



# Winter News

## President's Message

From Sarah Quinlan, JD



Annually, in July, our Board of Directors engages in a day-long planning meeting where we discuss COAFCC's upcoming term and the future plan beyond. This year, we renewed our commitment to being a statewide organization and to bringing current and relevant education not only to the Denver metro area but throughout Colorado. In keeping with this goal, we started this term with a presentation in Pueblo by Judge Victor Reyes. This program was well reviewed and we are grateful to Judge Reyes for his commitment to education on domestic violence and his time in helping to put together such a great program. Our Outreach Committee is now planning other seminars in various parts of the state.

In April we will welcome Susan Lach and Mindy Mitnick to Denver for a presentation on the Use and Misuse of Experts. Ms. Lach is an attorney, licensed both in Minnesota and Colorado, who currently practices in Minneapolis where she is the past president of the Minnesota Chapter of the American Academy of Matrimonial Lawyers. Ms. Mitnick is a psychologist with a private practice in Minneapolis where she provides clinical and forensic services to children, adults and families including work as an evaluator. Their presentation will provide practical pointers for both attorneys and mental health professionals on topics such as "what makes an expert an expert"; recognizing a hired gun; standards, laws and guidelines for defining the role of experts; ethical issues regarding coaches for parties involved in PRE's; and how to ethically prepare for trial.

On Columbus Day weekend (October 9 -11, 2015) we are launching our first multi-day conference in Breckenridge. Our intention is to host an annual conference each Columbus Day where national speakers can educate us while we enjoy fall in the mountains and networking opportunities. Please mark your calendars for this exciting event at Beaver Run Resort. The speakers and topics are being finalized and will be circulated to our membership in the near future.

I would also like to take a moment to thank everyone serving on the COAFCC Board and Committees. These programs and the planning that goes into them, take a great

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**Disclaimer:** The opinions expressed in the articles published or referred to in the COAFCC newsletter are those of the authors and do not necessarily reflect the positions of the Association of Family and Conciliation Courts or the Colorado Chapter of AFCC.

Winter 2014  
Volume 5, Issue 2

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deal of effort by a group of already busy individuals and I am so appreciative of the time they so tirelessly give to our organization. In particular I want to point out the efforts of the committee chairs: Lenny Tanis (Newsletter), Beth Lieberman (Outreach), Jennifer Mone (Program), Barbara Pevny (Membership) and Kathleen McNamara (Nominating). Thank you so very much for taking on these additional roles and doing such a superb job!

We welcome the help of our members and if you are looking to become more involved in COAFCC, volunteering on a committee is the perfect place to start. Please feel free to contact me if you want to become more involved, have questions about our organization, or ideas for future programs.

~Sarah Quinlan

If you or a COAFCC member you know has recently received an award, promotion or recognition please let us know so we can share the great news. Email: April Freier at [aprilfreier@hotmail.com](mailto:aprilfreier@hotmail.com)



Dedicated to improving the lives of children and families through the resolution of family conflict

**Join Today!**

Benefits of Membership:

- Be part of a vibrant network of Colorado family law professionals
- The COAFCC semi-annual newsletter is packed with local news, articles, links to resources, and more
- Discounts for COAFCC conferences & training programs
- All the benefits of AFCC membership: Subscription to Family Court Review; discounts for malpractice insurance & publications; access to the Parenting Coordination Listserv
- Access to conference audios
- Support & advocacy for local community networking
- Representation on COAFCC Board of Directors
- Participation on committees, task forces & projects
- Mentoring and consultation from experts around the state

## COAFCC 2015 FALL CONFERENCE

**Save the weekend of October 9 to October 11, 2015 for an extended conference and networking event!**

The Colorado Chapter of AFCC has been planning a new conference format for the Fall of 2015. Bring your family and enjoy time in the Colorado mountains! The conference will be at Beaver Run Resort in Breckenridge, Colorado.



Who should attend?

Judges  
Lawyers  
Mental Health Professionals  
CFI and PRE Evaluators  
Mediators

**More information to come!  
Mark and save this date on your calendar!**

# Dealing with High Conflict Personalities (7 tips)

Bill Eddy, LCSW, Esq.

If you are separating or divorcing from someone with a “high-conflict” personality, here are a few tips to consider. Their behavior is considered high-conflict because it increases conflict instead of reducing or resolving it. This can catch you by surprise, especially when it is done by someone who seemed reasonable at first. Most people with these types of extreme behaviors have a *repeated pattern* of high-conflict behavior. It’s part of who they are. They didn’t just make a mistake or act out of the blue – they have done this before and will do it again. We think of them as “high conflict” people (HCPs). They aren’t just difficult. They’re the *most* difficult people, because their pattern includes the following:

## 4 Key Characteristics of HCPs:

**All or Nothing Thinking** – they tend to try to control relationships or avoid them. They see others as all-good or all-bad. Therefore, their relationships are often unrealistic and a frequent crisis for them. They generally want to be secure, but they undermine themselves on a regular basis causing relationship insecurity without even realizing why. They often look to fulfill all of their intense personal needs from one person, where it’s very unlikely they can be met.

**Unmanaged Emotions** – they tend to react emotionally and to focus backwards on the past. Looking to the future is hard for them because they are so emotionally absorbed in their emotional reactions. They are preoccupied with arguing over who caused the problem, rather than analyzing it and looking at options for fixing it. (Be aware that some of them don’t show their emotional upsets, but become silently preoccupied with getting revenge or vindication, or engaging in passive-aggressive behavior.)

**Preoccupied with Blaming Others** – they unconsciously put a spin on how they view other people, the world and problems. They exaggerate the negative or the positive – then switch to negative when others don’t turn out to be as unrealistically positive as they thought. They take things personally that aren’t, then they attack back. Their emotions interfere with their logical thinking

and they believe these thinking distortions about other people without question – and blame those close to them for everything.

**Extreme Behavior** – they tend to become more extreme in their behavior when things go badly, rather than backing off and trying a different approach. They don’t connect their problems to what they are doing, so they try to stop or change other people, rather than themselves. When this doesn’t work, they become more frustrated, desperate and intense in their misdirected efforts.

To make matters worse, they lack insight into their own behavior and how they contribute to their own problems. They sometimes become *persuasive blamers*, so that others actually believe them when they tell everyone it’s all *your* fault!

Yes, chances are high that *you* have become an HCP’s *target of blame*. When someone treats you that way, you have to learn to deal with them – because it’s a pattern of behavior that won’t just go away.

But this is the bad news. The good news is that most HCPs have a predictable range of behavior which you can influence with the right methods. You can often bring out the best or the worst in them by how you respond.

## Don’t React

When you’re dealing with an HCP, you may feel frustrated, hopeless, enraged, confused or a lot of other emotions. These are natural fight, flight or freeze responses to unrestrained aggressive behavior – a hallmark of HCPs. Yet most of our natural responses to

HCPs often backfire and make things worse. You may have already discovered this. If you react impulsively or emotionally, you are much more likely to get worse behavior than if you can stay calm.

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Bill Eddy, LCSW, Esq.  
President, High Conflict Institute

*“Most people with these types of extreme behaviors have a repeated pattern of high-conflict behavior. It’s part of who they are. They didn’t just make a mistake or act out of the blue – they have done this before and will do it again.”*





# COAFCC 2015 Spring Conference

## Use and Misuse of Experts

CLEs Applied For

April 10, 2015

Marriott Denver-Skyline Room 1475 South Colorado Blvd, Denver, 80222

Registration & Continental Breakfast: 8:00-8:30 am

Program: 8:30 am-4:00 pm (Lunch provided)

Register today at  
[www.coafcc.org](http://www.coafcc.org)

### Program Description

This presentation, intended for attorneys, evaluators, mental health professionals and judicial officers, will focus on the who, what, when and how of using expert witnesses. When are expert witnesses helpful in a family law case? Who makes a good expert witness? What should the expert be asked to do within the bounds of advocacy and what can the expert do that reflects professional best practices? How can the expert be helpful in resolving a case and in educating the court about specific issues? Presenters will discuss “how to” tips and utilize case examples.

### Presenters

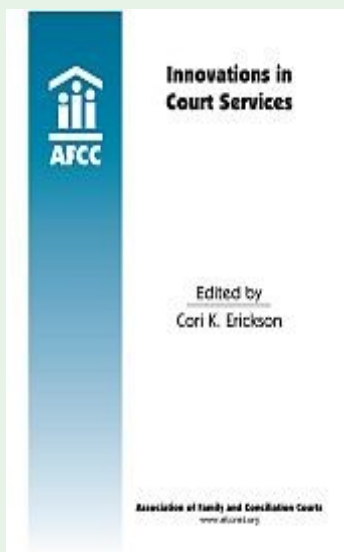
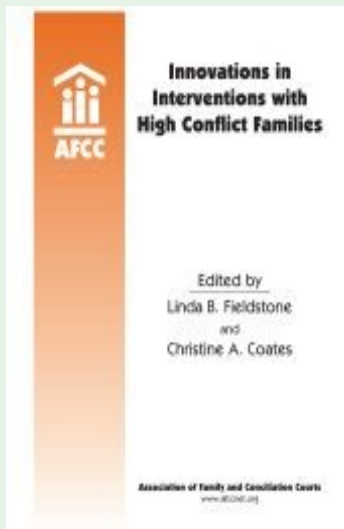


**Susan M. Lach** is a partner at Tuft, Lach & Jerabek, PLLC, and practices in all areas of family law, including complex property valuation and division, contested child custody matters, spousal maintenance and child support issues, and drafting antenuptial agreements. She is trained in arbitration as well as mediation. Ms. Lach is a Fellow in the American Academy of Matrimonial Lawyers (AAML) and is past Minnesota Delegate to the National Board of Governors. She is past president of the Minnesota Chapter of the AAML and currently sits on its Board of Managers. Ms. Lach is a member of the Association of Family and Conciliation Courts. She is past chair of the Family Law Section of the Trial Lawyers of America. Ms. Lach has been consistently named to the list of the Top 40 Family Law SuperLawyers® in Minnesota by her peers. She has also been named to the list of Top 100 SuperLawyers® in Minnesota as well as the Top 50 Women Attorneys in Minnesota. Ms. Lach has lectured on topics related to family law through state and local bar associations in both Minnesota and Colorado as well as nationally for the American Academy of Matrimonial Lawyers, the American Bar Association, The Association of Family and Conciliation Courts, and the Association of Trial Lawyers of America. She also is an Adjunct Professor at William Mitchell School of Law, teaching family law.



**Mindy Mitnick, EdM, MA** is a Licensed Psychologist practicing in Minneapolis. She received a Master of Education from Harvard University and a Master of Arts from the University of Minnesota. She specializes in work with families in the divorce process and with victims of abuse and their families. Ms. Mitnick has trained professionals throughout the country and abroad in identification and treatment of child abuse, the use of expert witnesses in child abuse and divorce cases, effective interviewing techniques with children, interventions in high-conflict divorce and the impact of psychological trauma. She has been a speaker for the National Child protection Training Center, National Center for Prosecution of Child Abuse, National Association of Counsel for Children, the Association of Family and Conciliation Courts, the American Academy of Matrimonial Lawyers and numerous statewide multidisciplinary training programs. Ms. Mitnick has written and taught extensively about the assessment of child sexual abuse allegations during custody disputes. Ms. Mitnick served as a member of the ABA Criminal Justice Section Task Force on Child Witnesses and as a member of the AFCC Task Force on Court-Involved Therapy. She is serving her second term on the Board of Directors of AFCC.

Two great resources for  
**Child and Family Investigators**  
and **Parental Responsibilities**  
**Evaluators**



Go to the AFCC website:  
<http://www.afccnet.org>  
and look in the  
**Resource Center!**

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**You CAN Deal with Them**

As frustrating as they are, HCPs tend to have predictable patterns of behavior which you can recognize once you learn the warning signs. This means that you can learn effective ways of dealing with them when you recognize their patterns of behavior. One important point is to NEVER tell the person you think he or she is a “high-conflict person.” It will make your life much worse if you do. Just keep it to yourself and adjust your strategies for dealing with the person.

First, things to remind yourself:

**1. IT’S NOT ABOUT YOU!**

While this is obvious most of the time, it’s a lot harder to remember when he or she is yelling at you, blaming you, challenging you, etc. Just keep reminding yourself of this and ask your friends and supportive family members to remind you of this. It will give you needed energy.

**2. YOU’RE NOT GOING TO CHANGE HIM OR HER!**

You already know this, but in the heat of battle it’s tempting to try. Just forget-about-it! Save your energy for strategic responses and setting limits, not challenging him/her back.

**3. DON’T TRY TO MAKE LOGICAL SUGGESTIONS!**

An angry, upset, belligerent bully is operating most likely out of his or her defensive brain thinking, which focuses on survival, not logic. Since you’re not going to change him/her, use the following methods to “manage” him/her.

Second, things to do with him/her. What I describe as the CARS Method:

**4. CONNECT with E.A.R. Statements.**  
Unless it would be dangerous to do so, attempt to calm him or her with a statement that shows empathy, attention, and/or respect – what we call an “EAR Statement,” such as the following:

*“I can see how important this is to you. Don’t worry, I will pay attention to your*

*concerns, so that I understand them as best as I can. I have a lot of respect for the efforts you have made to solve this problem.”*

This can be very difficult to do at first. However, an E.A.R. statement usually calms down a high-conflict person right away, at least long enough to use their problem-solving skills for a while. This gives them the chance to work with you rather than against you for a few minutes to solve the problem. It soothes the high-conflict person’s unconscious defenses enough to calm their defensive reaction and allows them to see you as less of an enemy at the moment and more of an ally in solving an objective problem.

Try not to totally avoid him or seem unfriendly. If he/she has had a setback of some sort, briefly tell him/her you can “empathize with him,” “understand his frustrations,” “see how difficult it is,” etc. See if you can find something that you respect about him/her and mention it early and often in your conversations.

Don’t do this if you need to just get away from him/her, but if you are sharing children, it will be a good thing to practice, regardless of what he/she says. Often high-conflict people mirror the emotions of the people they are talking with, so try to maintain positive emotions while interacting.

Of course, the first thing that most people feel like doing when they’re blamed or attacked is to attack back. Instead, it is helpful to just respond with a statement that shows Empathy, Attention and/or Respect.

**5. ANALYZE Your Options.**

Get the other person to focus on solving a problem, by making a proposal or explaining the options available as you see them, such as the following:

*“I propose that we either have you bring the kids to my house at 6:00 or I pick them up from your house at 5:00. Let me know your schedule, so we can come up with the best plan.”*

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## Review: COAFCC FALL CONFERENCE, September 19, 2014

### *Evolving Judicial Responses to Domestic Violence in Colorado Presented by the Honorable Victor Reyes*

Review by: Marlene Bizub, Psy.D., Beth Lieberman, LCSW,  
& Armand Lebovits, MSW, LCSW, CAC III

**The Honorable Victor Reyes** is a district judge in the 10th Judicial District in Pueblo, CO and presides over a civil case docket. Judge Reyes has served on the Judicial Conference Planning Committee, Colorado Criminal Rules Committee, Colorado Court Improvement Committee, Project Safe Neighborhood Conference Committee, Fairness and Diversity Committee and the statewide Domestic Violence Offender Management Board. He also facilitates judicial trainings on domestic violence matters related to supervised visitation, review hearings on immigration and firearms consequences nationwide and for the State of Colorado.



The fall conference of the Colorado Chapter of the Association of Family and Conciliation Courts was held on Friday, September 19, 2014 at the Pueblo County Judicial Building in Pueblo, Colorado. The Honorable Victor Reyes was the presenter and addressed the group on the topic of statutory changes in the area of domestic violence. Judge Reyes' presentation, entitled "Evolving Judicial Responses to Domestic Violence in Colorado", was captivating and informative. Judge Reyes started with a review of the statutory changes concerning domestic violence and protective orders, which provided an educational overview of the changes which have come about since the change in the "Best Interest" statute, CRS 14-10-124.

The highlight of the presentation was an exercise conducted by Judge Reyes with the goal of increasing participants' sensitivity to the impact and plight of victims of domestic violence; similar to the "Poverty Simulation" learning experience that enables participants to view poverty from different angles in a dynamic, experiential environment. In Judge Reyes' "Stay or Go" exercise each participant received green cards representing cash or yellow cards serving as tokens for human services resources. These cards could be exchanged for resources or services that a victim of domestic violence could access; some participants had more cash and were less dependent on social services. As different conditions transpired in this domestic violence scenario, participants had to make choices about staying in the home or going to another location, such as going to a friend's house, a hotel, a shelter, going home or being homeless. Likewise, various services, such as counseling or legal services would require cash resource cards. As Judge Reyes read through the various scenarios, participants had to make decisions along the way as to how they would utilize their resources. Various locations had both pros and cons, and participants had to weigh the alternatives, gauging the consequence of each decision. For example, if the friend that a person was staying with said you only had three more days to be there, the participant had to weigh the cost with the effect of whatever each move would entail, including the risk the move brought with it. The victim may have to take time off from work; the children could miss school and become truant. The victim may lose her/his children to CPS and foster care. If the participant went to a hotel but the hotel did not allow pets, the participant had to make a decision about whether or not to take the dog back to the home where the perpetrator had threatened to harm the dog. Another scenario involved the shelter telling the individual to file a restraining order, but the participant's boss had indicated that if the person took another day off from work, they would lose their job.

As participants, we were sensitized to the everyday decisions that victims of domestic violence encounter, as well as, the impact on the victim and their children inherent in the human services systems. It was humbling and eye-opening to be placed in these positions and having to make very difficult decisions that affect one's livelihood, safety and security, and the well-being of the children or even

## Welcome New COAFCC Members!

**Michal Lord-Blegen  
Emily Inman  
M David Johnson**

**Luke McConnell  
Michele Roche  
Todd Stahly**

### MEMBERSHIP COMMITTEE REPORT

By: Barbara Pevny

The Membership Committee is developing ways to recruit new members through use of annual e-blast letters to mental health professionals and attorneys. The committee continues to seek available professional mailing lists to reach potential new members as well as new avenues to advertise the benefits of AFCC and Colorado Chapter membership. Should a member have a list to share, please contact Membership Committee Chair Barbara Pevny at [bpevny@southernute-nsn.gov](mailto:bpevny@southernute-nsn.gov). We look forward to the Inaugural COAFCC State Conference in October 2015 to encourage new membership and attendance at this statewide training and networking opportunity.

**COAFCC has a searchable membership directory at our website: [www.coafcc.org](http://www.coafcc.org). This is a public directory that can be updated by individual members and is password protected. Each member should update his or her directory profile by including information about their own practice types, professional memberships, fees and other descriptive data.**

### Perks of Being a COAFCC Member

Did you know that as a COAFCC member you may enter your name in a drawing for the AFCC/COAFCC "matching" scholarship to attend the AFCC national conference? AFCC contributes \$300 toward the cost of registration and COAFCC matches that contribution. That's \$600 toward registration!

If you intend to go to the annual conference, May 27-30, 2015 in New Orleans, be sure to enter your name in the drawing. To be eligible, you must be a COAFCC member and have not received a COAFCC scholarship in the past three years. To enter your name in the drawing, simply email your contact information to April Freier at [aprilfrei-](mailto:aprilfrei-)



COAFCC members--we want to know when you publish a peer-reviewed paper or a book of relevance to family law practitioners so we can highlight your work in our newsletter! Let us know about awards, promotions and other honors. Send an email to April Freier, our administrative assistant: [aprilfreier@hotmail.com](mailto:aprilfreier@hotmail.com).

## ACR/AFCC Spirituality Retreat

By: Barbara Pevny, MA, LPC

Thirty-five participants attended the ACR/AFCC Spirituality Retreat on July 17-20, 2014 at the Shambala Mountain Retreat Center in Red Feather Lakes, Colorado. With the hard work, collaboration and support of AFCC's Executive Director, Peter Salem, Christie Coates, former AFCC National President and Leslie Todd, LCSW, ACR/AFCC member the retreat with Dr. Joan Borysenko was a wonderful experience for ACR and AFCC members. To quote former ACR Spirituality Section tri-chair, Emily Gould "this retreat was a landmark in the integration of ancient wisdom into contemporary professional practice and a great, great blessing to us all".

For a first time collaboration between ACR and AFCC, twelve AFCC members (1/3) attended the retreat. There also were a number of ACR members who have returned to the Spirituality Retreat several times over as a part of their own sense of self care and renewal to do high conflict work. It was an international experience with participants coming from as far away as Australia and Germany as well as across the US.

Dr. Borysenko provided three experiential workshops that offered participants updated interpersonal neurobiology information as well as essential aspects of mindfulness entitled "Embodying Spirit: The New Brain Science of Compassion and Wellbeing". Weaving current neurobiology information with methods in mindfulness and compassion as we work with high conflict individuals, Dr. Borysenko provided the participants opportunities to use words and music to decrease stress and increase empathy. We were offered this wonderful loving kindness blessing for personal calm and balance:

*May you be at peace  
May your heart remain open  
May you know the beauty of your own true nature  
May you be healed  
May you be the source of healing to the world*



## Outreach Committee Report

On September 19, 2014, a one-day presentation entitled "Evolving Judicial Responses to Domestic Violence in Colorado" was held at the new (and beautiful!) Pueblo County Courthouse. Our speaker for the entire day was Judge Victor Reyes of Pueblo County District Court. Judge Reyes has a passionate interest in the topic of domestic violence, and has attended and presented on this topic at numerous conferences throughout the country over the past several years. Prior to the conference, Judge Reyes provided attendees with an outstanding portfolio of research, articles, and handouts for clients to enhance our understanding and provide us with tools to enhance our practices and interventions. Approximately thirty professionals, including several judges, attended this fascinating and engaging conference, and most shared that their perceptions and perspectives about the experience of domestic violence had been significantly affected. Most felt that what they learned and experienced at this presentation would greatly impact their work in this field. Please see the review of this presentation elsewhere in this newsletter for more details.

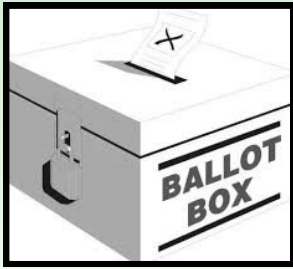
The Outreach Committee is committed to providing programs and other forms of support to COAFCC members throughout Colorado, and soliciting their involvement and input. Our goal is to provide several programs each year at various locations throughout the state. Any members with ideas for programs or those interested in participating in the Outreach Committee are invited to contact Beth Lieberman at [bethlieboffc@aol.com](mailto:bethlieboffc@aol.com)

### **How to Contact Us:**

**E-mail :** aprilfreier@hotmail.com

**US Mail :** COAFCC  
c/o April Freier  
4307 W. 6th Street  
Greeley, CO 80634





## Nomination Committee Report

Kate McNamara (chair), Barbara Pevny and Sarah Quinlan make up the nomination committee this year. We are charged with preparing the slate of nominees for election to open seats on the Board of Directors as well as the officer positions on the board. We will begin considering nominees early next year. The slate of nominees will be presented to the membership no less than thirty days prior to the election next spring.

### Join a COAFCC Committee!

#### Membership Committee

Recruits members, tracks incoming and outgoing members, welcomes new members and deactivates non-renewing members

#### Program Committee

Plans and implements COAFCC conferences and annual meetings, and coordinates with other groups on joint conferences

#### Outreach Committee

Plans and implements programs in northern, southern and western regions of the state.

#### Communication and Public Relations Committee

Tends to the many aspects of maintaining our website, publishing our newsletter and program brochures and communicating with our membership

**WE NEED YOU!**



**We are especially in need of people to join our Program and CPR committees!**

If you are interested in committee work please contact April Freier at [aprilfreier@hotmail.com](mailto:aprilfreier@hotmail.com)

#### MEMBERSHIP COMMITTEE

**Chair: Barb Pevny**

Mary Wollard  
Kim Wood  
Adoree Blair  
Craig Eades  
Joyce Randall  
Phil Hendrix  
Charlene Slover

#### PROGRAM COMMITTEE

**Co-Chair: Sarah Quinlan**

**Co-Chair: Jennifer Moné**

Daryl James  
Shelley Bresnick  
Jen Feingold  
Armand Lebovits  
Glenn Crow

#### OUTREACH COMMITTEE

**Chair: Beth Lieberman**

Kate McNamara  
Jack Gardner  
Bob Lang  
Barbara Pevny  
Sunni Ball  
Lynda Kemp

#### COMMUNICATION AND PUBLIC RELATIONS COMMITTEE

**Chair: Lenny Tanis**

Armand Lebovits  
Lorna Horton  
Marlene Bizub

#### NOMINATION COMMITTEE

**Chair: Kate McNamara**

Sarah Quinlan  
Barbara Pevny

## A View from the Bench

By: The Honorable Barbara L. Hughes

**Question:** *What are Judges looking for from a CFI/PRE in terms of evidence or opinions as it relates to the new 14-10-124 language, and in particular, the revisions relating to claims of child abuse or neglect or domestic violence?*

### Answer:

*(Below is my opinion and it does not necessarily reflect the opinion of the full banc of Domestic Judges here in the Fourth Judicial District.)*

As a threshold suggestion for the CFI/PRE, the “best interests of the child” standard under 14-10-124 must be construed in harmony with 14-10-123.6. Under 14-10-123.6, C.R.S. there is, inter alia, the following potent declaration that can provide a CFI/PRE fodder for consideration: “[the general assembly] finds, determines, and declares that domestic violence is a pervasive problem in society and that a significant portion of domestic violence in society occurs in or near the home”. Thus 14-10-123.6 C.R.S. reveals a broad legislative intent for consideration by a CFI/PRE. Not only does the legislative declaration include the goal to “increase awareness” of domestic violence but it codifies (“establishes”) a nexus between domestic violence and “greater risks” to children. C.R.S 14-10-123.6 states those risks with particularity – which may provide some statutory context that would assist a CFI/PRE in framing their opinion.

In my view the amendments to 14-10-124, C.R.S. represent a significant departure from the previous “best interests of the child” standard. First, the

terms “child abuse or neglect or domestic violence” are replete through C.R.S. 14-10-124. Second, the term “domestic violence” is more conspicuous as there is a definition of “domestic violence” contained within in the 14-10-124 statute. Note: the definition of domestic violence under C.R.S 14-10-124 (1.3) (a) appears more parochial than the definition of “domestic abuse” under the protection order statute, 13-14-101, C.R.S. However, 14-10-123.6, C.R.S. imports for purposes of Notice any protection order into a domestic case.) Third, there appears to be a mandatory threshold analysis under the statute when “child abuse or neglect or domestic violence” is “claimed” which substantially implicates any potential recommendation of a PRE/CFI as to decision-making. “When a claim of child abuse or neglect or domestic violence [had been made or court believes has been committed] prior to considering C.R.S. 14-10-124 (1.5) (a) (determination of parenting time) and (b) (allocation of decision-making responsibility) the Court shall consider several factors. (emphasis supplied) 14-10-124 (1.5) (a) and (b) C.R.S; 14-10-124 (4) (a), C.R.S. The statute places an appreciable new focus on decision making if there is a claim for child abuse, child neglect or domestic violence and, if warranted under the evidence, statutory constraints on mutual decision-making. The factors delineated under 14-10-124 (4) (a) are important for the CFI/PRE to be cognizant of given the distinct statutory scheme.

*“In my view the amendments to 14-10-124, C.R.S. represent a significant departure from the previous “best interests of the child” standard.”*



**Child abuse or neglect:** IF a court finds a party has committed child abuse or neglect there is no discretion if there is an objection from the other party: “it shall not be in the best interests of the child to allocate mutual decision-making” if there is an objection from the other party.

**Domestic violence:** However for a finding of “domestic violence”, though the denotation of “domestic violence” in 14-10-124, C.R.S appears narrower than “domestic abuse” under the protection order statute, under a preponderance of the evidence standard the type of evidence of domestic violence appears broad: it may be by “history” or “pattern” or

“act”. However, the Court has a bit more discretion for to allocate *mutual* decision making if one of the parties has committed “domestic violence” than if there is a finding of child abuse or neglect. For a PRE/CFI it would be important to address this discretionary authority in order to assist the Court as even if there is an objection by a party or a CLR the Court could still order mutual decision-making.

But only IF there is “*credible evidence of the ability of the parties to make decisions cooperatively in the best interest of the child in a manner that is safe for the abused party and the child*”. (emphasis supplied). Further, it appears no longer can there simply be a default recommendation by a PRE/CFI and/or Order of the Court to just appoint a parenting coordinator for the sole purpose of ensuring mutual-decision making. C.R.S. 14-10-124 (4) (a) (II) (B). Nor can a CFI/PRE or a Court consider a party’s absence or departure from the home (“leaves home”) because of an act or threatened act of domestic violence by the other party in determining best interest (“shall not be a factor”). The “primary concern” is “safety and well-being of the child and the abused party” when there is child abuse or neglect or domestic violence. Indeed, a party’s protective actions shall not be considered with respect to the ability of the parties to encourage love, affection and contact between the parties.

When there is a finding of child abuse, neglect or domestic violence, CFI/PRE should be aware that the Court must consider the safety of the child and the abused party. Acutely, there are seven (7) discreet provisions that a Court *may* consider when a parenting plan is proposed that is moored to the *safety* issue. 14-10-124 (4) (e), C.R.S. The list of safety provisions are not exhaustive and other provisions may be considered. Note: that there is a “catchall” subsection to ensure safety/protection which would provide an opportunity for the CFI/PRE to propose safety/protection recommendations that may be uniquely efficacious for the child and abused party in *that* particular case. 14-10-124 (4) (e) (VII). The CFI/PRE needs to consider any recommendation for a domestic violence evaluation under subsection (4) (f). It may be helpful to the Court to have some information about various professionals in the community who can conduct such domestic violence evaluations, the range of cost for same, time frame for completion etc.

*“When there is a finding of “child abuse, child neglect or domestic violence” the “best interests of the child” standard under the recent amendments appears far more prescriptive than under the former statute.”*

There are many other provisions that can be addressed but in short, when there is a finding of “child abuse, child neglect or domestic violence” the “best interests of the child” standard under the recent amendments appears far more prescriptive than under the former statute. There is less discretion for the Court given the discreet statutory analysis for child abuse, neglect and domestic violence. Additionally, the while there is no express ranking of factors *per se* under best interest standard, the statute contemplates mandatory consideration of additional factors under parenting time and allocation of decision making responsibility “*in light of*” any finding of child abuse, neglect or domestic violence. 14-10-124 C.R.S. Under the former statute, these three factors (“domestic violence, child abuse and child neglect”) were merely listed as one of many factors for consideration by a CFI/PRE and the Court. The amendments clearly direct a new *discreet analysis* for these three factors. However, I would resist any interpretation of the amendments, absent case law, that suggests a presumption or ranking of the numerous factors delineated under parenting time or decision-making. 14-10-124, (1.5)(a) (I) through (XI) C.R.S and 14-10-124 (1.5) (b) (I) through (III), C.R.S.

**Barbara L. Hughes is a District Court Judge and Domestic Presider in the 4th Judicial District.**

# New Alcohol and Drug Testing Technologies and Updates

Armand Lebovits, MSW, LCSW, CAC III

Alcohol and drug testing and monitoring have been utilized to support continued access and active parenting that ensures an increased degree of safety for children. It can be implemented as an effective strategy by investigators, evaluators, attorneys, decision makers, and the Courts to substantiate or rule out allegations of substance abuse and to monitor substance use during parenting time or as a tool to support total abstinence from alcohol or drugs. Drug testing and monitoring strategies are also used as a safety measure in Parenting Plan recommendations.

Substances can be analyzed and detected via saliva, breath, blood, hair, skin/ transdermal and finger/toenail matrices. Unfortunately most of the available alcohol and drug testing technologies cannot determine the amount of use, the frequency of use, or the exact time(s) of use of a substance. However, alcohol and drug testing can tell us whether someone is abstinent (or below the detection level) or abusing a substance (or above the detection level) and the interpretation of results are limited by the window of detection for that specific substance. A common problem in drug testing is that testing strategies are not always amenable to monitoring specific parenting time schedules that do not require total abstinence.

Recently several new promising technologies have emerged that can be utilized to detect and monitor for alcohol, alcohol metabolites, and other drugs and their metabolites. The following is a brief description of new technologies and an update on previously accepted testing technologies in current use in Colorado.

The Soberlink breathalyzer was introduced in Colorado in 2012. Soberlink 2, the second generation of Soberlink is a smart-phone sized mobile, Verizon service based breathalyzer with photo identification/face recognition software that provides **real-time** results from breath alcohol tests. Soberlink 2 has a web-portal system that stores breath testing results including missed tests. Text notifications are sent to the parties, attorneys, mental health therapists, and decision makers that are approved to be notified of test results.

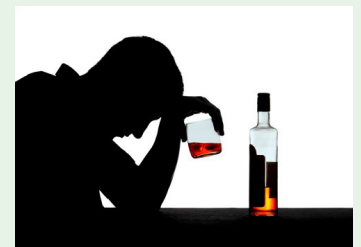
Ethyl Glucuronide (EtG), the alcohol metabolite detected in urinalysis testing, has been increasingly utilized in Colorado for the last decade. EtG testing detection thresholds have been established at higher levels to reduce the possibility of false positives related to environmental and incidental/accidental alcohol exposure. EtG testing has shown over time to be most effective in detecting heavy drinking or binge drinking and less sensitive to social or moderate consumption. Early detection of alcohol is usually accomplished with a screening test just for EtG and does not include EtS (Ethyl Sulfate), a more stable and reliable alcohol metabolite that is utilized usually for EtG/EtS confirmation testing following a positive test result for EtG screening. EtG/EtS testing usually requires a more costly test based on LC/MS/MS testing (see below).

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“Recently several new promising technologies have emerged that can be utilized to detect and monitor for alcohol, alcohol metabolites, and other drugs and their metabolites.”



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A recent research pilot study suggested that Soberlink breath testing (four times daily, *i.e.*, early morning, at lunch, at dinner, and before bedtime) was significantly more effective in detecting incidents of alcohol use (1-6 drinks) compared to random once weekly Urinalysis EtG testing. Of the 84 drinking episodes in the study, all 84 incidents were detected by Soberlink and only 1 episode was detected by EtG testing. Recent research and anecdotal information suggests that the window of detection for EtG testing may only be 24 to 48 hours retrospectively, rather than the earlier descriptions of an 80-96 hour detection window, and may require heavy drinking or binge drinking to be detected.

EtG testing usually requires driving to a testing site from home or work or finding a testing site while traveling out of town, then waiting 2-5 days for the return of test results. Furthermore, EtG testing may require 3 times weekly random tests or 4 times weekly scheduled tests to deter heavy alcohol use or binge drinking.

Soberlink 2 is more confidential and less embarrassing for individuals, than the trans-dermal ankle bracelet device, SCRAM (Sustained Continuous Random Alcohol Monitoring), or the SleepTime actigraphy/wristwatch monitoring device, or breath testing ignition interlock devices. All of these devices require that their data be downloaded at service centers or testing sites and then requires further UA testing for confirmation.

If the goal is to be able to support abstinence from alcohol consumption 8-24 hours before or during parenting time and/or to support and monitor total abstinence, Soberlink 2, is the most effective real-time testing strategy. Soberlink 2 units can be purchased or leased through soberlink.net or rented on a monthly basis from Rocky Mountain Offender Management Services (RMOMS).

Another new emerging blood alcohol test, the PEth (Phosphatidyl Ethanol) Blood Spot test can detect heavy drinking and binge style drinking retrospectively for up to 3-4 weeks. PEth testing can be utilized as an initial test for alcohol use or for confirmation testing where the donor affirmed abstinence from alcohol for 28 days, has stipulated to be abstinent, or is ordered by the Court to be abstinent. The 21-28 day window of detection does not determine the amount, frequency or exact time of use. The amount of use for a positive test result (*i.e.*, >20 ng/ml) most likely requires heavy drinking on at least a few days (4 or more drinks) or binge drinking on one or more episodes of drinking in the window of detection. Earlier descriptions of PEth blood testing had suggested that subjects had to consume at least 14 drinks in a 2-week period for a positive test result above 20 ng/ml. Other research has suggested that donors had to consume a minimum of 50-60 grams of alcohol daily (or 3.6-4.2+ drinks per day, based on 14 grams of alcohol per drink) for a positive test result. Additional research has suggested that individuals have to consume enough alcohol proportionate to their body weight to establish a 0.10 BAC to create enough PEth to be detected. Positive PEth results are apparently formed only in the presence of significant blood alcohol concentrations and there may be a positive linear relationship between PEth levels and grams of alcohol consumed.

PEth Blood Spot tests can be used to verify and confirm self-reporting of abstinence or acknowledged social/moderate drinking or as a way to verify the other party's allegations or concerns of alcohol abuse. Positive PEth testing results following Ethyl Glucuronide (EtG) urinalysis testing results can be used as a confirmation of positive EtG testing with respect to abstinence monitoring. PEth testing can also rule out any accidental or incidental alcohol use or exposure through use of products such as hand sanitizers or mouthwash that can result in possible false EtG positives. Unfortunately, the window of detection for PEth testing cannot provide the specific data for amount of use per episode, frequency of use, or actual time of use of alcohol in the 21-28-day period. Most recent research and anecdotal data suggests that PEth Blood Spot testing is a useful direct biomarker that can differentiate between abstinence and heavy or binge style drinking.

Another emerging testing method is fingernail testing. EtG and other drug analytes or metabolites are found in the protein keratin structure of finger or toenails. Nail clippings are tested with LC/MS/MS (Liquid Chromatography Tandem

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By asking questions and making proposals, you can shift the other person away from an “attack-defend” cycle and into a problem-solving approach. If this doesn’t work, then help yourself by analyzing what options you have at the time, such as by writing a list of options:

*I could keep arguing. I could walk away. I could call a friend. I could wait until next week after I talk with my lawyer, counselor, etc.*

By writing a list, you realize that you have choices and it helps to calm yourself down and become more practical.

### 6. RESPOND to Hostile Communications or Misinformation.

High-conflict people often put their hostile comments in writing, and email is one of the worst places for this. Yet you can respond in writing in a manner that does not make things worse and helps you feel good about yourself. These are BIFF Responses, which stands for Brief, Informative, Friendly and Firm.

Just be **Brief** (3-4 sentences), **Informative** (just necessary information without opinions or advice), **Friendly** (thanks for your question, etc.) and **Firm** (set a deadline if you need a response or say that’s all you’ll say on this subject if the discussion needs to end).

We have a whole website dedicated to helping people write a BIFF Response. Check it out at [www.BIFFResponse.com](http://www.BIFFResponse.com).

### 7. SET LIMITS and Inform About Consequences.

This is what to do instead of making suggestions or giving advice. Just say, “When you do \_\_\_\_\_, I’m going to do \_\_\_\_\_.” “You’re doing \_\_\_\_\_ again, so I will now [be leaving][call my lawyer about going back to court][stop providing that extra flexibility I was giving you][etc.]” Don’t make it a discussion. Don’t try to convince him/her. Just matter-of-factly say what YOU are going to do, rather than what HE or SHE should do. “When you do this, I will do that.” And make sure you do what you say.

Lastly, CHOOSE YOUR BATTLES. Unfortunately, he/she may always be difficult. But you have already taken some big steps to live separately from each other. This approach of “managing” your ex gets easier as you disengage from expecting him/her to be different. Use the CARS Method when necessary, and otherwise focus on living your own life to the best of your ability. It’s hardest usually in the first year. Many people have moved on even though their “ex” remains a high-conflict person.

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President, High Conflict Institute

Bill Eddy is a lawyer, therapist and mediator. He is the President of High Conflict Institute, which provided training for professionals and others dealing with high-conflict situations.

For more information on managing a potentially high-conflict divorce or a difficult co-parent, go to:

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

There are free articles, and lots of books and CDs and DVDs that can help.



COAFCC is a statewide interdisciplinary association of professionals dedicated to improving the lives of children and families through the resolution of family conflict. COAFCC promotes a collaborative approach to serving the needs of children among those who work in and with family law systems, encouraging education, research and innovation and identifying best practices.



## New Alcohol and Drug Testing (CONTINUED FROM PAGE 13)

Mass Spectrometry) technology, which is the platinum standard for drug testing. Fingernail testing is effective for up to 3 to 6 months (3 months for alcohol based on EtG metabolites and up to 6 months in terms of retrospective detection for other drugs. Toenail testing may be retrospective for up to 12 months for drug testing. Fingernail testing results are more reliable than hair testing as some substances analyzed in hair testing can be influenced by cosmetic hair treatments, *e.g.*, bleaching and dyeing hair, straightening, or permanent wave styling. Like hair testing, fingernail testing can determine past use of substances though it cannot determine the amount of use, the frequency of use or the exact time of use in the 10-90-day detection window for EtG and the 10-180 day detection window for drug analytes and metabolites.

Alcohol and drug testing methods when used in combination can increase the validity and reliability of drug testing results as additional evidence to properly identify an individual's substance use or to determine a current alcohol and/or drug problem. Remember that a negative test result does not prove abstinence and that substances may be present below the level of detection on a specific test. In determining a current substance abuse or dependence problem, it is always imperative to utilize multiple sources of information.

For additional information, including a bibliography and resources, Armand Lebovits can be contacted at [armandlebovitslcsw@gmail.com](mailto:armandlebovitslcsw@gmail.com)

## COAFCC Fall Conference Review (CONTINUED FROM PAGE 6)

family pets. Participants got to experience the tough decisions that have to be made when there are more risks than resources, and it was much more difficult than many of us had expected, as evident when discussing the exercise afterward.

Participants also observed two video clips of films that were very enlightening. One video clip was from the movie "Affliction" with Nick Nolte. We first were read a narrative of the main actor's behaviors, as in a case report. Then we viewed a portion of this film, and the domestic violence and general violence were more evident with more or increased context. Another movie clip was helpful in differentiating domestic violence or coercive and controlling behavior from actual protective behavior; and again demonstrating the importance of context in domestic violence case scenarios.

The day was topped off with a tour, conducted by Judge Reyes, of the new Pueblo County Courthouse. It is a beautiful, brand new facility, and participants were given the grand tour, including accessing areas that we typically are not allowed to access. This was followed with additional lecture and discussion into the afternoon.

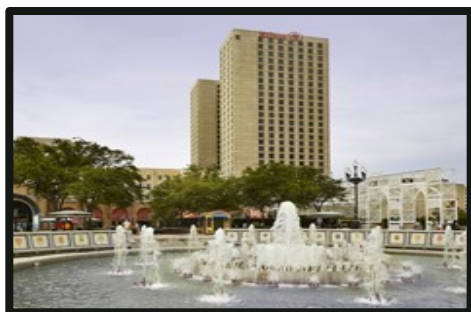
In summary, the domestic violence statutory information and judicial responses update and the experiential and interactional simulation was a day filled with informative and thought-provoking considerations that have practical application to our work in family law cases.

## Upcoming AFCC Conferences

### AFCC 52nd Annual Conference

#### *Children in the Court System:*

#### *Different Doors, Different Responses, Different Outcomes*



**May 27-30, 2015**

**Hilton New Orleans Riverside  
New Orleans, LA**





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- ◇ Complete and submit the Advertising Agreement with your payment (April Freier will provide this to you)
- ◇ Advertising space is limited and offered on a first-come, first-served basis
- ◇ No refunds are given for advertising due to the nature of print deadlines and the costs associated with layout changes
- ◇ Deadline to submit ads for inclusion in the Fall/Winter newsletter is October 1 and for the Spring/Summer newsletter April 1

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