



ASSOCIATION OF  
FAMILY AND  
CONCILIATION COURTS



eNEWS

## President's Message

*Richard L. Altman, JD, Napoleon, Ohio*

Recently, I had the opportunity to review a paper, [The Modern Family Court Judge: Knowledge, Qualities, and Skills for Success](#), released by the [Institute for the Advancement of the American Legal System](#) (IAALS). The paper was developed as part of the IAALS [Honoring Families Initiative](#) (HFI) and in partnership with a working group made up of HFI Advisory Committee members. From my personal perspective, as a judicial officer in domestic relations matters, the paper comprehensively discusses the many interdisciplinary areas of family law in which judicial officers need, in the very least, a cursory knowledge.

[Read more](#)

## Final Days to Register

### 11th Symposium on Child Custody Evaluations Examining Unintended Consequences November 6-8, 2014, San Antonio, Texas

There is still time to register! Make check-in even smoother by pre-registering online. If you are already registered, be on the lookout for attendee emails, which contain important information for accessing session handouts before the symposium and helpful information about onsite logistics. Are you attending a full-day pre-conference institute on Thursday? There is still time to add an institute to your registration. See the [program brochure](#) for more information and full session descriptions.

[Register today](#)

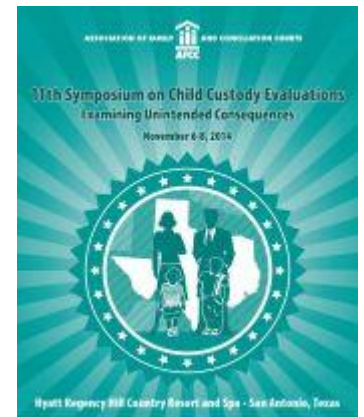
## Ask the Experts

### 10 Tips for Preparing for and Trying Relocation Cases: The Legal Perspective

*Honorable Mark A. Juhas, Judge of the Superior Court of California, Los Angeles County, California, and Michael J. Kretzmer, CFLS, Manhattan*

MONTHLY E-NEWSLETTER  
VOL. 9 NO. 10  
OCTOBER 2014

## AFCC Conferences



**AFCC 11th Symposium on  
Child Custody Evaluations  
Examining Unintended  
Consequences**  
November 6–8, 2014  
Hyatt Regency Hill Country  
Resort and Spa  
San Antonio, Texas  
[Register today](#)

**AFCC 52nd Annual  
Conference**  
May 27–30, 2015  
*Children in the Court System:  
Different Doors, Different  
Responses, Different  
Outcomes*  
Hilton New Orleans Riverside  
New Orleans, Louisiana

*Beach, California*

Relocation cases are frequently difficult and heart-wrenching. No bench officer looks forward to a relocation case. At the end of the trial, inevitably one party feels that he or she is losing their child or children. For each parent, the fear of that loss can be staggering and incapacitating. Too often relocation cases focus on the needs of the parents, instead of focusing on the important needs and expressed desires of the child.

[Read more](#)

## **Custody Evaluation and PC Trainings in December**

AFCC, and the [University of Baltimore School of Law Sayra and Neil Meyerhoff Center for Families, Children and the Courts](#), will hold two training programs, at the University of Baltimore School of Law, Student Center in Baltimore, Maryland. David Martindale, PhD, will present *The Model Standards and Beyond: Custody Evaluations and Risk Management*, December 8-9, 2014. The American Professional Agency offers a 5% premium reduction to members. Mindy Mitnick, EdM, will present *Parenting Coordination: Strategies for Helping Parents Improve Communication and Reduce Conflict*, December 10-11, 2014. AFCC members receive a discounted registration rate. Save even more when you attend both trainings. A block of rooms has been reserved at the Peabody Court Hotel. Unreserved rooms will be released November 7, 2014.

[More information and registration](#)

## **Keynote Speaker Julie Kenniston**

### **AFCC 52nd Annual Conference**

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

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

#### **May 27-30, 2015, Hilton New Orleans Riverside**

AFCC is pleased to announce Julie Kenniston will be the keynote speaker for the 52nd Annual Conference in New Orleans. Julie Kenniston, MSW, LISW, is the volunteer executive director of [The Center for Family Solutions](#) and a project employee for SEARCH Group Inc. As the director of training and education for Butler County Children Services in Hamilton, Ohio, she was responsible for training and mentoring child protection caseworkers and supervisors for over nine years. She is a trainer for the [Office of Juvenile Justice and Delinquency Prevention](#); the [American Professional Society on the Abuse of Children](#), where she is a board member and co-chairs the forensic interviewer certification task force; the [National District Attorneys Association](#), and the Ohio Attorney General sponsored Finding Words Ohio. Ms Kenniston presents nationally and internationally on interviewing, investigation, and the prosecution of child abuse cases. She is co-author of

[More information](#)

### **AFCC Regional Training Conference**

November 5–7, 2015  
Hyatt Regency Columbus  
Columbus, Ohio

### **AFCC 53rd Annual Conference**

June 1–4, 2016  
Sheraton Seattle Hotel  
Seattle, Washington

### **AFCC 54th Annual Conference**

May 31–June 3, 2017  
Sheraton Boston Hotel  
Boston, Massachusetts

### **AFCC Training Programs**

#### ***The Model Standards and Beyond: Custody Evaluations and Risk Management***

David Martindale, PhD  
December 8-9, 2014  
University of Baltimore School of Law  
Student Center  
Baltimore, Maryland  
[More information](#)

#### ***Parenting Coordination: Strategies for Helping Parents Improve Communication and Reduce Conflict***

Mindy Mitnick, EdM  
December 10-11, 2014  
University of Baltimore School of Law  
Student Center  
Baltimore, Maryland  
[More information](#)

### **AFCC Chapter Annual Conferences**

#### **Arizona Chapter Annual Conference**

*Tomorrow is Here: Examining*

[Handbook on Questioning Children: A Linguistic Perspective](#), with Anne Graffam Walker, PhD, and co-editor Sally Small Inada, MA, published by the American Bar Association.

### **Sponsorship, Exhibit and Advertising Opportunities**

Sponsoring the AFCC annual conference, exhibiting onsite and advertising in the conference program brochure are excellent ways to share your products and services with an interdisciplinary community of family law professionals.

**December 1, 2014**, is the deadline for advertisements to be included and sponsors to be listed in the conference program brochure. [More information](#) or contact [Erin Sommerfeld](#).

### **AFCC Publication of the Month**

#### **Essays from the Family Court Review: Child Custody Evaluations**

This month, as we look forward to the upcoming Symposium on Child Custody Evaluations, we highlight, *Essays from the Family Court Review: Child Custody Evaluations*. The editor of this volume in the *Essays* series is Robin M. Deutsch, PhD, a psychologist and Director of the [Center of Excellence for Children, Families and the Law at the Massachusetts School of Professional Psychology](#) (MSPP). In her guest editorial notes, Dr. Deutsch writes, "Articles for this volume were chosen to represent the debates in the field and address the scientific validity and usefulness of the custody evaluation process including testing and those that propose a method to conduct the evaluation and review the process...." AFCC members enjoy a 15% discount on publications.

[More information, order online](#)

### **Member News**

**Bill Eddy**, San Diego, California, has written a new book, [So, What's Your Proposal? Shifting High-Conflict People from Blaming to Problem-Solving in 30 Seconds](#). Instead of reacting, defending yourself and blaming high conflict people, this book explains how to use the simple "So, What's Your Proposal?" method to pull them out of the past and away from blaming everyone else.

**Hon. Leonard Edwards (Ret.)**, Los Altos Hills, California, has written a new book, [Reasonable Efforts: A Judicial Perspective](#). The new publication was made possible by the generous support of Casey Family Programs and Philanthropic Ventures Foundation. Individual copies of this book are available free with a nominal shipping/handling fee via the [NCJFCJ website](#).

*the Challenges of the Modern Family*

February 6–8, 2015

Sedona, Arizona

[More information](#)

### **California Chapter Annual Conference**

*Inventing the Future: Getting Ahead of the Curve for California's Families*

February 6–8, 2015

Westin South Coast Plaza

Hotel

Costa Mesa, California

[More information](#)

### **Oregon Chapter Annual Conference**

*The Rising Tides of Shared Parenting*

April 10, 2015

The Grotto Conference Center

Portland, Oregon

[More information](#)

### **Join AFCC**

Are you a member?

[Join](#) or [Renew](#)

AFCC offers member benefits that promote excellence in the field of family law and in your practice.

[View member benefits](#)

### **Ask the Experts**

Is there a topic you would like

to see covered by an AFCC

Ask the Experts piece?

[Email your suggestion](#)

### **AFCC Chapters**

Network and share your interdisciplinary view of family court matters on a local level.

There are currently chapters in the following states and provinces:

[Julie Macfarlane](#), Windsor, Ontario, has been honored by the University of Windsor with the title of University Professor. This title is awarded to a faculty member at the rank of Professor "who has distinguished achievements in teaching and who has wide national or international reputation for scholarship or creative or professional accomplishment."

### **New Editor Sought for Family Court Review**

AFCC is seeking a new editor for its quarterly academic and research journal, *Family Court Review (FCR)*. The five-year term of the new editor will begin in July 2016. Editorial responsibilities in collaboration with the current *FCR* Editor will, however, begin in June 2015 following the AFCC 52nd Annual Conference to ensure a smooth transition. Read more about the job description and search process [here](#). If you have additional questions about the position of editor or about *Family Court Review* operations you may contact the current editor, [Andrew Schepard](#).

### **Call for Nominations—AFCC Awards**

Nominate a colleague or a program for one of the following AFCC awards by March 15, 2015. Awards will be presented at the AFCC 52nd Annual Conference in New Orleans. The John E. VanDuzer Distinguished Service Award recognizes outstanding contributions and/or achievements by AFCC members; the Stanley Cohen Research Award, sponsored by the Oregon Family Institute, recognizes outstanding research and/or achievements in the field of family and divorce; and the Irwin Cantor Innovative Program Award recognizes innovation in court-connected or court-related programs created by AFCC members.

[More information](#)

### **Conference of Interest**

The International Society of Family Law will hold its 2014 Caribbean Regional Conference, *Our Children, an Endangered Species*, November 19-21, 2014, at the British Colonial Hilton, Nassau, Bahamas. The conference invites family law and related academics and practitioners to examine the progress made in protecting children's rights, identify the risks to which children remain susceptible and share experiences of innovative laws, practices and policies which seek to advance children's rights.

[More information](#)

### **National Survey of Legal Self-Help Centers Finds They are a Vibrant Resource in US Communities**

**Australia**  
**Alberta**  
**Arizona**  
**California**  
**Colorado**  
**Connecticut**  
**Florida**  
**Illinois**  
**Indiana**  
**Louisiana**  
**Maryland**  
**Massachusetts**  
**Minnesota**  
**Missouri**  
**New Jersey**  
**New York**  
**Ohio**  
**Ontario**  
**Oregon**  
**Texas**  
**Washington**  
**Wisconsin**

[Add an AFCC Chapter to your membership](#)

### **AFCC Networks**

New Zealand

The opinions expressed in articles published or linked to in the *AFCC eNEWS* are those of the authors and do not necessarily reflect the positions of the Association of Family and Conciliation Courts.

Readers are welcomed and encouraged to forward this e-newsletter to interested colleagues.

[About the AFCC eNEWS](#)

### **Editor:**

Erin Sommerfeld  
[editor@afccnet.org](mailto:editor@afccnet.org)

*Courtesy of the American Bar Association*

Using responses to an online survey, the American Bar Association's Standing Committee on the Delivery of Legal Services has issued *The Self-Help Center Census: A National Survey*, an analysis of court-based legal self-help centers across the country. Nearly half of the approximately 500 self-help centers identified replied to the survey.

[Read more](#)

## **Family Law in the News**

### **Parenthood Denied by the Law:**

#### **After a Same-Sex Couple's Breakup, a Custody Battle**

*John Leland, courtesy of the New York Times*

The Marriage Equality Act, which New York State passed in June 2011, allowed Jann Paczkowski to marry her partner, Jamie, with the assurance that "the marriages of same-sex and different-sex couples" would "be treated equally in all respects under the law." But when the couple separated and Ms. Paczkowski sought joint custody of the 2-year-old boy they were raising together, she discovered the limits of that assurance. On June 30, 2014, a judge in Nassau County family court ruled that Ms. Paczkowski did not have legal standing to seek access to the boy—because even under the Marriage Equality Act, she was not his parent.

[Read more](#)

### **Domestic Violence Common among Same-Sex Partners: Review**

*Andrew M. Seaman, courtesy of Reuters Health*

Domestic violence occurs as much and possibly more among same-sex couples as among opposite-sex couples, according to a fresh look at past research. The study team can't say why domestic violence may be more common among same-sex couples, but they suggest it may result from the added stress of being a sexual minority.

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Recently, I had the opportunity to review a paper, [\*The Modern Family Court Judge: Knowledge, Qualities, and Skills for Success\*](#), released by the [Institute for the Advancement of the American Legal System](#) (IAALS). The paper was developed as part of the IAALS [Honoring Families Initiative](#) (HFI) and in partnership with a working group made up of HFI Advisory Committee members. From my personal perspective, as a judicial officer in domestic relations matters, the paper comprehensively discusses the many interdisciplinary areas of family law in which judicial officers need, at the very least, a cursory knowledge.

The paper examines the need for family court judges to be "problem solvers and adjudicators" and the need for them to have specific knowledge on all issues that impact children: trauma, child development, family dynamics, domestic abuse, child maltreatment, substance abuse and addiction, a knowledge of mental health issues and cultural competence. In the financial arena, it is recommended that judges have an understanding of spousal support and the tax implications thereof, as well as the effects of court decisions as they relate to tax matters, knowledge of pensions and the division thereof, evaluations of businesses and personal property along with many other key financial components of the marriage. Further, it discusses how family court judges need to have knowledge of the resources available in their community for families and an awareness of intervention strategies and processes, along with the standards for each of those processes: listening skills, knowledge of dispute resolution techniques, stress management, along with other specific qualities.

For me, this paper was on-point and timely. Shortly after reviewing it, I was writing a decision that involved not only issues of finances, but multiple children's issues. There were several children in the family, ranging from teen-age to tender years, with parents who were in constant conflict and had trouble communicating in an appropriate fashion, along with allegations of domestic abuse. The guardian ad litem report and psychological custody evaluation were to some extent at odds with one another. As judicial officers and anyone who works in family law knows, cases like this are not uncommon.

The important need for continuing education for judicial officers discussed in the IAALS article is spot on. All family court professionals face multifaceted challenges and can benefit from an interdisciplinary understanding of issues facing families and the administrative challenges described. Where do we go for this ongoing training? For many of us, at least in the legal field, the majority of our continuing education is obtained through

state and local professional organizations. In many instances, those educational opportunities are strictly limited to our own specific field, legal issues, and do not include the breadth of knowledge needed when practicing in family court. The education needs discussed in the IAALS article sound awfully familiar to me—they are the exact needs AFCC conferences and chapter conferences fulfill.

In fact, over the past twenty (or more) years, as a result of attending AFCC conferences, I have had the benefit of hearing some of the world's foremost experts in fields like domestic abuse and its impact on children; working with high conflict families and drafting decisions in the best interests of the children. Through AFCC, I've obtained information concerning attachment and overnights with very young children; learned how using communication tools such as *Our Family Wizard* help reduce conflict for high conflict families, and I have been educated about the standards for [custody evaluations](#), as well as [parenting coordination](#) and [family mediation](#). Many of the leading international mediation and dispute resolution trainers have made me aware of the vast array of ADR techniques that can be made available for families in conflict. Additionally, I have been trained to consider whether or not certain dispute resolution techniques should be used in cases where domestic abuse exists.

As I continued to work on the decision, I realized just how much I have come to rely on the training I receive through our AFCC conferences. I have been so fortunate—not only have I benefited personally—many of the family law professionals who appear in our court also attend AFCC conferences. It's noticeable! Not only do I recognize some of them, but it's also obvious that they are putting the skills they have learned from attending those conferences to work, each and every day, working with families and appearing in our court. Seeing these well-trained and knowledgeable professionals make my job that much easier and make the outcomes that much better for the families we see in court.

Looking back at the IAALS article I am convinced, now more than ever, that AFCC is the best home for interdisciplinary professionals who wish to grow in the field of family law and family court services. We must continue to strive to produce more interdisciplinary and better education for all family professionals in our communities. To that end, the IAALS paper will be a focus of discussion at the next meeting of the AFCC Board of Directors at the *Symposium on Child Custody Evaluations* next month in San Antonio. Additionally, I invite you to join us at an AFCC conference. If you are as interested as I am in examining how families' journeys through the court system can be more coordinated, more efficient and result in better outcomes for parents and children, mark your calendar for AFCC's [52nd Annual Conference](#), *Children in the Court System: Different Doors, Different Responses, Different Outcomes*, May 27-30, 2015, at the Hilton New Orleans Riverside.





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## **10 Tips for Preparing for and Trying Relocation Cases: The Legal Perspective**

*Honorable Mark A. Juhas, Judge of the Superior Court of California, Los Angeles County, California, and Michael J. Kretzmer, CFLS, Manhattan Beach, California*

Relocation cases are frequently difficult and heart-wrenching. No bench officer looks forward to a relocation case. At the end of the trial, inevitably one party feels that he or she is losing their child or children. For each parent, the fear of that loss can be staggering and incapacitating. Too often relocation cases focus on the needs of the parents instead of focusing on the important needs and expressed desires of the child.

Determining how to best protect and promote the “best interests” of the child while mitigating the potential diminishment or loss of a relationship with a parent are among the most difficult tasks faced by bench officers and counsel in all of family law. These intensely competing interests make it all the more important for the parties, counsel and the court to keep in mind that the primary focus of a relocation case must be on the best interests of the child and that the interests of each parent are secondary.

### **Initial Preparation**

#### **1. Establish a Narrative**

Tell a compelling story. Achieving a successful result for a client with regard to almost any legal dispute requires that counsel tell a compelling story. In order to prevail in a relocation case, counsel must convince the judicial officer that a change from a familiar environment is in the child’s best interest. Often, but not always, relocation involves a change from a comfortable, supportive and nurturing environment, in which both parents, extended family members, friends, social ties, schools, extra-curricular activities, and the child’s geographical sense of place have been important parts of the child’s life, to one that is new and uncertain. Sometimes, the move is necessary in order to provide the child with a comfortable, supportive and nurturing environment that is lacking in the child’s present circumstances.

Knowing (1) what your client wants; (2) why your client wants it and; (3) what facts support what your client wants is critical to developing and presenting your client’s story to the court. Counsel must ask themselves whether what their client wants is really in the best interests of the child, or only in the best interests of the parent counsel represents. This is most certainly the question the court will be asking of each parent.

## **2. Know the Players, Know the Audience**

First and foremost, know your client. What is your client's motivation for seeking to relocate? How does your client present himself or herself—to the court, to a custody evaluator, to opposing counsel in a deposition? Is your client able to handle the often extraordinary burden of putting on and proving up a relocation request? How will your client handle the demands of a child custody evaluation, as well as the emotional and financial costs that a child custody evaluation inevitably brings? Has your client fully considered what the child's experience may be in the process? Assuming the relocation request is granted, is he or she willing and able to take on the additional parenting responsibilities that result from relocating? This includes ensuring that the child's relationship with the left-behind parent is promoted, maintained and fostered. Can your client tell a compelling story? Can your client clearly articulate what he or she wants (i.e., the relocation), why he or she wants it (i.e., why it is necessary or in the best interests of the child), and what facts support the necessity of the relocation? If your client cannot tell a compelling story, it will quickly become apparent when he or she sits down with the evaluator or takes the witness stand.

Knowing the other players in the story is mandatory and a critical factor. You must know the other party and opposing counsel. What motivates the other parent's opposition to the move? Anticipating and knowing the other party's defenses is fundamental to developing the narrative. What is opposing counsel like? Does opposing counsel have a track record in relocation cases? If so, who in the mental health field has opposing counsel used or relied on in prior cases? It would be difficult to overstate the importance of gathering this information early in the process.

You must know your bench officer. Bench officers who yearn to try relocation cases are, putting it mildly, very rare. Apprehension and anxiety are the first cousins of every relocation case. Deciding a relocation case based on the law and the facts is the foremost responsibility of a judge. However, the judge frequently finds that he or she must manage the personalities of the parties, anticipate how the decision the court makes will be implemented going forward, and what effect that decision will have on the child (a child who the court, most likely, will never meet or even see in the course of the litigation). Knowing your judge's tendencies, likes, dislikes and prior experience with custody and relocation cases can be invaluable.

The "audience" also includes the child custody evaluator, assuming the court requires an evaluation. Knowing the custody evaluator's background and track record is important to the preparation of your case and your client. Has the evaluator appeared before your judge previously? Has the evaluator appeared in a relocation case before your bench officer, or other bench officers in your courthouse or county? Obtaining copies of any prior evaluations performed by the evaluator, whether in relocation cases or other custody matters, can be especially helpful.

## **3. Gather Evidence—Less is Often More**

Determine clearly and precisely what you need to prove or disprove in order to make your case, then gather evidence that will accomplish that. Remember—what do I want,

why do I want it, and what information supports what I want? Presenting a comprehensive plan is part of telling a compelling story. You must not only tell the court why the relocation is important, but also everything your client is prepared to do to promote, preserve and enhance the relationship between the child and the left-behind parent.

An important part of the evidence you will gather is what the moving or remaining parent proposes by way of a parenting plan, support, and communication with the left-behind parent, as well as financial accommodation for travel requirements and the like. It is important that you critically consider each piece of evidence as you gather it. Does it withstand scrutiny? How does it relate to other evidence you are gathering? Is it contradicted or negated by other evidence? Is it necessary to establish an important point? Consider carefully what the evidence will prove or disprove. Avoid the “throw it against the wall and see what sticks” approach to presenting evidence. Demonstrate your appreciation of the judge’s intelligence and time by presenting relevant evidence that supports your narrative. Remember that more is not necessarily better. Distilling a matter or a point to its fundamental essence makes for an elegant, understandable and, most importantly, convincing presentation to the court.

#### **4. Assemble the Team**

It is critical that consultants and experts are carefully chosen and their roles clearly defined. A trial is like a jigsaw puzzle, each piece is critical to the whole, but each piece is only a part of the whole. Are you asking your consultants and experts to stray into areas beyond their expertise? It is the wise consultant and expert who know what they do not know. Your experts may be well-known in the vast community of mental health and custody professionals and have impeccable credentials, but it is up to you to make sure that your expert stays on what he or she knows. On occasion, consultants and experts will be tempted and fall prey to opining and advising on matters beyond their expertise and experience. Nothing dilutes the usefulness of a consultant or an expert faster than exceeding the bounds of their expertise and practice. This happens more often than you might think.

A consultant or a testifying expert who opines and advises on matters beyond his or her expertise and experience can quickly lead you and the court astray, and will most likely make any opinions and testimony worthless. Should this occur, it will most likely be disastrous, if not fatal, to achieving your client’s goal. An expert’s purpose is to assist the court with matters beyond the court’s expertise and experience. Experts that lose sight of this role may lose credibility with the bench officer or even be rejected as, in the eyes of the court, they become no more than an advocate. Further, you run the risk of having the judge prevent the testimony of a true expert in the area as it is now cumulative, or determined to be an undue and unnecessary consumption of time.

#### **5. Manage Resources**

Judges are acutely aware of how emotionally and costly relocation cases are for the parties involved. The involvement of a child custody evaluator will add fees and costs, including: preparation time for the evaluation, vetting and interviewing collaterals, hiring

mental health consultants, conducting additional discovery, increasing the complexity of trial proceedings, and parsing of the evaluation itself. Is your client prepared and willing to undertake this burden? Does your client realize that the finality of the proposed move may be in limbo for several months? Merely proposing a move may change the family dynamic forever with, for instance, the non-moving parent believing that the other parent is out to “steal” the child(ren).

In virtually every jurisdiction, family law courts and their resources have been stretched very thin and, in some cases, are just plain broken and unable to deliver the necessary services to litigants. Before launching into the relocation proceedings, make sure you have discussed with your client potential alternatives like private and court-based mediation and settlement services or intervention with a mental health professional. Be cognizant of the limits of what a court can really do to resolve a relocation dispute. More importantly, be cognizant of what the court cannot do to halt family conflict and to spare the child(ren) from the strain of the process.

### **Trial**

#### **6. Control the Narrative**

The fundamental job of both an attorney and an evaluator at trial is to teach and persuade the judge that their presentation and interpretation of the facts in the case is the correct one and the one most likely to promote and insure the child’s best interests. From an attorney standpoint, constant vigilance is required to make sure that the necessary “good” evidence is properly admitted for the appropriate purpose, and the “bad” facts are either explained away or kept out of the hearing all together.

It may be critically important to determine who is in your audience. You may find that your audience changes during the course of the trial. For instance, you may begin by addressing the trial court but circumstances can occur where you end up making your arguments to the court of appeal. This may be the case even if you win at the trial court level. Therefore, counsel must ask themselves throughout the course of the trial, “Am I making a sufficiently clear and complete record assuming that there may be an appeal of whatever decision is ultimately made?”

#### **7. Again—Know Your Judge**

Every family law judge that has been sitting for any length of time will have had experience with a move-away case. No matter how great the parties’ emotional strength and resolve or how deep the pockets, move-away cases exact an enormous toll on a family. If the moving parent is not allowed to move, he or she may lose the ability to start anew with better emotional and financial support in a new city. If the move is allowed, the left-behind parent may miss out on day-to-day contact with the child. The parent will no longer be able to attend soccer games, talk to the teacher on a regular and informal basis, or perform other common parenting activities. The relocating parent takes on new responsibilities and burdens as well, such as how to actively promote and ensure the left-behind parent’s meaningful participation in the child’s life.

Knowing your judge also involves understanding your judicial officer's level of tech savvy. How comfortable is he or she with innovations in parenting plans? How up-to-date is your bench officer with the current literature? In addition to the pre-trial homework, it cannot be emphasized enough that the best way to know your judge is to watch and listen carefully during the trial.

Do not forget that the case does not simply start with a trial. Along the way it is quite likely that the trial judge or another judge has made interim custody and support orders, received information, and interacted with the parties. Pay close attention as the case progresses so that you are able to respond in trial to concerns that may have been expressed by the court at prior hearings, or at a time when facts and circumstances may have been different.

Even if you have had the same judge throughout (i.e., in pre-trial proceedings), that judge may seem unrecognizable when it comes to the actual trial of the same matter. In attempting to resolve matters prior to trial, a judge may be sending different signals and may have a different style and manner of handling things prior to trial as opposed to once trial has actually commenced. The judge will now be listening to actual evidence, determining what evidence will be admitted and what evidence will be excluded, as well as determining the weight given to the admitted evidence. Is your judge an "activist" or is he or she more passive in their approach? Does the judge participate actively in questioning witnesses? How does your judge handle evidentiary issues—is there a tendency to let all the evidence in and then give it the weight that it is due? Or, is the judge's approach more controlled and restrictive by way of strictly limiting what is allowed into evidence? Will the judge want to hear from the child(ren)?

## **8. Present Evidence**

After all is said and done, the court can only rule on persuasive, competent and admitted evidence. A well-conceived trial is designed to be a swift, cogent and organized presentation of known facts. That said, an evidentiary hearing is a dynamic thing and surprises can, and do, arise.

It is fundamental that counsel be familiar with the evidence he or she will offer in the case, as well as that which opposing counsel may offer. Unfortunately, and far too often, it is apparent that the attorney has not done the necessary homework and is not sufficiently familiar with all aspects of the case. Lack of adequate preparation will make presentation of your case awkward at best and may lead to a nightmare at worst. Too many cases get bogged down with presentation of unnecessary, unclear and irrelevant evidence. Counsel needs to determine *as soon as possible* what must be proved in order to carry the trial at the time of the evidentiary hearing. Doing this work early in a case will help to avoid or limit wasted time and effort later when resources may be depleted.

Put together a strategy. How is each witness and each piece of evidence going to support your theory? Put your evidence together in a way that makes sense and is easy for the bench officer to use; "loop back" to evidence, to remind the court why and how it

is necessary to the decision-making process. Make it easy for the bench officer to see it your way. Tell an interesting and believable story. Above all, a judge's ability to make an informed, intelligent and rational decision is wholly dependent upon the judge having all the necessary information.

### **9. Lights, Camera, Action!**

You are the producer, director, choreographer, cinematographer and screenwriter in this production. You are in control of the cast (at least some of them) and you are a cast member. Making the process of putting on a trial appear seamless and effortless is your aim. Clearly, it is neither seamless nor effortless. However, in order to make it seem so, you must put a lot of thought into what gets said by whom and when. You must also keep in mind, again, your audience. Does this judge like seeing your consultants/experts in the courtroom? Is the judge going to be sensitive to a big production? Think about the visual of your case. How does it look when you step back and watch the production?

Consider the roles and effects of the other persons on the set. The work of the court does not go on without the bailiff, the court clerk, the court reporter and others. There is often a good deal of informal banter between these people and the judge that may have an effect on how the court perceives what is occurring in or outside of trial.

### **10. Loop Back/Temperature Check**

At all times in a trial or evidentiary hearing, it is critical to make sure that the judge understands you, your client, and your positions. Whether you are an evaluator, attorney, or litigant, it is important to listen closely to the comments the judge makes during the course of the proceedings both on and off the record. Is he or she confused about some or all of the facts, laws, or positions? Is he or she certain in some areas and uncertain in others? Have you made your parenting plan clear in a way that the judge is able to understand it, as well as adopt and use it?

It is equally important that you keep a check on the clarity of matters for your client. Are you communicating to your client and the professionals on your team how you perceive things to be going in the case? Is the judge not buying certain parts of your case? Is it time to have a heart-to-heart with your client and the opposing side to discuss resolution? Is it time to have a cup of coffee with the other side and reach an agreement to save your client's financial and emotional resources?

Take the temperature regularly and monitor the vital signs. Constantly assess and reassess where you are in the course of the proceedings. Opportunities for dialogue and resolution may present themselves at the most surprising times. Make sure your eyes and ears are open to such opportunities.

### **Conclusion**

Dr. Maya Angelou put it best when she said, ***"I have learned that people will forget what you said, people will forget what you did, but people will never forget how you made them feel."*** While you are presenting your case and when you have

finished, how you have made the people in that courtroom feel may well be as important as all you have said and all that you have done. The old adage that you don't get a second chance to make a first impression is worth keeping in mind.

The authors will present a full-day, pre-symposium institute with Philip M. Stahl, PhD, ABPP, at the AFCC 11th Symposium on Child Custody Evaluations in San Antonio, November 6, 2014, entitled, *The Relocation Case in Court: Legal and Psychological Issues*. Dr. Stahl wrote an *Ask the Experts* column, [Ten Tips for Dealing with Relocation Cases](#), from the December 2011 *AFCC eNEWS*.

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### ASK THE EXPERTS

#### Top 10 Tips for Dealing with Relocation Cases

*By Philip M. Stahl, PhD, ABPP*

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

#### If you are a mediator:

- Recognize that these cases are very tough to settle. Try and encourage each parent to formulate a proposed parenting plan that maximizes each parent's time with the children. Encourage the away parent to communicate with the children via Skype and encourage the parent who has the children to communicate regularly with the distant parent about the children and how they are doing. Strongly encourage the present parent to keep the distant parent positive in the children's memories.
- When considering the parenting plans, recognize that recent research coming out of New Zealand and Australia suggests that the biggest burdens of travel fall on the children. Encourage the distant parent to consider traveling to see the child at least for several of their times together. Not only does this reduce the burden of travel for the children but also allows the distant parent to meet the children's teachers and friends, and participate with the children in extra-curricular activities. Help the distant parent recognize that this will help the children feel more connected to the parent.

#### If you are a child custody evaluator:

- Familiarize yourself with all the research and psychological literature on relocation and become familiar with relocation statutory and case law in your state/province. This is critical when considering how to approach a relocation case as a child custody evaluator. Recognize that the psychological literature identifies a number of relevant risks and protective factors to be considered in a relocation case. If the request is for an international relocation, research whether the country that the moving parent is relocating to is a signatory to The Hague Convention and whether or not the US State Department has identified problems with the courts in that country supporting a valid US custody and visitation order.
- Many relocation cases are "close calls," i.e., some significant factors might favor the children moving and other significant factors might suggest against the children moving. When it is a close call, the evaluator needs to identify the risks and benefits of primary custody with the mother in one location and the risks and benefits of primary custody with the father in the other location, and avoid making an actual recommendation. Weighting of those factors is to be left up to the court. The evaluator is encouraged to give alternate recommendations depending on the weighting of the court.



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

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

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

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

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

- Consider using a psychological consultant who can help you learn the psychological research and literature, and identify which risk and protective factors are likely to apply in your case. Such a consultant can assist you in determining the helpful and non-helpful facts of your case and can hopefully assist you and your opposing counsel in settling the relocation without litigation. If the case must be litigated, your consultant can assist you in arguments to the court. If need be, you may want an expert witness to testify about relevant factors to the court.
- Recognize that recent research suggests that children adjust to moves most easily when both parents are supportive of the outcome and remain child-focused. Encourage your client to stay child-focused and work with the other parent even after the case has been litigated.

**If you are the judge:**

- It is critical to approach each case without bias; either the bias that a parent should not move because children benefit when both parents are actively involved in the children's lives or the bias that a parent with primary custody should be able to move for any good reason. Recognize that each case is unique and must be considered on all of the relevant factors in that particular case.
- Like the custody evaluator, learn the psychological research and literature on relocation and understand the multiple factors that result in increased risk of children's adjustment or may serve as a protective factor and help the children's adjustment in the event of a move. Integrate that understanding with the expected legal considerations as identified in your state's statutory and case law.

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