Association of Family and Conciliation Courts
Colorado Chapter

Fall News

President's Message

Frances Fontana, JD

It's hard to believe that 2017 is almost over and it is time to welcome 2018. It's that time of year to take a quick look back and then take a peek at next year.

We had our annual Board of Directors retreat this summer in Denver to brainstorm and get energized for this year. I am privileged to have an enthusiastic and hard-working group of board members from across the state to work with this year. It is a definite bonus of being the President of this wonderful organization to get to know and work with such a talented group of professionals, each bringing thoughtful and unique ideas to growing and sustaining our organization.

Speaking of growing – we are in the midst of a membership challenge from our parent organization AFCC. There is a $5,000 cash payment to the Chapter that has the highest percentage increase in membership in AFCC from July 2017 through May of 2018. So, each of you grab a colleague that is not currently a member and encourage them to join. We are currently in second place, so the prize is definitely within our grasp and the boost to our treasury will enable us to continue to put on great programs and reach out to all parts of our state with educational opportunities!

Our 3rd Annual Conference in Breckenridge in October was a huge success. The energy in the room was amazing and there were lots of great ideas shared. What we do is hard work and it is always affirming to gather with our colleagues in a beautiful setting, learn about new ideas and research, and talk about the important work we do. We are doing good work but there are mountains left to climb and we are gearing up!

Our Program Committee is hard at work finalizing plans for our next conference which will be a one-day program on April 27, 2018, at the University of Denver. The keynote speaker with be Bill Eddy, the president of High Conflict Institute, and an award-winning author, lawyer, therapist, and mediator. He developed the "High Conflict Personality" theory (HCP Theory) and is an international

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expert on managing high-conflict disputes. Mark your calendars and be sure to save the date.

In 2018, instead of putting on our yearly conference in the mountains in the fall, we will be supporting the AFCC's 13th Symposium on Child Custody Evaluations which is being held in Denver, November 8 -10, 2018. We will be organizing a silent auction to take place during the symposium with all proceeds going to our Chapter. Another date to save!

I want to thank you all for the opportunity you have given me to be the President of this incredible group. We all work very hard to improve the lives of families going through difficult times with the hope of making the transitions better for children and it is not easy work to do. The frustrations are plentiful, but the rewards are tremendous. Let's all remember to take care of ourselves and our loved ones; to take the time to do things that make us happy; and to maintain a healthy balance.

I wish you all peace in 2018. May you all be treated with the dignity and respect you deserve and may we in turn, treat others with kindness, compassion, and respect.

AFCC COLORADO

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

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 Events

AFCC 55th Annual Conference:

Compassionate Family Court Systems:
The Role of Trauma-Informed Jurisprudence

June 6-9, 2018

Washington Hilton
Washington, DC

FEATURING:
Jaycee Dugard, Author, A Stolen Life
Bob Woodward, Washington Post
The political satire of *The Capitol Steps*

COAFCC 2018
Annual Members Meeting & Elections and Spring Conference

April 27, 2018

UNIVERSITY of DENVER

Taming the Beast:

Dealing with the High Conflict Personality in Family Law Cases

Featuring

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

This day-long conference addresses the underlying personality traits and disorders which are so often the cause of entrenched conflict in family law cases. Sessions will focus on how to recognize and work with high conflict personalities and refer them for appropriate services. The contribution of high conflict personalities to domestic violence, child abuse, and parental alienation will be explored. Ethical issues and risk management in working with high conflict personalities will be addressed.

Bill Eddy, LCSW, Esq., is President and co-founder of High Conflict Institute based in San Diego, California. Bill has been a speaker in over 25 states, Canada, France, Sweden, England, Greece and Australia. He has become an authority and consultant on the subject of high conflict personalities.

More information and registration details coming soon!

THE THIRD ANNUAL COAFCC STATE CONFERENCE

Leonard D. Tanis, JD

Seeing is Believing:

Best Practices in Divorce Cases

The third annual COAFCC State Conference was held at the Beaver Run Resort in Breckenridge over the weekend of October 13-15, 2017. Once again the conference was held under bright blue skies, golden aspens, and warm temperatures, which presaged what has turned into a delightful though extremely unusually warm and dry fall for Colorado. Over 60 professionals attended the conference with a theme of *Seeing is Believing: Best Practices in Divorce Cases*. The program was formatted to examine a specific case pattern and explore how the courts can best deal with family law cases, especially high conflict cases. The emphasis throughout the weekend was on the practical rather than the theoretical – how the courts and practitioners can take what we know and assist families in working through the systems so that the end result is a healthy family relationship. This brief summary cannot hope to capture all the interesting, complex, and sometimes controversial ideas that were raised throughout the weekend, but I shall attempt to at least give non-attendees an idea of what did occur and why they should attend the next annual conference.

The opening session was a presentation by Bud Dale, an attorney, psychologist, and researcher from Kansas. His presentation was about how the law can make things better in family cases. He argued that the statutes that define best interests and what should be included in parenting plans are the most important things or considerations for the court and the practitioner. A further point he repeatedly emphasized was that the court needs to make the family understand and respect that the Parenting Plan is the law. In doing so, the court provides structure for the family and there should be no deviation from that plan. Dale also discussed his disagreement with our own Bill Austin on the concept of "gatekeeping," although it seemed to me, as an attorney, that there was actually very little difference in their positions.

The late afternoon session was a panel of judges exploring various ways that they try to make things better for families. Judge Jill Baker, Chief Judge from the 4th Judicial District (El Paso County), Judge Gail Meinster from Jefferson District Court, and Judge Laurie Clark from Denver District Court each offered unique perspectives on how things were handled in their courtrooms. Those perspectives were thought provoking on how best to handle various issues that are common to all districts.

We awoke to a glorious Saturday morning with brilliant sunshine. The conference day began with a presentation of the case study of the Johnson family that the conference would be addressing for the remainder of the weekend. Sarah Quinlan, Esq., and Gene Gross, Psy.D., led the room through the case from the beginning of the case through years of litigation that resulted in a broken relationship between the father and his daughter. It was a sad story that is too often repeated

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Conference Presenters:

DEBORAH ANDERSON, ESQ

HONORABLE RANDY ARP

BILL AUSTIN, PH.D.

HONORABLE JILL BRADY

HONORABLE LAURIE CLARK

MILFRED "BUD" DALE, JD, PHD

HONORABLE PAUL DUNKELMAN

FRAN FONTANA, ESQ

BILL FYFE, ED.D.

GENE GROSS, PSY.D.

ANN GUSHURST, ESQ

MAGISTRATE KAREN HUBLER

LAURIE MACTAVISH, MSM

KATHLEEN MCNAMARA, PH.D.

JOAN MCWILLIAMS, ESQ

HONORABLE GAIL MEINSTER

SARAH QUINLAN, ESQ

HONORABLE MARK THOMPSON

JULIE VAN HEYNINGEN, PSY.D.

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in our current system and the intent was that each speaker going forward would address their best practice materials or suggestions to altering the outcome.

Bill Austin, Ph.D., then presented on his gatekeeping construct. For those not already familiar with the construct, this was an important presentation as it explored the various dimensions of gatekeeping: is it facilitative or restrictive and, if restrictive, is there a reason that makes it justifiable. One particularly interesting concept brought out by Bill was that he considers all relocation cases to really be about gatekeeping. Bill explored how the concept of the gatekeeping construct could help families like the Johnsons. This was followed by a panel discussion with Chief Judge Randy Arp from the 1st Judicial District (Jeffco) and Magistrate Karen Hubler from Denver moderated by our President, Fran Fontana, Esq. The judicial officers explored various ways that they attempted to help families navigate through their dockets. It was a lively session with considerable interaction with the audience. After lunch there was another excellent panel discussion with Deb Anderson, Esq., Joan McWilliams, Esq., and Julie Van Heyningen, Ph.D. This dialogue focused on the ethical challenges of representing clients while trying to help children. Again, as there was throughout the weekend, there was a great deal of interaction between the panel and the remainder of the attendees. The afternoon ended with Bud Dale returning to discuss with Ann Gushurst, Esq., what is the best way to handle entrenched conflict. Bill Fyfe, Ed.D., was the moderator of this dialogue that tried to explore ways to stop the incessant warfare that is seen in those very high conflict cases.

Sunday morning dawned cooler and with an increasing north wind that was a harbinger of the changing season in the high country. Laurie Mactavish, the Family Court Facilitator from the 5th Judicial District (Summit, Eagle, and Clear Creek),

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THE THIRD ANNUAL COAFCC STATE CONFERENCE (cont.)

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moderated a panel of judges from that district, Chief Judge Mark Thompson and Judge Paul Dunkelman, who explored how the district tried to help families like the Johnsons. The ensuing discussion was fascinating as it demonstrated not only the extreme openness of that district, but also brought out other fresh ideas from districts throughout the state by attorney and judicial officer attendees from those areas. For instance, one magistrate told how she solved the problem of people attending the mandatory parenting class but not being "present" – she makes them write a one-page paper on what they learned and present it to her in an open (and usually full) court. The conference then wrapped up with an extremely lively panel discussion that included all presenters that was facilitated by Sarah Quinlan and Gene Gross.

All in all this was another fantastic weekend of education and networking. The interaction between all of the presenters and attendees was, I believe, invaluable for everyone who came. Everyone left Breckenridge renewed and excited about how best to handle high conflict cases. Next year the Annual Conference is being replaced by an AFCC Regional Conference being held in Denver, which we hope all of our members will plan on attending. Plans are underway for the 4th Annual Conference to be held in October 2019. See you all there!

SAVE THE DATE!!

13TH SYMPOSIUM ON CHILD CUSTODY EVALUATIONS

NOVEMBER 8-10, 2018

EMBASSY SUITES BY HILTON DENVER DOWNTOWN HOTEL
DENVER, COLORADO

TOP TEN REASONS TO JOIN AFCC

According to our Members

1. **Learning, learning, learning!** I belong to AFCC because I want cutting-edge learning opportunities. AFCC offers national, international and local programs that are extremely relevant to my daily work. Once you attend an AFCC conference you become hooked on the high-quality learning opportunities!

2. **Cutting edge research and knowledge.** I appreciate getting to know and learning from the people who write the books and articles. I look forward to reading the *Family Court Review*… it's a treasure trove of the latest, greatest, most relevant information! Belonging to AFCC enables me to be well informed about what is currently known, as well as what is not yet known.

3. **Innovative programs.** From co-parent education, to parent coordination and elder coordination, to therapeutic programs and court based services, AFCC is on the leading edge of innovative services and programs. No need to reinvent the wheel if you are a member of AFCC! Resources and information about a wide range of interventions and best practices are readily accessible to members.

4. **Discourse and Debate.** Bar none, AFCC is the best place to hear and engage in debate on the really difficult questions. You hear multiple perspectives and can make up your own mind. AFCC never shies away from addressing the most challenging issues in family law.

5. **Colleagues and Friends.** As a professional organization, AFCC has some of the friendliest people I have ever met! You experience true collegiality without egos. I have made lifelong, wonderful friendships within AFCC…. this is what happens when you bring people who are committed to excellence together.

6. **Global and Diverse Perspectives.** Being a member of AFCC helps me understand the perspectives of professionals from various disciplines. I immensely value having access to international experts and being a part of international collaboration.

7. **A Multidisciplinary Home.** AFCC is a multidisciplinary home for those who work at the interface of psychology, family law, dispute resolution, and education. We are a diverse group, defined by our commitment to helping children and families in conflict. I find membership in AFCC to be more relevant and valuable than my membership in the association for my primary discipline!

8. **Dedication to Excellence.** No organization identifies and promotes best practices for working with families in conflict better than AFCC. I belong to AFCC because it truly makes the world a little better place.

9. **Discounts and Scholarships.** Membership in AFCC is a bargain! The dues are extremely reasonable for what you get. Member discounts and scholarships are just a few of the perks that come with membership.

10. **Information at your fingertips.** The AFCC website is the first place I go when I need information and resources. The monthly AFCC eNEWS quickly updates me on the latest news and events, and alerts me to emerging issues and innovations. *Family Court Review* articles back to 1963 can be accessed in a few clicks if you are a member. Belonging to AFCC keeps me at the top of my professional game!

COAFCC's NoCo Dinner Meetings

Robert Smith, Esq.

While Denver has had an interdisciplinary group (Metro Denver IDC) meeting monthly for over 35 years, and Boulder's interdisciplinary group (Boulder IDC) has convened regularly for just over 30 years, Northern Colorado's needs for ongoing training and networking were conspicuously without any organized interdisciplinary group. However, this past Spring COAFCC members Kate McNamara, PhD, and Robert Smith, Esq., decided it was time to fill this void with an organized program of five meetings that would occur throughout the Fall, Winter, and next Spring. The meetings would be sponsored by COAFCC, and include participation by members of both Larimer and Weld Courts' Best Practices Teams to form an ongoing planning committee.

The inaugural meeting concept was quickly revised from a standard lunch meeting to become an early Tuesday evening dinner meeting at the suggestion of Weld County District Court Judge Betty Strobel, so that more judicial officers could attend the gathering that would necessarily need to be held halfway between the two District Courthouses. The initial program, launched just before the summer season began, started with a judicial panel that answered questions that were submitted by the dinner meeting registrants. This permitted a comprehensive discussion of a wide range of domestic relations issues between judicial officers, Court staff, family law attorneys, mental health professionals, mediators, and other interested practitioners, with an emphasis upon best practices as the unifying theme. The meeting was held at a midpoint restaurant, and the gathering began with a full half-hour of networking. Attorney CLE credits were secured for the judicial panel discussion. Both the previous and current COAFCC chapter presidents attended, as well, and presented strong professional reasons for non-members to join their COAFCC colleagues as members of both AFCC and COAFCC.

Although the planning committee initially expected about thirty registrants, this first meeting netted some sixty-five participants–the room's fire code capacity. This was primarily due to the interest in the judicial panel, as well as in the concerted effort by both the planning committee and April Freier, COAFCC's administrator, in advertising the event and planning the myriad necessary details.

The following meetings in this inaugural year were even more successful, since the planning committee paid close attention to the evaluation comments of the dinner meeting participants, including the need to change the venue to a larger, more crowd-friendly space, reworking the sound system to cover the entire room, and adjusting the meal offerings. Subsequent meetings, which resumed this past Fall, are planned for panels of CFIs, PREs, and family law attorneys. Subjects include becoming aware of the risks and challenges of mental health professionals in high-conflict cases, and a highly-anticipated reprise of the questions to the Larimer and Weld judicial officers. The planning committee is scheduled to meet shortly after each NoCo dinner meeting in order to refine the system, review the evaluations, and plan for future topics that will be relevant to all COAFCC members and will help advance domestic relations best practices in both judicial districts.

Spearheaded by Kate McNamara, who has devised a detailed plan for dinner meeting program development, the COAFCC Board is considering sponsoring such interdisciplinary programs in other areas of the state, in conjunction with District Court Best Practices teams. If your geographical area is interested in exploring the COAFCC-sponsored development of professional training and networking interdisciplinary groups, please contact Kate at kathleenmcnamaraphd@gmail.com for more information.

10 Tips for the Holidays

Robin M. Deutsch, PhD, ABPP, Wellesley, Massachusetts

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

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

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

4. Create new traditions that feel special to the children and family. This is an opportunity for the new family configuration to establish new traditions for the holidays including creation of a special holiday celebration or experience on a day other than the actual holiday. It is also an opportunity for the adult who does not have the children, to establish new practices such as time with friends, volunteering, movie days, and travel.

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

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

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

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

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

10. In ten years or twenty years, what do you want to see when you look back on these years of change? From that long view you can highlight the tone and experience of these transformed holidays. Remember, children who find holidays stressful because of the conflict between their parents, have terrible memories as adults of holidays and of special family moments. It is in your hands to create fond, pleasant memories for your children. They can be traditional or not, but the message is that you and our family are important and we find ways to celebrate and enjoy holidays.

Robin Deutsch, PhD, ABPP is a former AFCC President and is a psychologist in Boston. She is the director of the Center of Excellence for Children, Families and the Law at the William James College, where she runs a postdoctoral fellowship program and offers a Certificate in Child and Family Forensic Issues.

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MEMBERSHIP UPDATES

Welcome New COAFCC Members!

AJ ALLES
AMY ANTOMMARIA
KATHRYN BRIGHT
CHRISTINE CALLAHAN
JOSEPH CASH
THOMAS COSSITT
MICHAEL DAVIS
JODI EDMONDS
JOYCE FINE
SUZANNE GOUDZWAARD
EVELYN HERNANDEZ-SULLIVAN
CELESTE HOLDER KLING
CURTIS KOFOED
JOI KUSH
NEESHA LANZINI
DIANE LATHROP
CHERI LEFEVRE
LAURA MCCLENNY
CHRISTOPHER MCLANE
KELLY MCPHERSON
KATE MILLER
AMANDA PEEK
REBECCA PEPIN
RACHEL PEREZ-STEINBACH
JOEL PRATT
KENT ROSENGREN
CAROLYN SANDIFER
TERESA SEDLAK
GALIA SPYCHALSKA
CHRISTINA SZARKA
JAMES TACY
KEVIN UDIS
SUSAN VANDERBORGH
BILL VAN HORN
NICOLE VETTE
LYNAE WALKER
SARAH ZANE

NOMINATION TIME

The Nomination Committee is seeking interested individuals to become members of the COAFCC Board of Directors. The next election cycle will be at the Spring Conference held on April 27, 2018. If you wish to nominate yourself or another COAFCC member, please contact the Nomination Committee Chair, Beth Lieberman at bethliebofcc@aol.com. Thank you!

COAFCC COMMITTEES

Join a COAFCC Committee!

Membership & Outreach Committee
Recruits new members, tracks incoming and outgoing members, welcomes new members, and deactivates non-renewing members. Plans and implements programs in northern, southern, and western regions of the state.

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

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

If you are interested in committee work please contact April Freier at aprilfreier@hotmail.com

MEMBERSHIP/OUTREACH COMMITTEE
Co-Chair: Deb Anderson
Co-Chair: Resa Hayes
Adoree Blair
Shelley Bresnick
Sharon Feder
Phil Hendrix
Beth Lieberman
Kate McNamara
Patricia Riley
Robert Smith

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Co-Chair: Sarah Quinlan
Terry Duffin
Bill Fyfe
Ann Gushurst
Armand Lebovits
Beth Lieberman
Kathleen McNamara
Barbara Pevny
Sarah Quinlan
Barbara Shindell
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Marlene Bizub
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David Rolfe
Melinda Taylor

NOMINATION COMMITTEE
Chair: Beth Lieberman
Fran Fontana

Motions to Restrict: Challenges and Approaches

David S. Rolfe, Esq.

A Motion to Restrict Parenting Time is brought pursuant to § 14-10-129(4), C.R.S., which has mandatory statutory guidelines for when it must be heard, the Parenting Time that may occur until it is heard, what will happen with the child until the hearing, and what happens if the Motion is brought in a substantially frivolous, groundless or vexatious manner. However, the statute is silent on whether or not expert testimony is required.

A Motion to Restrict is akin to other emergency pleadings, such as a protection order, and will be set on a priority docket. § 14-10-129(4), C.R.S., states that the motion "shall be heard and ruled upon by the court not later than fourteen days after the day of the filing of the motion." When I discuss the filing of this particular Motion with a client I refer to it as a "nuclear option." It bares everything for the Court and it grinds parenting time to a screeching halt.

The Motion is considered to be self-executing, *i.e.*, that the mere filing of the Motion automatically restricts the other parent's parenting time. That being said, each Court has an obligation to review the Motion and to determine, on its face, if the Motion has a *prima facie* basis under the statute. In limited instances the Court will find that it does not have such a basis and will deny the Motion. Additionally, some Courts have interpreted the fourteen day mandatory rule as meaning only that the Hearing must be set within fourteen days rather than held within fourteen days. There are limited options for persuading a judicial officer otherwise. Those options, as I see them, are either filing a Motion to Reconsider or filing a Petition with the Supreme Court under C.A.R. 21. Neither of those options, however, will get the parties a hearing within the fourteen days as required, which impacts negatively on the relationship of the affected child and parent and on the parental rights of the restricted parent.

"In order for the court to restrict the parenting time of a parent it must determine that the restrictions serve the best interests of the child."

In order for the Court to restrict the parenting time of a parent it must determine that the restrictions serve the best interests of the child. *In re Marriage of Hatton*, 160 P. 3d 336, 332 (Colo. App. 2007). The Court, in making that determination, must give paramount consideration to the physical, mental, and emotional conditions and needs of the child. *See* § 14 -10-124(1.5), C.R.S.

In reviewing this statutory standard the question for both attorneys and mental health professionals becomes: Does the party bringing such a Motion need to put on expert testimony or evidence in order to persuade the Court of the merits of the Motion and best interests of the child? It is my opinion that while experts can certainly bring important information before the Court and assist the Court in making a determination, expert evidence is often not a key determinant of the outcome. The issue ultimately is: Can the movant provide the Court with sufficient evidence to support that there is harm to the child sufficient to warrant the imposition of the restriction?

All too often a party (or counsel) latches onto an unwarranted belief that a specific event is sufficient to warrant a restriction of a parent's right to an unfettered relationship and contact with their children. Please remember, this is a very serious move (thus my use of the phrase "nuclear option"). To paraphrase from the old wedding vows, it should not be filed lightly or inadvisably. If the harm can actually be demonstrated to the Court then, most likely, proof exists from some outside source and does not require a new expert opinion. As an attorney bringing the motion, you should think outside the box. Having the

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mindset that an expert must be found to do an evaluation highly limits the thinking. An attorney should first look for certifiable public records or records from a source that has a custodian of records who can provide an Affidavit. This brings in evidence while reducing time and costs for the parties and the Court. When one brings in an expert the other party will generally find an expert of their own. It then becomes a battle of experts who may not ultimately persuade the Court either way. Neutral observations and records will move the fact finding down the path to a decision more readily than a battle of experts.

If there is a history, it should be succinctly placed before the Court. This includes previous expert reports that might impact on the present situation. If they are part of the Court record the Court can take judicial notice of them. That does not mean that they are "evidence." However, attorneys or parties can stipulate to them becoming exhibits in your hearing, which will make them evidence once they are admitted.

The standard under § 14-10-129, C.R.S., is not whether (as so many folks mistakenly believe) a parent is at fault or the "cause" of the danger or impairment for the child. The standard is whether the myriad of circumstances that shape a parent's parenting time "endanger the child's physical health or significantly impair the child's emotional development." § 14-10-129 (b)(I), C.R.S.. That is a much broader focus, expanding the issue of causality beyond just the parent. When the attorney bringing the Motion does not have a clear understanding of what must be shown to the Court, the hearing will tend to deteriorate into attacks on the parent whose parenting time the Motion is designed to restrict (which generally results in counter-attacks). In some cases it is easy to find the direct link, such as when there is a distinct act of child abuse. In most circumstances, however, the issues are less black and white, and thus harder to present and prove to the Court.

If it accepts the proof that the current parenting time does in fact endanger the child under the above standard, then the Court must balance the harm that is likely to occur to the children if they are left with the restricted parent and the harm that is likely to occur to the children if they are moved. Both scenarios require careful analysis by the Court. Evidence must be presented to the judicial officer on which they can make findings and orders. The more evidence submitted demonstrating a concrete history, the more likely it is that the Court will have sufficient evidence on which to rule.

Here too, the parties are better relying on factual evidence than on speculative opinions of experts who battle with each other and do not provide the Court with solid information on which to base a decision. The more closely related in time the evidence is to the present circumstances the easier it is for the trier of fact to apply it to the matter at hand. It is also easier for the Court if there is consistency to the record rather than an isolated episode of conduct, *e.g.*, one parent has constantly shared or offered to share parenting time over two years and the restricted parent has rarely or never done so.

Family law practitioners and their clients should avoid becoming part of the problem. Do not attack the other party. Remember this is about the children and making sure that they are safe from harm. It is not about punishing the other parent. We should consistently attempt to counsel and encourage good parenting by articulating the need to support the other parent's relationship with the children. At the end of the day, the children will still love both parents and need a healthy relationship with them. Relationships should be repaired and existing harm resolved to whatever degree possible. It is always important to help our own clients recognize behaviors that may be harmful so that the damage is not exacerbated. Do not help them burn the bridge as you march with them down the road.

DOGS AND DIVORCE: IS IT TIME FOR A NEW APPROACH?

Commentary by Greg Kincaid

When someone mentions the family pet in the middle of their divorce, most lawyers shut down. Although they may not actually say it, I'll tell you what I suspect crosses the average legal mind…

You're kidding me. You're an emotional train wreck, your children are suffering, and your finances are in shambles—and, now, you want to spend your limited time and resources arguing over the dog, too!

Those sentiments are not totally wrong. But, they aren't totally right either. When it comes to dogs, and pets in general, we need to develop a more sophisticated and thoughtful problem-solving model. I'd be honored to start the dialogue. To handle pets and divorce with the requisite sensitivity and insight, like most problems we face, we'll need to think about the problem from a variety of different perspectives. Only then, will the entire picture come into focus.

1. A Legal Perspective.

The legal perspective on pets and divorce is frankly arcane and outdated. In general, as far as the law is generally concerned, there is no difference between a beloved family pet and a barnyard sow. Oink, oink or bow wow—it makes no legal difference. Even more starkly, there is no difference between a pet and a piece of furniture. An animal is personal property; nothing more. A dog's feelings, needs, and best interests are irrelevant. When lawyers and courts divide personal property—like dishes and towels—it's not a particularly good argument to assert that you happen to like the object in question more than your spouse or that the object in question seems to like you better. Nor would a court award a sofa to the spouses on an alternating week schedule. Most of the tools we use to divide personal property seem absurd when directed at pets. So, what does happen? Thankfully, most families work something out. But, sadly, the spouse that is more attached to the pet(s) can easily find himself or herself being emotionally blackmailed. *You want the dogs, then I'll take the Porsche.* It's not that the law is lazy, outdated or insensitive; these are very difficult problems and sometimes when people are left to solve their own problems (because the court won't do it for them), that's just what they do: solve their own problems. When judges feel ill-equipped to make the right decision, who can blame them for kicking the can down the proverbial road.

2. A Dog's Perspective.

In a divorce, it's easy to skate right past the dog's needs. Instead, the arguments are all about the humans involved and their needs. As a mediator, I have received emails or memos with pages of narration about how much the dog means to the owner/spouse. Interestingly, dogs and kids are often treated alike. The dog-parents are often focused on their needs and not the dog's needs. One could easily theorize that the same parents that argue over their children are also likely to argue over their dogs—for essentially the same selfish reasons. Dog expert, Cesar Millan, in his book *A Member of the Family: The Ultimate Guide to Living with a Happy, Healthy Dog*, points out that because dogs (and humans) are pack animals, a divorce is emotionally stressful for the dog, too. A divorce is the break-up of the pack, or the family unit. Why wouldn't dogs have similar feeling of loss and anxiety? Instead of thinking about dogs like a piece of furniture, what if we thought of them as sensitive and caring animals that also have needs? Needs, it turns out, that are very similar to our own. What if, instead of applying property principles to our pets, we applied the same considerations that we use when thinking about the human animal? If we treated dogs like living creatures and not chattels, how would our analysis differ? I don't know for sure, but I suspect we might have the same kinds of dialogues we have every day with respect to children. When we put the children's needs first, somewhat miraculously, most custody disputes dissipate into thin air. Wouldn't the same happen with pets?

There are questions that just need to be asked when thinking about the dog's needs. How does your work schedule impact your ability to care for the animal? Why would it make sense to give the dog to the spouse that travels frequently and as a practical matter isn't available to meet the dog's needs?

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If one spouse is already feeling financially slammed, does this bode well for the pet's vet care? How attached is the dog to the children or to one owner? I understand that thinking about children and dogs in the same fashion has its limitations. Perhaps we're not ready to think about court ordered doggy-support, but surely we are ready to start treating pets like the loving family members that they are.

3. A Child's Perspective.
I don't have many memories of being seven years old. In fact, I only have one. The day a man came and took away my dog. I don't think I was a unique child. My dog was the center of my universe. As a Navy pilot, my father was often absent. Fritz filled that gap. He was a manly dog—quiet, patient and always attentive to me. I spent hours playing with him or just staring at the passing clouds with my head resting on his chest. Fritz was also a no-nonsense and fiercely protective dog. In the end, that was why my parents felt the need to give him away. My grandmother picked me up one day and gave me a big squeeze. Fritz did not understand that it was a loving embrace. To him, I was being attacked. He, growled and jumped on her, knocking her to the ground. He stood over her, with teeth barred. Absent my mother pulling the 110- pound German Sheppard off her, bad things might have happened. Of course, getting rid of the dog was a sound adult decision. But… Fifty years later, I still haven't forgiven them for giving my dog away! Sorry sis, but if someone had asked me to choose, I would have said, "Give my sister away, but not my dog!" In my parent's defense, I'm sure they had no idea of the depth of the emotional connection I had to the black German Sheppard. And, well, that's my point.

Parents spend a lot of money and effort trying to keep a house because they are convinced children are attached to a house. At the same time, some families barely give a passing thought to the family pets. It might be far more important to the children to have the dog available than that cozy southwest bedroom looking out over Elm Street. It only makes sense: biological attachments are far deeper than residential attachments.

4. A Fresh Perspective.
At least one state has started to change the legal terrain in some very positive ways. Alaska has recently passed a law that allows courts to consider the best interest of the dog when deciding which spouse gets the dog. The same law also allows for "joint custody" awards and extends *protection from abuse orders* to pets. It's a great first step. Now, the rest of us need to get our state legislative bodies to follow suit. In the meantime, divorce courts are courts of equity. Fairness is the guiding light. I see no reason why we can't argue that the "equitable" thing to do is to consider the best interest of all family members—human and pet.

But hopefully we can avoid court altogether by wisely steering our clients away from these conflicts. When the question comes up from our clients-- *what do we do about the dog(s*)-- be prepared with something better than "The law really doesn't care about pets." Instead, ask the important questions. "Are your children attached to the pet? If so, would it make sense for the children and the dog to spend as much time together as possible?" Can both parents afford the pet? Is there any way you could share the pet?

I've written four dog-themed novels. In my recent novel, *Noelle*, I explored a plot element using a dog as a transitional object—that is, the dog goes back and forth with the children. Neither parent gets the dog. The kids get the dog! I've done this with several families in my mediation practice. Each parent is responsible for maintaining the dog at their own house and they split the vet bills. Not only does this approach give the children a sense of continuity between households, but (arguably) it gives the dog a real purpose, too! I believe that, professionally, we may have underestimated the importance of pets in a divorce. I believe too that the tools we bring to bear on this problem have been unnecessarily limited. I hope that this article has served its limited purpose. Let's all begin to think more carefully about our client's pets.

Greg Kincaid is divorce mediator in Overland Park, Kansas and one of our members. He is also the New York Times best-selling author of six novels, all published by Penguin Random House. Two of his novels—A Dog Named Christmas and Christmas with Tucker--were made into Hallmark movies. His latest work, Noelle, was just released. In this novel, Greg borrows from his law practice as a divorce mediator to tell the story of Kansas family torn by divorce and healed by a dog. Please visit www.gregkincaid.com for more information.

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