

# Spring News

## President's Message

Barbara Pevny, MA, LPC



Happy spring! Our Board of Directors and committee members have been hard at work on a number of educational projects. Based on comments from the membership, the Program Committee organized an exciting Spring Conference on April 8, 2016, focusing on three hot topics with an opportunity for group discussions moderated by Judge Angela Arkin. Local presenters Darius Dugas, J.D., Kathleen McNamara, Ph.D., and David M. Johnson, J.D., shared their knowledge with us. Finally, there was a cocktail hour afterwards where members had an opportunity to socialize and network with one another.

Our second annual conference at Beaver Run Resort in Breckenridge is shaping up. Our theme is *A and V: Alienation & Intimate Partner Violence*. National speakers presenting at the conference include: Michael Saini, Ph. D., M.S.W., R.S.W.; Associate Professor Factor-Inwentash, Chair of Law & Social Work; and Nancy Ver Steegh, Professor of Law, Mitchell Hamline School of Law, and former AFCC President. Please mark your calendar for the weekend of October 7<sup>th</sup>-9<sup>th</sup>, 2016.

The Board of Directors recently approved a merger of the Membership Committee and Outreach Committee as both missions appeared to be similar. Recruitment of new members, retention of existing members, and outreach around the state have been the joint activities of both committees.

The COAFCC and the Board of Directors will be losing a founding member, Dr. Jack Gardner on June 30, 2016. He has been the only Treasurer of the Board of Directors since the inception of COAFCC. His nine year commitment to ensuring COAFCC solvency, judicious use of funds for the educational support of our membership, and pragmatic approach to decision making on all our fiscal responsibilities has proved to be extremely difficult to replace. Please join the Board of Directors in offering Jack our deep appreciation to supporting the development and maintenance of COAFCC. We wish Jack well as he seeks other pursuits.

I wish to introduce the incoming President, Beth Lieberman. Beth is a L.C.S.W. with 30 years of field experience as a divorce mediator, custody evaluator, and

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individual/family therapist. She lives and works in Colorado Springs. She has served on the COAFCC Board of Directors for three years, acted as the Outreach Committee Chair, and been an active member of the Program Committee. She has been instrumental in merging the Outreach and Membership Committees this year. Beth also served as our first Annual Conference Silent Auction auctioneer keeping bidding lively and steady.

I also want to highlight that the AFCC 53<sup>rd</sup> Annual Conference, *Modern Families: New Challenges, New Solutions* will take place June 1-4, 2016, in Seattle, Washington. Also the AFCC 12<sup>th</sup> Symposium on Child Custody Evaluations will take place November 3-5, 2016, in Atlanta, Georgia. You may register for these programs at [afccnet.org](http://afccnet.org).

Barbara Pevny  
bpevny@southernute-nsn.gov

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
- 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

# Upcoming AFCC Trainings

*Modern Families: New Challenges, New Solutions*

**June 1-4, 2016**

**Sheraton Seattle Hotel  
Seattle, Washington**



***AFCC 12th Symposium on Child Custody Evaluations  
Abuse, Alienation, and Gatekeeping: Critical Issues  
for Family Court Professionals***



**November 3-5, 2016  
Atlanta, Georgia**

# COAFCC Spring Conference—Review

Leonard Tanis, JD

On April 8, 2016, the COAFCC held its Spring Conference at the Marriott Courtyard in Denver. The Conference opened with announcements by President Barbara Pevny. Officers for the upcoming year were announced and are:

President	Beth Lieberman, L.C.S.W., from Colorado Springs
Vice President	Frances C. Fontana, Esq., from Littleton
Secretary	Shelley Bresnick, Psy.D., from Lakewood
Treasurer	Barbara Pevny, M.A., L.P.C., from Ignacio

Barbara invited everyone to vote for the candidates for the Board of Directors for 2016-17. Election results will be announced in May.

The remainder of the Conference was devoted to three excellent fifty minute presentation/discussions. First was an in-depth discussion of HIPAA, legal privilege and how they intersect. Darius Dugas, Esq., presented timely and useful information regarding the similarities and differences between federal and Colorado statutes and case law. For instance, although HIPAA generally preempts state law, Colorado law is actually more stringent than the federal statute regarding rules and regulations of disclosure. This is a complex area of the law, and it is important for attorneys, investigators, and mental health professionals to be aware of the substantive and jurisdictional issues. Contact Darius for more information.

Next up was Kathleen McNamara, Ph.D., who led an active discussion of what conduct or misconduct is really relevant for parenting cases, and in particular, forensic investigations. Dr. McNamara focused the discussion on two main areas: marijuana and pornography. Marijuana because it is now just as legal to consume THC as it is to consume alcohol, and there are no legal absolutes as to what level of THC causes impairment. Pornography because it is so very readily available, especially with the proliferation of smartphones and tablets that are constantly connected to the internet without even a wifi connection. There was a lively discussion as to when these issues become of major importance to the parenting of children.

The final presentation, by David M. Johnson, Esq., included a history of the roles of GAL's, Special Advocate's, CLR's, and CFI's. Mr. Johnson identified problems previously faced by GALs, including being asked to provide recommendations to the court that were really beyond their expertise and how this led to the establishment of the Special Advocate/CFI role. Mr. Johnson also explained recent changes to CJD 04-08. The presentation ended with a group discussion of the issues that attorneys and investigators have with each other, and what to do about them.

The afternoon ended with a networking and socializing cocktail reception, which included some very excellent appetizers, that allowed folks to miss most of the rush hour traffic going home. The conference was well attended and proved very educational for those who attended. Make plans now to attend next year's spring meeting!



# PLAN NOW FOR THE ANNUAL CONFERENCE

Jennifer Moné, Ph.D.

*“Advocates for those victimized by IPV are concerned about alienation allegations being falsely or unfairly made against victims and are concerned that the impact of violence exposure on children is largely under-estimated.”*

COAFCC and those who comprise the Program Committee are excited about the upcoming Fall Conference scheduled for October 7-9, 2016, in Breckenridge! Last year's inaugural conference was highly successful and the upcoming conference should be both incredibly informative and provide useful networking opportunities. The title for this year's event is **A and V: Alienation and Intimate Partner Violence**. We have several dynamic speakers who are well-versed in these intersecting areas: Michael Saini and Nancy Ver Steegh, who will present from both the mental health and the legal perspectives; Lyn Greenberg, Ph.D., who will address the clinical aspects of assisting children without compromising external investigations; and the Honorable Julie Kunce Field, will speak to these topics from the judicial perspective.

Alienation and Intimate Partner Violence (formerly termed "Domestic Violence") are often viewed as polarities: Advocates for those victimized by IPV are concerned about alienation allegations being falsely or unfairly made against victims and are concerned that the impact of violence exposure on children is largely under-estimated. On the other hand, when one parent alleges violence and seeks child protections or restrictions of the other parent's parenting time, the IPV allegation is very often countered with allegations that the protective parent is engaging in restrictive gatekeeping and the child has become alienated as a result of a lack of

support for the other parent-child relationship. Discerning what is going on in alienation and IPV cases, and making judgements about children's best interests when these allegations exist, requires a strong grasp of both IPV control dynamics and the complexities and nuances involved in why children resist contact with a parent.

With the relatively new laws for IPV and the new AFCC guidelines on assessing IPV in custody evaluations, this conference will offer best practice information for family law and mental health professionals alike. Mark your calendars now for the COAFCC Fall Conference from October 7-9, 2016, in Breckenridge at the Beaver Run Resort Center. Registration will begin soon, so plan to sign up during our special Early Bird pricing for COAFCC members for a discounted rate!

## Support COAFCC by Donating to the Silent Auction!

The COAFCC Silent Auction is a fun opportunity to support the association's ongoing efforts to bring national speakers to Colorado at a reasonable cost to attendees and to provide scholarships to members to attend AFCC and COAFCC conferences. The silent auction will be held on Friday evening, October 7<sup>th</sup>, at the Welcome Reception. Please donate an item and/or attend the auction and bid! You do not need to attend the conference to donate. Wonderful items for the auction include time shares, tickets to special events, gift certificates, jewelry, sports memorabilia, fashion accessories, electronics, collectibles, books, wine, gift baskets, and more! It's a fun time to relax and socialize!

To donate an item to the Silent Auction, please contact Chelsea at [chelsea.kathleenmcnamaraphd@gmail.com](mailto:chelsea.kathleenmcnamaraphd@gmail.com).

# COAFCC 2016

## 2nd Annual Conference

Save the weekend of October 7 to October 9, 2016  
for an extended conference and networking event!

Bring your family and enjoy time in the Colorado mountains!

The conference will be at Beaver Run Resort  
in Breckenridge, Colorado.



### ***A and V: Alienation & Intimate Partner Violence***

Featuring the following speakers:

**Michael Saini, Ph.D., M.S.W.**

**Nancy Ver Steegh, J.D., M.S.W.**

**Lyn Greenberg, Ph.D.**

**The Honorable Julie Kunce Field,  
8th Judicial District Court**



# How COAFCC Was Founded: Continuing the Interdisciplinary Tradition With National Input

Shelley Bresnick, Psy.D.

The Colorado Chapter of the Association of Family and Conciliation Courts (COAFCC) is celebrating its 10 year anniversary in October as we became a chapter of AFCC in October of 2006. The creation of the chapter generated a great deal of excitement in the professional family law community and many individuals volunteered their time to help establish it. Starting COAFCC was no small task and required a great time commitment from many devoted people. The story of how COAFCC came to be is important to understand, as it is a part of the history of Colorado's family law interdisciplinary tradition.

Many of you will recall an organization called the Colorado Interdisciplinary Committee (CIDC or State IDC, as it was also known). This organization was founded in 1998, put on outstanding annual conferences in mountain locations (usually Breckenridge), and disseminated an excellent newsletter. The organization began to lose momentum and finally, in 2005, the board of directors began to consider how to change the organization into something that would appeal to more professionals across the state of Colorado. The establishment of a Colorado chapter of AFCC was determined to be the most effective step to take toward this goal, due to the national support available from AFCC. AFCC was regarded as the most innovative international organization that serves as a catalyst for change and progress in the area of family conflict resolution. A Coordinating Committee for starting the chapter was established. This committee consisted of several of the CIDC board members and a number of others who were very excited about the prospect of a Colorado Chapter and wanted to be involved in its creation. Additionally, we had the support and assistance of the

AFCC President at that time, Robert Smith, J.D., from the Fort Collins area, and past-president, Christie Coates, J.D., from Boulder.

The path to becoming a provisional chapter was not an easy one. AFCC, as a highly esteemed international organization, has a detailed process that must be accomplished in order to achieve provisional chapter status. During 2005 and 2006, the Coordinating Committee worked tirelessly to meet the requirements for starting a chapter. By the spring of 2006, the website, [www.coafcc.org](http://www.coafcc.org), was developed. By September of 2006, a Letter of Intent to establish the Colorado Chapter was submitted to AFCC.



In October of 2006, Provisional Chapter Status was approved for COAFCC by the AFCC Board of Directors. One of the requirements for provisional status was to hold an inaugural event. Many of you came to that event in March of 2007, in which the subject of Early Neutral Evaluation, a topic that AFCC had highlighted around that time in an issue of the Family Court Review (AFCC's premier journal), was presented and discussed. We were able to have the developers of Early Neutral Evaluation come to our inaugural event to tell us about their court-sponsored ENE program in Minnesota. Next we elected a board of directors and officers.

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This board consisted of both many members of the original Coordinating Committee and other esteemed professionals. As the Chairperson of the Coordinating Committee, I became the first president. Soon thereafter, the Board incorporated COAFCC, obtained tax-exempt status, established and approved bylaws, and began pursuing Chartered Chapter status.

After the inaugural event, the Program Committee rolled out a four-part series of half-day conferences that took place in 2008. In 2009, COAFCC began its tradition of holding two conferences every year. Joint conferences with MDIC and BIDC were held in the fall of 2009 and 2013. In the spring of 2010, AFCC held its annual conference in Denver, and COAFCC participated in that conference. Many outstanding national and international speakers have presented at these conferences: Lynn Greenberg, Ph.D.; Bill Eddy, L.C.S.W., J.D.; Phillip Stahl, Ph.D.; Jennifer McIntosh, Ph.D.; Nicholas Bala, J.D. and Barbara Jo Fidler, Ph.D.; Pamela Ludolph, Ph.D.; Susan Lach, J.D. and Mindy Mitnick, M.A., M.E.; John Zervopoulos, Ph.D., J.D.; and Jennifer Kesge, L.M.F.T. COAFCC held its first annual weekend conference in October of 2015 in Breckenridge. The second annual conference will take place again in Breckenridge, October 7-9, 2016. Additionally, COAFCC has presented smaller conferences in areas further from the Denver-metro area, such as Montrose, Grand Junction, and Pueblo. And, as you can see, an outstanding newsletter is produced twice a year. A tradition of presenting nationally and internationally-recognized speakers with an eye toward state-wide membership inclusion and connection has been established.

The COAFCC Board has consisted, from the days of its beginning to the present, of mental health professionals, legal professionals, and judicial officers. Presidents who have served over the years, in chronological order, are: Shelley Bresnick, Psy.D. (Lakewood); Judge Randall Arp (Golden); David Rolfe, J.D. (Parker); Michele Tipple, L.C.S.W. (Boulder); Jennifer Feingold, J.D. (Denver); Armand Lebovits, L.C.S.W. (Denver);

*The creation of the state chapter in 2006 generated a great deal of excitement in the professional family law community and many individuals volunteered their time to help establish it.*

Kate McNamara, Ph.D. (Ft. Collins); Sarah Quinlan, J.D. (Denver); and Barbara Pevny, M.A., L.P.C. (Ignacio). The incoming president will be Beth Lieberman, L.C.S.W. (Colorado Springs).

The Colorado Chapter was the ninth AFCC chapter to be established. Since that time 12 more chapters have been founded, including two in Canada and one in Australia, for a total of 21 chapters. We are proud to continue offering educational and networking services to our members and other professionals who work in the area of family law, as well as promoting improvements in the process of family conflict resolution. Personally, I have enjoyed working with some of the best and brightest professionals in our community and becoming involved in programming that draws from the biggest names in our field. While the original purpose of this article was not to promote COAFCC, my enthusiasm and regard for this organization is so high that I cannot help but be proud to promote it and hope that all of us will continue to work towards improving and growing this great organization!

## Welcome New COAFCC Members!

Anna Armas  
Susan Carr  
Linda Connors  
Jacqueline Deam  
Carrie Galyardt

John Jostad  
Abby Medina  
Rachel Perez-Steinbach  
Brad Rose  
Michael Taylor

### *A Special Thank You!*

A heart felt thanks to our outgoing board members:

**Jack Gardner, Daryl James, and Jennifer Moné.**

Thank you for your service to COAFCC!

## ELECTION UPDATE

This year's annual meeting was held at the Marriott Denver Cherry Creek. Ballots were distributed to COAFCC members for the current Board of Directors election. The slate, as elected, was as follows:

#### **Director Nominees:**

Deborah Anderson  
Ann Gushurst  
Laurie Mactavish  
Leonard Tanis

#### **Officer Nominees:**

**Secretary:** Shelley Bresnick  
**Treasurer:** Barbara Pevny  
**Vice President:** Frances Fontana



Beth Lieberman will move from the position of Vice President to the position of President in accordance with our bylaws.



# MEMBER NEWS

Marlene Bizub, Psy.D.

COAFCC members **Nan Waller Burnett, MA, Terri Harrington, JD, and Christie Coates, JD**, are on the planning committee for the 10th Annual Rocky Mt. Retreat to be held July 15-17, 2016 in Colorado Springs. Internationally recognized conflict specialist, author and trainer, Gary Friedman, Esq., will present "Inside Out: How Conflict Professionals Can Use Self-Reflection to Help Their Clients." For more information on this space-limited, unique event for ADR professionals, lawyers, judges, therapists, parenting professionals, collaborative professionals, and educators, contact Terri at [th@hbc-law.net](mailto:th@hbc-law.net) or Christie at [coatesc@aol.com](mailto:coatesc@aol.com).

**William Austin, Ph.D.**, has written a series of articles on forensic relocation evaluations for the American Journal of Family Law.

Austin, W. G. (2015). Child Custody Evaluation and Relocation, Part I of III: Forensic Guideposts for the Evaluator and Court, *American Journal of Family Law*, Vol. 29, Number 3, 156-170.

Download at [www.child-custody-services.com](http://www.child-custody-services.com)

Austin, W. G. (2016). Child Custody Evaluation and Relocation: Part II of III: Options for a Systematic Approach to Forensic Evaluation, *American Journal of Family Law*, Vol. 29, Number 4, 207-223.

Download at [www.child-custody-services.com](http://www.child-custody-services.com)

Austin, W. G. (2016). Child Custody Evaluation and Relocation: Part III of III: Forensic Consultation Services and Common Errors by Evaluators, *American Journal of Family Law*, Vol. 30, Number 1, 32-45.

Download at [www.child-custody-services.com](http://www.child-custody-services.com)

**Dr. Austin** also contributed to another publication:

Parkinson, P, Cashmore, J., Taylor, N., Austin, W. G. (2016). Relocation, research, and child custody disputes. In. L. Drozd & M. Saini (Eds.), *Parenting Plan Evaluations: Applied Research for the Family Court*, 2<sup>nd</sup>. Ed. New York: Oxford University Press.

**Marian Camden, Psy.D.**, has published a new book, *Where Do My Brother and Sister Go?* This story is written from the perspective of the little half-sibs, the "ours" children in blended families, and addresses questions about joint custody, visitation, and step parents. Available at [www.createpace.com/5822083](http://www.createpace.com/5822083)

The following COAFCC members will be presenting at the AFCC 53rd Annual Conference in Seattle, Washington June 1-4, 2016.

**William Austin, PhD**, of Lakewood will be presenting "Unsubstantiated Allegations of Child Sexual Abuse: An Integrative Approach" (w/ Pamela Ludolph, PhD, Ann Arbor, MI)

**Christine A. Coates, JD, MEd**, of Boulder will be co-presenting "Tearing Your Hair Out: Exploring New Interventions in High Conflict Cases" (w/ Hon. Denise McColley, Napoleon, OH)

**Kathleen McNamara, PhD**, Fort Collins will be co-presenting "Allegations of Child Sexual Abuse during a Child Custody Evaluation—Now What?" (w/ Lawrence Jay Braunstein, JD, White Plains, NY)

**Daniel J. Mosley, EdD**, Colorado Family Center, Littleton, CO will be co-presenting "#MyAdolescent: An Asset to Parenting Plans." (w/ Heidi A. Sauder, PhD, Lone Tree, CO)

# PARENTING EXCHANGES:

## THE ULTIMATE OPPORTUNITY TO LISTEN TO PRE-VERBAL CHILDREN'S TESTIMONY

Adoree Blair

In February of this year, The Denver Post reported the story of 2-year-old Danny Molina, whose mother's boyfriend beat him to death with brass knuckles, despite the outcries of Danny and his father for help. Danny is not alone. The Center for Judicial Excellence reported that in the ten months between June 2009 and April 2010, 75 children were killed by fathers involved in volatile custody battles with their former partners (Chabachnik, 2010)

The Child Welfare Information Gateway (Bureau, 2015) reports that in 2013, the latest year for which we have statistics, an estimated 1,520 children in the U.S. died from abuse and neglect. Almost 50% of these dead children were under a year of age, and 35% more were under the age of 3. Deceased abused children's ages are approximately the same year after year and the perpetrators of almost 80% of these fatali-

ties are parents. (Bureau, 2015) Notably, up to 79% of fatalities occur to children whose cases have been previously investigated by social workers (Jennifer Brown, 2012) (Osher, 2010).

Importantly, we must keep in mind that a child's brain grows (and connects neurons for a lifetime of reactions) to 80% of adult size by age 3, and 90% of adult size by age 5. (Zero to Three, 2014) Working Paper 9 from the National Council on the Developing Child warns about the permanent damage to the brains of young children who have chronic and fearful experiences, saying these children "lose the [life-long] capacity to differentiate between threat and safety." (Child, 2010) The vulnerability of a 0-3 age child's capacity to reach his or her lifetime potential is incredibly time-sensitive.

When our CFI, CLR, or PRE cases involve babies and toddlers, we are not asked to share an opinion of this young child in section 14-10-124, C.R.S., because the child's capacity to express his opinion is often misunderstood. However, if abuse is alleged, we must attempt to hear what the youngest children are telling us about the abuse they are suffering. The youngest children can tell us a great deal about their needs if we listen and observe.

According to Dr. Alice Honig (Alice Sterling Honig, 2016), distress signals to look for in suspected abuse or neglect are distressed facial expressions, back arching, withdrawal, aggression and over-activity, hitting others, or a

*"The youngest children can tell us a great deal about their needs if we listen and observe."*

very clingy child. The Center on the Social and Emotional Foundations for Early Learning reports that children's emotions are the same as adults' emotions, but expressed differently. Babies will turn away from people or arch their backs when upset or hurting, and toddlers' expressions are usually easy to read. (Center on the Social and Emotional Foundations for Early



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Learning, 2015) For example, Dr. Linda Acredolo (Dr. Linda Acredolo, 2016) distinguishes between babies' cries: Hungry - short, low-pitched and becomes louder and more intense if not responded to; Pain - sudden beginning, loud, continuous in pitch; Tired - softer, fussy, on an off.

Matthew Malmel, Executive Director of Zero to Three, testified to the U.S. Congress (Matthew Melmed, 2009) how critical a child's first 3 years are to the 'vulnerability and promise' for her entire lifetime. The American Academy of Pediatrics and Dave Thomas Foundation for Adoption, (American Academy of Pediatrics, Dave Thomas Foundation for Adoption and Jockey Being Family, 2013) warned that trauma for a child increases and has more severe effects when it happens again and again, happens to a younger child, and where the child has few supports and fewer coping skills (language, health, self-esteem).

Dr. Zeynep Biringen cautions that the positive Emotional Availability of the parent contributes to a consistent positive outcome for the child. (Zeynep Biringen, 2015) Dr. Celia Doyle (Doyle, 2003) cautions "Emotional abuse is known to result in damaged individuals." AFCC's "Family Law and the Neuroscience of Attachment, Part I" (Schepard, 2011) warns that "...all infants are vulnerable and will suffer emotional

(if not also cognitive) consequences...Relational traumas during infancy override all genetic, temperamental, constitutional and intellectual factors and negatively impact right brain development, leading to a predisposition to future psychopathologies."

For forensic evaluators, parenting exchanges offer a very valuable place and time to assess a child's reactions and to understand the child's testimony. If the child is very young and there are either noticeable differences in how the child acts/reacts to one parent versus the other parent or, more importantly, if there are allegations (or suspicions) of abuse or neglect, it is imperative that we watch the children transfer from one parent to the other, and then watch them transfer back again. I have found in the past that the full picture is only seen when I ensure time to begin observing exchanges at the home of the parent who will exchange the children to the other parent. I watch the child's reaction when the transfer is announced and watch the child's reaction on the way to the exchange. I ride in the car with the child and observe and assess their reactions to the upcoming exchange. Does the child appear content, or does he become still and watchful as the journey progresses, has he cried, whimpered, or objected in some way since announcing the impending exchange, or since riding in the car to this specific location? I must listen and watch the child



during the exchange. If I see a child particularly upset, I have, at times, accompanied the child and receiving parent in their car to the receiving parent's home so I can observe the parent's ability to cope with the child's outcry and the parent's ability to comfort the child. The information gained from these exchanges is monumental to a case with a very young child who might be endangered with one parent.

When a very young child is being maltreated by one parent, a parent exchange observer will often note the child crying/screaming, reaching out for the parent who is leaving, squirming to get down and run to the leaving parent. A baby might arch her back, pull her arms and legs up toward her stomach protectively, or turn away from the parent of whom he is afraid. The child might frantically look over the shoulder of the receiving parent for signs of the other parent. Every once in a while, one sees a baby or toddler who has been transferred to the receiving parent for quite some time **despite** her protests, react by lowering her head, folding her arms in to her chest and refusing eye contact with the receiving parent – as if she is closing herself down and surrendering to what is coming.

Sometimes, receiving parents argue that the parent bringing the child 'pinches' or other

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## PARENTING EXCHANGES CONTINUED FROM PAGE 11

wise provokes a child to cry. Some parents even arrange for the filming of a child crying while being transferred “to prove that Mom (or Dad) is pinching him to make him cry.” If the professional assessing these exchanges has been with the parent and child before the transport and during the transport, these allegations can be ruled out.

Some healthy signs we all know to look for are the baby seeking good eye contact with the receiving parent, a lack of discomfort in the child, and even a sparkle of recognition and joy at being reunited with the receiving parent. But until we understand that any young child about whom there are allegations or concerns of abuse must be observed during, before, and sometimes after the exchange of the youngest children, we probably will never get the information from the children that we need.

It is important to plan to observe the next exchange to the opposite parent, for comparison and contrast. I have found that sometimes babies or toddlers leaving an ominous parent to return to the safe parent will quietly accept the exchange and, until the unsafe parent leaves, the child might not feel free to show relief and affection.

Keep in mind that when babies are talking, the more exchanges observed, the better the information.

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**Adoree Blair** spent 26 years as a foster parent (to 70-plus children) and volunteer children's advocate at the state capitol, bringing legislation forward that protects foster and adopted children. She has worked with hundreds of families within the child welfare system, assessing and observing interactions within families and attachment of young children to caregivers. She has coached parents in these arenas and in safe parenting techniques, as well as early brain growth. She has been working in the DR field for 10 years as a mediator, CFI, PC/DM and Supervised Parenting Time Provider. The field of understanding about 0-3 brain growth is leaping forward with new research and knowledge, and this has been Adoree's most beloved focus in child advocacy, due to environmental determinations of that entire child's lifetime.



# MEDIATION CHANGES: ARE THEY COMING?

David Rolfe, Esq.

As many of my fellow members and fellow mediators may know, there is presently pending before Chief Justice Nancy E. Rice, a Draft Policy Establishing Standards for Mediators Accepting Court-Referred Domestic Relations Cases Referred Pursuant to §13-22-311, C.R.S. The Draft policy was accompanied by a letter from the Task Force dated December 23, 2015, which encapsulated their work.

If you would like copies of either or both of these documents, please let me know and I will be pleased to forward them to you. I can be reached at [drolfe@parkerlaw.net](mailto:drolfe@parkerlaw.net). The Chief Justice is currently considering whether to institute changes to the present free market, economy driven mediation process by imposing requirements similar to those imposed for Child and Family Investigator training, appointment, and oversight.

The task force provided Justice Rice, in the Final Report, with two schools of thought, and thus two potential courses of action. One school of thought was that change was needed, and the best course of action would be to impose requirements for training, education, credentialing, and rostering of all mediators accepting Court-appointed cases. The second school of thought was that the current system was working just fine and the Task Force was, essentially, addressing a non-existent problem. Thus the recommended course

of action by the second school of thought was to maintain the status quo.

Over the years, various stake-holders have advocated for change with differing rationales. Some had financial interests and some simply wished to make the profession more accountable and assure that mediators are better prepared. It is unclear what lies behind the current clarion call for change. You are encouraged to discuss the draft standards with other members of the organization, other members of your own professions, and look deeper into the subject.



*“The Chief Justice is currently considering whether to institute changes to the present free market, economy driven mediation process by imposing requirements similar to those imposed for Child and Family Investigator training, appointment, and oversight.”*

# GOOD NEWS/BAD NEWS: WHATS NEW WITH CJD 04-08

Gay Niermann, Esq.

**The good news is the CFI cap has been raised. The bad news is the mandates continue. Here is a recap of the some of the more significant changes to CJD 04-08, which went into effect January 1, 2016.**

- The CFI investigation can be expanded to a PRE if the CFI is qualified under section 14-10-127, C.R.S., to conduct a PRE, the parties agree to the change in writing, and the Court approves the agreement.
- The presumptive maximum fee for the investigation has been increased to \$2,750. A request can still be made for additional fees if circumstances warrant the increase.
- The Office of the State Court Administrator (“SCAO”) has taken over supervision of CFIs including state pay CFIs. CJD 04-06 is no longer relevant. CJD 04-05 applies to state pay CFIs, and if the CFI is on the state wide roster or district roster, the CFI can accept state pay appointments. A CFI no longer has to execute a contract to accept state pay appointments. The presumptive cap for state pay investigations and testimony continues at \$1,440.
- Complaints can be made only by parties, counsel of record, or judicial officers. The new spouse or a grandma cannot file a complaint. A complaint must be filed within one year after termination of the appointment. The presiding judge will receive the complaint and determine if an action should take place.
- Founded complaints may be provided to regulatory agencies entitled to notice. The complaint must be redacted to maintain confidentiality of the parties, addresses, names and birthdates of the children, and witnesses. The redacted documents must be marked “Confidential Pursuant To CJD 04-08.”
- Founded complaints may be publicly released as to the existence of the complaint, the date of the finding, the standard violated, and the sanction.
- The possible sanctions are clarified, which may include less drastic measures than removal from the statewide roster and district rosters. It also clarifies that no complaint is required for a district to remove a CFI from the district roster. Notification is then provided to the SCAO which has discretion to also remove the CFI from the statewide roster.




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## GOOD NEWS/BAD NEWS

### CONTINUED FROM PAGE 14

- Requires a CFI to maintain professional liability insurance if available and give written notice to SCAO if insurance is terminated. SCAO must also be notified of any disciplinary action filed (malpractice, grievance, or complaint) and under investigation.
- Standard 2 mandates the filing of the Mandatory Disclosure form within 7 days of appointment in every case, even if there is no existing relationship. This usually involves a filing fee, which will have to be paid even if the retainer has not been paid.
- Standard 4 permits a CFI to make referrals or recommendations to other professionals only upon the request of the Court or upon the written request of the parties.
- Standard 8 now mandates data collection routines consistent with accepted legal standards, disclosure of any limits to the data or information, and state how these limits impact the recommendations.
- Reports are due at least 35 days prior to the hearing date unless the Order specifies a different due date.
- The report must list all services performed and the time spent during the investigation. Practically speaking, the requirement to include all time spent seems to contradict the mandate for a brief and focused investigation. Attaching your billing records should meet this requirement.
- Standard 12 states that requests for the CFI file must be made in writing, allows copying to be done by outside businesses if confidentiality is assured, and limits the cost to \$.025 per page. The CFI cannot charge for the time involved to copy the file.

- Standard 12 also requires the file be maintained for 7 years after the appointment terminates.
- Standard 13 permits the CFI to conduct domestic violence screening if competent to do so. When the court specifically orders a drug or alcohol or other evaluation, a qualified individual shall conduct such evaluation; an a CFI qualified to conduct drug and alcohol evaluations may do so only if specifically ordered.
- Many of the revisions are now mandatory, changing the word “should” to “shall.”



*“The good news is the CFI cap has been raised. The bad news is the mandates continue.”*

#### **Here are some additional points that a CFI should always remember:**

- Your role is defined by the Order of Appointment and you should not go beyond the specifics areas to be investigated.
- Regularly review CJD 04-08; this can be especially helpful prior to testimony.

# UNBUNDLING FAMILY LAW SERVICES: WHY MORE FAMILY LAW ATTORNEYS SHOULD DO IT

Angela R. Arkin  
District Court Judge (Retired)

Judges sitting in family court in Colorado are encountering a large and ever-growing number of self-represented litigants. Many of these parties are not indigent, but they are not hiring lawyers to assist them. These non-indigent litigants generally fall into three categories:

1. They can't afford traditional legal representation because of their financial circumstances (low wages, significant consumer debts, high student loans, etc.);
2. They are of moderate means, but do not wish to spend all of their disposable income on legal fees;
3. They wish to reach an amicable resolution of their family law matter, and are afraid that hiring an attorney will make their case more complicated and/or expensive.

If a family court case is litigated, judges have a duty to enter equitable rulings regarding financial issues and support for dependents, to act in the best interests of children when their parents cannot agree, and to protect children who are being harmed by their parents' actions or inactions. In cases

*“From the judge’s side of the bench, self-represented litigants bring many challenging concerns.”*

that settle, family court judges cannot reject separation agreements or stipulated parenting plans unless the financial provisions are extremely unfair to one spouse, the parenting provisions would endanger the minor children, or the support provisions would deprive dependents of legally required support. The court interventions that are mandated do not include the duty to reject ill-advised or poorly written agreements that could prove impractical or unenforceable in the future. Indeed, the court is prohibited from providing the parties with legal advice. Therefore, from the judge’s side of the bench, self-represented litigants bring many challenging concerns:

- A. They do not know the law, so they are unable to determine whether their wishes for the resolution of the case are reasonable, equitable, or allowed by law. This can increase the likelihood of litigation, which can be difficult for parties and harmful to children.
- B. They do not know the rules of evidence, so they struggle to prepare their case in a way that allows the court to admit the evidence necessary for the court to do equity. The court cannot issue good decisions when the judge does not have sufficient information to determine what is fair.
- C. They do not understand the rules and procedures that must be followed by litigants to participate in the process, meet court deadlines, and

timely complete required disclosures and any discovery requested. Sherlocks, Family Court Facilitators, judicial assistants, and judicial officers often spend significant court time and resources helping self-represented litigants understand the litigation process.

- D. They do not understand when experts need to be appointed to assist the court in understanding and evaluating contested issues, and/or what the experts do in their evaluations. If there is a significant contested issue, such as abuse allegations against a parent or valuation of a significant asset, when there is no expert the court is left to guess at an appropriate resolution.
- E. They do not know how to draft an agreement resolving their contested issues that is clear as to their intent, and is specific enough to be enforceable by the court if one or both parties fail to comply. The court cannot reject or unilaterally revise written agreements absent a serious legal, equitable, or child protection flaw.

These litigants need affordable legal advice.

Over approximately the last 13 years, the Colorado Bar Association (CBA), the Colorado Judicial Branch (Court),

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## UNBUNDLING SERVICES CONTINUED FROM PAGE 16

and Colorado Legal Services have made great efforts to address the problems caused by and to the rising tide of self-represented litigants. The most prominent step was the joint effort to create one of the first Access to Justice (ATJ) commissions in the United States. The Colorado ATJ has taken countless actions to assist self-represented litigants, including holding hearings on the access to justice crisis, creating local ATJ Committees throughout the State, and creating significant incentives for lawyers to do 50+ hours per year of pro bono work. The local ATJ Committees have also had a great impact, including recruiting volunteer lawyers to provide legal information and advice to litigants at clinics, self-help centers and local bar events.

The Court has created a state-of-the-art website with lots of user-friendly forms and instructions. They also hired an ever-increasing number of Court Facilitators and Self Represented Litigant Coordinators (Sherlocks), made changes to rules and procedures to give courts more flexibility in assisting self-represented litigants, and have made countless other efforts to assist self-represented litigants through Supreme Court commissions and committees. Despite these efforts, currently, according to the Court, approximately 70% of Domestic Relations (DR) and Allocation of Parental Responsibilities (APR) cases filed in Colorado have zero or only one attorney involved. However, self-represented litigants, especially in the family law area, have become too numerous and too needy to be fully served by volunteer lawyers, Sherlocks, or Court Facilitators.

The CBA has created a “Toolkit” for attorneys wishing to provide unbundled legal services, and has an

“Unbundled Legal Services Roadshow” which has made innumerable presentations on these issues to lawyers and law students throughout the state. There is a “Modest Means Committee,” that has implemented numerous legal services projects, and continually seeks new ideas on how to provide services to self-represented litigants. A small but growing number of family law attorneys have embraced unbundled legal services based on these efforts.

There is also a CBA committee looking at whether Colorado should allow non-lawyer professionals to fill the market for affordable legal services, since the need continues to be overwhelming, and too few attorneys are currently providing the same. Family lawyers have expressed concerns that creating a new profession such as a “Limited Liability Legal Technician (LLLT),” or other similar “paralegal plus” type professionals could cause more problems for self-represented litigants than it solves; but the alternative, convincing more licensed family law attorneys to meet the needs of this ever growing moderate means population, has not yet been successful.

The Colorado Rules of Professional Conduct allow attorneys to provide ‘unbundled legal services.’ Colo. RPC 1.2(c). A lawyer may provide limited representation to self-represented parties as permitted by C.R.C.P. 11(b) and C.R.C.P. 311(b). There are three key issues for the lawyer to consider in deciding to offer unbundled legal services: (1) the limitation on the services provided by the attorney to the unbundled client must be reasonable; (2) the client must give informed consent to the limitation of services; and (3) the attorney must advise the court if he/she is drafting or “ghostwriting” court documents, other than the state forms available on the Court website. Whether the limitation of services provided is reasonable



will depend on the facts and circumstances of the case, but there is not a specific rule or significant body of case law that defines what is a reasonable limitation. Arguably, the reasonableness of the limited representation would require the lawyer to consider the following:

- Is the case relatively simple, or complex?
- Does the client seem capable of understanding legal advice and following instructions?
- Does the attorney have a reasonable amount of time to assist the self represented party in addressing the matter?
- Is the client going to be comfortable with the limited communication with the lawyer that often accompanies unbundled legal services?

Family law attorneys could have more confidence that their liability does not significantly exceed the scope of the services purchased by the unbundled client if the Court provided specific guidance about the parameters of their professional duty. But lawyers could also consider other models for providing unbundled legal services as an alternative to trying to adapt standard forms of legal representation to the needs of the unbundled client. This would arguably limit the attorney’s

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liability while providing services to this underserved market.

There are a number of innovative ideas across the country regarding providing affordable unbundled legal services. One of these alternative models is the Self-Represented Resource Center™ (SRRC) at The Harris Law Firm. We created the SRRC to provide unbundled legal services to individuals who are considering handling their legal matters without hiring an attorney. This new legal clinic allows those with family law issues to access high level divorce and family law advice while still representing themselves, *i.e.*, sort of a “doc in a box” (urgent care clinic) for *pro se* parties.

The SRRC provides legal information and advice, but we don’t enter an appearance, we don’t prepare or file documents, and there is no ongoing relationship with the self-represented party. We offer what we consider to be reasonable rates, and the self-represented client pays as he/she goes: there is no retainer. This allows each litigant to manage his/her own legal fees and costs, and get as much legal help as he/she needs to resolve the matter in the best possible way.

The scope of Unbundled Services available to self-represented parties at the SRRC includes:

- Providing a consultation and advice regarding a Dissolution of Marriage/Parental Responsibilities matter;
- Reviewing and commenting on documents not prepared by the SRRC;
- Helping prepare for Child and Family Investigator/Parental Responsibility Evaluator (CFI/PRE) interview;

- Assistance with forms for filings with the court and service of process;
- Assistance with calculation of child support and maintenance;
- Assistance with preparation of disclosures and discovery responses;
- Coaching and helping to prepare for a hearing.

We spend time with the client before we begin the consultation explaining our services and the limitations of our services to the client in detail, and have them sign a document confirming that they understand our services. If we believe the client is not a good fit for our clinic, we provide them with a list of alternative resources, and end the consultation without a charge.

Regarding fees, the client pays nothing until after the first hour of consultation. If the consultation takes more than an hour, the attorney charges a modest hourly rate for further consultation (per 10th of an hour). The client can also book a follow-up with the attorney, or with the senior paralegal for review of the forms and help with procedural matters such as service of process. The client can return anytime, but there is no obligation. Work is only done when the client is present in person.

The SRRC does not provide legal representation. If there is any contact with the court or court event scheduled in the case, the self-represented client is responsible for attending that court appearance. The self-represented client signs all pleadings, disclosures and discovery, attends settlement conferences such as mediation, and negotiates and communicates with the opposing party, opposing counsel and the court. The SRRC does not conduct any independent investigation into the facts of the client’s case, and clients are

notified to bring any documents with them to the consultation. We are available to consult with the client about all aspects of their case, but if at any time they wish to obtain legal representation, they will need to hire an attorney.

We consider a significant focus of the SRRC to be providing services that help clients understand the laws, rules, procedures, and equities of their family law case well enough to be prepared for settlement. In addition to educating clients about the legal system, we discuss costs and benefits of their financial positions, and the impact the proposals in their parenting plan may have on their children. We always talk to clients about therapeutic resources, mediation, and other kinds of professionals who might help them resolve their case. When requested, we provide our clients with lists of professionals we believe are a good fit for their case, and we make suggestions on what might be reasonable compromises that can help them, the other party, and their children move forward in an amicable way.

Unbundled services have been encouraged by the Colorado bench and organized bar to persuade lawyers to provide more economical access to justice for self-represented parties. There are many ways attorneys can provide these services to family law litigants, but not providing them is an option that is likely to have dire consequences for our profession. At the SRRC, we are excited about and enjoying this new opportunity to be of service to self-represented parties with Colorado family law matters. We invite and encourage more of our esteemed family law colleagues to join us in the effort to provide affordable unbundled legal services to self-represented litigants.

## 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!**



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

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# PATRICK PARKINSON'S VISIT TO DENVER

Melinda Taylor

Anyone who has heard about the sweeping innovations in Australian family law over the past decade has certainly heard about Professor Patrick Parkinson. Professor Parkinson came to Denver last January and visited the Center for Out of Court Divorce in Denver. As many of you know, COCD is modeled after the Family Relationship Centres in Australia. Professor Parkinson was one of the primary creators of the FRC model and drafted the legislation that implemented them throughout Australia. While in Denver, he had the opportunity to meet with family law professionals to discuss the reforms in Australia and to dialogue about our family law reform efforts in Colorado. During our meeting we acknowledged that extensive systemic and funding differences between our countries were significant, yet the needs of families are the same.

We discussed at length the reality that a great many families do not belong in a traditional court model; they need access to a range of services, education, and coaching to empower them to develop parenting and financial agreements that are unique to their circumstances, and that provide them with the foundation that they need for transition. Our current model is not equipped to offer these services and will often increase cost and levels of animosity and conflict for children. We discussed ways in which courts and family law professionals could work to improve the needs of high-risk families through comprehensive access to assessment, services, education, and court handling of their cases by a judge who had the education and tools he/she needed to resolve these cases.

Professor Parkinson talked about the "indissolubility of family" in which the needs of a child(ren) are fluid and ever-changing as a result of the ages, stages, development, and circumstances that affect that child's life. In Australia, education, resources, and mediations are provided by the Family Relationship Centre and parents must first work with a professional mediator at a local Family Relationship Centre (or elsewhere) to develop their parenting plan. These parenting plans do not need to be filed with the

court and are considered "enforceable;" if one parent does not comply with the agreement, mediation is commonly used, and court intervention is a last resort. All child support issues are handled administratively by a separate division of the federal government.

*Professor Parkinson talked about the "indissolubility of family" in which the needs of a child(ren) are fluid and ever-changing as a result of the ages, stages, development, and circumstances that affect that child's life.*

Financial agreements are also mediated and then filed with the court. Professor Parkinson stressed that the culture norm is no court involvement unless there are protection, compliance, or safety factors that prevent resolution for the family. In fact, he shared his view that the United States promotes a court-centric



**PATRICK PARKINSON**  
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model, even when mediation is used, the transition process for the family is dominated by the legal process of developing and adopting parenting and financial separation plans. In Australia, the mission of the Family Relations Centre is to acknowledge that there are non-legal relationship issues for families going through separation or divorce. The Centre provides families with a lot more than mediation, they have access to community resources that can help them with the psychological stressors as well as the pragmatic challenges of housing and employment issues. The Centres mission is all about strengthening family relationships, helping families stay together, or assisting families through separation. Additionally, FRCs reflect the unique culture of each community in the way that families are unique, as Professor Parkinson described it, “letting a thousand flowers bloom.” While each Centre is unique, they share the community-centric approach that puts the comprehensive needs of the family at the root of the transition process and promotes resolution of those issues outside a legal context.

For those of us accustomed to the court-centric approach in the United States, Professor Parkinson’s observations about our system caused many of us to feel “disrupted” in our commitment to

reform. In other words, do we need to reflect on the strategies we are promoting for family law reform? Could we allow ourselves to move beyond the recommendations of judicial officer and family law education, one family one judge, and increasing court-annexed services<sup>1</sup> and, instead, strategize ways in which we can change the culture for separating and divorcing families to a more family-centric approach? One that assumes families will not use the court system unless safety, compliance, or complex financial issues are prevalent and that the path to resolution involves community partnerships, limited court involvement, and empowerment of families.

I read a book recently, *Getting Beyond Better: How Social Entrepreneurship Works*, in which the authors distinguish between social service providers, social advocates, and social entrepreneurs. Social service providers and social advocates do important work to improve the existing system. Social entrepreneurs take action to transform the system using advocacy, strategy, testing, and creation of new models. Professor Parkinson’s visit encouraged me to think of family law reform in the context of a social entrepreneurship movement in Colorado. Professor Parkinson shared with us that when the legislative reforms were implemented in Australia, those invested in the process knew that culture change was not an over-night sen-



sation, he indicated that true reform can take decades to achieve. But, he also shared with us, his surprise that so much had happened in the past ten years. Realizing that the creation of a new platform for separating and divorcing families to successfully transition will take decades is a challenging mindset. But, when I envision the benefits, I think it is an investment I would like to make! And, I think those of us who had the opportunity to meet with Patrick were inspired to think about family law reform in a different paradigm.

For more information on the luncheon with Patrick Parkinson, click on this link.

[http://  
centerforoutofcourtdivorce.org/  
supporting-family-wellbeing-  
through-the-divorce-process-2/](http://centerforoutofcourtdivorce.org/supporting-family-wellbeing-through-the-divorce-process-2/)

<sup>1</sup> This is not to suggest that these recommendations should not continue within the confines of our current system. I am suggesting that we could perhaps create a parallel strategy for culture change.

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