

# Spring News

## President's Message

Leonard Tanis, JD

As I approach the end of my term as President, I have both a sense of accomplishment and also a belief that much needs to be done. Our Board of Directors has established ambitious goals for the future and are in the process of planning how we can turn those goals into reality. The leadership of the various committees, with the able assistance of the members, have worked extremely hard to make this a very successful year, and for that I thank each and every one.

Over the past two years our membership has grown significantly thanks in large part to the work of the membership committee. As you may know, we won the AFCC prize for having the largest percentage increase in membership over the year ending in May 2018 and almost won the next half year contest ending in November 2019. Colorado, a relatively less populated state, is now one of the largest chapters in the organization. I encourage you to help us continue to grow by inviting colleagues you know to become members. There is information available on our website on the 10 best reasons to join AFCC, which you can download and provide to them. The lifeblood of any organization is ensuring that growth is continuous, and it is especially important that we encourage our younger colleagues to join us.

Although we were not able to hold our annual conference in Breckenridge last fall due to the AFCC holding their annual Child Custody Symposium here, that conference will be held this year during Columbus Day weekend, October 11-13, 2019. Make plans now to attend this conference that will feature two excellent presenters. You can find more information on that as you read through this Newsletter. This event is always a great time for gaining knowledge of the latest research and for networking and sharing information with colleagues from all over the state.

That is exactly what I had the opportunity to do this year attending our satellite programs in Northern and Southern Colorado. I had the privilege of being present at three of the four events held at the Ptarmigan Country Club in Fort Collins over the past year and meeting members from the area. These events

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Spring 2019  
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are often sold out, with Rebecca Pepin, Kate McNamara, Bob Smith and others putting together great programs. They are currently planning for next year's meetings, so if you would like to present or have suggestions about subjects that you are interested in, please contact Rebecca as soon as possible.

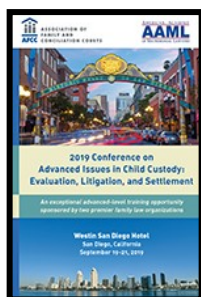
I also was able to attend three of the four dinner meetings held at the Colorado Springs Fine Arts Center, so well put together by the tireless efforts of Beth Lieberman. This was the first year for these events as the Board worked to expand our outreach throughout the state and they were very successful. Planning is also underway for next year's programs and if you have suggestions or would like to present there, please contact Beth soon.

Preliminary plans are being made to continue expanding these "popup" programs to the West Slope. The Board feels a strong obligation to make these programs available for our members and colleagues in areas such as Glenwood Springs, Grand Junction, Durango, etc. If anyone in those areas would like to assist in that effort, I would encourage you to contact April Freier, our excellent administrative assistant.

Our annual meeting was held last month at the University of Denver where Dr. Ben Garber gave a fascinating and informative presentation. The event sold out a month before the April 26<sup>th</sup> date. Kudos go to the Program Committee, led by co-chairs Gene Gross and Sarah Quinlan, for putting together such an excellent program. Plans are already underway for next year's annual meeting that will also be held at DU, but in a larger venue so more of us can attend.

It has been my pleasure to serve as your President. I look forward to working with Laurie Mactavish, the incoming President, to continue expanding our organization's outreach and educational efforts. I hope you will join us by becoming a committee member today by contacting April Freier, our administrative assistant; it is a great way to contribute to your organization. The CPR Committee, including Marlene Bizub, Katie Hays and Melinda Taylor, that I co-chair with Armand Lebovits, are responsible for bringing you this Newsletter.

# Upcoming AFCC Trainings



## **AFCC-AAML Conference**

*Advanced Issues in Child Custody: Evaluation, Litigation, and Settlement*

**September 19-21, 2019**  
**San Diego, California**

## **AFCC Fall Conference**

*Integrating Research into Practice and Policy: The Impact on Families and Children*

**October 31—November 2, 2019**  
**Pittsburgh, Pennsylvania**



# COAFCC 2019 4th Annual Conference

## The Best Possible Relationship: Coping with Parenting Time Resistance and Refusal



**Featuring:**

***Robin Deutsch, PhD & Matthew Sullivan PhD***

**October 11-13, 2019  
Breckenridge, CO**

**Bring your family and enjoy time in the Colorado mountains!  
The conference will be at Beaver Run Resort in Breckenridge.**

**Look for more information and registration details coming soon!**

## Support COAFCC by Donating to the Silent Auction!

Once more, COAFCC will be sponsoring a Silent Auction in conjunction with our Fall Conference. 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 11<sup>th</sup>, during our 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! If you can't think of anything to donate, Rebecca Pepin will be only too happy to give you an idea!

To donate a Silent Auction item please contact Rebecca Pepin at [rpepin@jbplegal.com](mailto:rpepin@jbplegal.com).

We would GREATLY appreciate your support!

# COAFCC 2019 Annual Meeting & Spring Conference

## April 26, 2019

### Family Law Through the Developmental Lens: Assessing and Including the Voice of the Ever-Maturing Child

Reviewed by: Katie Hays, JD

Perfect spring weather gave way to a humorous and touching presentation by Dr. Benjamin Garber Ph.D, at the Colorado AFCC Spring Conference April 26, 2019 at the University of Denver. The Conference, titled *Family Law Through the Developmental Lens: Assessing and Including the Voice of the Ever-Maturing Child*, started with the morning session focused on developmental psychology needs. Attendees were reminded growing up truly is hard to do. Everything from a kayak to a 1960's Twilight Zone episode informed the group about the needs of children to be **held** and practitioners' need for self-care. Conflict of co-parents eliminates the ability of a child to feel held and creates anxiety.

Dr. Garber highlighted assessing the maturity of the child as a core concept. It is important to distinguish between superficial and genuine maturity, and to recognize the various types of maturity: social, cognitive, emotional, physical, moral and creative. Stress in children causes regression in their maturity, so that should be considered and possibly reported by professionals. If it is necessary to focus on one type of maturity in assessing the voice of the child, that focus should be on emotional maturity. Dr. Garber

emphasized transitional objects providing emotional fuel for children. Also, virtual parenting time can provide the child emotional fuel to better cope with separations from long-distance parents.

The second morning session covered systemic confounds and the voice of the child. Professionals such as evaluators are tasked with serving each child's needs versus his/her wants. The child's voice is often lost in the din of conflict in family law. How do we determine whether a child's wishes are expressed independently as required by our best interests statute? Systemic confounds impede the child's ability to express their feelings and Dr. Garber noted systemic confounds are exacerbated by confirmational bias.

Dr. Garber explored five systemic confounds:

- 1) incidental preferences and aversions (smells, lenient/strict parenting);
- 2) scripting, coaching, bribes and threats (it can be very difficult to identify coaching in child interviews);
- 3) role corruption (systemic stresses like poverty, character pathology, adultification/parentification);
- 4) the chameleon child; and



Ben Garber, PhD

- 5) alienation and estrangement.

Our Family Wizard provided a sponsorship that allowed attendees to enjoy a delicious lunch. OFW noted some tools that may not be widely known, such as the availability of Spanish with translation to English and GPS capability to establish a participant was actually at a location at a particular time (a potentially helpful tool for parenting time exchanges).

The third and final session with Dr. Garber provided practical tips for interviewing children. One especially helpful tool interviewing children is to play dumb. Child: "Mom will contempt us again if we don't go to her house."

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**SPRING CONFERENCE REVIEW**  
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Interviewer: "What's contempt?"  
Practitioners should consider their office environments and other ways to build rapport with the child.

Dr. Garber identified 6 variables to determine a child's emotional maturity.

- Is the child able to routinely distinguish emotional experiences?
- Is the child able to communicate his/her emotional experiences?
- Is the child able to recognize and express simultaneous and contradictory emotional experiences (2 opposite emotions at the same time)?
- Is the child able to function unassisted despite powerful emotional experiences?
- Is the child able to delay gratification and tolerate frustration in demonstrating capacity to work toward an emotionally rewarding goal?
- Is child able to spontaneously calm unassisted after upset?

Dr. Garber illustrated a Query Grid. Four emotions are placed across the top (happy, sad, mad, scared), and three experiences are placed along the left side (i.e., Home with Mom, School, Home with Dad.) He explained the child should be asked to point to a square and give an example: "What makes you happy when you are with dad?"

Having interviews spread out over several days or months may not provide the best observations, in Dr. Garber's view. One day where the child is brought in by one parent, seen with each parent, and multiple interviews are conducted (two with the child, one with each parent) provide excellent information and the opportunity to emulate a parenting time exchange. Dr. Garber ended his presentation noting self-care is important for many reasons, one of which is that it opens our thinking to alternate hypotheses.

The final sessions of the day involved a panel of distinguished speakers: Dr. Garber, Gina Weitzenkorn, Joan

McWilliams, Magistrate (Ret) Evelyn Sullivan, and David Littman. The panel was moderated by experienced family law attorney Ann Gushurst, who led the discussion about involving children in mediation and how to relay the child's voice in CFI and PC/DM work. Magistrate Sullivan suggested we let children know they have a voice and not a choice. The panel provided excellent insight into why a child's voice should be heard and what precautions should be taken in interviewing children.

In presenting the Spring Conference, the Colorado AFCC provided yet another excellent seminar filled with practical and thorough advice and information for both legal and mental health professionals.



**Dr. Ben Garber** is a New Hampshire licensed psychologist, parenting coordinator, expert consultant to family law matters across North America, speaker and author. Dr. Garber is a former Guardian ad litem. Dr. Garber has advanced degrees in psycholinguistics, developmental and clinical child psychology from the University of Michigan and Pennsylvania State University. He completed an internship in clinical child and family psychology at the Institute of Living in Hartford, Connecticut. He is co-founder of the Parenting Coordination Association of New Hampshire, winner of the March of Dimes "Distinction in Media Excellence" award, and an acclaimed educator and author in numerous areas of child and family development and family law. Above all else, across roles and titles and jurisdictions, Dr. Garber is an unwavering advocate for children.

## Northern Colorado Wrap-up

Rebecca Pepin, Esq.



NOCO was pleased to host Tiah Terranova, Psy.D., Gene Gros, Psy.D., and David Littman, M.A., J.D., for our final meeting of the year as they spoke on “Making Sense of Parents’ Extreme Reactions and Erratic Behaviors,” answering once and for all “Is it PTSD, Personality Disorder or Simply Bad Behavior?” Dr. Terranova explained PTSD, and the variances within that diagnosis, as well as, the symptoms often associated with “Big T” and “little t” trauma. Dr. Gross continued that discussion and explained that, “Prognosis is a key factor in assessing the impact of mental health on decision making and parenting time,” and determining whether the person has PTSD, a Personality Disorder, or a Neurosis that will be primarily important in determining prognosis. Dr. Gross presented charts describing the symptomatic differences in diagnosis which assisted the non-mental health professionals to better understand the diagnostic implications. Mr. Littman closed out the talk discussing what to do if a parties’ mental illness rose to the level of incompetency, providing requirements, options, and ethics to the legal practitioner. The talk was an amazing culmination of NOCO’s dinner talks for the season. Please keep your eyes open for our fall series of dinners. NOCO wishes you all a wonderful summer.



## COAFCC Southern Exposure

Stacy Mesias, LMFT

The first year of COAFCC presenting educational programming in Southern Colorado has been a great success. The idea to make the COAFCC more accessible to everyone in the state by offering programs in Colorado Springs has produced a year of four exceptional programs presented at a beautiful venue, The Colorado Springs Fine Arts Center. Our series started in September of 2018 with a very well-attended judicial panel. Moderated by Dave Johnson, Esq., the panel included judges and magistrates from Colorado Springs, Pueblo and La Junta. This event was followed by three programs that brought together different professionals in the family law field and promoted the interdisciplinary ideals of AFCC. These events included:

**Becoming Trauma Informed: What it Means for Family Law Professionals**, presented by The Honorable Judge Elizabeth Strobel, Kate McNamara, Ph.D, and Jennifer Helland, Esq., in November 2018;

**Caught in the Web: Therapists Working with High Conflict Divorce**, presented by Jane Irvine, MA, LPC, and Chad Gillam, Esq., in January 2019; and

**Children and Relocation: Risk, Buffers and Legalities**, presented by Bill Fyfe, Ed.D. and Marie Moses, Esq., in April 2019.

The information offered by our presenters was invaluable, and the networking opportunity provided an atmosphere of collaboration. COAFCC plans to continue its efforts to expand its outreach to Southern Colorado this coming year, beginning with another judicial panel in September 2019 at the Fine Arts Center.

## Join a COAFCC Committee!

### **Membership & Outreach Committee**

Recruits 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

### **Nomination Committee**

Executive officers yearly provide slate of nominees for open board member positions for board review and submission to membership at the annual spring meeting.

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

### **MEMBERSHIP/OUTREACH COMMITTEE**

**Co-Chair: Deb Anderson**

**Co-Chair: Resa Hayes**

Shelley Bresnick

Sharon Feder

Phillip Hendrix

Beth Lieberman

Laurie Mactavish

Rebecca Pepin

Patricia Riley

Robert Smith

### **COMMUNICATION AND PUBLIC RELATIONS COMMITTEE**

**Co-Chair: Armand Lebovits**

**Co-Chair: Lenny Tanis**

Marlene Bizub

Katie Hays

Melinda Taylor

### **NOMINATION COMMITTEE**

**Chair: Frances Fontana**

Lenny Tanis

Magistrate John Jostad

### **POP-UP DINNER MEETINGS COMMITTEE**

Deb Anderson

Fran Fontana

Resa Hayes

Katie Hays

Laurie Mactavish

### **PROGRAM COMMITTEE**

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**Co-Chair: Sarah Quinlan**

Marlene Bizub

Julie Caputo

Jamie Darr

Terry Duffin

Ann Gushurst

Armand Lebovits

Beth Lieberman

Laurie Mactavish

Barbara Pevny

Sarah Quinlan

Barbara Shindell

Robert Smith

Jeanette Troncoso



## A VIEW FROM THE BENCH

The Honorable Anne K. Norrdin  
District Court, 9<sup>th</sup> Judicial District

I am a district court judge who has the privilege of presiding over domestic relations cases in the 9<sup>th</sup> Judicial District, which includes Garfield, Pitkin and Rio Blanco counties in Colorado. I find that presiding over cases involving families is truly a privilege because of the profound impact I and others in the court system can have on issues that are deeply fundamental to the litigants' daily lives, such as the manner and circumstances of parenting, dissolving a household, and moving on with their lives in a dignified manner. Candidly, when I took the bench in 2016, I did not expect to find as much fulfillment in deciding domestic relations cases as I do, and I'm thankful for the opportunity to share some perspectives I've gathered during my time on the bench.

First, in cases involving children, I find it is a common occurrence to wish I knew far more about the child whose best interests drive my decision. We all know that the best interests of the child standard is the primary guiding principle for Allocation of Parental Responsibility decisions. Often, I hear only brief testimony about the child or children involved, and a disproportionate amount of testimony about one parent's desired parenting plan or their concern about the other parent's lifestyle, parenting, or other issues. My suggestion to you is to try to bring a child's presentation to life through your evidence. I have a few thoughts about how you can do that.

Initially, during trial preparation, both alone and with your client, spend time thinking about who the child is and his or her personality, not just the basic biographical information such as the child's name and date of birth. Spend some time talking with your client about the child, what the child loves or does not love, what the child's challenges are, how the child reacts to certain situations such as the first day of school, holidays, long car rides, new foods, etc. Work with your client to

prepare for testimony that will provide a more fulsome picture of the child for the court.

Additionally, I find it helpful when parties move to admit pictures of the child and his or her environment during a hearing. I recognize that a picture captures only a moment in time, and certainly a picture's limitations could be identified on cross examination or in argument, but I have found that pictures of a child engaged in activities both alone and with others, pictures of a child's room in the parent's home, and other relevant photographs help elucidate the other evidence in a case and enrich my understanding of the child.

Another thing that can help develop my understanding of a child's best interests are the child's statements. This is an area containing potential evidentiary landmines, but I have observed that some attorneys take the position that a child's out of court statements will "never" come into evidence and preface questions to witnesses by saying "we can't talk about what the child has said." Conversely, it has been asserted to me that "all" of a child's statements should come into evidence during a hearing. I think it simply depends on the statement and its context, and most judges want to admit as much evidence as possible to help guide our decisions, including children's statements if the record supports their admission. You should spend time pre-trial thinking about whether a child's statement is, for example, a statement of the child's then-existing state of mind, emotion, intent, or mental feeling (C.R.E. 803(3)), an excited utterance (C.R.E. 803(2)), or whether there is utility or relevance in seeking to admit a child's statement to demonstrate its effect on the testifying parent or other witnesses. Work with your client to identify potentially admissible statements that would help the court understand the child.

As a final thought on the topic of bringing a child to life for the court, I find it helpful to hear one parent's description of the other parent's current and past relationship with the child. This provides insight and a basis for findings on subsections (VI) and (VII) of the best interests factors within C.R.S. §14-10-124(b), which relate to the parties' respective abilities to encourage the sharing



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of love, affection and contact with the other parent and the past pattern of involvement of the parties with the child. Often, the evidence is focused on the testifying parent's relationship with the child. I have noticed that in cases where I hear one parent testify that the other parent is, for example, a skilled parent who loves their child, I find it often reflects maturity and a more developed ability to encourage a relationship with the other parent despite the end of their previous personal relationship. I also find that positive comments about the other parent tend to enhance the credibility of the testifying parent. So, I suggest you inquire with your client during trial preparation about positive relevant attributes of your client's ex-spouse or partner and consider presenting those during the hearing.

I would like to shift topics to another evidentiary issue: the presentation of digital evidence such as video and audio recordings. I sometimes see attorneys skip the necessary pre-trial and trial steps that would ensure smooth and efficient presentation of such evidence. My suggestions are as follows:

1. Obtain a copy of the recorded phone call, parenting exchange, or other digital evidence you wish to present from your client, whether by email, filesharing program, or on a thumb drive.
2. Place a copy of the recording on a new, blank recordable DVD or thumb drive. Make a copy of that DVD or thumb drive for the opposing party.
3. Meet with your client in person. Show your client the DVD or thumb drive on which you placed the recording.
4. Place the thumb drive or DVD in your computer and have them navigate (or watch you navigate) the computer files to play the recording directly from the DVD or thumb drive.
5. After they have watched the recording on the DVD or thumb drive, pull it out of the computer and, using a

permanent marker, have them sign their name on the thumb drive or DVD. Place the DVD in a paper sleeve, or the thumb drive in a plastic bag, close the sleeve or the bag with tape, and have your client sign over the tape.

6. Label the exhibit according to the letter or numbering system required by the judge. Let's call it Exhibit A for this example.
7. At trial, while your client is testifying, approach with Exhibit A. Ask whether your client recognizes Exhibit A. He or she will likely say, "yes, that is a thumb drive that contains a recording I made of [insert event here]."
8. Ask how he or she knows Exhibit A contains such a recording. Your client will likely say, "well, I watched the recording on that thumb drive prior to this hearing, put my initials on it and the tape sealing the bag, and when I watched it I saw that it was a recording I made of [insert event here]."
9. Ask whether the recording that your client saw on Exhibit A prior to the hearing was a fair and accurate copy of the recording that he or she made of [the event recorded]. Remember, as long as the client had personal knowledge of the event recorded, they do not need to have been the person recording it.
10. Once your client says "yes" to the above question, move to admit and publish to the court. The thumb drive or CD becomes part of the court record.

I hope the above steps will help you prepare for trial and seamlessly get digital evidence admitted at trial.

In conclusion, it is my perspective that family law cases are challenging, but they present a unique and fulfilling opportunity for me to interact with individuals in the court system in a manner that hopefully leaves them feeling heard and understood. It may not happen in every case, but I thank you for your commitment to assisting your clients and courts like mine in trying to achieve that outcome. Thank you also for considering the perspectives I've shared in this article.



**Judge Norrdin** was appointed to the District Court bench in October 2016. She graduated from the University of Colorado in 2002 with degrees in Political Science and German and received her law degree from the University of Oregon School of Law in 2005. Judge Norrdin has volunteered as a Big Buddy mentor through the local Buddy Program and as a scoring juror and a mock trial judge for the local high school mock trial program.

# THE BENEFITS OF WORKING WITH PARENTAL RESPONSIBILITIES EVALUATORS

Karen F. Hubler, District Court Magistrate and Brenda L. Storey, Esq.

With an ever-constant goal of minimizing litigation and attendant conflict in domestic relations cases, the role of a Parental Responsibilities Evaluator is greatly misunderstood. There is a perception by some judicial officers, as well as practitioners, that the appointment of a Parental Responsibilities Evaluators increases conflict, expands litigation, and expands cost. However, the opposite is much more common. These mental health practitioners, trained in child psychology, human development, and children of divorce, actually get cases settled. If the case does not settle, these experts' opinions provide the court with sound recommendations that offer the subject child the best chance at success despite their parents' breakup and can actually save the parties money. Additionally, in instances where there are undiagnosed mental illness or addiction issues, the input of such an expert is invaluable to the court, as well as the parties and children, in defining a parenting plan truly in the

best interests of the specific children impacted. Further, the lack of psychological testing of parents that suffer from undiagnosed mental health disorders can even result in harm to a child.

The misconceptions are understandable, as judicial officers are only aware of cases that come before them at status conferences, motions and hearings. What happens between those appearances, or in lieu of them, is not obvious to the court. When a case settles, the court is not made aware of exactly why or how. Further, there do not seem to be any statistics being kept within the court system as to settlement versus litigated resolution, and whether the cases involved an expert or not. Further, positions evolve in cases, and what is presented to the court after input from a Parental Responsibilities Evaluator ("PRE") may be much more streamlined than what would have been trial presentation without such an expert. Those changes are simply not obvious, and the backstory is much more telling.

Given the dearth of any statistics as to cases that settle versus being litigated, and the involvement of experts in such resolutions, The Law Offices of Brenda L. Storey, P.C., has been tracking their cases, as well as making sure experts appointed in the firm's cases are given closure as to how the case resolved. From June 2013 through

May 2018, the firm had 51 contested Allocation of Parental Responsibilities cases, excluding two-state parenting plan cases (as those are likely to be litigated regardless). Of those, 36 involved an expert and 29 of those settled. That is an 80.5% success rate. Of the 7 that did not settle, most had an underlying undiagnosed mental health issue that prevented the impacted parent from being able to accept the input of the expert (and the report identified the mental health concern).

These statistics make sense. Parties in a contested APR case can get entrenched in their positions. They each have a version of facts as truth, as well as what those facts mean as far as best interests of their children. Unless those facts are fleshed out, as well as the impact of the actual facts on the children, the positions will remain unchanged. The PRE does just that in advance of a trial, with their report addressing the factual disputes between the parents, and putting those facts into perspective as relates to the children's needs. Seeing in black and white what an expert found, after extensive time in speaking to the parents, the children, and collaterals, is very compelling to a parent considering his or her children's best interests, as well as facing a court appearance where that report will be analyzed. Such a report is obviously also a huge tool for the lawyer to use in



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**WORKING WITH PREs**  
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exploring settlement thoughts, and risks of trial, with the client. In the absence of such a report, the risks are less discernable or palpable.

Of those cases that do not settle, despite the appointment of an expert, the experts offer invaluable factual information that impacts the court's decision, as well as the expertise that gives the subject children the best chance at success despite the end of their parents' relationship.

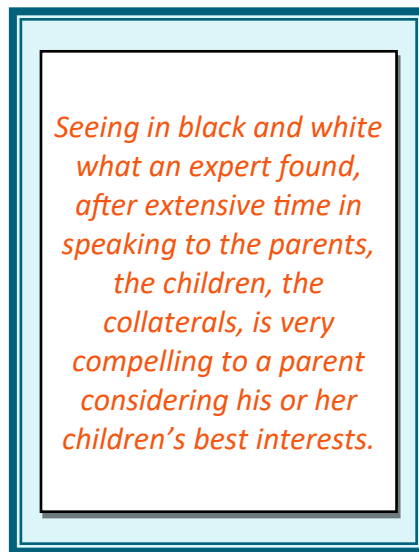
The PRE may be the first expert to evaluate a parent's cognition and behavior as it impacts children. The psychological testing provides a degree of clarity concerning a diagnosis and treatment options for a parent who may be in denial about his or her distorted thinking.

The PRE can effectively discern information from collateral witnesses, such as teachers, treating therapists, and physicians. Although they have key information about children, most teachers do not want to be involved in litigation but will speak to a PRE.

Therapists do not want to testify, especially as they want to protect the privilege and all that it offers in effective on-going therapy. They are willing to speak to a PRE, a fellow mental health practitioner, while still protecting the patient-therapist relationship and privilege.

This is crucial information, but especially when there are undiagnosed mental health issues or substance abuse issues, as the therapy, based upon self-report, may not be addressing the underlying issues. Pediatricians, who may have very relevant information for a case, oftentimes flat out refuse to testify in court and have

a provision in their office policies that they will terminate the family's patient status if subpoenaed. However, these same providers will speak with an Evaluator. This, and similar information, that would not otherwise be before the court, is invaluable to the children's best interests, and the true relevance of it can be explained via the PRE's expertise. By this method, the court has all relevant facts before it, as addressed by § 14-10-124, C..R.S., as well as an expert opinion as to what those facts mean in fashioning a detailed parenting plan for the specific children in their best interests.



This accessibility to experts, and ability to report the gathered information, are also what lead to cost-savings by using a PRE. If the teacher, the therapist, or the pediatrician, or other collateral witness will even speak to a lawyer, the client is charged for that time. The witnesses that will be of benefit to the client's case must be subpoenaed, which costs the client the lawyer's fee as well as expense of service. There is trial time for those witnesses to testify at trial, which is charged to both clients by their respective lawyer. All of this preparation comes at great cost to clients, as billable time adds up

in preparing for trial and presenting the case. Even then, these fact witnesses can give no recommendations, so the court is left to determine how the testimonial facts impact best interests. In contrast, a PRE interviews these same witnesses, and can include the information obtained in their report and testimony, alleviating the cost of having each be interviewed by lawyers as well as direct and cross-examination of the fact witnesses at trial. That is a significant savings in both expense and court time. Plus, this same Evaluator can testify as to what the information means as relates to the children, and give the court recommendations. That, alone, is priceless.

If the case settles as a result of an Evaluator's report, which statistically is likely to happen, the cost savings are even greater. An Evaluator might charge \$7,000 for all work up through the Report. That is the total for both sides. If that case then settles, the parties save the cost of trial. If there is no expert, no report, and no settlement, the cost for both parties is usually much higher than \$7,000. A full day trial tends to be at least eight hours with the attorney, and two hours of drive time, for a total of 10 billable hours just for the day of trial. If each party is represented by a skilled attorney with years of practice, each is likely paying at least \$350 an hour for the presentation, that is a total of \$3,500 for each, or \$7,000, for both, just for the trial. That does not include the hours of trial preparation time, drafting of Trial Management Certificates, exhibit work, and all that immediately led up to that \$7,000 day in court. When budgeting trial preparation, that would easily total over the eight hours of allotted trial time.

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## A VIEW FROM THE BENCH: Effective De-Escalation Techniques

The Honorable Emily E. Anderson  
Chief Judge of the 17<sup>th</sup> Judicial District

Prior to joining the bench, I worked as a family lawyer and mediator, which provided me with a unique, bird's eye view of individuals and family dynamics. Before being appointed as a district court judge in 2013, I served as a magistrate for 12 years primarily working with self-represented litigants, who bring their own set of personal dynamics into the courtroom. In each of these jobs, I learned effective methods to de-escalate situations in the courtroom, particularly from self-represented litigants. I hope you will put some of these skills in your toolbox to assist your clients and other self-represented litigants in family law cases. I think these tips will be useful for judicial officers, mediators, investigators, and attorneys.

Generally self-represented litigants are neither disruptive nor do they intend to be difficult. However, occasionally one may present significant difficulty in the courtroom. This article is intended to help identify situations that can easily turn into highly emotional or disorderly exchanges, as well as provide a basic understanding of techniques you can use to maintain order in challenging situations. Specifically, we're going to look at eight techniques effective when



encountering a challenging *pro se* litigant, including how to:

- Maintain control over the proceedings
- Remain alert to imbalances of power in the courtroom
- Use nonverbal communication effectively
- Develop interpersonal respect
- Identify elevated anxiety in litigants

I will also touch on a few questioning techniques, including:

- Paraphrasing,
- Summarizing, and
- Reframing questions

A basic requirement for any court hearing is the need to maintain control over the proceeding. I find most self-represented litigants are respectful of the court and conduct themselves in a dignified manner. However, particularly in family law matters, emotions can flare. When they do, it is the judge's job to maintain control. If I can calm anger and terminate arguments early, it can save a lot of headaches later.

The best way to control the courtroom is to set clear ground rules early, be alert to violations, and then enforce infractions quickly and fairly. *Pro se* litigants tend to interrupt testimony to which they disagree. They typically don't mean harm, it's just a natural reaction. A short, immediate reminder of the ground rules will generally resolve the problem. In particularly

heated moments, I consider calling a short recess to give the parties a chance to regain their composure.

The second technique is remaining alert to imbalances of power. As a judge, I must ensure that both sides have a full opportunity to present their points of view in court. This is particularly true when it becomes clear to me that one of the parties has more power. An imbalance of power can have many sources: domestic abuse; disputes where one party is far more educated or sophisticated than the other; or situation where one of the parties has limited knowledge of English. In these cases, I make a special effort to ask the passive party to provide their views on each issue. When necessary, I attempt to draw out their views with follow-up questions.

The third technique is my favorite—implementing effective nonverbal communication. Within a courtroom setting, nonverbal communication reflects the relationships between various pairs of participants, builds confidence and trust in the judge, and helps maintain courtroom traditions. There are many ways to provide effective nonverbal communication from the bench: maintaining eye contact, orienting your body as each litigant speaks, nodding your head to signify understanding, using hand gestures to postpone or invite a litigant to speak, maintaining pleasant and open facial expressions, and finally... smiling. Yes, the common courtesy of smiling can

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## EFFECTIVE DE-ESCALATION CONTINUED FROM PAGE 12

determine whether a party feels like the judge has heard them or not. Now we all have slightly different styles. Whatever your style may be, the parties must know that you are listening to them. However, please remember that litigants from other cultures may not interpret nonverbal behavior the same way that persons from a dominant culture would. Therefore, if someone does not look you straight in the eye, it may not be a sign of rudeness or disrespect.

That provides us with a perfect transition to our next technique, which is developing interpersonal respect. Every judicial officer wants to do a good job. But being informed, well prepared, and willing to examine issues in a business-like manner is not enough to be successful. You also need to present both our opinions and ourselves in a way that demonstrates dignity and respect for the individuals with whom we are working. By taking the time to listen to the positions of both sides and communicating clearly the basis of the ultimate decisions I make can create a feeling of calm reassurance and stability that can be felt in the courtroom.

The next skill is identifying elevated anxiety in litigants, something that becomes easier as you gain more experience. Honestly, it's a challenge for all judges and staff regardless of our experience or background. It is also something that we look for every day. Cases carry significant consequences to the litigants, with the outcome potentially changing the course of their lives. Even cases of seemingly small dollar amounts to outsiders can be exceedingly important to someone who is living paycheck-to-paycheck. Adding to the strain is self-represented litigants often don't know what to expect. They are trying to anticipate the tactics and

statements of the opposing party, all while fearing the outcome of the hearing. Imagine being a self-represented litigant who is possibly appearing in court for the first time in their life. Add these factors together and you have all the ingredients for a high stress environment.

So what can you do when you see a party is showing unusual levels of anxiety in the courtroom in your case? First, if a litigant appears too anxious to reasonably participate in a hearing, you can take a recess to allow them an opportunity to calm down before taking further action. You can also provide litigants with an opportunity to momentarily leave the courtroom to have a glass of water, or otherwise take time to regain their composure. In severe cases, a judge can even reschedule the hearing to later in the day with a suggestion that the litigant who is showing significant signs of stress might want to observe other hearings before recommencing the current one. Again, please be aware this is particularly true for immigrants and litigants with limited English proficiency, who not only face language barriers, but may not understand the U.S. legal system.

The final three techniques we will discuss, paraphrasing, summarizing and reframing, are generally used together. While mediators often use these techniques, I've found them to be equally effective in a courtroom setting.

Let's begin with paraphrasing: listening to the spoken words then putting what you heard into your own words. Paraphrasing is typically used to identify a key point or bit of information important to a case. Paraphrasing is interactive and will take place throughout the encounter. While paraphrasing is an excellent way of identifying important facts, there are pitfalls you should avoid. If done incorrectly, it can affect your appearance of neutrality.

*By taking the time to listen to the positions of both sides and communicating clearly the basis of the ultimate decisions I can create a feeling of calm reassurance and stability that can be felt in the courtroom.*

When you paraphrase what a party is saying, be sure you are just rewording, not adding your personal opinion of the testimony. Therefore, when paraphrasing be sure to not directly or indirectly: appear to agree with one or both of the parties, add your own opinion to the facts, judge or evaluate the statements provided, or give advice. Also, be sure to pick your spots - a good time to paraphrase is when there is a dialogue pause, a shift in the subject matter, or at the end of a statement.

Summarizing is closely related to paraphrasing. Summarizing involves putting together in condensed form the key points of someone's statement. It is distinguished from paraphrasing, which is focused on one bit of information, while summarizing combines multiple pieces of information. Effective summarizing has benefits for each party and the overall quality of a hearing by reducing confusion to what the parties have been saying, by helping them assess where they are, and by helping them choose where to go next. Similar to paraphrasing, the guidelines for effective summarizing include listening carefully for the key idea and supporting points, using the party's language choices whenever possible, highlighting differences to promote clarity when appropriate, not omitting any

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## Welcome New COAFCC Members!

AR Ascano  
Trina Barnes  
Monnie Barrett  
Allison Boschert  
Sarah Carlson  
Courtney Cline  
Mary Davis  
Cleshawn DuBose  
Jennifer Easterday  
Scott Goldstone  
Gavin Halligan  
Jessica Handelman

Magistrate Annette Kundelius  
Gretchen Lipman  
Leslie Murtagh  
Brandi Nieto  
Edward Parrish  
Clinton Pickett  
Valerie Savoie  
Nancy Smith  
Tara Talley  
Russell Thyne  
Heidi Whitaker

## ELECTION UPDATE

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

**Director Nominees:**

Deborah Anderson  
Frances Fontana  
Ann Gushurst  
Beth Lieberman

**Officer Nominees:**

**Vice President:** Resa Hayes  
**Secretary:** Rebecca Pepin  
**Treasurer:** Barbara Pevny



Laurie Mactavish will move from the position of Vice President to the position of President in accordance with our bylaws.

# MEMBER NEWS

**Rachel Catt, Esq.**, is serving as the 2019 President of the Colorado LGBT Bar Association. Congratulations, Rachel!

**Steven Wolhandler, JD, MA, LPC** has published his new book, *Protecting Yourself from Emotional Predators: Neutralize the Users, Abusers and Manipulators Hidden Among Us*. It offers a new paradigm for understanding and dealing with the difficult people (i.e. personality disorders, narcissists, sociopaths, borderlines, toxic personalities, malignant personalities, etc...) who are so often in the family court system and practical steps and tactics for protecting yourself and your clients.



Thank you to our most recent past presidents.  
We quite literally couldn't do this  
without you!

**Beth Lieberman (2016-17)**  
**Fran Fontana (2017-18)**  
**Lenny Tanis (2018-19)**



COAFCC members--we want to know when you publish a peer-reviewed paper or a book of relevance to family law practitioners so we can highlight your work in our newsletter! Let us know about awards, promotions and other honors as well.

Send an email to April Freier, our administrative assistant: [aprilfreier@hotmail.com](mailto:aprilfreier@hotmail.com).

**WORKING WITH PREs**  
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As such, at \$350 an hour, both sides would incur *at a minimum* another \$5,600, or \$12,600 total (\$5,600 prep + \$7,000 trial day) just for the trial specifically. There is a rule of thumb that for each hour of trial, one can anticipate three hours of preparation time, which calculates to \$16,800 for both sides under this scenario, plus the \$7,000 day of trial, for a total of \$23,800. This is also without adding in all the work and attendant fees, in the months prior to the trial, when the lawyer, rather than the Evaluator, was having to track down and attempt to interview witnesses. Thus, trial without an expert can be much more expensive than settlement with an expert.

Now, it is true that some Evaluations cost more than \$7,000 up through the Report. Those tend to have more issues of concern, additional collateral witnesses, and psychological testing. The attorney's fees for such a case in the absence of a PRE would

likewise be higher, exploring the additional concerns and interviewing the numerous potential witnesses. This is in addition to the actual one day of trial and specific trial preparation, and again would leave the court, and the parties, with no expert input as to what it all means for the subject children and what orders would be in their best interests. If the Report costs less than the \$12,600 minimum estimated for a trial per the preceding paragraph's components, and the case settles before the trial preparation starts, there is still cost savings (and even more so if the trial preparation would be the three to one calculation). Further, these Evaluations that identify a need for psychological testing are the ones that most need an expert.

Another cost savings of using an Evaluator is that the resulting parenting plan, entered into with expert guidance, gets done "right" the first

time, saving the parties, and the court, additional time, conflict, and costs of continued or protracted litigation. Those cases with undiagnosed mental health issues or substance abuse problems will continue to be litigated, and litigated, post-initial ruling, as the mental health or substance challenges continue to impact the children. If those cases finally resolve, it is usually when an Evaluator is finally appointed, identifies the true concerning issues and how they impact parenting, and recommends a plan that is best suited for the children despite the challenges presented by the parent.

Now, it is true that not every APR case needs to have a PRE appointed. Such appointment should be reviewed on a case-by-case basis. However, any inclination to not appoint an expert solely because it suggests more cost, or greater litigation is, hopefully, rethought.

**EFFECTIVE DE-ESCALATION**  
**CONTINUED FROM PAGE 13**

topic a party brought up, and not softening or diluting differences.

The final technique is reframing, which is a bit more complex than either paraphrasing or summarizing. The goal of reframing is to restate words, phrases, or ideas into neutral, non-judgmental or, at times, positive terms. With reframing, you listen to what is said, which might include insensitive, harsh, or hurtful words. When paraphrasing the testimony, you reframe the statement in a more positive context. Don't change the meaning, just remove the

hot button or argumentative words. As you build this into your repertoire, here are a few helpful hints: (1) see whether you can change a phrase that has a negative form to a positive one; (2) when a party is verbally attacking another person, try to move the focus from the person targeted back to the needs of the speaker; and (3) when a speaker focuses on a problem, see whether you can reframe that phrase to focus on the underlying issue.

Thank you for the very important and challenging work that you do for folks in our community. Try these techniques to improve your interactions with self-represented parties and other people associated with your cases.



Honorable Emily E. Anderson was appointed to the 17th Judicial District Court bench by Governor Hick-enlooper in 2013. She currently presides exclusively over civil matters. Prior to moving to the bench, Judge Anderson ran her own law firm for eleven years. Her private trial practice focused on family law, civil litigation and mediation.





# COAFCC Advertising Opportunities

**Newsletter Ads:** The COAFCC Newsletter is e-mailed to hundreds of COAFCC members and professionals who work with children and parents and in the family court system. Advertising in the COAFCC Newsletter is an effective way to have your message received by the appropriate audience. In addition, the newsletter is accessible on our website.

## Advertising Options and Pricing (prices listed are COAFCC member/non-member)

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Quarter Page..... \$150/\$225  
3.25" width x 4.25" height

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- ◇ Ads must be in image-ready JPEG format for display ads (pictures or logos included) or PDF format for type-only ads
- ◇ Email the JPEG or PDF file to April Freier at [aprilfreier@hotmail.com](mailto:aprilfreier@hotmail.com)
- ◇ Complete and submit the Advertising Agreement with your payment (April Freier will provide this to you)
- ◇ Advertising space is limited and offered on a first-come, first-served basis
- ◇ No refunds are given for advertising due to the nature of print deadlines and the costs associated with layout changes
- ◇ Deadline to submit ads for inclusion in the Fall/Winter newsletter is October 1 and for the Spring/Summer newsletter April 1

## Advertising Agreement:

COAFCC reserves the right to accept or reject, in its sole discretion, advertising based upon space limitations, appropriateness, timeliness or similar criteria. All advertising must meet the standards of COAFCC's Mission, Vision and Values, which can be found at our website: <http://www.coafcc.org>. Image-ready ads must arrive by publication deadlines. No refunds will be given for items that fail to arrive by the stated deadlines. Submission of a proposed advertisement implies acceptance of the terms listed herein.

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