of the plan will be made (“Both parents agree to return to mediation before taking any future separate legal action”). Within each of these sections, varying degrees of detail and elaboration can be added as needed for the particular case dynamics. Remember that mediation agreements frequently breakdown because of the inclusion of inappropriate, insensitive, imbalanced or unfeasible clauses, the omission of appropriate and necessary clauses, and the absence of an agreed-upon format for making future modifications of the plan. A comprehensive parenting plan can reduce the chances of an agreement breaking down for these reasons.

6. Use child-centered wording

While many parenting plans still are written using traditional legal language such as, “Primary physical custody to Mother and reasonable visitation to Father,” it is time to begin using language that specifically focuses on the child. This requires the mediator to make the conceptual shift from parent-focused wording, such as: “Mother shall have primary physical custody of Ricky, and Father shall have visitation rights on alternate weekends, one weekday evening, and a month in the summer,” or, “Mother will have custody during Thanksgiving, and Father will have custody during Christmas,” to child-focused wording, such as: “Ricky will share time with his parents according to the following schedule: He will be with his Father (or, “Father will be responsible for him...”) from Friday at 5:00 p.m. until he returns to school on Monday, weekly. He will be with his Mother from Monday after school until Friday at 5:00 p.m., weekly” or, “Ricky will share time with his parents during holidays according to the following schedule: On Thanksgiving, he will be with Father from... and with Mother from....” This requires the mediator (and the parents) to shift from thinking of parents as “owning their children” to thinking of children as “sharing their parents.”

7. Use clear wording

Many mediation agreements break down because of the use of vague wording in the clauses, such as “Primary custody to Mother, and alternate weekends to Father.” Such wording does not help the parents to know when exactly the child will be with each of them. For example, Dad may interpret this to mean that the alternate weekends begin on Thursday night and end Monday morning, while Mom may interpret it to mean “Saturday at noon until Sunday at 5:00 p.m.” Such vagueness of wording can cause more conflict between the parents than they had before coming to the mediator!

In contrast, a clearly worded clause might read, “The children will be with Father on alternate weekends beginning the weekend of October 30, 2013. On the weekends in which they are with him, Father will pick up the children from Mother’s house on Friday between 4:00 p.m. and 4:15 p.m., and Mother will pick them up from Father’s house on Sunday between 8:00 p.m. and 8:15 p.m. During transfers, both parents agree to remain in their cars while waiting for the children.” Such verbal clarity will reduce conflict over the rules of engagement and is likely to be much more enforceable, if the need for enforcement arises.

8. Match the degree of detail needed with the degree of inter-parental conflict

A good rule of thumb regarding the degree of detail is to utilize Connie Ahron's (2004) original typology of post-divorce spousal relationships: Perfect Pals, Cooperative Colleagues, Angry Associates, and Fiery Foes. This typology provides a simplified and meaningful grid for determining the degree of detail needed for a particular set of parents. In general, the lower the level of conflict, the fewer details are needed, and the higher the level of conflict, the more details needed. Some examples follow:

Perfect Pals need: "Ricky will share equitable time between his parents each week, with details to be arranged between his parents."

"Ricky will share all holidays with both parents, with details to be arranged between his parents."

Cooperative Colleagues need: "Katie will also share time with Father, weekly, in mid-week, in the following alternating pattern: Following a weekend in which he does not see Katie, she will be with him from Tuesday at 9:00 a.m. until Wednesday at 1:00 p.m. Following a weekend in which he does see Katie, she will be with him on Wednesday from 9:00 a.m. until 7:00 p.m."

"During the Christmas holiday period, in even-numbered years, Katie will be with Mother from December 20 at 5:00 p.m. until December 24 at 5:00 p.m., and then with Father from December 24 at 5:00 p.m. until December 28 at 5:00 p.m. In odd-numbered years, this pattern will reverse between the parents."

Angry Associates need: "Each parent agrees to have a separate set of clothes, diapers, carrying bags, car seats, and other care-giving supplies for beginning each 'on-duty' time with Angela, in order to eliminate disputes over misplaced, lost or insufficient clothing and supplies available to her. Moreover, the parents agree to maintain a 'transfer outfit' that Angela can wear only during transfers between parents, which effectively eliminates complaints about 'lost clothing.' Upon receiving Angela from the other parent, each parent will carefully place the 'transfer outfit' by the door, and upon returning to the other parent, Angela will once again be dressed in it."

Fiery Foes need: "All transfers of Russell will take place at the Main Street Police Station, with the parent who drops off Russell leaving the premises 20 minutes before the picking-up parent arrives. Father will arrange for the police secretary to retain Russell for those 20 minutes, so that the parents never see each other during transfers of Russell."

Sometimes, too many details can be as bad as too few details, as it can set expectations for inflexibility and non-cooperation between the parents. The mediator needs to make a judgment call regarding this on a case-by-case basis.

9. Balance parental concessions

Because of the frequent heightened sensitivity of parents in mediation, the mediator needs always to be monitoring the agreements to make sure that the concessions are balanced between the parents. Too many concessions by one party are likely to result in a flare up of anger and resistance. There is an art to balancing the concessions of the parties. It requires vigilant awareness of the reactions of each party while the other asserts a need.

An example of an imbalanced, one-sided concession likely to get a flare up from Dad is: "Father agrees to refrain from using cocaine and alcohol while driving the children, or while in the presence of the children." But, re-written as a balance concession (assuming that Mom can tolerate it), it would read: "Both parents agree to protect their children by not exposing them to any use of illicit drugs or alcohol while the children are in the care of either parent, and they agree not to drive the children while under the influence of alcohol or any illicit drug."

10. Consider partial and/or short-term agreements

Rather than accepting an impasse in mediation as a failure of the process, it is often the case that a couple will accept a partial agreement rather than no agreement. The final wording of a partial agreement (preceded by all the clauses that they did agree to) could read as follows: "Because the parents are unable to reach agreement on the issue(s) of… they agree to request that the court make the decision(s) for them on this/these last issue(s)."

Or, a partial agreement with options could read: "The following possible plans for sharing the children were developed by the parents (Plan A; Plan B). Because the parents were unable to decide between these options, they are requesting the court decide on one of these options for them."

A short-term agreement of three or six months is often an impasse-breaker, allowing each party face-saving and giving time for the emotional process of divorce to

do its magic and soften the parties so that they are more ready to reach agreement when they next meet in mediation.

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Ten Tips for Professionals on Domestic Violence and Cultural Contexts in Asian Communities

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Domestic violence is a systematic pattern of abusive behaviors that include physical battering, coercive control, economic abuse, emotional abuse and/or sexual violence. It is intended to gain or maintain power and control over a romantic or intimate partner to intimidate, frighten, terrorize, humiliate, blame or injure. Domestic violence is more than a series of incidents. It is about living in a climate of fear and disempowering restrictions that threaten and affect one's selfhood, psychological well-being, health, economic security, and the emotional labor of parenting. The presence of domestic violence tells us about the presence of inequality in a relationship, the extent of the abuse tells us about the extent of the inequality. Addressing domestic violence in an ethnic community, in this case, Asians, typically raises questions about the role of culture and how a deeper understanding of cultural issues can guide and improve practice.

1. Culture is more than ethnicity; culture is context

Culture defines the spaces within which power is expressed, gender, and other relations are negotiated, and traditions are re-designed. There are three intersecting cultures that affect everyone because we all have cultural identities: a culture of violence that makes domestic abuse, sexism, and the devaluation of women normative; the culture of ethnic communities enforcing gender roles; and the culture of systems that domestic violence victims/survivors and their advocates have to contend with. Culture is responsible for how domestic violence is viewed: it is used as a convenient excuse for abuse by communities, or as encouragement to racial stereotyping by systems. Domestic violence must be understood within these intersecting cultural contexts for professionals to design meaningful interventions that acknowledge how survivors negotiate the barriers and gateways cultures afford them. Culture is also the site of being nurtured by community, a vital link that risks getting broken if services for survivors are only predicated on leaving. The importance of connection to community guides the many promising practices designed to serve Asian immigrant and refugee survivors.

2. Domestic violence is gendered; it is not gender-neutral

Women are disproportionately affected by gender-based violence (GBV). The CDC reports the following lifetime prevalence rates: 1 in 5 women and 1 in 71 men have been raped; 1 in 4 women and 1 in 7 men have experienced severe physical violence by an intimate; and 1 in 6 women and 1 in 19 men have been stalked.[1] A compilation of community-based studies estimates domestic violence prevalence rates at 21-55% for Asian women.[2] In a 6-year period, 160 Asian intimate homicide cases resulted in 226 fatalities, 83% of perpetrators were men.[3] In many Asian communities, women who use physical violence and coercive control usually target other women, i.e., their daughters or sisters-in-law. Asian families that subscribe to very traditional ideas of women's role and place in society compound the gender inequality that domestic violence is rooted in. Professional neutrality is imperative: it doesn't however mean overlooking the disproportionality of women's victimization.

3. Assess if physical violence includes abuse by in-laws

The dynamic of multiple perpetrators against a single victim is present in some Asian families (similar to elder abuse in all communities). So, in addition to her husband, a woman's mother-, father-, sister- and/or brother-in-law may abuse her—employing a range of tactics. Professionals should assess the presence and

[1] Centers for Disease Control. National Intimate Partner and Sexual Violence Survey (NISVS). Atlanta: 2010.
[2] Yoshihama, M. and Dabby, C. Facts & Stats Report: Domestic Violence in API Homes. San Francisco: Asian & Pacific Islander Institute on Domestic Violence, 2013.
[3] Dabby, C., Patel, H., Poore, G., Shattered Lives: Domestic Violence, Homicides & Asian Families. San Francisco: Asian & Pacific Islander Institute on Domestic Violence, 2009.

effects of multiple batterers abusing a single victim in an extended family home.

(a) Do not assume there is no domestic violence because the intimate partner is not abusive. Battered women may be viewed as denying, minimizing or not co-operating because a professional's questions assume the intimate partner is the batterer.
(b) Explicitly gather additional information about who other abusers are. Systems may respond inadequately, given a lack of understanding or training about multiple batterers. Practitioners, therefore, should rely on getting this information directly as it may not appear in regular documents such as police or medical reports.
(c) Do not assume that accompanying female or male relatives are part of a support system. Greater family collusion accompanies multiple abusers. Male or female women relatives from the extended family or the family of origin are not necessarily a battered woman's allies or friends. Even if they are not actively violent, they may collude with the other abusers.

4. Identify if emotional abuse includes 'push' factors that coerce women to exit the relationship

Asian women may more frequently experience 'push' factors out of a relationship than 'pull' factors that draw her back into the relationship—signaled, for example, by an abuser's apology/contrition. Push factors (e.g., 'get out; I never wanted you anyway') constrict autonomy and decision-making. Women experiencing push factors early on in the relationship will not be in a position to make decisions, and what may look like an inexplicable decision, e.g., to leave without her children, could in fact be a function of push factors exerted by a single batterer and reinforced by multiple batterers. Professionals can then understand the context for a survivor's poor decision-making skills, lack of agency, and/or anger at being pushed out of her home.

5. Evaluate how maternal authority and child safety are compromised by multiple abusers

Custody evaluators may view an extended family home as a better environment for children post-separation, a home with several family members who can help care for the child, rather than a home with a single parent. However, multiple abusers increase children's exposure to domestic violence. For children exposed to domestic violence perpetrated by their father and by other family members in the extended family home, their access to maternal nurturing can be blocked by the multiple family members while they are living in the house together. Mothering in an abusive extended family home can be severely undermined by multiple perpetrators and maternal decision-making inhibited by push factors. Custody evaluators should identify these factors pre-separation to assess for them in post-separation parenting arrangements; and scrutinize paternal and familial allegations against the mother of child abuse, neglect or abandonment in light of multiple abuser dynamics. In addition, when multiple individuals give the same story of maternal culpability and paternal scrupulousness, the credibility of mothers, and even their children, is jeopardized or dismissed. In Asian families with acculturated, English-speaking fathers and recently immigrated non-English-speaking mothers, a further credibility gap develops to be exploited by abusers.

6. Consider a range of sexual violence perpetration

In a study that interviewed 143 domestic violence victims, 56% of Filipinas and 64% of Indians reported sexual violence by an intimate.[4] Asian women's experiences of sexual coercion and violence can include being forced to watch and mimic pornography; bodily humiliation; forced (contra arranged) early marriage; being forced to marry one's rapist; and/or sexual harassment by male in-laws. Asian women's reluctance to discuss sexual violence may be stereotyped as prudery, but it is influenced by the tight nexus of visiting shame on the family through public disclosure; by significant histories of sexual abuse (sexual violence starts early in all cultures[5]); and victim-blaming attitudes from communities and systems. Given these cultural contexts, professionals cannot limit their inquiry to intimate/marital rape, and need to build a repertoire of sensitive questions to gather a sexual violence history.

7. Be alert to abuses that exploit victims' immigration status and refer them to immigration lawyers/services

Asian immigrant women face particular vulnerabilities when their immigration status is insecure. Most often, they fall out of status because abusers make false declarations to immigration authorities; refuse or delay filing paperwork that converts temporary status (e.g., a 3-month fiancée visa) to permanent residency; hide

[4] Yoshihama, M., Bybee, D., Dabby, C., Blazevski, J. Lifecourse Experiences of Intimate Partner Violence and Help-Seeking among Filipino, Indian and Pakistani Women: Implications for Justice System Responses. Washing-ton, DC: National Institute of Justice, 2011.

[5] In the United States, almost half of female victims experienced their first rape before age 18, and a quarter of male victims were age 10 or younger.

important documents like birth certificates or passports, so she cannot prepare her own application. Abusers may threaten deportation and loss of access to children if she reports domestic violence; abandon her a few months after marriage; or severely isolate her from family and friends. Domestic violence victims might behave compliantly in the mistaken belief that their immigration problems will be resolved, and at least they will not be forced out of the country and permanently lose access to their children. Practitioners should collaborate with or refer immigrant battered women to programs that help them obtain legal relief through U-Visas.

8. Do not accept culture as an explanation for domestic violence, or as a barrier to solutions

When someone justifies domestic violence by claiming "this is how women are treated in my culture," what's being described is the culture of patriarchy, the culture of gender oppression, the culture of sexism. Cultures of patriarchy differ from place to place and in how rigidly they are maintained over time—the culture of patriarchy on an army base in Kentucky is different the culture of patriarchy in rural Chile, or in metropolitan London, etc. Cultural explanations of domestic violence can help professionals understand how tightly prescribed and rigid gender relations are within the community; how their interventions will challenge conventional practices; and what battered women are up against (e.g., tradition requires silence) and what risks they may encounter (e.g., from disclosure).

Because we are talking about domestic violence, a gender lens is at times equally, or more, illuminating than a cultural one. For example, a rural shelter frames an Indian woman's reluctance to use common bathrooms as a function of her cultural attitudes to nudity and contrasts them to American women's attitudes to nudity. The more appropriate question is: what would any abused woman in this situation want—privacy for sure; and not how an Indian woman's attitude to nudity impinges on her ability to shower in front of others. Practitioners should ascertain if the lens of gender answers a question or suggests a solution more effectively than the lens of culture.

9. Use an understanding of cultural differences to prompt better interventions, rather than confirm or sensationalize stereotypes

Clearly, whilst domestic violence is a universal phenomenon, the cultural expressions of it differ, and some types of violence can be more horrific than others based on what people are exposed to in their own culture. For example, burning a woman to death or shooting her dead—the former may seem more disturbing than the latter and our cultural stereotypes step in to confirm this view, but in fact both acts are equally awful. If practitioners don't adequately guard against cultural biases, they might risk misunderstanding their client's narrative. So, in the above example: asking if a batterer has threatened to use a gun does not rule out homicide risk by other means. While it is not possible to understand/learn all cultural contexts, it is possible, as professionals, to be trained and guided by best practice standards that mitigate cultural bias.

10. Considerations in serving clients with Limited English Proficiency (LEP) Interpretation:[6]

Arrange for professional in-person or telephonic interpreters for parties with Limited English Proficiency for all meetings. Allow extra time to familiarize yourself and all parties about how to work with an interpreter; as well as for the sessions. The same applies to working with sign language interpreters for a deaf client. Do not have adult or child family members, friends, or other bi-lingual individuals interpret for a client—and especially not the alleged abuser. Such practices can vitiate practitioner-client confidentiality. Fluent bilingual professionals could, of course, practice in a foreign language (and produce a report in English).

Test Instruments: Standard psychological tests for individuals with limited English proficiency are contraindicated. They would require every item to be sight translated and every response interpreted—introduceing unknowable degrees of error and jeopardizing the integrity of assessment methods and test result validity.

Bias: Immigrant or refugee families who lack proficiency in English should not be considered uneducated or disadvantaged at parenting; and greater credibility should not be attached to more acculturated fathers.

[6] To learn more on interpretation ('translation' refers to rendering written text from one language into another), go to http://www.apiidv.org/files/Interpretation.Resource.Guide-APIIDV-7.2010.pdf.

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Ten Serious Errors made by Custody Evaluators

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David Martindale served as the reporter on the AFCC Task Force on Model Standards of Practice for Child Custody Evaluation. The AFCC Model Standards of Practice for Child Custody Evaluation were adopted by a unanimous vote of the AFCC Board of Directors in May 2006.

Regular readers of the AFCC eNEWS are aware that the title of this column ordinarily begins with the words "Top Ten." Neither Jeff nor I, nor our co-presenter, Tim Tippins, really knows which of the errors made by evaluators might legitimately be classified as the top ten, nor do we know whether, in this context, "top" relates to frequency or to severity. We therefore sought, and obtained, a dispensation, allowing us to tweak the title.

1, 2. Insufficient professional preparation…

…manifests itself in many ways, two of which are failure by evaluators to develop forensic interviewing skills and failure by evaluators to familiarize themselves with applicable statutes and precedents.

Interviewing. Treatment providers learn that effective listening often requires resisting the impulse to interrupt. In a treatment context, permitting patients to discuss what they believe to be important facilitates the development of the therapeutic alliance. Forensic practitioners conducting child custody evaluations must, in their interviews, gather information that will shed light on the disputed issues enumerated in a court order and must gather information that bears upon the parenting strengths and deficiencies of the litigating parties. They must pose follow-up questions and ask how certain assertions might be verified.

Statutes and Precedents. In the United States, forty states have statutes in which the factors to be considered in examining the best interests standard are identified. In six states, legal precedents serve as a guide to the factors that should be the focus of attention. In four states, the factors to be considered are determined by the evaluator.

In a New York case, a judge pointedly criticized the evaluator whom she had appointed for failing to consider "the current state of New York law" in formulating her recommendations.

3. Provision by evaluators of insufficient information to those being evaluated

Model Standard 4.1 of the *AFCC Model Standards of Practice for Child Custody Evaluation* addresses "written information to litigants," and urges evaluators to provide detailed written information concerning their policies, procedures, and fees. Many evaluators provide information orally, leaving litigants with no written document to which they can refer. Often, litigants are not provided with complete information concerning those to whom the information gathered will be made available.

4. Failure to create, maintain and furnish appropriate records

Model Standard 3.2(b) of the *AFCC Model Standards of Practice for Child Custody Evaluation* (2007) states that records "shall be created in reasonable detail, shall be legible, shall be stored in a manner that makes expeditious production possible, and shall be made available in a timely manner to those with the legal authority to inspect them or possess copies of them." Some evaluators fail to create adequate records, some cannot read their records, some cannot locate their records, and some destroy their records.

5, 6. Deficient knowledge of the basics of assessment…

... manifests itself in the selection of inappropriate methods or instruments and reliance on computer-generated narrative reports.

Selection of methods and instruments. Model Standard 5.6 addresses the use of reliable and valid methods and states, in part, that "evaluators have a special responsibility to base their selection of assessment instruments and their choice of data gathering techniques on the reliability and validity of those instruments and techniques."

An example: An evaluator who conceptualizes children's drawings as a useful assessment technique, asks children to produce drawings, but does not discuss the drawings with the children. She explains that she has not inquired concerning a conspicuous circle appearing in a child's drawing because "you don't ask children those kinds of questions. It doesn't matter what the child says. Certain signs mean certain things, despite what the child says it means." The evaluator relies upon her interpretations of children's drawings to formulate opinions concerning the children's emotional needs.

Reliance on computer-generated reports. Narrative reports that provide computer-generated statements about test-takers, based upon their test responses, are referred to by those who have developed them as computer-based test interpretations (CBTIs). The algorithms (the computer's decision rules) that trigger the printing of various descriptive statements are well protected proprietary information. Evaluators who rely upon CBTIs are usually unable to state what responses, scores, or patterns of scores prompt the production of the various descriptive statements that appear on the CBTIs.

Most, if not all, CBTIs produced by reputable organizations include cautionary messages reminding users that the computer-generated statements should be conceptualized as hypotheses to be explored through the use of other sources of information. Evaluators who rely upon CBTIs are revealing their lack of familiarity with the limitations of actuarial data.

7. Failure to secure verification of information relied upon

Mental health professionals performing evaluations in litigated disputes concerning parenting plans can reasonably be expected to be familiar with the vast body of published literature that documents quite well the inability of mental health professionals to function as human lie detectors. Though our inability to discern deception has been established, far too many evaluators display baseless confidence in their ability to distinguish between the forthright and the deceitful.

Standards 11.1 and 11.2 of the *AFCC Model Standards* address the importance of corroborating information that one intends to rely upon, and using collateral sources of information as one means by which to accomplish this. In Standard 11.1(a), reference is made to the importance of securing information from those whose input is likely to be salient. Far too often, evaluators fail to distinguish between endorsements (often communicated by individuals who are allied with one parent or the other) and information being provided by disinterested individuals.

8. Failure to maintain role boundaries

Treatment providers treat; evaluators evaluate. Mental health professionals who accept court assignments to evaluate families in which custody of or access to children is being litigated are accepting tasks that are investigative in nature. Evaluators must resist the temptation to try and rehabilitate damaged relationships.

In the course of an evaluation, a father reported to the evaluator that during his parenting time with his children, they were "nonresponsive [and] not showing up in good faith and being respectful." In the course of a deposition, the evaluator acknowledged having engaged in an "effort in a therapeutic-type basis to try to get these kids [to be] courteous, respectful and appreciative [of their time with their father], to behave and be lovely children [while] they are with their father."

9. Failure to focus on the best interests of the child

It is not uncommon to encounter, in the reports of evaluators, inordinate emphasis on marital issues that have minimal, if any, bearing on the parenting strengths and deficiencies of the litigating parties.

10. Expression of personal opinions in the guise of expert opinions

Not all opinions expressed by experts are expert opinions; some are nothing more than personal opinions being expressed by individuals with credentials. The defining characteristics of expert opinions relate to the procedures that were employed in formulating the opinions and the body of knowledge that forms the foundation upon which those procedures were developed.

An evaluator directed to provide opinions relating to issues of custody and access, gratuitously offers this: "The financial arrangement to which Mr. and Mrs. Smith have agreed requires reexamination. In my view it is unfair to Mrs. Smith." The evaluator has exceeded to scope of the court's order, and has opined on a matter that is noticeably beyond the sphere of her expertise. It is a personal opinion, not an expert opinion.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Top Ten Tips When a Child is Resisting or Rejecting Contact with a Parent

Robin Deutsch, PhD, Boston, Massachusetts, and Matthew Sullivan, PhD, Palo Alto, California

1. It is uncommon that a case presented as "alienation" or parental alienation syndrome" involves just one dynamic that contributes to the child's response to the targeted parent. A dichotomous conceptualization that characterizes the situation as either alienation or estrangement is rarely accurate or helpful to develop effective interventions. The most common case might be called a "hybrid case" and must be understood from a family system's perspective.

2. Always evaluate systemically. Consider child development, history of the parent-child relationships, parental abuse, parenting problems, the effects of highly conflictual co-parenting, and other contextual factors (ongoing litigation, financial issues, the impact of extended family, etc.).

2a. Reunification with the non-custodial parent is not the primary goal of intervention, but a by-product of individual and relationship work with family members.

3. Clear and specific court orders for parental access and intervention are necessary but not sufficient for effecttive intervention.

3a. Mandate information exchanges and joint decision-making between parents who share legal custody, regardless of the physical custody timeshare (even if no contact is occurring with a rejected parent).

4. Professionals involved cannot mirror the conflicted process of the family system: the likelihood that intervening professionals will become aligned in the polarized dynamics of the family system can only be avoided by collaborative professional work supported by structures that allow information sharing and the coordination of the team's treatment. Ongoing adversarial legal processes tend to be detrimental to successful outcomes.

5. Any mental health professional in the community won't do. Professionals who work in these cases need to have specialized experience and skill. See the AFCC Guidelines for Court Involved Therapy[1], professional practice guidelines for mental health professionals working with these cases.

6. Custody change requires risk analysis and should not be a punitive measure or based only on the evidence of a parent engaging in alienation.

7. An ounce of early intervention when there is evidence of a child resisting visitation (or even before the child begins resisting) is worth a pound of legal and mental health intervention when these problems become entrenched.

8. Parenting coordination is almost always a necessary role for case management in these cases, unless the judicial officer is willing and able to intensively manage the case.

9. Some coercive court authority is often needed to support compliance with treatment and access orders. The favored parent and child are rarely motivated to comply with orders that support reunification, and a coercive component to interventions (i.e., the risk of court sanctions) is often necessary for progress to occur in these cases.

10. In the most entrenched cases, after reunification interventions have failed, sometimes the least detrimental alternative is a well-prepared intervention that provides the rejected parent an opportunity to give the child a "parting message." This message explains that the parent will let go of continued efforts to reconnect for the moment, but allows them the opportunity to express their love and commitment to the child with an open door in the future.

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Ten Tips for Lawyers When the Other Party is Self-Represented

Annette T. Burns, JD, Phoenix, Arizona

Self-represented parties make up the majority of family court litigants in most jurisdictions. A family case often involves no attorneys at all, and another segment of cases have a lawyer representing one side with no attorney on the other side. The non-represented person is often referred to as the "pro per", shorthand for in propria persona, meaning, literally, "in one's own person". ("Pro se" also means "representing one's self".) The self-represented person is as likely to be male as female; for purposes of this article and for ease, I will refer to my hypothetical self-representing person as "Mr. SR."

A Google search for "self-represented litigants family court" turns up countless websites created to help Mr. SR navigate various family court systems. Maricopa County (Phoenix) Arizona led the way with the creation of its Self-Service Center in the 1980's. Long before internet access was widely available, a room in the Maricopa County Courthouse provided people like Mr. SR with packets of forms and instructions for family court actions. Those forms allowed him to fill out initial filings, motions and responses on his own, and included instructions on how to file things at the courthouse. Jurisdictions across the country expanded resources for self-represented parties, and internet use later allowed the forms to be delivered via links and PDFs, and expanded the self-represented litigant's access to electronic filing. It's fortunate that court systems recognized long ago that self-represented persons in family court were not going away and that systems must be created to serve them.

Have lawyers' abilities to work with self-represented litigants kept pace? The American Bar Association's Model Rules of Professional Conduct, Rule 4.3 covers, only in the most general of terms, some ethical obligations for dealing with self-represented parties:

> *Rule 4.3 Dealing with Unrepresented Person*
> In dealing on behalf of a client with a person who is not represented by counsel, a lawyer shall not state or imply that the lawyer is disinterested. When the lawyer knows or reasonably should know that the unrepresented person misunderstands the lawyer's role in the matter, the lawyer shall make reasonable efforts to correct the misunderstanding. The lawyer shall not give legal advice to an unrepresented person, other than the advice to secure counsel, if the lawyer knows or reasonably should know that the interests of such a person are or have a reasonable possibility of being in conflict with the interests of the client.

Presumably most ethical attorneys already knew, without the aid of the ABA, that one should not give legal advice to the opposing party, and one should advise a self-represented party that seeking independent legal advice is a smart thing to do. Practical advice can expand on the limited guidance we get from the ABA. The attorney who finds himself dealing with Mr. SR can take certain actions to make the experience more pleasant for everyone. The following suggestions were compiled after recent discussions with several attorneys in Phoenix and Yuma, Arizona.

1. Recognize that Mr. SR has very possibly gotten in over his head, and will react to your attempts to communicate or "help" accordingly. The attorney should try to recognize that Mr. SR's anger, rage, failure to communicate or refusal to speak with the attorney likely comes from a position of fear. Remembering this will help the professional deal more effectively with the problem. The massive amount of online help for Mr. SR—blogs, websites, forums, listservs, self-help centers and links—might initially have misled him into thinking it's easy to self-represent. It's likely that Mr. SR was quickly overwhelmed by the time and effort that is really required. Always remember that the forms, rules and procedures we take for granted look like a foreign language to someone not skilled in family court.

2. Provide Mr. SR with articles and court documentation showing what great tools mediation and ADR provide. Anyone who is self-representing needs to hear, from as many sources as possible, how important settlement discussions are to a family case. If only opposing counsel is promoting mediation, Mr. SR may

naively think that means the attorney feels her case is weak. Someone who spends substantial time in family court systems knows that neither litigant is likely to be happy with the ultimate result of a family court trial, but Mr. SR doesn't know this.

3. Having promoted mediation, choose the best mediator you can find who is skilled in working with self-represented persons. If you, as the attorney, believe your case is strong and Mr. SR's positions are unreasonable, then he needs to hear this from a skilled, neutral third party. Ask Mr. SR to research and suggest several mediators, and do your best to try and agree to someone that he has suggested. Mr. SR must be permitted to do his own research to alleviate his fears, often justified, that the mediator and opposing attorney are friends. Even if you are acquainted with the mediator, the waiting room at mediation is not the place to chat and be friendly. Attention to professional protocols is never more important than when Mr. SR is involved.

4. Whenever possible, treat Mr. SR like you'd treat a client. He is not a sub-class of humanity just because he's either chosen not to hire an attorney, or can't afford to. Respectfulness to Mr. SR will pay off during the case and after. Mutual respect in the case is good for your client and your client's finances, and preserving any kind of decent relationship between the parties is crucial if they are parents together. Attorneys have reported to me that they get later referrals from former opposing parties because of the respect they showed to the party during the case. And if Mr. SR isn't making it easy to treat him with respect, try harder. It can be challenging and enjoyable to show a great deal of respect to someone who is trying his hardest to be rude and condescending; it builds character to show respect to those who make it a challenge.

5. Protect your own client by getting out a Request for Production and basic family case interrogatories early in the case. Point out to Mr. SR in a letter that your client is going to answer (and produce) the same information and that the disclosure requirements work both ways. Explain to him that your client is going to fulfill her duties of disclosure, and he is expected to fulfill his duties as well. Propose in writing to Mr. SR that you get together to personally exchange the documents and information on a specific date. If you end up having an uncooperative opposing party, by sending these requests out early, you leave yourself time to request that the Court later compel disclosure.

6. Send Mr. SR a respectful letter of introduction with a general explanation of how the entire process works. You can construct a basic outline about exchanging information, getting each other's questions answered, establishing what property and issues are to be dealt with, and establishing what time parameters are expected of each party. (Your client will appreciate this basic outline too.) If your jurisdiction has specific disclosure statutes or rules, or forms that must be filled out in every family case, enclose a copy of the rule(s) and forms. Mr. SR will either realize that he is expected by law to provide certain information (as opposed to you just being nosy), or he will ignore your requests, and you will have documentation to show the judge later that you tried to make things easier on him, but he declined to cooperate.

7. Do everything in writing so there is no issue later that you possibly gave Mr. SR legal advice or led him astray. If Mr. SR shows himself to be problematic, set written guidelines for communication with him, such as how many of his emails you will respond to in a week, and when and how you agree to exchange information. Don't be naïve; there are certainly self-represented parties who feel they can spend all of their spouse's money by insisting on unreasonable and frequent communications with the spouse's attorney. You, as the attorney, have the responsibility to be proactive and set boundaries to prevent that from happening.

8. Jettison the legalese whenever possible. If a disclosure statement or settlement letter needs to cite the law, include a copy of the statute with the letter. Try to use normal, layman's language whenever possible. Referring to a "continuance" means nothing to a non-attorney; it's more understandable to say "postpone this until sometime later." Asking Mr. SR to "provide disclosure in accordance with the rules" can be better stated as, "We need to exchange bank statements and other information so that you have the each other's information."

9. Your introductory letter can give Mr. SR the links to your state's self-help or online forms website. Mr. SR is likely to realize that you personally didn't set up those sites and therefore he might be wise to review them and figure out what to do.

10. Get the assistance of the judge through a management or settlement conference. Ask for straightforward instructions about the exchange of information as early as possible in the case. Family court judges are used to having self-represented litigants in their court and will appreciate that this self-represented case includes an attorney on the other side (you) who is conscientious and respectful. Use your next self-represented case as a chance to enhance Mr. SR's opinion of attorneys and the court system while also honing your skills in dealing with people in difficult situations.

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Ten Tips for Writing High Quality and Helpful Custody Evaluation Reports

Robert L. Kaufman, PhD, ABPP, Oakland, California, and Daniel B. Pickar, PhD, ABPP, Santa Rosa, California

The preparation of a child custody evaluation (CCE) report is the culmination of a lengthy, often intense, stressful, and intrusive process for parents and children. Unless there is a trial in which the evaluator testifies, the CCE report may be the only means by which the parents, judge, and attorneys have to understand the evaluator's thinking. Despite the importance of CCE reports, little has been written about how to craft a high quality report that responds to the needs of this multi-client system. It is estimated that between 80-90% of cases in which a CCE has been conducted settle either outside of court or without a trial. Thus, in the day-to-day world of family law, custody reports most frequently serve a settlement function. Our work focuses on integrating forensic and clinical approaches to guide report writing that supports families resolving disputes and moving forward in the interests of their children.

1. Be helpful to the court by offering *additive* or *incremental* input

Custody evaluators should not only understand the foundations of forensic evaluations and how they differ from purely clinical assessments, but also demonstrate that understanding in their reports. Apart from offering a recommended timeshare, be sure the report defines and responds to the psycho-legal issues of the specific case. Reports that are helpful to the court are those that synthesize current empirically based research in the field with the fact pattern and evidence of the case and well-informed clinical understanding of individuals and family dynamics.

2. Readability of the report

CCE reports should be written at a reading level that the average reader can understand. Jargon should be avoided and multiple subheadings should be utilized to improve organization and readability.

3. Presentation of psychological test results

Evaluators should not rely heavily on computer-generated test report interpretive statements, which, among other things, often emphasize pathology. Clinical judgment and skill are necessary when deciding what to include and not include from such computer-based reports. Evaluators who utilize psychological tests should be trained in independent interpretation of scores. Attempts should be made to frame interpretive statements of test findings in a useful and beneficial manner to maintain the humanity and integrity of the parent being described. In addition to highlighting problematic aspects of psychological functioning which could negatively impact parenting, reports should also describe the strengths in a parent's psychological make-up and functioning which positively impact parenting.

4. Denote parental strengths as well as weaknesses

Reports should not only attempt to specify areas of parental weakness needing improvement, but also clearly highlight parental strengths for both parents. When describing parental weaknesses, evaluators should use appropriate clinical judgment (i.e., forensic empathy) and carefully attend to the manner in which such weaknesses are described, seeking to present such concerns in a non-judgmental manner. Sensitive feedback should be written in such a way to enhance a parents' ability to receive the information in a non-defensive manner.

5. Avoiding bias in reports

Evaluators should carefully review their reports prior to final submission to self-screen for various kinds of bias (i.e., confirmatory, countertransference bias). Such biases may be evident when parents are presented in a polarized fashion (one parent is "all good" while the other is "all bad"). However, other forms of bias are more subtle. Evaluators should seek consultation, if necessary, to control for biases.

6. Maintain a "settlement" mindset
Report writing should be approached with a mindset and awareness that a CCE report most often serves as a "settlement tool" rather than a "litigation tool." Though the custody report is an advisory report to the court and must meet the standards of forensic evaluations, it is most helpful when it includes information and recommendations that can be pragmatically applied by the family.

7. Presentation of recommendations for parents
Recognize that most parents want to do what is best for their children, even if it means taking steps to improve their parenting skills. Provide report recommendations for enhancement of parenting or co-parenting skills in a manner that increases hope. This can be accomplished by generating specific strategies and pathways for improvement, and noting the advantages not only to the child, but also to the parent, of improving ineffective parenting and co-parenting approaches.

8. Incorporate the "voice of the child" into reports
CCE reports should present information regarding children's stated or inferred custody preferences. If child custody plan recommendations drastically differ from a child's stated preferences (especially for a teenager), clearly articulated reasoning should be contained in a report noting that a child's input and preferences were carefully considered, but the evaluator deemed their stated wishes were not in their best interests. Where appropriate, include children's actual words in a report. Clinical judgment is crucial, however, in making decisions regarding what to include and not include about a child's concerns about a parent. Evaluators must be attentive to how such child-generated information is described in the report, due to its potential to impact the child's future relationship with each parent.

9. Demonstrate careful, fair-minded weighing of the data
Evaluators should pay particular attention to how their analysis of the case is presented. It is important to discuss various hypotheses and parenting plans that were under consideration. Not only should evaluators discuss limitations of their assessments, but they should also reveal data that did not support their conclusions and the present reasoning for rejecting some hypotheses, but adopting others. Among other things, this demonstrates fair-mindedness.

10. Presentation of recommendations regarding post-evaluation services by divorce professionals
CCE reports need to be useful not only to the courts and to parents, but also to professionals (i.e., child's or parent's therapist, co-parenting therapist, parent coordinators, guardians ad litem) providing services to the family as part of a comprehensive parenting plan. Thus, reports should clearly articulate the purpose of each recommended intervention, while enumerating the stepwise goals for the manner in which these various services should be provided to the family.

The authors will present a full-day, pre-symposium institute at the AFCC 11th Symposium on Child Custody Evaluations in San Antonio, November 6, 2014, entitled, Writing the Child Custody Evaluation Report: Integrating Forensic and Clinical Perspectives*. This column is also based upon a previously published article by the authors entitled, "The Child Custody Evaluation Report: Towards an Integrated Model of Practice, in the* Journal of Child Custody*, 10:1, 17-53 (2013).*

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ASSOCIATION OF FAMILY AND CONCILIATION COURTS
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Ten Reasons to Reconsider *NOT* Using the Rorschach in Your Child Custody Evaluations

Robert E. Erard, PhD, Bloomfield, Michigan

The Rorschach Inkblot Test (1921) is one of the most widely used personality tests in child custody evaluations (Ackerman & Ackerman, 1997; Quinnell & Bow, 2001), but the importance of its contributions is frequently underestimated. It provides insights about how people view and make sense of the world, logically and coherently organize their thoughts and perceptions, cope with problems, regulate their impulses and emotions, understand people's motives and intentions, and create conditions for cooperation and conflict in relationships. But some custody evaluators have hesitated to use the Rorschach due to concerns about criticisms of the Rorschach Comprehensive System (Exner, 2003) in some of the scientific and professional literature (e.g., Erikson, Lilienfeld, & Vitacco, 2007; but see Erard, 2005; 2007) or worries about how to explain their findings in court.

The Rorschach Performance Assessment System (R-PAS®) (Meyer, Viglione, Mihura, Erard, & Erdberg, 2011), a new system for administering, scoring and interpreting the Rorschach, was designed to address these concerns. It uses the best validated variables (Mihura, Meyer, Dumitrascu, & Bombel, 2013) with documented clinical utility (Meyer, Hsiao, Viglione, Mihura, & Abraham, 2013) and organizes them according to their degree of empirical support and clinical meaningfulness. It presents results using percentiles and standard scores in an easy-to-read visual display, so that they can be understood by the intelligent layperson, and bases interpretations on cohesive, internationally-collected, non-pathologizing norms. It employs contemporary psychometric methods to generate more reliable and valid composite variables and to permit interpretation of scores in cases where people provide limited or highly complex protocols. Accordingly, it puts the Rorschach on a strong psychometric foundation and also satisfies stringent admissibility standards in family court (Erard, 2012; Erard, Meyer, & Viglione, 2014; Erard & Viglione, in press).

Still, you might just wonder, "Why bother learning something new? What difference does it really make if I don't use the Rorschach in my custody evaluations?" Here are 10 points to consider:

1. Clinical interviews, parent questionnaires, rating scales, and "objective" personality tests are important components of child custody evaluations, but they are all variations on a single methodology—self-report testing, and all of them share its limitations.

If you rely primarily on self-report methods, you are depending too much on:

(a) The limits of introspection: Clinical and social psychology research documents the limitations of deliberate introspection, including confounds from self-deception, illusory mental health, attribution biases, cognitive heuristics, priming, and neurological or character problems associated with lack of insight.

(b) Limited retrospective recall: People's memories for past behavior and problems tend to correlate poorly with prior contemporaneous records and are subject to primacy and recency biases, fundamental attribution errors, and distortion by current moods and affect states.

(c) Self-serving self-presentation: How people present themselves is highly dependent on interpersonal context and what they wish to achieve with their presentations. It has been well documented that custody litigants typically put their best foot forward and minimize their faults and limitations in interviews and self-report testing.

(d) Monomethod co-variance: When people say essentially the same things about themselves in an interview, on a parent questionnaire, in a psychosocial history, and on commonly used personality inventories like the MMPI-2 and PAI, findings of high agreement "across methods" are often spurious. Because all these methods reflect how people verbally present themselves

and all are subject to similar distortions, agreement among them is often more a reflection of the reliability of similar measures of similar constructs than validity in identifying extra-test correlates. In other words, the accumulation of many self-report findings is often a source of redundancy rather than enlightenment (like reading variations of the same Associated Press newsfeed in multiple newspapers). One's choice of methods for gathering data has a huge influence on what inferences are possible to derive about someone's motives, traits, and behaviors.

2. Performance-based assessment with the Rorschach shows you personality in action
How does the person go about solving the task? How does she relate to the examiner? How does she deal with frustration, embarrassment, or challenging demands? What qualities of the inkblots does she focus on? How does she resolve contradictory ideas? What themes does she keep coming back to?

3. Using the Rorschach, you can compare what people actually show you to what they say about themselves
The Rorschach is a brief, portable, standardized, and normatively referenced behavioral experiment. The person is solving a complex perceptual and verbal problem in front of you, showing you how he copes in a novel situation rather telling you about himself.

A parent who claims to be a self-reliant, "take-charge" kind of person, but who scores at the 95th percentile on Oral-Dependent Language (a well-validated, Rorschach measure of implicit dependency) is showing you something he may not be aware of about himself.

A parent who insists that she tries to avoid conflict and searches for win-win solutions, but who is passive-aggressive about following test instructions (Pr and Pu) and produces a Rorschach protocol with validated scores that show representations lacking cooperative interactions (COP) and showing destructive or coercive relationships (MAP), defensive superiority (PER), aggressive preoccupations (AGC and AGM), and oppositional characteristics (SR), is probably not the team player she presents herself to be.

4. The Rorschach helps you to see how motives, traits, and patterns of coping emerge in particular contexts
For instance, you can observe and quantify variations in the quality of perceiving and thinking under different conditions, including the conventional but changing features of the inkblot stimuli across cards, the person's overt emotional behavior, the thematic content of his attributions, or his behavior towards the examiner.

5. Unlike self-report, during Rorschach testing behavior is more spontaneous, unscripted, and unfiltered
The person likely lacks any detailed schema for how to behave when performing the task and has little guidance for how to look good on the test.

Self-report findings are better at predicting deliberate performance in front of an audience, especially verbal performance. Rorschach findings are better at predicting how someone will behave automatically in unscripted situations over time and under conditions of stress or strong emotional demands (e.g., in family interactions behind closed doors; Finn, 1997).

6. Multi-method assessment including self-report testing and the Rorschach takes into account that both explicit and implicit dispositions shape behavior, particularly the sort of interpersonal behavior that most concerns us in custody cases.
If you went to a doctor complaining of back pain and the doctor only asked you when, where, and how much it hurts, but performed no direct examination or testing, or the doctor ignored what you had to say and only observed how you moved, how much you could lift, and how you looked on X-rays, you might start looking for a second opinion. Understanding your pain would require not only listening to you but also observing and measuring things you cannot so easily describe (adapted from Hopwood & Bornstein, 2014).

7. Multi-method assessment that includes self-report and Rorschach-assessed characteristics evaluates both internal, verbalized experience (guiding deliberate action) and unscripted, spontaneous behavior.
Contemporary personality theory is moving away from describing fixed, all-purpose traits and toward an understanding of how behavior unfolds depending on the interaction of one's internal attributes and situational demands in the environment. These are often expressed in "if-then" formulations (Mischel & Shoda 1995), such as:

—*If* she finds herself feeling stuck in sad or gloomy situations, *then* she quickly tries to turn them into something exciting and uplifting.
—*If* he engages in aggressive interactions, *then* he tends to misunderstand other people's motives.

—*If* she gets sidetracked by strong emotional demands, *then* she tends to shut down in an effort to recover quickly.

8. Multi-method assessment using both self-report testing and the Rorschach allows you to compare findings across contrasting approaches to gathering data, thus providing true incremental validity and offering a check against self-presentation biases.

Self-report and performance-based personality tests tend to show low correlations with each other, but roughly equivalent correlations with relevant extra-test behavior (Mihura et al., 2013), so that having the results of valid scorers from both provides incremental validity and increases interpretive accuracy and confidence.

Because it is difficult to guess what constitutes a good Rorschach response, people who present with illusory mental health on self-report testing often show more serious difficulties on the Rorschach (Ganellen, 2008; Hartmann & Hartmann, 2014).

9. The Rorschach Performance Assessment System® (R-PAS) uses international, cross-cultural, non-patient reference data and internationally applicable Form Quality tables that work well for people of diverse ethnic, linguistic, and national backgrounds.

R-PAS adult norms are modeled from 640 non-clinical volunteers living in 13 countries and show very high cross-national convergence.

R-PAS Form Quality tables (used to assess quality of reality testing and the likelihood of adaptive, conventional behavior) rest on a strong international, empirical foundation. This foundation incorporates over 50,000 accuracy ratings of individual Rorschach images from eleven countries, as well as information on the frequency with which these objects are spontaneously reported, derived from volunteers in six countries.

10. The Rorschach Performance Assessment System is a clinically rich, evidence-based, logically transparent, and user-friendly system that enriches evaluations and provides incremental validity in applied forensic practice.

Robert E. Erard, PhD will present a full-day, pre-symposium institute at the AFCC 11th Symposium on Child Custody Evaluations in San Antonio, November 6, 2014, The Unintended Consequences of Not Using the Rorschach in Child Custody Evaluations*.*

Dr. Erard is a past president of the Society for Personality Assessment and of the Michigan Inter-Professional Association on Marriage, Divorce, and the Family and is one of the developers of the Rorschach Performance Assessment System® (R-PAS).

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ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
September 2014

Ten Considerations for Using Gatekeeping to Assess and Describe Family Dynamics

Leslie Drozd, PhD, Newport Beach, California, Nancy Olesen, PhD, San Rafael, California, and Michael Saini, PhD, Toronto, Ontario, Canada

1. Although originally focused on maternal behaviors that either facilitate or restrict the involvement of fathers with the children, recent attention has shifted the theory of gatekeeping to be more gender neutral as a framework for assessing how parents' (both mothers and fathers) attitudes and actions affect the involvement and quality of the relationship between the other parent and child.

2. Gatekeeping should be assessed on a continuum that varies in degrees from facilitative to restrictive on the issue of supporting the other parent-child relationship (Austin, 2011; Austin, 2005a, 2005b; Pruett, Arthur, & Ebling, 2007).

3. Parental gatekeeping can be positive or negative. "Facilitative gatekeepers" actively work to support and enrich the child's relationship with the other parent. "Protective gatekeepers" restrict or manage the child's contact with the other parent in order to protect the child from known risks of harm by the restricted parent. In contrast, "restrictive gatekeepers" use a set of behaviors that results in their child resisting or refusing time with the other parent without realistic reasons (Saini, Johnston, Fidler, & Bala, 2012).

4. Gatekeeping is not synonymous with alienation. Only unjustified restrictive gatekeeping behavior is similar to alienating behavior. Gatekeeping does not look at whether the child is resisting or refusing contact with the "out" parent, but only at the parental behavior.

5. Gatekeeping is important but not the only factor to consider. Other considerations may include parental attunement, parent competency, parent-child attachment, parent-child conflict, and age and development of the child, to name a few.

6. The analysis of gatekeeping should focus on the impact of gatekeeping behaviors and attitudes on child's outcomes, including the child's overall safety and wellbeing and the quality of the child's relationships with both parents.

7. Adaptive gatekeeping behaviors include responses to the co-parenting that lead to positive outcomes of safety and wellbeing for the child. Adaptive gatekeeping serves the purpose of doing what is best for the child by either promoting the child's relationship with the other parent in safe situations or protecting the child if she or he needs to be protected because of risk of harm by the other parent.

8. Maladaptive gatekeeping behaviors include responses to the co-parenting that lead to poor outcomes for the child. Maladaptive gatekeeping occurs when a parent, out of his or her own needs—for example, to get revenge on the other parent, or to maintain an enmeshed relationship—restricts a child's relationship with the other parent and in so doing, harms the child's relationship with that parent and ultimately harms the child.

9. A parent's gatekeeping can also be maladaptive if the parent is non-protective, disengaged, or too lax, failing to protect the child from harm.

10. Rather than a set of hardline rules that govern behaviors, gatekeeping analysis requires working hypotheses to consider the various factors that may contribute to both adaptive and maladaptive gatekeeping responses.

The authors will present a full-day, pre-symposium institute at the AFCC 11th Symposium on Child Custody Evaluations in San Antonio, November 6, 2014, entitled, Using Gatekeeping as a Framework to Assess and Describe Family Dynamics within the Context of Parenting Plan Contexts*.*

Leslie Drozd, PhD, is an editor (with Kathryn Kuehnle, PhD) of Parenting Plan Evaluations: Applied Research for Family Court *(2012) and a forthcoming update of the research (with Michael Saini, PhD). She was the founding editor of the international* Journal of Child Custody: Research, Issues, and Practice *(2004-2013). She been a child custody evaluator for over 25 years, teaches professionals how to do custody evaluations, reviews other experts work, and serves as a consultant to attorneys. Her specific areas of expertise include intimate partner violence,*

alienation, gatekeeping, and substance abuse. She works clinically with families in the various stages of divorce including co-parenting therapy, reunification therapy, and parent coordination. She is a co-author (with Drs. Olesen and Saini) of a 2013 book, Parenting Plan and Child Custody Evaluations: Using Decision Trees to Increase Evaluator Competence and Avoid Preventable Errors*.*

Nancy W. Olesen, PhD, graduated in psychology from the University of Wisconsin, Madison and earned a PhD in clinical psychology from the University of North Carolina, Chapel Hill. She has conducted over 150 child custody and dependency evaluations for the courts in California and has provided expert testimony in child custody cases throughout California and other states in the US. Dr. Olesen has taught many courses in best practices in child custody evaluation for professionals in California, including the mandatory training required for court appointed evaluators. She is a co-author (with Drs. Drozd and Saini) of a 2013 book, Parenting Plan and Child Custody Evaluations: Using Decision Trees to Increase Evaluator Competence and Avoid Preventable Errors*.*

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ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
October 2014

Ten Tips for Preparing for and Trying Relocation Cases: The Legal Perspective

Honorable Mark A. Juhas, Judge of the Superior Court of California, Los Angeles County, California, and Michael J. Kretzmer, CFLS, Manhattan Beach, California

Relocation cases are frequently difficult and heart-wrenching. No bench officer looks forward to a relocation case. At the end of the trial, inevitably one party feels that he or she is losing their child or children. For each parent, the fear of that loss can be staggering and incapacitating. Too often relocation cases focus on the needs of the parents instead of focusing on the important needs and expressed desires of the child.

Determining how to best protect and promote the "best interests" of the child while mitigating the potential diminishment or loss of a relationship with a parent are among the most difficult tasks faced by bench officers and counsel in all of family law. These intensely competing interests make it all the more important for the parties, counsel and the court to keep in mind that the primary focus of a relocation case must be on the best interests of the child and that the interests of each parent are secondary.

INITIAL PREPARATION

1. Establish a narrative

Tell a compelling story. Achieving a successful result for a client with regard to almost any legal dispute requires that counsel tell a compelling story. In order to prevail in a relocation case, counsel must convince the judicial officer that a change from a familiar environment is in the child's best interest. Often, but not always, relocation involves a change from a comfortable, supportive and nurturing environment, in which both parents, extended family members, friends, social ties, schools, extra-curricular activities, and the child's geographical sense of place have been important parts of the child's life, to one that is new and uncertain. Sometimes, the move is necessary in order to provide the child with a comfortable, supportive and nurturing environment that is lacking in the child's present circumstances.

Knowing (1) what your client wants; (2) why your client wants it and; (3) what facts support what your client wants is critical to developing and presenting your client's story to the court. Counsel must ask themselves whether what their client wants is really in the best interests of the child, or only in the best interests of the parent counsel represents. This is most certainly the question the court will be asking of each parent.

2. Know the players, know the audience

First and foremost, know your client. What is your client's motivation for seeking to relocate? How does your client present himself or herself—to the court, to a custody evaluator, to opposing counsel in a deposition? Is your client able to handle the often extraordinary burden of putting on and proving up a relocation request? How will your client handle the demands of a child custody evaluation, as well as the emotional and financial costs that a child custody evaluation inevitably brings? Has your client fully considered what the child's experience may be in the process? Assuming the relocation request is granted, is he or she willing and able to take on the additional parenting responsibilities that result from relocating? This includes ensuring that the child's relationship with the left-behind parent is promoted, maintained and fostered. Can your client tell a compelling story? Can your client clearly articulate what he or she wants (i.e., the relocation), why he or she wants it (i.e., why it is necessary or in the best interests of the child), and what facts support the necessity of the relocation? If your client cannot tell a compelling story, it will quickly become apparent when he or she sits down with the evaluator or takes the witness stand.

Knowing the other players in the story is mandatory and a critical factor. You must know the other party and opposing counsel. What motivates the other parent's opposition to the move? Anticipating and knowing the other party's defenses is fundamental to developing

the narrative. What is opposing counsel like? Does opposing counsel have a track record in relocation cases? If so, who in the mental health field has opposing counsel used or relied on in prior cases? It would be difficult to overstate the importance of gathering this information early in the process.

You must know your bench officer. Bench officers who yearn to try relocation cases are, putting it mildly, very rare. Apprehension and anxiety are the first cousins of every relocation case. Deciding a relocation case based on the law and the facts is the foremost responsibility of a judge. However, the judge frequently finds that he or she must manage the personalities of the parties, anticipate how the decision the court makes will be implemented going forward, and what effect that decision will have on the child (a child who the court, most likely, will never meet or even see in the course of the litigation). Knowing your judge's tendencies, likes, dislikes and prior experience with custody and relocation cases can be invaluable.

The "audience" also includes the child custody evaluator, assuming the court requires an evaluation. Knowing the custody evaluator's background and track record is important to the preparation of your case and your client. Has the evaluator appeared before your judge previously? Has the evaluator appeared in a relocation case before your bench officer, or other bench officers in your courthouse or county? Obtaining copies of any prior evaluations performed by the evaluator, whether in relocation cases or other custody matters, can be especially helpful.

3. Gather evidence—less is often more

Determine clearly and precisely what you need to prove or disprove in order to make your case, then gather evidence that will accomplish that. Remember—what do I want, why do I want it, and what information supports what I want? Presenting a comprehensive plan is part of telling a compelling story. You must not only tell the court why the relocation is important, but also everything your client is prepared to do to promote, preserve and enhance the relationship between the child and the left-behind parent.

An important part of the evidence you will gather is what the moving or remaining parent proposes by way of a parenting plan, support, and communication with the left-behind parent, as well as financial accommodation for travel requirements and the like. It is important that you critically consider each piece of evidence as you gather it. Does it withstand scrutiny? How does it relate to other evidence you are gathering? Is it contradicted or negated by other evidence? Is it necessary to establish an important point? Consider carefully what the evidence will prove or disprove. Avoid the "throw it against the wall and see what sticks" approach to presenting evidence. Demonstrate your appreciation of the judge's intelligence and time by presenting relevant evidence that supports your narrative. Remember that more is not necessarily better. Distilling a matter or a point to its fundamental essence makes for an elegant, understandable and, most importantly, convincing presentation to the court.

4. Assemble the team

It is critical that consultants and experts are carefully chosen and their roles clearly defined. A trial is like a jigsaw puzzle, each piece is critical to the whole, but each piece is only a part of the whole. Are you asking your consultants and experts to stray into areas beyond their expertise? It is the wise consultant and expert who know what they do not know. Your experts may be well-known in the vast community of mental health and custody professionals and have impeccable credentials, but it is up to you to make sure that your expert stays on what he or she knows. On occasion, consultants and experts will be tempted and fall prey to opining and advising on matters beyond their expertise and experience. Nothing dilutes the usefulness of a consultant or an expert faster than exceeding the bounds of their expertise and practice. This happens more often than you might think.

A consultant or a testifying expert who opines and advises on matters beyond his or her expertise and experience can quickly lead you and the court astray, and will most likely make any opinions and testimony worthless. Should this occur, it will most likely be disastrous, if not fatal, to achieving your client's goal. An expert's purpose is to assist the court with matters beyond the court's expertise and experience. Experts that lose sight of this role may lose credibility with the bench officer or even be rejected as, in the eyes of the court, they become no more than an advocate. Further, you run the risk of having the judge prevent the testimony of a true expert in the area as it is now cumulative, or determined to be an undue and unnecessary consumption of time.

5. Manage resources

Judges are acutely aware of how emotionally and costly relocation cases are for the parties involved. The involvement of a child custody evaluator will add fees and costs, including: preparation time for the evaluation, vetting and interviewing collaterals, hiring mental health consultants, conducting additional discovery, increasing the complexity of trial proceedings, and parsing of the evaluation itself. Is your client prepared and

willing to undertake this burden? Does your client realize that the finality of the proposed move may be in limbo for several months? Merely proposing a move may change the family dynamic forever with, for instance, the non-moving parent believing that the other parent is out to "steal" the child(ren).

In virtually every jurisdiction, family law courts and their resources have been stretched very thin and, in some cases, are just plain broken and unable to deliver the necessary services to litigants. Before launching into the relocation proceedings, make sure you have discussed with your client potential alternatives like private and court-based mediation and settlement services or intervention with a mental health professional. Be cognizant of the limits of what a court can really do to resolve a relocation dispute. More importantly, be cognizant of what the court cannot do to halt family conflict and to spare the child(ren) from the strain of the process.

TRIAL

6. Control the narrative
The fundamental job of both an attorney and an evaluator at trial is to teach and persuade the judge that their presentation and interpretation of the facts in the case is the correct one and the one most likely to promote and insure the child's best interests. From an attorney standpoint, constant vigilance is required to make sure that the necessary "good" evidence is properly admitted for the appropriate purpose, and the "bad" facts are either explained away or kept out of the hearing all together.

It may be critically important to determine who is in your audience. You may find that your audience changes during the course of the trial. For instance, you may begin by addressing the trial court but circumstances can occur where you end up making your arguments to the court of appeal. This may be the case even if you win at the trial court level. Therefore, counsel must ask themselves throughout the course of the trial, "Am I making a sufficiently clear and complete record assuming that there may be an appeal of whatever decision is ultimately made?"

7. Again—know your judge
Every family law judge that has been sitting for any length of time will have had experience with a move-away case. No matter how great the parties' emotional strength and resolve or how deep the pockets, move-away cases exact an enormous toll on a family. If the moving parent is not allowed to move, he or she may lose the ability to start anew with better emotional and financial support in a new city. If the move is allowed, the left-behind parent may miss out on day-to-day contact with the child. The parent will no longer be able to attend soccer games, talk to the teacher on a regular and informal basis, or perform other common parenting activities. The relocating parent takes on new responsibilities and burdens as well, such as how to actively promote and ensure the left-behind parent's meaningful participation in the child's life.

Knowing your judge also involves understanding your judicial officer's level of tech savvy. How comfortable is he or she with innovations in parenting plans? How up-to-date is your bench officer with the current literature? In addition to the pre-trial homework, it cannot be emphasized enough that the best way to know your judge is to watch and listen carefully during the trial.

Do not forget that the case does not simply start with a trial. Along the way it is quite likely that the trial judge or another judge has made interim custody and support orders, received information, and interacted with the parties. Pay close attention as the case progresses so that you are able to respond in trial to concerns that may have been expressed by the court at prior hearings, or at a time when facts and circumstances may have been different.

Even if you have had the same judge throughout (i.e., in pre-trial proceedings), that judge may seem unrecognizable when it comes to the actual trial of the same matter. In attempting to resolve matters prior to trial, a judge may be sending different signals and may have a different style and manner of handling things prior to trial as opposed to once trial has actually commenced. The judge will now be listening to actual evidence, determining what evidence will be admitted and what evidence will be excluded, as well as determining the weight given to the admitted evidence. Is your judge an "activist" or is he or she more passive in their approach? Does the judge participate actively in questioning witnesses? How does your judge handle evidentiary issues—is there a tendency to let all the evidence in and then give it the weight that it is due? Or, is the judge's approach more controlled and restrictive by way of strictly limiting what is allowed into evidence? Will the judge want to hear from the child(ren)?

8. Present evidence
After all is said and done, the court can only rule on persuasive, competent and admitted evidence. A well-conceived trial is designed to be a swift, cogent and organized presentation of known facts. That said, an evidentiary hearing is a dynamic thing and surprises can, and do, arise.

It is fundamental that counsel be familiar with the evidence he or she will offer in the case, as well as that which opposing counsel may offer. Unfortunately, and far too often, it is apparent that the attorney has not done the necessary homework and is not sufficiently familiar with all aspects of the case. Lack of adequate preparation will make presentation of your case awkward at best and may lead to a nightmare at worst. Too many cases get bogged down with presentation of unnecessary, unclear and irrelevant evidence. Counsel needs to determine as soon as possible what must be proved in order to carry the trial at the time of the evidentiary hearing. Doing this work early in a case will help to avoid or limit wasted time and effort later when resources may be depleted.

Put together a strategy. How is each witness and each piece of evidence going to support your theory? Put your evidence together in a way that makes sense and is easy for the bench officer to use; "loop back" to evidence, to remind the court why and how it is necessary to the decision-making process. Make it easy for the bench officer to see it your way. Tell an interesting and believable story. Above all, a judge's ability to make an informed, intelligent and rational decision is wholly dependent upon the judge having all the necessary information.

9. Lights, camera, action!

You are the producer, director, choreographer, cinematographer and screenwriter in this production. You are in control of the cast (at least some of them) and you are a cast member. Making the process of putting on a trial appear seamless and effortless is your aim. Clearly, it is neither seamless nor effortless. However, in order to make it seem so, you must put a lot of thought into what gets said by whom and when. You must also keep in mind, again, your audience. Does this judge like seeing your consultants/experts in the courtroom? Is the judge going to be sensitive to a big production? Think about the visual of your case. How does it look when you step back and watch the production?

Consider the roles and effects of the other persons on the set. The work of the court does not go on without the bailiff, the court clerk, the court reporter and others. There is often a good deal of informal banter between these people and the judge that may have an effect on how the court perceives what is occurring in or outside of trial.

10. Loop back/temperature check

At all times in a trial or evidentiary hearing, it is critical to make sure that the judge understands you, your client, and your positions. Whether you are an evaluator, attorney, or litigant, it is important to listen closely to the comments the judge makes during the course of the proceedings both on and off the record. Is he or she confused about some or all of the facts, laws, or positions? Is he or she certain in some areas and uncertain in others? Have you made your parenting plan clear in a way that the judge is able to understand it, as well as adopt and use it?

It is equally important that you keep a check on the clarity of matters for your client. Are you communicating to your client and the professionals on your team how you perceive things to be going in the case? Is the judge not buying certain parts of your case? Is it time to have a heart-to-heart with your client and the opposing side to discuss resolution? Is it time to have a cup of coffee with the other side and reach an agreement to save your client's financial and emotional resources?

Take the temperature regularly and monitor the vital signs. Constantly assess and reassess where you are in the course of the proceedings. Opportunities for dialogue and resolution may present themselves at the most surprising times. Make sure your eyes and ears are open to such opportunities.

CONCLUSION

Dr. Maya Angelou put it best when she said, "I have learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel." While you are presenting your case and when you have finished, how you have made the people in that courtroom feel may well be as important as all you have said and all that you have done. The old adage that you don't get a second chance to make a first impression is worth keeping in mind.

The authors will present a full-day, pre-symposium institute with Philip M. Stahl, PhD, ABPP, at the AFCC 11th Symposium on Child Custody Evaluations in San Antonio, November 6, 2014, entitled, The Relocation Case in Court: Legal and Psychological Issues*. Dr. Stahl wrote an* Ask the Experts *column, Ten Tips for Dealing with Relocation Cases, from the December 2011* AFCC eNEWS*.*

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ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Ten Tips for Online Mediators: All Mediators are Online Mediators

Clare Fowler, EdD, Eugene, Oregon

Most of us are not online mediators.

> *And yet, as I say this, I receive a notification of a new client contact by email, a text from a colleague saying that a revised agreement is being placed in Dropbox, and my calendar jingle reminds me of a meeting in ten minutes.*

There seems to be a stigma among some related to online mediation. When I, like most of us, picture an online mediator I see someone who is more concerned with technology than connecting with clients, a professional more fascinated by gadgets than by being present at the mediation table.

> *Ah, another beep alerting me of a mediation request from my intake form on my website. I'll double-check my online calendar for availability, and then set up a Skype intake session with the clients.*

Many of us fall into this trap, where we do not self-identify as online mediators, but we use the same online tools. The problem is that many of us have not taken the time to ensure we are capably and safely using these technologies. This could put us and possibly our clients at risk.

Let me encourage you to take a moment to look at the checklist below to make sure you are using thoughtful, effective, and safe online mediation practices.

1. Should you use social media?
If I want an Italian meal, I will look online to see what Italian restaurants are around. Then, I will rank them by the presence and visibility of those choices. A restaurant with little if any online presence appears to be less trustworthy, less connected, rarely visited, and probably on its way out. A restaurant with a vibrant online presence gives the impression that it is proud of what it provides, that it is respected by the local community, and that it has been around for a while and will be around for longer.

The simple fact is that modern clients expect any professional practice to have a social media presence. Your social media presence is a part of your overall reputation and brand. It will be a good use of a Saturday morning to create a professional social media presence on Facebook, Twitter, LinkedIn, and Google+. Also, you might consider creating two identities with two different privacy settings: a personal presence with a high amount of privacy, and a professional page with a high amount of publicly available content.

2. Personal information on professional page
What information do we share on a professional social media site? This answer is changing and the norm is shifting toward sharing personalizing stories on professional sites. This is not to say anyone wants to see what you ate for dinner or pictures of your cat (cute as it may be). But your clients do want to see that there is a real person managing the site and not a robot, preferably a person who is relatable.

3. What is your brand?
The type of information you share needs to be in-line with your brand. For instance, Belinda Jokinen, a family mediator from Washington, does the majority of her marketing through Facebook. She shares interesting quotes, shares sunset pictures from her office window, and advertises promotional discounts on her à la carte marital dissolution services. This is appealing to families searching online for dispute resolution options. Don Philbin, on the other hand, promotes a different brand through social media sites such as Twitter and his ADR Toolbox. He shares interesting academic and business related articles. What both of these mediators have mastered is the ability to sell through service. They use social media to provide a useful service, consistent with their brand identity, resulting in an informative and trustworthy online presence.

4. Your mobile-friendly website
Please say that you have a website! If you do not have a website, stop reading now, go get a website, then come back and finish this article. Make sure you can

easily edit and grow the content on your website. As a professional mediator, you need to have your own professional website that highlights and updates your unique experience for consumers using all kinds of devices to access your information. The majority of research is now done on devices other than computers, so take a moment with your phone or tablet and look at your website. If the images and text are not displaying correctly, or you are getting frustrated having to pinch and zoom around pictures and awkward menus, realize that this is the impression and experience you are also giving your clients.

What does your website need to say? Gary Dorr, Mediate.com Webshop Director, has prepared an in-depth tutorial on this topic. Let me highlight a few key points. Your website is your online storefront. It needs to set and be consistent with your brand, as well as set balance of your professional online presence. Additional suggestions: your website needs to include a third-person description of you and your services, a description of your fees and location, and a clear path to how people can most easily hire you. The majority of clients spend 30 seconds or less on a website. Don't force them to dig for important information. Spoon-feed them!

5. Do-it-yourself design
Can you create your website yourself? The answer nowadays is "yes." Should you? That's a trickier question. There are some complex things to think about. First, who will design it? Second, who has access to update it? Third, how can people reach you?

Design: It is likely worth your investment to have a professional website company develop a mobile-friendly, custom, unique looking website, and then hand you the reins. You can begin by searching Google for mediators in your geographic area to get a sense of your competitors' websites. To say that potential clients compare mediator websites and choose the best might be simplistic, but it is often true.

Updates: You will appreciate it in the long run if you have a website that you can manage yourself. In other words, you do not want to pay someone every time you want to upload a new article or list a new award. As you make changes, make sure that you are being consistent with the feel of your website and your existing content. If your website looks outdated or sloppy—what will clients think of you?

Interactivity: Make sure that people can interact with you through your website. I was recently trying to hire a speaker for a conference. After two minutes on her website, I gave up and booked someone else. I couldn't find a way to send her an email; I couldn't find an online calendar to check her availability; I couldn't find a form where I could send her my specific details to review. So, I chose to leave her site. Her lack of preparedness on her website indicated to me the type of speaker she would be. Yes, this was a snap judgment but her website was all of the information I had to go on. Your clients will be making the same judgments on your website.

6. Email
As too many politicians have found out, email does not go away. When you are emailing with your clients, it may be best to assume that every email will be shared with the other party. As a mediator, it may generally be wise to include all parties and attorneys on every email. Complete transparency can be your best weapon when it comes to "email protection." If you do not want your email to be transparent, then perhaps don't send it. Pick up the phone instead.

If you do need to send a confidential email, clearly state "CONFIDENTIAL" in the subject line. Include in the text of the email everyone that is cc'd on that email. If you need to send a picture or a large document, try to find a case management system with a secure document-sharing program such as www.caseloadmanager.com. Such programs will scan for viruses, make it easier for all parties to see the original version of the file, and will increase the email being received.

Clients often tell me that they just don't have the time anymore to go through their junk mail. So, if I am sending them an important email, I follow up with a phone call alerting them to the time and subject of the email to ensure they can find it.

7. Online case management
I am biased toward Mediate.com's Caseload Manager as this program was designed by mediators for mediators. Regardless of the case management program you choose, make sure that it has a few basic abilities:

- Multiple staff log-ins, with separate identities and access levels
- Create and edit unlimited fields
- Create flexible reports on the fly
- Securely upload and share documents
- Flexible billing
- Timed email reminders for parties and staff

Additionally, take time to research your system's security and reliability. Can you trust that you will be able to access your case information when you need to? What

is the backup system for the program if, for instance, your two-year-old accidentally deletes your cases? Ideally, all of your case data should have multiple back-ups, such as an hourly, daily, and weekly back-up that you can restore if necessary. This data should then be archived and available to you as long as you need it, should you need to reference a closed case years from now.

8. Video-conferencing
The ability to meet people online by video as a part of the mediation process is a major leap forward for the mediation field. This now nearly ubiquitous technical ability is allowing people to resolve disputes that previously did not receive attention and further humanized online mediation efforts. For a variety of reasons, perhaps mostly convenience and cost (what else is new), people are using video-conferencing capabilities more and more. Mediators are wise to master video conferencing as an option for their choreography of communications.

I recommend becoming comfortable with at least two video conferencing options, such as Skype, WebEx, GoToMeeting, Zoom, and/or Google Hangouts. If you are dependent on only one system, somehow that system is always the one that does not work well for someone. Find options that are simple for clients to use, for which your clients do not have to pay anything, and allow an option where everyone is able to see each other, and where you can also create documents together.

Mediation is no longer either face-to-face or online. It is now both. You will want to integrate these video options into your practice when it best suits your clients. For instance, you might have an initial face-to-face meeting with everyone in the same room to establish trust and rapport, identify the agenda and easy points of agreement then, perhaps, have separate follow-up video meetings online to the extent that it is helpful for your clients.

Remember, video-conferencing is just one more online tool for you to use. Some cases will require every meeting to occur by face-to-face communication. Participants may prefer or need to see each other in person to trust the other party's commitment to a resolution. On the other hand, some participants feel more comfortable not being in the same room as another party. As you become more comfortable with video-conferencing, you may also choose to invest in a good microphone, as laptop microphones can be difficult in large group settings.

9. E-commerce
Every mediator has their own preferred method for billing and receiving payment. In this "age of the internet," mediators are also wise to consider whether their own preferred payment methods are most convenient for clients. Many mediators now effectively use the Square app on their phone for accepting credit card payments. You can also look into setting up a PayPal account on your iPad or tablet.

When you are making your e-commerce decisions, you should compare the cost (typically 1-3%) for using the online payment service, and how you will receive your money. Many services will transfer money immediately, but some services might take a lower percentage and only transfer your money monthly.

10. Intake/booking form
Take the time to find a way for your clients to easily interact with you online. They appreciate it. They now expect it. It helps clients feel involved and invested in their case and it makes it easier for them to hire you.

Allow your clients to view your online calendar and check it for availability. Mediate.com has this capability, as does NADN, Google Calendar, and many others. Look for a program that allows you to indicate publicly that a slot is open or booked without adding any private details (your clients really do not need to know every time you go to the dentist). Also, look for a calendar that sends reminders, preferably both to you and to your clients.

You should be able to include a booking form/intake form on both your website and your directory listings. If you are able to create your own intake form, only ask people for enough information to get the ball rolling. First and last name, email, phone, the matter in dispute, desired meeting date and time, and a space for any other comments is fairly common. Also, look for a form that will allow you to include "captchas" or some type of a method for filtering out robots and spam.

Conclusion—We Are Now All Online Mediators
Love it or hate it, communication technologies are here to stay and they are constantly evolving and improving. Establishing your online presence and online proficiency is now a part of being a highly effective mediator. It is a growing and evolving expectation of our clients. Choose the online options and strategies that you are comfortable with and that you think will help your clients settle their dispute. For those options you choose to integrate into your practice, understand their reliability and confidentiality concerns. You are already mediating online. Make sure you are doing it right.

Dr. Clare Fowler is a workplace and family mediator and managing editor at Mediate.com. She received her Masters of Dispute Resolution from the Straus Institute for Dispute Resolution at the Pepperdine University School of Law and her Doctorate in Organizational Leadership, focused on reducing workplace conflicts, from Pepperdine University School of Education. Clare also coordinated the career development program for The Straus Institute dispute resolution students. In addition to her editorial duties at Mediate.com, Clare coordinates online case management for programs, agencies, and courts. Contact her at www.ClareFowler.com.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Ten Tips for Client Engagement

Bill Eddy, LCSW, JD, CFLS, San Diego, California

Clients today want to be positively engaged with their professionals and to play an important role, yet many of them tend towards negative engagement and many professionals are tempted to respond negatively as well—especially when they have "high conflict" clients. These tips can be used to help engage clients in thinking about problem-solving rather than reacting, whether you are a therapist or lawyer with an individual client, or a mediator with both parents. Judges and custody evaluators can use these principles to the extent possible, even when talking about past behavior problems. By focusing clients on these simple steps for future problem-solving, some become more engaged and less defensive.

1. Forget about insight
This is who they are and efforts to make them a better person with on-the-spot "constructive" feedback often creates more defensiveness and an unnecessary power struggle. Just focus on addressing what action steps to take now about the problems at hand.

2. Focus on the future
Talking about a client's past behavior triggers defensiveness and resistance to change. As much as possible, it's better to talk about desired future behavior rather than criticizing the past behavior.

3. Communicate in ways you want your client to mirror
Researchers say that we have neurons in our brains which "mirror" the behavior of others. So rather than mirroring their frustration, fear or anger, it's better for us to act in a way that we want our clients to mirror us—especially showing them empathy and educating them, rather than showing anger.

4. Teach clients to ask you questions
Rather than making brilliant decisions for our clients, we need to engage them in asking us questions as much as possible, to help them prepare to make proposals and decisions themselves.

5. Teach clients to set the agenda
Whether you are meeting individually, in mediation, in a group meeting or otherwise, teach clients to think about and list items for the agenda. The more they are thinking about what to do, the less they are thinking about blaming and complaining.

6. Educate clients about their choices and possible consequences
This approach keeps more responsibility on their shoulders and gets them thinking. Repeatedly remind them: "It's up to you."

7. Have clients make lots of little decisions
Whether we are providing mediation, counseling, advocacy or judging, we need to give clients practice in making as many decisions as possible (e.g., who goes first, changing topics, when to take breaks, etc.)

8. Teach clients to make proposals
Rather than taking the lead, we need to ask clients to form proposals and test them out on their lawyers, counselors or others, to prepare positively for negotiations, rather than focusing on negative arguments about the past. This includes who will do what, when and where.

9. Teach clients to ask questions about each other's proposals
Rather than quickly saying "No" to proposals, teach clients to ask questions to help them form their next proposals. This can turn an angry exchange into an analysis of what's important to each party.

10. Teach clients to reply to proposals by saying "Yes," "No" or "I'll think about it"
This encourages clients to stay focused on thinking about proposals and making new proposals, rather than just reacting to proposals. If a client says "No" to a proposal, then it's their turn to make a new one.

Bill Eddy is a lawyer, therapist, mediator and the President of High Conflict Institute. He developed the High Conflict Personality Theory (HCP Theory) and has become an international expert on managing disputes involving high conflict personalities and personality disorders. He provides training on this subject to lawyers, judges, mediators, managers, human resource professionals, businesspersons, healthcare administrators, college administrators, homeowners' association managers, ombudspersons, law enforcement, therapists and others. He has been a speaker and trainer in over 25 states, several provinces in Canada, Australia, France and Sweden. He is also the developer of the New Ways for Families method of managing potentially high conflict families in and out of family court.

Bill Eddy will present a full-day pre-conference institute on this topic titled, Client Engagement Skills for High Conflict Families*, at the AFCC 52nd Annual Conference in New Orleans, May 27-30, 2015. He will also present a workshop with Marsha Kline Pruett and Lisa Matthews,* Two Program Models and Research on Parenting and Co-parenting Skills*. See the conference program brochure for full session descriptions and schedule.*

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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What is the Biggest Challenge Facing Conflict Professionals Today?

Bernie Mayer, PhD, Creighton University, The Werner Institute, Kingsville, Ontario, Canada

While there is no shortage of challenges, those that conflict professionals most often focus on—marketing, approaches to mediation, institutional obstacles, training, certification, public acceptance—seem very secondary to what I believe is the most serious obstacle to our success and growth as a profession: the limits we (perhaps unintentionally) impose on ourselves by how we understand conflict and our role in it.

What makes conflict work vital, exciting, and durable is our outlook on conflict and conflict intervention. We bring a unique set of conceptual tools to conflict—tools that distinguish us from law, psychology, diplomacy, political science, and labor relations, to name a few other fields of practice that deal with conflict. While we draw on all of these fields—and for many of us they are our professional fields of origin—we differ from them in how we think about conflict and therefore how we approach it. But while we operate from a powerful set of concepts that guide our work, they are often embedded in our practice rather than something we consciously or fully embrace (they are our "theories in action"). As a result we are often vague about just what these frameworks are, and we don't spend much effort trying to challenge, deepen, or intentionally connect them with what we actually do. This is unfortunate since they are the source of our strength and identity as a profession and they point the way to a broader utilization of our services.

At the heart of our way of understanding and intervening in conflict is our rejection of the polarized way in which most conflicts are framed. Disputants present conflicts as a choice between right and wrong, winning or losing, compromising or standing on principles. Conflict professionals try to help people look beyond these simplistic framings. Our approach is imbued with the belief that there is almost always a third way that integrates the most important beliefs, needs, and ideas of conflicting parties. We have many techniques for doing this. Perhaps the most prevalent is the principled interest based approach described in Getting to Yes (Fisher, Ury, Paton, 1991). We also encourage integrative negotiation, a systems approach, affirmation of shared underlying values, and a focus on mutual concerns. All of these can be seen as approaches to breaking down the polarized approach that disputants are prone to take in conflict.

But even as we believe in the essential importance of breaking through a polarized approach to conflict, we adopt our own polarities; this interferes with our ability to make sense of a conflict and our effectiveness as interveners. Our biggest challenge, therefore, is to understand these polarities, challenge ourselves to move past them, develop ever more sophisticated tools for taking an integrative approach to how we understand conflict, and thereby build on our greatest strength as conflict professionals. For example, consider three of these polarities:

Competition and Cooperation

When divorcing parents are fighting over parenting plans, we instinctively want to encourage a cooperative approach to negotiation, problem solving, and parenting, and to discourage competition. We equate cooperation with lower levels of conflict, more effective parenting, and better adjusted children. We associate competition with high conflict, adversarial approaches to negotiation, and more traumatized children.

Conflict professionals exhibit similar attitudes with regard to labor relations, environmental disputes, international conflicts, and political negotiations. For example, we think that the way to end the dysfunctional polarization or our political culture is to be more cooperative and less competitive.

But it's not. Competition is a necessary and healthy part of our political system—democracy depends on it. Similarly, the way to help parents through divorce is not simply to tell them to stop competing and start cooperating. Suppressing competition often means marginalizing a parent. The problem in both situations is that there is in fact a need to do both—to compete and to cooperate—and in fact you can't have the one without the other. To preach to parents that they simply need to cooperate and all will be well denies a reality that

they are very well aware of—that they are in a relationship that has competitive components, just as our national political parties are. The challenge is to compete effectively and to cooperate effectively, and to see the two as inextricably intertwined.

Effective parenting, particularly when parents have different views about how to parent and about education, religion, discipline, nutrition, etc., necessitates that parents find a constructive way to articulate their different views, advocate for their beliefs, and figure out how to move forward despite their differences. A genuinely cooperative parenting relationship requires that parents learn to compete in a cooperative manner and to cooperate in competing. Our capacity to help parents do this, and to understand this challenge, is essential to promote a healthy co-parenting relationship, one in which both parents are genuinely involved in all aspects of their children's lives. The alternatives (which are sometimes the best we can do) are to suppress genuine disagreements, create artificial barriers in parenting decision making, marginalize a parent, or subject children to dysfunctional conflict.

As anyone who has worked with high conflict parents knows, this is no simple challenge, and simply recognizing it does not solve it. However, if we fail to appreciate the reality of the competitive element of cooperative parenting, then we are not being realistic, we are not meeting parents where their experience is, and we are failing to use our most important conceptual tools for helping people in conflict.

Logic and Emotions

Most conflict professionals understand that you cannot simply apply logic to address a conflict. We recognize that emotions play a major role in how we address conflict and that we often have to "work through" our emotions in order to reach a more rational, objective, and constructive place. However, we sometimes think of these as separate processes. We seem to believe that we have to help disputants deal with their emotions just enough so that they can be put aside, allowing disputants to do the logical and rational work (the "real" work) necessary to deal with conflict.

But that is a myth. Emotions can take over, but so can logic. An overly logical approach is no more realistic or effective than an overly emotional one. Emotions are essential to clear thinking. Our challenge is not to move past emotionality, but to integrate it with rational processes so that people can make wise decisions. The neuroscientist Antonio Damasio (2005) found that people who had damaged the part of their brain that processes emotions could still engage in rational analyses of the pros and cons of different courses of action, but they could not make decisions. Emotions are not only essential to good decision making, they are essential to the capacity to make decisions at all.

So when we try to help people (or ourselves) work through their emotions so that they can engage in a more rational approach to conflict we are onto something, but we only have it half right. Our more profound challenge is to help people use their rational tools to handle their emotions so that their emotions can be brought to bear on their rational process. We ought not ask divorcing parents to put aside their sad, angry, scared, or upset feelings, for example. This cannot be done in a healthy way. Instead, we need to help them accept and understand these emotions (using rational processes) so that these can be integrated into their thinking about their choices and concerns in an effective and meaningful way.

For the most part, disputants intuitively understand this. Conflict professionals come close to getting this right when they acknowledge feelings, stay with them, accept them, and do not try to rush people through them. But too often, we view emotions as something to deal with and then move beyond so that the real work can be done. Emotional work is just as much real work as rational analyses. And these aspects of conflict processing cannot be separated.

Principle and Compromise

We often get this right as well. We do not ask people to relinquish their principles so that they can compromise as necessary to deal with a conflict. We are more likely to ask them to be flexible in how they understand their principles or to think harder about what principles are critical to them. If parents say, for example, that equal parenting time is an essential principle for them about which they are unwilling to compromise, we are likely to accept this but to ask them to delve a bit deeper into why this is so important to them.

But what we may not always recognize is that without appropriate compromise no principle is meaningful—and without adherence to principle, compromise has no purpose. The challenge of integrating principle and compromise is part of almost every important move we make in conflict; as with competition and cooperation, or emotion and logic, our challenge is to take a truly integrative approach. Principle and compromise are not simple choices, but essential components of an ethical and effective approach to conflict.

As conflict professionals, we often fall into these and other polarities (e.g. outcome and process, neutrality and advocacy, avoidance and engagement). But we

are also well situated—by our experience and by the values that undergird our work—to find an integrative approach to the dualities they represent. So our biggest challenge, both in terms of our thinking and our practice, is directly related to the biggest asset we bring to conflict, namely, our commitment and experience in helping disputants move beyond a polarized, dualistic approach to their conflicts. And as with most important challenges, the clearer we can articulate the issue, both the easier and more challenging it becomes to deal with.

These and other conflict dilemmas are described, illustrated and analyzed in The Conflict Paradox: Seven Dilemmas at the Core of Disputes by Bernard Mayer (Jossey- Bass/Wiley and the ABA, January, 2015).

Bernie Mayer, PhD, Professor of Dispute Resolution, The Werner Institute, Creighton University, is a leader in the field of conflict resolution. Bernie has worked in child welfare, mental health, substance abuse treatment, and psychotherapy. As a founding partner of CDR Associates, Bernie has provided conflict intervention for families, communities, and governmental agencies throughout North America and internationally. Bernie's latest book, The Conflict Paradox, Seven Dilemmas at the Core *of Disputes, is just out (January 2015). Earlier books include: The Dynamics of Conflict, Beyond Neutrality, and* Staying with Conflict*. Bernie is the recipient of the 2013 President's Award and the 2009 Meyer Elkin Award, both presented by the Association of Family and Conciliation Courts.*

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ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Ten Tips to Save Money Using Your Parenting Coordinator

Annette Burn, JD, Phoenix, Arizona

A PC is assigned to your case and you've paid a substantial amount of money to get started with that person. Between you and the other parent, you have brought somewhere between two and ten issues to the PC. How can you save some money and get the most out of your parenting coordinator to get those issues resolved?

1. Pick your battles
Just as you do with your children, decide if an issue is really something to fight about. Have a serious conversation with yourself about whether you want to spend money and time arguing over an hour of parenting time here or there. There's nothing wrong with first raising an issue with the PC, discussing it a bit, and then saying, "Never mind, let's remove that one from the list."

2. Determine if your position is logical and reasonable
If your position is that the other parent should do 100% of the driving for the children 100% of the time, ask yourself: is that logical? Is it reasonable to think that a PC and, later, a judge will have one parent do all of the driving? Is it logical that the judge will give one parent every Christmas Day with the children and deprive the other parent of ever having a Christmas Day?

3. Make sure the fight isn't costing you more than the issue
Although parenting coordinators don't usually handle financial things, some issues creep into money matters. If the parents are arguing about whether Johnny's baseball glove is at Mom's or Dad's house and who failed to get the glove to the practice field, involving the PC in those discussions will easily cost more than the glove (or tennis shoes, or school book). Asking the PC to get involved in issues of clothing left at the other parent's house will eat up money even more quickly. This is a variation of "pick your battles." Determine whether it's cheaper to buy a second school book or pair of shoes, rather than spend the money on the PC.

4. Use trusted friends to discuss the things above
Don't pick a friend or family member who will agree with you on everything. Choose someone whose opinion you trust and who you would consult with about an important decision like changing neighborhoods or jobs. Choose someone who has stayed neutral between you and the other parent. Bounce your ideas off of that person: is this a battle I should continue? Is my position logical and reasonable? Ask for real, truthful feedback.

5. Communicate with the other parent about the issue at hand in brief informative emails, or with brief questions about the issue
BRIEF is the key component here. If the other parent asks for something that infuriates you, go ahead and write your scathing, outraged, three-page response—but don't send it to the PC or the other parent. Send it to yourself, or that trusted friend, or even your mother, but keep it in your small circle. Sending it only to the PC is an option, but it's an option that will probably cost you money. After writing the full outraged response, sit down (a few hours or a day later) and edit it down to: "I don't agree to give up my parenting time on Fathers' Day this year," and stop. Saying more isn't helpful and will cost you money.

6. If you can't stop yourself from writing and sending the long, drawn-out emails…
…that re-hash what happened last Easter and state what an inconsiderate bum the other parent is, then carefully review the bills you receive from the PC. Make a point of adding up how much those emails cost you. If you realize that sending those emails cost you as much as a two-day admission to Disneyland, or enough to have your car repaired, or enough to pay for a nice children's birthday party, it may give you incentive to change your behavior.

7. Read your parenting plan and all court orders that might cover the issue

An amazing number of parenting coordination clients simply haven't read their court orders. Getting the PC involved means that you are paying someone to read your documents to you. If the issue is where the children will be for Thanksgiving this year, you need to find and read every court document that might mention Thanksgiving. These documents could be your parenting plan (sometimes called a joint custody agreement or joint legal decision-making agreement), or it could be in an order issued directly by the court. Read everything, thoroughly, before involving the PC.

8. Make sure your parenting coordinator has all your court orders and parenting plans

If you've been back to court several times, there may be several orders or modifications or a single order that mentions only one issue, like summer vacations. Organize all your parenting plans and orders and list them by date for the parenting coordinator to make sure they have everything. The court does not usually provide the parenting coordinator with everything, and having the PC track down multiple orders is an unnecessary expense.

9. Create a calendar

If the issues between you and the other parent involve a certain period of time, such as summer vacation, or the weeks from mid-November through the re-start of school in January, create a calendar showing who the children are with each of those days. That's what your PC is going to have to do, eventually, and if you start with one, it simplifies the process and may even end it. Pull up Google Calendar, or your own calendaring program, and fill in your understanding of the schedule for the weeks in question, including all exchange days and times, and list all holidays and special days. Then propose that specific calendar to the other parent and ask, "Do you agree with this? If you don't, tell me what parts you don't agree with."

10. If the calendar and exchange of emails does not resolve the issue without the PC's help, then organize everything for the PC

Telling the PC "My position is stated in all the earlier emails" is an expensive statement, because now the PC has to go through many emails to find your position. That is done at your cost. To reduce that cost, briefly re-state your position in one organized email. If the issue involves a long period of time, use a calendar to re-state your position. Refer the PC to the specific dates of the emails and court orders and the specific sections of a parenting plan that should be reviewed by the PC in making this decision. The more specific you are, with page and paragraph numbers, the less time your PC will spend looking for information.

Annette Burns has practiced law in Arizona since 1984, specializing in family law, and focusing on acting as mediator, arbitrator, family law master and parenting coordinator in family law cases. Her background and experience includes over 28 years of client representation in divorces, property valuations and divisions, and actions involving spousal maintenance, child custody and parenting time, paternity, and child support. Since1994, she has been a certified family law specialist in Arizona. Annette is a Fellow of the American Academy of Matrimonial Lawyers (AAML), and is a board member and secretary of the AFCC Board of Directors. This piece was originally published January 14, 2015, as Nine Tips to Save Money Using Your Parenting Coordinator *on her blog www.heyannette.com.*

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Tips for Unbundling Your Family Practice: 2015

Forrest S. Mosten, Beverly Hills, California

In the April 2010 edition of the *AFCC eNEWS*, I offered "Ten Tips to Unbundle Your Practice," which are as applicable today as they were five years ago. Two years later, I expanded that list of practice tips for a piece in the Fall 2012 issue of the ABA *Family Law Advocate*, "25 Tips for Starting an Unbundled Peacemaking Practice." Since these were published, the popularity of unbundling has increased, but there will always be lawyers who choose not to. Here, you will find those previous tips, a brief update on unbundling development, perceptions of some unbundling critics, and five new tips for 2015.

***AFCC eNEWS*, April 2010**
Ask the Experts, Ten Tips to Unbundle Your Practice

1. Let clients know that you unbundle
Tell clients in the first meeting, or even on your website, that you are available and enjoy helping them on a limited scope basis: you will meet for short sessions (30 minutes), by telephone or Skype rather in person; or can help them with just one issue (summer vacation) or task (ghostwriting letters to their parenting partner).

2. Before a client signs up for full service, offer a comparison with an unbundled approach
Information is the essence of client-informed consent. Compare and contrast a full service approach with limited services by discussing the benefits and risks of an unbundled approach using following variables: clients' ability or willingness to handle part of the work themselves, the difference in stress, cost differential, and the ability of the client to later convert to a full service approach after starting on a discrete task basis.

3. Offer stand-alone orientation services
Unbundle your role as a client educator from that of a service provider. Develop services that can inform divorcing parents individually or together about legal or parenting issues and available process options in your community—then refer the clients to others rather than providing the services yourself.

4. Turn your office into a divorce family classroom
By creating a client library with DVDs, computerized information, handouts and access to community resources, you can empower client's informed decision-making by giving them information to help themselves or keep their costs down within a full service context.

5. Be a shadow coach
Clients appreciate having you prepare them for negotiations with the other party at Starbucks or a court mediation session and having you available on call if they need your ideas, advice, or support during the session itself. Your involvement can remain confidential so that the client can get your help without provoking or frightening the other party.

6. Attend sessions as a consultant
As a professional trained and supportive of mediation and collaborative law, you can attend sessions as a client resource rather than an advocate.

7. Limit your services to be a conflict manager
Some matters are not yet agreement-ready and clients may need help to gather information, handle immediate issues, or locate/engage other experts. Be available for these pre-settlement tasks and be open to the client utilizing another mediator or representative to actually negotiate the deal when the time is ripe.

8. Endorse confidential mini-evaluations (CME)
Put as many barriers as possible between the family and the courthouse—and still get necessary expertise and recommendations to resolve impasse. Offer CMEs within the mediation and collaborative processes and recommend the use of CMEs with other neutrals when you already have another professional role.

9. Suggest and offer second opinions
Oncologists often insist that their patients obtain a second opinion before commencing or continuing treatment. So should we. Make such unbundled second opinion recommendations a standard part of your practice and consider offering second opinions yourself.

10. Be an unbundled preventive conflict wellness provider
After successfully resolving a family conflict, conduct an unbundled future conflict prevention consultation to discuss methods to resolve future disputes, regular parenting meetings, and options to monitor and avoid future family conflict. Helping clients maintain family conflict wellness may be the most important contribution that we make to the divorcing families we serve.

ABA *Family Law Advocate*, Fall 2012
25 Tips for Starting an Unbundled Peacemaking Practice

1. Commit to legal access and a consumer approach.

2. Commit to the learning concepts, law, skills and craft of unbundling.

3. Commit to making your living through non-court unbundling work.

4. Draft and vet a mission statement for your unbundleing practice.

5. Draft and vet a business plan for your unbundling practice.

6. Pencil out your profitability. Illustration: if you charge $150 per hour and you believe that you can bill and collect two unbundled or peacemaking hours per day, four days a week, for 50 weeks per year, you could anticipate $60,000 gross income. With 30% anticipated income, your adjusted gross would be $42,000. With this anticipated base, you could anticipate what additional non-unbundling legal work (if any) you would need to pay your living expenses and how much more marketing you would need to do to increase your income.

7. Reflect and continually re-evaluate: How is my plan working? How can I improve?

8. Study law practice management books, particularly, Jay Foonberg's *How to Start and Build a Law Practice*, 5th Edition (ABA 2005).

9. Select an area for your practice which has an underserved population. While it is better to live in the community where you practice, be prepared for a substantial commute to your practice in a geographical area with a shortage of lawyers, particularly lawyers who unbundle.

10. Be clear about the services that you are offering. Inventory your current services and think about what limited scope services you are already offering and let your clients know about them.

11. Be prepared to accurately and succinctly explain the option of unbundling and its benefits and risks to clients who ask for full service.

12. Be alert to the ethical and malpractice risks of unbundling and be prepared to explain and handle them.

13. Invest the time to prepare unbundling friendly client handouts and practice materials.

14. Do an unbundling impact study on your website, firm brochure and other marketing pieces to make sure that you inform prospective clients of the unbundled services you offer.

15. Prepare a script for your staff to handle unbundling inquiries from clients on the telephone or from website messages.

16. Install Skype and arrange for conference call telephone service to provide long distance unbundled services.

17. Refine your assessment screening to make sure that clients are appropriate candidates for unbundling.

18. Always use a current written unbundled client lawyer limited scope engagement agreement.

19. Clarify your fee requirements and make sure that your limited scope clients do not owe you money, as this situation only hurts your client relationship and willingness to render further services to the client in need.

20. Design your office to be unbundling friendly with a client library that provides information and education to do-it-yourself clients.

21. Initiate an evaluation protocol to assess client satisfaction.

22. Let other lawyers in your community know that you unbundle and are willing to handle their referrals of clients that they will not take.

23. Assemble a board of advisors to meet at least four times per year to guide and evaluate your practice development.

24. Be proactive—find and utilize unbundling role models and mentors.

25. Attend unbundling trainings and conferences—even if you have to travel.

On February 13, 2013, the ABA House of Delegates passed Resolution 108 endorsing unbundling.

In 2014, Lawyers Mutual Insurance Company, one of California's largest lawyer malpractice insurers produced a one-hour video for its policy holders encouraging the use of unbundling and providing guidance for its ethical and effective use.

In 2015, the Law Society of England and Wales issued guidance to its lawyers to effectively unbundle their practices to bridge a needs gap for the middle class caused by drastic cuts in their previous Medicare-type form of legal aid.

Has all this progress (and more) convinced most lawyers to expand their opportunities and provide needed services by unbundling? On March 20, 2015, the Law Society Gazette published comments on the Law Society's unbundling efforts (included here).

—We all know our barrister chums on the bench will absolutely ignore all efforts to limit liability when unbundling, and make us responsible for anything that went wrong during the case…Anyone who therefore offers 'unbundled' advice has to be totally bonkers...

—Only a lunatic would agree to work on such terms. You either act for a client or you don't. It's black and white in my view. You would end up doing stacks of work pro bono because clients would not understand the terms of the retainer and would expect to have their hands held from the cradle to grave. It is risible that the Law Society is endorsing this type of thing, and is a quite shocking indictment of the state of civil litigation at present.

—I got the email (on Guidance from the Law Society) last night and almost exploded! It basically says—work for less, don't do as good a job, and don't get paid a proper fee, but take on all the liability.

—Indeed, it makes clear that if you do this, you will be found liable for not having investigated the rest of the client's circumstances.

—I would go so far as to argue that it does the profession a disservice, because it suggests solicitors are liable to an extent that I think even the Court of Appeal has never suggested. It won't take a long time for our bewigged learned friends to dig this practice note up in the future and use it in submission to His Honour that our PII policy should be paying compensation to an unbundled client because we never asked her the circumstances of how much debt she was actually in (or whatever).

—Good god! We are dismantling our own jobs! And our own 'non' representative body is advocating it! Seriously there has to be a break away from this whole ethos. I cannot imagine any other profession voting, like a turkey, for Christmas….

—Why are the Law Society steering their members down this sort of path? The civil litigation system is broke I'm afraid. Suggesting we can all survive by undertaking this type of work is moronic.

—To unbundle is to undermine. Clients rightly expect nothing but the highest professional standards from solicitors. Journeymen doing half a job in the eyes of the client, irrespective of the weasel words in the retainer, will devalue the profession as a whole.

—Leave the unbundled to the unadmitted.

—I shall bundle until I can bundle no more.

—Just who are these people at the Law Society? Do they know anything at all about anything? They really must be absolutely crackers to promote this nonsense. It just makes you scream.

Clearly, there will be many lawyers who will never unbundle. However, for those of you who enjoy working with people who need your help and are willing to pay for it, limited scope services can help differentiate you and your practice from those lawyers who refuse to unbundle.

If you are trained and committed to mediation and/or collaborative practice, here is a **new set of 5 unbundling tips for 2015** that might increase your revenue while making a difference in the lives of many families in conflict:

1. Offer unbundled letter writing services to tone down harmful and pejorative comments and help your client resolve matters faster.

2. Offer negotiation coaching sessions to help prepare your client for a sit-down meeting with their spouse at Starbucks or around the kitchen table. Role play and

use your smartphone to record the practice negotiation. Help your client learn and use I-statements.

3. Help your clients organize their paperwork so that they can be effective in a settlement conference or court hearing. Help them take a shoebox full of receipts and make a chart of expenses.

4. Sit down with an unbundled client and go to www.UptoParents.org, www.ourfamilywizard.com or www.Split.com. These child-centered resources may provide the ideas and tone that can save their children from unnecessary long term harm.

5. Be an unbundled conflict wellness diagnostician and provider. When a self- represented litigant takes you up on your unbundling services, take a moment and assess their legal health and offer a Legal Wellness Check-up.

You do not have to forgo the rest of your practice to let clients know that you offer unbundled services. You have the training and the care for the health of divorcing families to provide needed services that these underserved clients will be grateful to pay for.

Forrest (Woody) Mosten is internationally recognized as the "Father of Unbundling" for his pioneering work in limited scope services to provide affordable, accessible and understandable legal services for the underserved. He is in solo private practice as a family lawyer and mediator in Los Angeles in which unbundling and other non-litigation activities are the foundation of his practice. He is the author of four books and numerous articles about unbundling and other issues of legal access and peacemaking, serves as a keynote speaker for legal and mediation conferences worldwide, and is adjunct professor of law at the UCLA School of Law where he teaches Mediation and Lawyer as Peacemaker. Since 1989, Mosten has served as Chair of The Louis M. Brown and Forrest S. Mosten International Client Consultation Competition affiliated with the IBA that bears his name. He has served on the ABA Standing Committee for Delivery of Legal Services, the ABA Commission on Interest on Lawyers Trust Accounts, Chair of the ABA Dispute Resolution Section on Integrating Collaborative Law into Law Schools, and has received the ABA Louis M. Brown Lifetime Achievement Award, as well as the ABA Lawyer as Problem Solver Award for his contributions in Legal Access and Mediation. Woody will serve on a plenary panel on legal access, Plenary II Access to Justice: Different Strokes for Different Folks and co-conduct Workshop 48, Unbundling Legal Services at the AFCC 52nd Annual Conference in New Orleans. He can be reached at www.mostenmediation.com.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
April 2015

Top Ten Tips for Helping Parents Keep Children Out of the Middle

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As significant a change as divorce is for children, ongoing conflict between parents can cause problems for children across a number of dimensions, including emotional development, social relationships and academic performance. All too often, even the best-intentioned parents act in ways that exacerbate tension and put the adult-sized weight of the divorce or separation onto the shoulders of children. Parents need to know how they can shield children from conflict while still listening to their concerns.

These practical tips are intended for family law professionals to provide to clients they represent as attorneys, see in mediation, help resolve disputes through parenting coordination and in mental health settings, both for parents and children.

1. Parents should model appropriate behavior for the child

Children constantly observe parental behavior. If a parent is terse, rude, will not make eye contact, or is otherwise disrespectful to the other parent, children notice and think that such behavior is normal or okay. Further, children identify with their parents. When it becomes obvious that Dad doesn't like Mom, a child is very likely to question if Dad likes them because the child likes Mom.

Even if it feels fake, making the effort to greet the other parent in a positive way, using good manners with them and avoiding a hostile or sarcastic tone, makes it comfortable for children to be in situations with both parents, such as at a school event or athletic activity.

Further, co-parenting does not end when the child turns 18. Graduations, weddings, grandchildren and other important events will likely involve both parents. Continuing conflict lessens the likelihood that both parents or either parent will be included in these important gatherings.

2. Parents should answer questions posed by the child in an engaged and empathetic way

Children need to be heard rather than interrogated about what they say. For example, when a child says, "I'm really tired," merely asking what time they went to bed may miss their need for comfort entirely. If a child states that he or she is unhappy with a decision, such as why they cannot spend the night with a relative of the other parent, reflective or active listening helps the child feel heard and doesn't blame anyone. Examples include:

"Wow! That must be confusing. Let's talk about this."

"Why, what do you think?"

"I understand what you're saying, and your mother/father and I will talk about it and get back to you by __."

"You sound really upset about this. Let's sit down and talk about it."

Parents should demonstrate that they are listening to their children and are willing to help them with their confusion, fear, sadness and/or anger. It's always okay for the parent to ask the child whether there is anything they can do to help.

3. To question or not to question children

When parents don't get along well, they may think, "What goes on in my home stays in my home," and ask, directly or indirectly, that the children not talk about their time together. This teaches children to keep secrets, which may actually prevent them from telling parents about unsafe or frightening situations, such as something that occurs at a friend's home. A parent who asks questions such as, "What did you guys do over the weekend?" or "Where did you go to eat?" should not be seen as intrusive, but rather as encouraging the

child to feel free to talk about every part of their life. When a child comes home from school, parents would never say, "What happens at school stays at school."

4. Parents must respond to the child's needs now, and their own needs later

Sometimes the child will ask a question or make a statement that pushes a button. The words "Mom/Dad said" are often triggers that remind a parent of the difficulties they experienced with the other parent. Your client may hear, "Dad says that you left us for another man" or "Mom told us you are behind in child support and that's why we can't go on vacation this year." It's important for parents to wear their "parent" hat at the time they are talking with the child, and appropriately respond to the child's question/statement (See Number 2, above). It may seem helpful to agree with the child, "I know what you mean. S/he used to do the same thing to me," but this would be putting the parent's needs before the child's. Instead, parents should react by using one of the examples in Number 2, above, and take care of their own needs later on, outside the presence of the child.

5. Using "we" messages implies cooperative co-parents

"We" messages show that the parents, although separated, are still a unified team. Parents can use these messages even when they think the co-parent isn't trying to protect the child from the adult disagreements. A statement such as, "I know you want to go on Spring Break with your friends, but I need to talk to your Mom/Dad about whether we think this is a good idea," models respectful and appropriate decision-making. Parents should make sure children don't think they have to choose between the parents: "We're both going to be at your awards ceremony and you can sit with anyone you want. If you don't sit with me, I'll see you afterwards before I go home."

6. Parents should keep the children informed (schedule, activities, big decisions), but not too informed (financial circumstances, reasons behind the divorce, other adult issues)

When parents say, "I'm going to be honest with the children," this often forecasts sharing too much or inappropriate information with the children. There is a great deal of information parents don't share with children while they're married or living together. Keeping those same topics between the adults prevents unnecessarily burdening children and prevents them trying to figure out who is "right." Few parents share financial details with their children, such as whether they're worried about getting laid off. Telling children about financial matters worries them and typically results in them asking the other parent if the information is "true." Parents regularly promote positive myths like Santa Claus and the Tooth Fairy and don't worry about "being honest" in that context. Parents should ask themselves why they are thinking about sharing information now that they wouldn't have shared if the parents were still together.

7. Keep the responsibility for constructive communication with the parents

When children realize that there is no communication between parents they typically feel a need to fill the void. Similarly, children may begin to protect parents from hostile communication by taking on that role. There are numerous simple guides to constructive communication available to parents, such as "Biff"—Be Brief, Informative, Friendly and Firm.1 Parents should consider themselves co-workers at Raising Our Children, Inc., and consider how they would react if they saw a colleague in the store, or at the child's ballgame. They would not be rude, dismissive, condescending, or otherwise belligerent, but rather would model good social behavior to the child. Telling clients to react as they would to anyone else rather than make a negative exception for the other parent can make a dramatic difference. Parents should remember that children are always watching, listening and remembering how their parents interact.

8. Pretend that any communications will be viewed/heard by the judge (or the children) someday

Communicated enmity between parents can cause emotional problems for children, and lead to legal ramifications if the parties' judicial officer becomes privy to disrespectful and uncooperative communications. A good rule of thumb is to assume all communications (in-person, over the phone, or text/email) can be viewed by people other than the other parent. There are very few circumstances that demand an immediate response, and many parents have lashed out at the other parent without stopping to consider the possible ramifications of their communication. Drafting an email or text and letting it sit for an hour or more will allow the sending parent to fully consider potential consequences of rude or disrespectful communications. Pretending that the child or the judicial officer is copied on any written communication reminds parents to be brief and respectful. Further, given that many parents allow children to use their smartphone or computer, the possibility that a child will actually view hostile or degrading communication between the parents can be very real.

9. Pay attention to who owns the problem

Parents sometimes react too quickly in telling a child the issue is "grown-up" business. When a child says, "Mom told me I have to ask you if I can go to Ryan's birthday party," telling the child, "Your mom should have talked to me about this," may leave the child feeling helpless in solving a simple problem. On the other hand, when a child says, "Dad says you're supposed to buy me new shoes," this appears to be a grown-up issue. Responding with reassurance that the parents will work this out helps kids get out from between the grown-ups. Sorting out whose problem it is can be tricky: Is this request one that the child would have made to either parent or does this sound like the child is reporting something the other parent wants? Will telling the child you will talk to the other parent leave them feeling stuck and as though there will never be a decision? Sometimes the best course is to answer the child's question or respond to the request even though the other parent should have spoken to you first. Parents sometimes say, "When I get paid next, we'll get a pair of shoes" to avoid the child waiting while the grown-ups discuss the issue.

10. Be careful about taking children's reports literally

There are a variety of reasons why children's statements and questions to their parents may be unreliable. Sometimes they do report exactly what they heard, but not everything the other parent said. Young children aren't good reporters of the context of events or statements. They may be accurately reporting the effect but not the cause: "Mommy pulled my arm and hurt me" may be true, but the child doesn't report that he was stuck in the grocery cart and Mommy was trying to help him get out. Older children often report the part of the conversation that fits with what they want: "Dad said I can go to the carnival with him" does not include the full statement, "You can go the carnival with me if that's our night together." Although it's hard to admit, sometimes children are manipulative to get what they want and purposely don't provide all of the information when they know a parent is likely to believe the worst of the other parent, such as, "Mom said you're paying for my class trip." A good response to such a statement is, "I understand; Mom and I will talk about it and you and I can discuss it afterwards."

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ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Ten Tips for Working with Interpreters and Translators in a Court Setting

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Have you ever wondered what the difference is between an interpreter and a translator? Interpreters work in oral or sign languages between two people who do not speak the same language and are a cultural and linguistic bridge between those two people. They use informal spoken rules of language to convey the message orally. Translators work with the written word. They take a document in a source language (Spanish) and turn that into a document in the target language (English). They bridge the gap between two parties who do not speak the same language in writing and use the formal written rules of language to do so, including syntax, grammar, punctuation and idiomatic usage. Both interpreters and translators transfer meaning from one language to another language. Here are some tips for working with translators and interpreters in a court setting.

1. Are they qualified?
Ask for a resume that documents their training and education. A qualified professional will present their credentials when asked. An interpreter must have accreditation, pass the requisite exams and be qualified by the jurisdiction in which the interpretation takes place. In most jurisdictions the interpreter will be required to take an oath or affirm as to qualifications and proficiency in the two languages and have the ability to provide the service. Translators usually have an A and a B language. Sometimes translators work in only one direction, for example from Spanish to English. If they are bi-directional, they usually know both languages equally well. Be familiar with the certifications and qualifications that are required in your jurisdiction for interpreters and translators.

2. If there is one available, work with the court interpreter's office in your jurisdiction
There are times when the court provides the interpreter and times when the parties/lawyers are expected to do the hire. Many courts have court interpreters employed by the court to translate and/or interpret. They may know of interpreting or translation professionals who work in many different languages in your community who are qualified to do the work you are seeking. They are a valuable resource who may be able to steer you to other resources.

3. Before hiring an interpreter or a translator negotiate all of the payment and job details up front
Will they be paid by the job, by the day or by the hour if they are an interpreter? Will they be paid by the word, by the job or by the length of time it takes if they are a translator? Will they submit an invoice at the end of their service? What is the deadline for the completion of the translation? Having the details worked out up front will avoid misunderstandings and surprises upon completion of the work.

4. Ask your interpreter up front what they need in order to do their job
They may need you to repeat things or look up a word. Oral interpreters do their job in the moment. Be aware that interpreter fatigue is a risk of the job as the task is both physically and mentally challenging. The court should be informed if fatigue becomes a problem or if and when a break is necessary in the proceeding. In some areas if the session is going to go longer than an hour, two interpreters may be required.

5. For interpreter, it is important to provide prep materials and as much information as possible about the case
Provide the interpreter with information about the assignment to make the task easier and more efficient. If you will be referring to handouts or court orders, give those to the interpreter in advance. An interpreter should make an effort to become familiar with the legal terminology particular to the assignment. Dialectic differences in languages exist and may create problems. The court interpreter should be informed not to hesitate to seek direction from the court if there are difficulties with idiomatic expressions, culturally bound terms related to the language/culture or legal terminology or anything else that might interfere with their ability to provide adequate service.

6. Conflicts of interest can occur in a case
By providing the interpreter/translator advance information on the case, conflicts of interest can be avoided. Interpreters should maintain a professional relationship with court staff, lawyers, parties and witnesses to avoid the risks of partiality. Family members and friends should not be used as interpreters. An interpreter must use the best skills and judgment and interpret accurately without embellishing, omitting or editing, and they must keep all information confidential.

7. Translators should have glossaries and informants available to them
Someone who is familiar with the document should be available as a resource to the translator so they have someone to talk to if there is a question related to what the document is trying to convey. A document is not a live person, so the only way to get meaning from it is through the written word. The translator may need to speak to someone to clarify what it is they are trying to have the document convey. And if you have a glossary of what the terms you use in your area mean, give that to the translator as well.

8. Give your translator the specifications on what the final document should look like
Are you going to format the document or do you want them to add the headings, bold title, or insert photos? Tell them up front what the end product should look like.

9. Whenever possible hire support and professional staff members who are bilingual
Do not use an interpreter, if possible. Especially in family law cases, people are sharing private and personal information. When people get emotional they often revert to the language they are most comfortable speaking. If a large portion of your clientele speaks another language, having some staff fluent in that language will help to make the client feel more at ease.

10. Language lines are an option for those in less populated areas and for lesser known languages
There are some reputable telephonic interpreting services available. Do your research and if no other options are available in your local area, a language line may be a great resource for you. Just like a telephonic mediation or court hearing, you will miss verbal cues and body language, but with adjustments like asking for clarification and repeating back what was said for clarification, using remote interpreting will allow you to serve your clients.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Low-Income and Never-Married Fathers and Families: Context and Perspective for Service and Support

Jacquelyn L. Boggess, JD, Co-Director of the Center for Family Policy and Practice, Madison, Wisconsin

Custody and other issues of parenting time and placement are areas of family law and family interaction that can be very contentious and emotional—with or without lawyers, and regardless of marital status. The adult conflicts, plus the difficulty inherent in providing a convenient, secure, and familiar residence for children in two different places, are obvious concerns. The difficulty can become impossibility in situations where both parents are poor. Many parents lack the resources to access the services of legal professionals but, more importantly for some families, parents may be unable to provide for their own and their children's basic needs—regardless of the parenting time arrangements.

Community-based fatherhood programs and service providers focus on poor and unmarried noncustodial fathers who are facing welfare and child support systems that create or exacerbate barriers to parenting time. They assert that many fathers and mothers know and understand the value of good parenting and involvement from fathers, but that society, and particularly government agencies and institutions, do not value any contribution of fathers that is not financial. They contend that many unmarried fathers are poor and need jobs and training, but these groups also assert men's ability and capacity to nurture and support children in ways that include, but are not limited to, financial contribution.

The following points of perspective and understanding will provide a context for low-income families negotiating the family court system.

1. The structure of social welfare support systems to which poor families: men, women, and children, are expected to apply for aid and support is based on public policy that may create barriers to effective co-parenting relationships. Fathers of children who receive welfare or other safety net services are often poor themselves. They are unemployed or severely underemployed, and they owe child support. Child support policy is based on the "deadbeat dad" stereotype, resulting in all of the aggressive enforcement mechanisms that are necessary to induce those who do not want to pay child support, also used against poor fathers who cannot pay child support.

2. The child support enforcement system has become more complicated for low- income parents over the last twenty years. State child support agencies have moved toward expedited and, very often, administrative processes. Paternity establishment has moved toward voluntary, summary processes occurring outside the courtroom. Since these administrative processes are judicial in nature, and the concepts involved are legal, parents frequently assume that the administrative staff with whom they interact have judicial status and that the decisions these staff make are judicial rulings. Parents do not understand how or know whether they can present evidence that might persuade the court of their perspective or position.

The system is very complex and unremitting, and it is based on consistent payment of a set amount. Without an understanding of the system (or access to the services of a legal professional), parents who cannot pay are subject to seemingly insurmountable problems. Nonpayment subjects parents to the possibilities of accumulation of arrearages, conviction and jail for contempt, and loss of license privileges (both driver's and professional licenses are sometimes necessary to continue working).

3. Most low-income noncustodial parents want to contribute financially and emotionally to their children and families. However, like many poor custodial parents, they are dealing with their own lack of economic viability; including lack of education and training, lack of employment and employment opportunities, race and class discrimination, criminal records, and lack of identifying and validating credentials (driver's license, permanent address, and previous work history).

4. Very low-income parents and parents who have never been married have no divorce proceeding to anchor or initiate the parenting time petitioning or proceedings. Generally, poor, never-married couples are in the courtroom on the petition of the state for paternity establishment and child support, not of their own volition for custody and parenting time determinations. Parents who are moved into the family court system by the state through the welfare agency or some other administrative agency have no control over the process. They may react and respond based on misunderstanding and misinformation, which can create additional barriers such as confusion, fear, and anger leading to disinterest and avoidance of the system and the process.

5. Some non-marital family situations are cohabiting families whose reasons for not getting married may include issues of eligibility requirements for social service programs used by the custodial parent. This is a concern when the social service needs of the child and family include child-care, housing, food stamps or cash benefits. This situation might naturally put the onus on the father as an outsider, whose presence could get the family benefits terminated (because he is living in the house regardless of the agency regulations against his residence). These families are unlikely to request court orders for parenting time or visitation.

6. Fatherhood programs that serve low-income men, mostly men of color, through employment and peer support service are generally not the recipients of funding or training around the issues of parenting time or custody. There are at least two very important reasons: (1) most of these programs serve men who have been summoned to the courtroom by the state child support agency for purposes of paternity and child support orders; (2) the most essential and most time consuming services these programs provide are employment and negotiation of the child support system.

7. In low-income communities of color, there is some concern about how men are treated in institutions—child support agencies, jails, police stations, and courtrooms. Parents (and communities) want safety and security for themselves and their children. This circle of concern and care includes men who may need protection from government agencies and institutions. Distrust based on fear, misinformation, and negative experience keeps parents away from courts and legal processes.

Jacquelyn L. Boggess, JD, has worked with the Center for Family Policy and Practice since its inception in 1995. Her work as a policy analyst involves investigation of the welfare system, family law courts, and the child support system. Her particular interest lies in the interrelations among these systems, and how the social welfare policy and practice that result from this relationship affect low-income fathers, mothers, and children. Ms. Boggess has concentrated on the question of the impact of government initiated "family formation" and father involvement policy on the safety and well-being of women and children. Ms. Boggess has a particular interest in the impact of non-resident father involvement on mothers and children. Her work on this issue has resulted in connections and collaborations with domestic violence organizations and progressive advocacy groups working on poverty reduction, violence prevention, and economic justice for parents and children. Ms. Boggess is a graduate of the University of Wisconsin-Madison Law School.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
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Courthouse Facility Dogs—An Innovation to Improve Services for Your Clients

Ellen O'Neill-Stephens, JD, Founder of Courthouse Dogs Foundation, Bellevue, Washington

The Need for Trauma Sensitive Courts

Families approaching the King County Juvenile Court for the first time see a four story bunkerlike building with rows of narrow vertical windows instead of horizontal slits. A mural painted on the wall near the front entrance looks more like graffiti than a work of art. The lobby is even less inviting. Seattle Post-Intelligencer reporter Levi Pulkkinen recently wrote, "When court is in session, the central waiting area at the Youth Service Center has the ambience of an airport terminal and the feel of an emergency shelter thrown up after a natural disaster. Rather than an earthquake or wildfire, though, the dozens of families gathered there are caught in more personal calamities."

This is where I started my career as a deputy prosecuting attorney back in 1983. At first, I loved the grittiness of "juvie" and I enjoyed prosecuting crimes of violence in superior court. However, after several years, the cumulative effect of witnessing people suffer intense emotional trauma and experiencing the negative consequences of working in an adversarial system, I realized that a courthouse can be a toxic environment that damages people. But since this was the way the legal system had conducted business for hundreds of years, it didn't seem likely it could ever be different.

The Genesis of Courthouse Dogs

In 2003, I rotated back to juvenile court. It hadn't changed and I wasn't looking forward to my new assignment as drug court prosecutor. I dreaded the idea of working with dysfunctional families and damaged drug-addicted teenagers. Although a few of the kids turned their lives around, most didn't. I knew it would be depressing.

Things were going well in my family life, however. My son Sean, who has cerebral palsy and virtually lives in his wheelchair, graduated from high school and we were going to get him a service dog. Since Sean is entirely dependent on people for all of his needs, my husband and I went to the assistance dog school to learn how to handle his dog for him. It was there that a big Golden-Lab mix named Jeeter entered our lives. Although he was only two years old, Jeeter seemed like an old soul and was very calm and loving towards Sean and anyone else who came within reach of him. While at the assistance dog school, I also learned that dogs like Jeeter could be placed with professionals who worked at hospitals and special education classrooms to help the people they served. These types of dogs are called facility dogs to distinguish them from service dogs that assist people with disabilities. This was a bit of information that would soon become useful.

Upon our return home, we discovered there was one day a week that Jeeter couldn't be with Sean because of his caregiver arrangement. So rather than leave Jeeter at home alone for 10 hours, I asked Juvenile Drug Court Judge Inveen if Jeeter could be a part-time facility dog and come to court to provide some comfort to the kids.

Surprisingly, she and the drug court team agreed. Jeeter's presence had a positive impact not only on the teenagers, but also on their families and the drug court staff. One teenager who graduated from drug court after years of struggle attributed her final success to Jeeter's presence.

Soon thereafter, the other deputy prosecutors in my office asked for Jeeter's assistance with children that had been sexually assaulted. It was time for the King County Prosecutor's Office to get a facility dog. Ellie, trained by Canine Companions for Independence, was placed there in 2004. Her primary job was to snuggle with children while a forensic interviewer questioned them about their sexual abuse, and to accompany kids when they testified in court.

A Case Study: How a Dog Can Make a Difference

A five-year-old boy had to describe to a jury how his father had viciously beaten his mother. Ellie's presence during trial preparation made it possible for the boy to convey how terrifying the experience had been for him, so the deputy prosecutor felt confident that the boy would be able to testify with Ellie lying beside him in the witness box. However, that wasn't the case. When

questioning began, the boy wasn't able to utter a word. The deputy prosecutor didn't realize that the boy's aunt was glaring at the boy from where she was seated in the courtroom. Before giving up on him as a witness, the prosecutor asked for a recess in the judge's chambers to try to understand what was happening. Ellie accompanied the boy for the meeting with the lawyers and the judge.

Despite the judge's efforts to engage with the child by showing him photos of her dogs, the boy was silent. Eventually, the deputy prosecutor stepped in and encouraged the young boy to play with Ellie. Within a few minutes, the boy was smiling and seemed more relaxed. The judge asked the boy why he did not answer the prosecutor's questions, and he explained that his angry aunt was scaring him. The aunt's removal from the courtroom enabled the boy to regroup and share his account of what occurred. When he struggled for words, he would reach down, pet Ellie and then continue to describe what happened. The jury convicted his father. The boy's mother later told the prosecutor that with her husband locked away for several years, she and her son finally felt safe.

The Development of Courthouse Dog Programs in Criminal and Civil Proceedings

This program became so successful that Celeste Walsen, DVM, and I joined forces to educate the legal community about the benefits of this innovation. We named our organization Courthouse Dogs. Soon, dozens of courthouse facility dogs began working in child advocacy centers and prosecutor's offices throughout the country.

We were contacted by the New Mexico Children's Justice Act Advisory Group in 2009. We learned that the Children's Justice Act (CJA) provides grants to states to improve the investigation, prosecution and judicial handling of cases of child abuse and neglect, particularly child sexual abuse and exploitation, **in a manner that limits additional trauma to the child victim** (emphasis added). The advisory group believed that the placement of these dogs would be one of the best ways to reduce trauma for children who had been abused or neglected, and they wanted to fund the placement of a few courthouse facility dogs in their state.

Chaves County CASA, New Mexico

In 2010, Carrie-Leigh Cloutier, the executive director of Chaves County CASA, located in Roswell, New Mexico, was among the first to add the presence of one of these loving dogs to the services they provide to children in their community. Now courthouse facility dogs Emma and Zia assist children in civil and criminal proceedings, during forensic interviews, their special children's programs and court-ordered visitation. Emma's immediate presence after the 2014 Berrendo Middle School shooting to comfort the children inspired the local district attorney to acquire courthouse facility dogs for the courthouses in the three counties of the 5th Judicial District in New Mexico.

13th Judicial Circuit, Tampa, Florida

Brenda Kocher, volunteer guardian ad litem, and facility dog Tibet began working in the 13th Judicial Circuit, Tampa, Florida, in February of 2014. Since beginning their work together, the team has worked with hundreds of children in courtroom waiting areas, hearings, trials, forensic interviews, sexual assault examinations, psychological evaluations and treatment sessions, and public awareness events. Brenda says, "Tibet helps us provide a more trauma-sensitive space for our children in every venue in which she is used. Her value to adult staff working in this stressful environment is immeasurable." Brenda recently received the Statewide Guardian Ad Litem Volunteer of the Year Award.

Marion County Family Court, Ohio

Kathy Clark, PhD, program and grants administrator with the Marion County Family Court in Ohio has been a social worker for over 35 years, working with children and adolescents in schools and the family court who are experiencing parental separation and divorce. Currently, Kathy is the dog handler for court facility dog, Camry. Camry now plays a role in helping children who are involved in domestic relations and juvenile cases by accompanying them in court hearings and interviews. Kathy has expanded their duties to facilitating interaction between parents and their children in supervised visitation. When Kathy sees children refusing to engage with their parents, she introduces them to Camry and soon parent and child are petting him together. This joint session of nurturing behavior can be the first step towards healing.

Williamson County CASA, Tennessee

Executive director of Williamson County CASA, Marianne Schroer learned about courthouse facility dogs when we presented at the 2014 National CASA conference. A year later she became the handler of Rocklin. Marianne reports, "Rocklin has been such a welcome addition to our staff at Williamson County CASA. Last week was a great example of his contribution to our kids and our community. He was in juvenile court on Monday and at the Foster Care Review board on Tuesday. He worked with 10 children at various times during those days. He was available to educate the school system on the work that he does with kids. He

attended a Rotary meeting to help build awareness and raise money for CASA, and he attended the district attorney staff meeting to share what courthouse dogs are bringing to our court system. As you can see he is a busy boy who provides a valuable service on many levels!"

The Need for Best Practices in this Field

It has been so rewarding to see how such a simple concept has made a huge impact on our legal system. What first seemed like a crazy idea has become almost mainstream. Five appellate court decisions have reviewed the practice of dogs assisting vulnerable witnesses when they testify in court and have found that, if certain procedural steps are taken, it is a justifiable accommodation for a witness. However, just because it is a simple idea doesn't mean that any dog or handler can perform to the high standards needed to ensure that a defendant's constitutional rights are not violated, and that the dog has been adequately trained and assessed to be safe during close contact with children, and is comfortable working in a high-stress environment.

The best practice model for dogs working in the legal system is the use of dogs that are graduates of an accredited assistance dog organization and are handled by professionals working in the legal field. These non-profit organizations should be members of Assistance Dogs International, an organization that has a comprehensive accreditation system and requires members to be regularly assessed to ensure they meet the high standards expected of assistance dog programs. Because these dogs and their handlers are trained to such high standards, Arkansas and Illinois recently implemented legislation requiring programs that use dogs to assist children in the courtroom to use this model.

Dogs Provide a Unique Sense of Safety and Comfort

As I struggled to write a concise conclusion about the many ways these special dogs can make a difference in a child's life, I received this photo from CASA director Carrie-Leigh Cloutier, with the caption: "Zia under my desk with a little boy who watched his mother try to kill his baby brother." No other words are necessary.

Learn More—2015 International Courthouse Dogs Conference

Learn more about courthouse facility dogs assisting children and their families from the practitioners mentioned in this article at the 2015 International Courthouse Dogs Conference in Seattle, October 4-6, 2015. Registration closes September 25, 2015.

Ellen O'Neill-Stephens, JD, is the founder of the Courthouse Dogs Foundation, a nonprofit organization that educates legal professionals and promotes best practices for the use of dogs during the investigation and prosecution of crimes. She retired in 2011 as a senior deputy prosecuting attorney from the King County Prosecutor's Office in Seattle, Washington after 26 years of service. In 2003, she pioneered the use of facility dogs that are graduates of assistance dog organizations to provide emotional support to everyone in the legal justice system. Ellen graduated from the University Of Oklahoma School Of Law in 1983. In 2010, Bark Magazine named her among the "100 Best and Brightest for Amazing Advancements in the Dog World Over the Past 25 Years". In 2013, Oprah Magazine named Ellen a "Local Hero" for her work. She also received recognition from the Hague Institute for the Internationalization of the Law for a successful innovation in their competition for the Innovating Justice Award. Ellen's son Sean and his service dog, Jeeter, were the inspiration for her efforts to make the criminal justice system more humane.

ASSOCIATION OF FAMILY AND CONCILIATION COURTS
Ask the Experts
September 2015

Top Ten Reasons to Support a CASA Volunteer Program

Doug Stephens, Executive Director, The Ohio CASA/GAL Association

Court Appointed Special Advocates (CASAs) are private citizens from all walks of life who are strictly screened and extensively trained to advocate for children involved in juvenile court proceedings as a result of being victims of abuse, neglect, or dependency. The volunteers research the child and family's circumstances, make recommendations to the court, advocate for the child, facilitate the offering of services, and monitor the progress of the child. They do not replace children's services caseworkers, nor do they provide legal services, but instead serve as an independent appointee of the court to advocate for the best interests of the child. Here are ten reasons to support a CASA volunteer program:

1. "To give a child a CASA is to give them a voice. To give them a voice is to give them hope, and to give them hope is to give them the world." —a former foster child

2. Children with CASA volunteers spend less time in foster care. In at least one study, children without a CASA volunteer spent an average of over eight months longer in foster care compared to children with a CASA volunteer.[7]

3. Children with CASA volunteers do better in school. Compared to other children involved in court as a result of abuse or neglect, children appointed CASA volunteers are more likely to pass all courses, less likely to be disruptive in class, and less likely to be expelled.[8]

4. Since its creation in 1977, in Seattle, by juvenile court Judge David Soukup, nearly 1,000 CASA programs have been established in 49 states with 77,000 volunteers serving a quarter of a million children every year.

5. In Ohio, 36 CASA programs exist serving 42 counties. Last year, 2,088 Ohio CASA volunteers served 7,698 children.

6. CASA volunteers see their children a minimum of once a month and average only three case assignments at a time.

7. A paid CASA program staff person averages 30 volunteers. With each volunteer supervising three children, one paid staff serves up to 90 children.

8. Last year, in Ohio, CASA volunteers worked in excess of 55,334 hours and traveled over 287,362 miles, largely unreimbursed, serving their children.

9. In at least one study, children assigned a CASA volunteer were more likely to have a plan of permanency, especially children of color, and were substantially less likely to spend time in long-term foster care.[9]

10. Most CASA programs rely significantly on private donations and funding. In Ohio, 56% of funding for CASA programs comes from non-public sources.

The Ohio CASA/GAL Association is the state non-profit membership driven association that supports the work of local CASA programs throughout Ohio. We help local CASA programs with volunteer recruitment, training, funding, state leadership, quality assurance, and management assistance. Ohio CASA is a member in good standing of the National CASA Association. Our annual Celebrate Kids! State Conference will be held October 14-16, in Columbus, with over 300 attendees from all 88 counties.

Read more: Evidence of the Effectiveness—Key Outcomes of the CASA/GAL Model

[7] Cynthia A. Calkins, MS, and Murray Millar, PhD, "The Effectiveness of Court Appointed Special Advocates to Assist in Permanency Planning," Child and Adolescent Social Work Journal, volume 16, number 1, February 1999.

[8] University of Houston and Child Advocates, Inc., Making a Difference in the Lives of Abused and Neglected Children: Research on the Effectiveness of a Court Appointed Special Advocate Program.

[9] Abramson, S. (1991). Use of court-appointed advocates to assist in permanency planning for minority children. Child Welfare, 70, 477-487.

Doug Stephens has been with Ohio CASA since April 2011. He has been affiliated with Ohio CASA since 1996 serving as a board member, treasurer, and the chair of the standards committee. Doug has spent over 33 years working within the Ohio court system, initially with Delaware County Juvenile Court, then with Licking County Probate/Juvenile Court and retiring from the Supreme Court of Ohio after 20 years on staff. With the Supreme Court he was a senior staff member serving as the Director of the Judicial & Court Services Division, which leads all support efforts for the nearly 400 Ohio courts and over 700 judges. Doug is a former member of the National Association for Court Management, the National Council of Juvenile and Family Court Judges, the Ohio Association of Court Administrators, the Ohio Sexual Assault Task Force, and the Ohio Criminal Justice Information Services Advisory Board. He served on the magistrate search committee for the US District Court and is a past board president of the Juvenile Diabetes Research Foundation. Doug is a graduate of The Ohio State University and a lifelong resident of central Ohio.

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