



ASSOCIATION OF  
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eNEWS

## Register Today—2015 AFCC-AAML Conference on Advanced Issues in Child Custody Evaluation, Litigation and Settlement

**October 1-3, 2015, Capital Hilton, Washington, DC**

Join AFCC and AAML for an exceptional, advanced-level training opportunity co-sponsored by two premier family law organizations. Learn new advanced practice skills, the latest research and policies related to children, marriage, separation and divorce from leading professionals in the field. Networking opportunities are plentiful—see old friends and colleagues and meet new ones. Priority registration for AFCC members and AAML Fellows ends June 30. Registration opens to all July 1. Early registration discounts end September 14.

[Register today](#)

[More information](#)

## Don't Miss the Keynote Address, Same-Sex Marriage and Parenting

Just down the street, the US Supreme Court will have recently ruled on challenges to state bans on same-sex marriage. Martha McCarthy, Esq., a legal pioneer who won Canada's first same-sex marriage case in 2003, will examine how marriage equality has advanced in North America, and discuss cohabitation, marriage, separation, divorce, and parenting for lesbian, gay, bisexual and transgender families.

[See the conference brochure for more information and full session descriptions](#)

## Exhibit Opportunities

Exhibit at the AFCC-AAML Conference—it's an excellent way to share your products and services with an interdisciplinary community of family law professionals. A limited number of tables are available.

[Rates and more information](#)

## AFCC Regional Conference

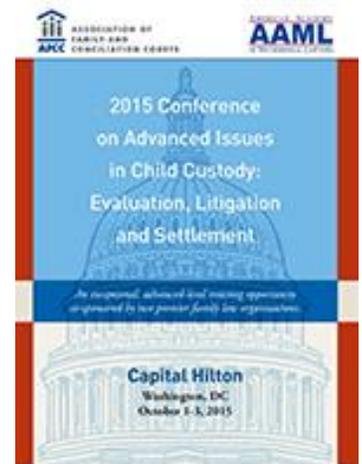
### Do You Hear What I Hear? Listening to the Voice of the Child

**November 5-7, 2015, Hyatt Regency Columbus, Columbus, Ohio**

The program brochure will be available online and mailed in July. Take a look at the list of featured topics and start checking out the area. The

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## Upcoming Conferences



### AFCC-AAML Conference *Advanced Issues in Child Custody Evaluation, Litigation and Settlement*

October 1–3, 2015

Capital Hilton  
Washington, DC

[Program Brochure, Online  
Registration](#)

### AFCC Regional Conference *Do You Hear What I Hear? Listening to the Voice of the Child*

November 5–7, 2015

Hyatt Regency Columbus  
Columbus, Ohio

[More information](#)

### AFCC 53rd Annual Conference

June 1–4, 2016

Sheraton Seattle Hotel

Hyatt Regency is within a short walk from the [Short North Arts District](#), [Arena District](#), and [Scioto Mile](#).  
[More information](#)

## Commentary on Work Product Review Testimony

*David A. Martindale, PhD, ABPP*

On April 22, 2015, the Court of Appeal for Ontario handed down a decision in which the court affirmed a trial court's decision to place limited weight on the testimony of a retained expert who was critical of the opinions generated by a court appointed evaluator. It was the court's position that the objective of testimony from a work product reviewer—impeachment of the report and testimony of a court appointed expert—can be met through cross-examination. In his "Commentary on Work Product Review Testimony," David Martindale discusses the appropriate role of the work product reviewer.

[Read more](#)

## Annual Conference Wrap-Up

The AFCC 52nd Annual Conference, *Children in the Court System: Different Doors, Different Responses, Different Outcomes*, May 27-30, 2015, at the Hilton New Orleans Riverside, was a great success. Over 1,100 family law professionals from 24 countries attended. We hope to see you at next year's annual conference in [Seattle](#)—mark your calendar, June 1-4, 2016! Look for the Call for Proposals in August.

## Congratulations Award Recipients

The [John E. VanDuzer Distinguished Service Award](#) was presented to **Mary M. Ferriter**; the [Stanley Cohen Distinguished Research Award](#) was presented to **Barbara A. Babb**; [Irwin Cantor Innovative Program Award](#) was awarded to **Only One Childhood**; the [Meyer Elkin Essay Award](#) was presented to **Janice M. Rosa** for her article "[Mission Critical: A Call to Action for Juvenile and Family Courts, the U.S. Armed Forces, and Veterans Affairs](#)," published in the July 2014 *Family Court Review*; and the [Tim Salius President's Award](#) was presented to **Dawn M. Holmes**.

## Virtual Poster Gallery

Posters representing current research, practice and policy were displayed at the annual conference. [PDF versions of the posters are available](#) for those not able to attend or who would like another look.

## Certificates of Attendance

If you attended the annual conference and need a certificate of attendance, they are available online for a processing fee of \$15 for members and \$20 for non-members. If you did not sign up for a certificate with your registration, this fee can be paid online.

[More information](#)

## Conference Audio and Materials

Seattle, Washington

### AFCC 12th Symposium on Child Custody Evaluations

November 3–5, 2016  
Sheraton Atlanta Hotel  
Atlanta, Georgia

### AFCC Trainings

#### Construction of an Effective Parenting Coordination Process: Structure, Tools, and Techniques

Debra K. Carter, PhD  
November 30–December 1, 2015  
University of Baltimore  
Baltimore, Maryland

#### Complex Issues in Family Law and Child Custody

Philip M. Stahl, PhD, ABPP  
December 2–3, 2015  
University of Baltimore  
Baltimore, Maryland

### AFCC Chapter Annual Conferences

#### Minnesota Chapter Annual Conference

July 16, 2015  
University of Minnesota  
Continuing Education Center  
St. Paul, Minnesota  
[More information](#)

#### Australia Chapter Annual Conference

August 14–15, 2015  
Sydney Shangri La Hotel  
Sydney, Australia  
[More information](#)

#### Florida Chapter Annual Conference

October 1–2, 2015  
Holiday Inn Tampa West Shore  
Tampa, Florida  
[More information](#)

#### Colorado Chapter Annual Conference

October 9–11, 2015  
Beaver Run Resort  
Breckenridge, Colorado  
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AFCC members receive [free access to audio recordings](#) of the plenary sessions. Additional conference audio is available to members and nonmembers for purchase through [Digital Conference Providers](#). Recordings of the entire conference are available for a discounted package price or purchase individual sessions; recordings of pre-conference institutes are also available.

A limited number of USB drives containing conference session handouts are available. The cost for a USB drive is \$20 for members and \$40 for non-members, shipping fees apply. Call the AFCC office at 608-664-3750 or email [afcc@afccnet.org](mailto:afcc@afccnet.org) to order.

### **Giving Thanks**

This conference would not have been the incredible success it was without the help of many extraordinary people and organizations. Thank you to the Louisiana Chapter of AFCC and the Board of Directors; our conference sponsors; collaborating organizations; program committee; shepherds; presenters; exhibitors; advertisers; dine around leaders; hospitality suite hosts; auction volunteers, donors, and bidders; and of course everyone who attended.

### **Thank You Scholarship Fund Donors**

This past year, your generosity provided 36 full conference scholarships and nine travel stipends, giving more of our colleagues the opportunity to attend an AFCC conference. The experiences you have given the recipients make a lasting difference in their practice and careers. [Thank you to everyone who donated to the 2014-2015 appeal](#). Every donation helps more colleagues. [Donate today](#).

### **Welcome to New and Thank You to Outgoing Board Members**

Welcome to new AFCC Board members **Dolores A. Bomrad, JD**, West Bend, Wisconsin; **Kelly Olson, JD, LLM**, Little Rock, Arkansas; **Michael Saini, PhD**, Toronto, Ontario, Canada; and Chapter Council Liaison **Ann M. Ordway, JD, PhD**, Signal Mountain, Tennessee. The new executive committee consists of: President, **Hon. Peter Boshier**, Wellington, New Zealand; President Elect, **Marsha Kline Pruett, PhD, MSL**, Northampton, Massachusetts; Vice President, **Annette T. Burns, JD**, Phoenix, Arizona; Secretary, **Hon. Dianna Gould-Saltman**, Compton, California; Treasurer, **Matthew J. Sullivan, PhD**, Palo Alto, California, and Past President, **Richard L. Altman, JD**, Napoleon, Ohio.

Thank you to our outgoing board members for all their hard work and dedicated service: **Andrea Clark, MSW**, St. Louis, Missouri; **Lesley Goldsmith, JD**, Canton, Massachusetts; **Hon. R. John Harper**, Brantford, Ontario, Canada; and **Nancy Ver Steegh, JD, MSW**, St. Paul, Minnesota.

#### **Ontario Chapter Annual Conference**

October 23, 2015  
Toronto Reference Library,  
Yonge Street  
Toronto, Ontario  
[More information](#)

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

January 29–31, 2016  
Hilton Sedona Resort  
Sedona, Arizona  
[More information](#)

#### **California Chapter Annual Conference**

February 19–21, 2016  
InterContinental Mark Hopkins  
San Francisco, California  
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#### **Ask the Experts**

Is there a topic you would like to see covered by an AFCC Ask the Experts piece?  
[Email your suggestion](#)

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. [Learn more or subscribe](#).

#### **Editor:**

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

## Chapter News

Welcome and congratulations to new chapter presidents:

**New Jersey**—Gregg Benson, MA, LCADC.

**Maryland**—Alice (Ali) E. Dansker Doyle, MEd, JD, Esq.

## Member News

**Grace Hawkins, MSW**, is retiring as Director of the Family Center of the Conciliation Court for Pima County in Tucson, Arizona. Grace has worked at the Conciliation Court since 1990, 14 years as a counselor/mediator and as the Director since January 2005. Within AFCC, is an active member, having served on both the AZ-AFCC Board of Directors and AFCC Board, participating in the Shared Parenting Think Tank and the Dispute Resolution Conference. Best wishes on your retirement!

*The Co-Parenting Toolkit*, by **Isolina Ricci, PhD**, Walnut Creek, California, is now available in eBook format. The supplement contains new strategies and advanced versions of the solutions in *Mom's House, Dad's House*.

**Jana B. Singer, JD**, Baltimore, Maryland, has co-authored a new book [\*Divorced from Reality: Rethinking Family Dispute Resolution\*](#), with Jane C. Murphy. The authors argue that the current legal and dispute resolution system, built around the nuclear family, must adapt to serve today's disputing families.

## Conference of Interest

The **American Professional Society on the Abuse of Children (APSAC)** will hold its 23rd Annual Colloquium, July 22-25 in Boston, Massachusetts. The colloquium offers learning and professional development opportunities for those who serve children and families affected by child maltreatment and violence. The sessions offered address all aspects of child maltreatment including prevention, assessment, intervention and treatment with victims, perpetrators, and families affected by physical, sexual, and psychological abuse and neglect.

[Read more](#)

## Family Law in the News

### **The Women Who Face More Traumatic Brain Injury than NFL Players**

*Melissa Jeltson, Huffington Post*

The Sojourner Center, one of the largest U.S. domestic violence shelters, along with TBI experts at local hospitals and medical institutions, is launching an ambitious program dedicated to the study of TBI in women and children living with domestic violence. The Sojourner BRAIN (Brain Recovery And Inter-professional Neuroscience) Program will study how common domestic violence-related TBI is, investigate short-term and long-term effects, develop domestic violence-specific

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tools to screen for head trauma, and provide individualized treatment plans.

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### **Why I Couldn't Tell Our Daughter about Our Separation**

*Julie Maxwell, The Guardian*

After Julie Maxwell and her partner split up, a court forbade them to tell their child that she was the subject of an order stipulating how much time she would spend with each parent. For how long could they comply?

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## Commentary on Work Product Review Testimony

David A. Martindale, PhD, ABPP

On April 22, 2015, the Court of Appeal for Ontario handed down a decision in which the court affirmed a trial court's decision to place limited weight on the testimony of a retained work product reviewer who had been critical of the opinions generated by a court appointed evaluator (*M. v. F.*, 2015 ONCA 277). Judge Mary Lou Benotto, writing for the court, declared that "it is not clear that [the work product reviewer's] evidence was admissible in the first place" (at 11). Judge Benotto opined that the objective of introducing testimony by a critic is impeachment of the report and testimony of a court appointed expert, and that this objective can be met "through cross-examination and, ultimately, argument [internal citations omitted]" (at 12). Judge Benotto expressed support for "the view that critique evidence is rarely appropriate. It generally—as here—has little probative value, adds expense and risks elevating the animosity between the parties" (at 13).

In the Ontario case, a work product reviewer acknowledged that his testimony had been sought in order to "raise concerns about" the court-appointed evaluator's assessment (at 5). The reviewer offered testimony in which unsupportable opinions were communicated. Specifically, notwithstanding the fact that, as a reviewer, the retained expert had not evaluated the litigants or their child, the reviewer offered opinions concerning the father's personality characteristics, and offered specific recommendations regarding the issues in dispute.

In 2014, in a New York custody case (*M.M. v. L.M.*, WL 1010258, [N.Y. Sup. 2014]), Judge Lori S. Sattler was very sharply critical of the testimony offered by a retained, testifying work product reviewer, and offered commentary regarding proper review methodology. With regard to the reviewer's testimony, Judge Sattler wrote: "The crux of his analysis suggests that [the evaluator's] work is deficient because she failed to hear the 'ring of truth' in Respondent's statements" (at 10). Judge Sattler concluded that the reviewer's "conclusions are based on an unquestioning acceptance of Respondent's views and an unwarranted rejection of all evidence to the contrary, including *irrefutable documentary evidence* [italics added]" (at 10).

Offering her perspective on work product reviews, Judge Sattler wrote: "The role of an expert conducting a peer review is to determine whether the methodology used in a forensic evaluation comports with professional standards such as those set forth in the

*Model Standards of Practice for Child Custody Evaluation* as approved by the Association of Family and Conciliation Courts (AFCC). [The reviewer] made no discernible attempt to conduct such a review. Rather, his report constitutes Respondent's attempt to provide a substitute forensic evaluation for the one conducted by the court-appointed expert and must be rejected as a peer review" (at 10).

The procedures employed in conducting a work product review are quite different from those employed in conducting a second opinion evaluation. Practitioners who have been retained for the purpose of generating second opinions employ assessment techniques that enable them to gather data that are quantitatively and qualitatively sufficient to support their opinions.

The performance of a work product review is a post-evaluation consultation service. Far more often than not, attorneys seeking work product reviews do so because they have been presented with evaluator reports in which the findings reported, opinions expressed, and recommendations offered will, if attended to by the court, result in a judicial decision contrary to their clients' interests. There are, of course, times when attorneys seek reviews of reports, the contents of which are supportive of their clients' positions. In cases such as these, the attorneys are aware that the presentation to courts of reports in which opinions offered are supportive of their clients' positions does not assure judicial decisions favorable to the clients. Favorable reports will be subjected to scrutiny by adversaries and evaluators will be subjected to cross-examination. Though some experts emerge unscathed from cross-examination, some do not. Attorneys holding favorable reports may want consultants retained by them to identify the strengths and deficiencies in the work that formed the basis for the reports. With such input from consultants, attorneys are better equipped to rehabilitate experts whose opinions the attorneys hope will guide the court.

Most of the attorneys who ask consultants to conduct work product reviews are attorneys who find themselves reading (and re-reading) reports in which their clients have been described in unflattering ways and in which parenting plans sought by their clients are not those endorsed in the reports. Most attorneys who retain consultants to review unfavorable reports seek candid and thorough feedback. They wish reviewers to identify the strengths as well as the weaknesses in the report. That is not always the case, however. Prudent reviewers enter into agreements with retaining attorneys in which it is made clear that information provided to the attorneys will be complete—both good news and bad. The consequences of misunderstandings can be significant.

After having conducted a review of an evaluator's work, the reviewer's first task is to relate orally his or her impressions of the work product to the retaining attorney. If a reviewer concludes that an unfavorable reviewed work product is sound, it is more likely than not that the retaining attorney and the reviewer will conclude that the reviewer cannot be of any additional assistance. If a reviewer has identified significant flaws in an unfavorable work product, the reviewer and attorney must decide how the reviewer's expertise can be most productively utilized. It is during this discussion that it is prudent to address the issue of role differentiation (Martindale, 2006a).

It is my position that, after having conducted reviews and after having conferred with the attorneys who retained them, reviewers may offer testimony regarding their reviews *or* may offer litigation support services (Martindale, 2011), but should not offer to do both (Martindale, 2006a, 2006b). A similar position was articulated by Gould, *et al.* (2011): “It is our position that participating in the role of a testimonial expert witness and simultaneously functioning as a behind the scenes trial consultant to a legal team represents a dual role. One cannot advocate for the data if at the same time one is being asked to advocate for a legal position” (p. 39). Subsequently, Dale and Gould (2014) advanced the position that “[t]he role delineation practice style is not the only option when attorneys retain experts for consultation and testimony. The law has no prohibitions against experts performing multiple activities or roles” (p. 19). Clearly, this issue will continue to be discussed and debated at AFCC conferences and elsewhere.

Generally, a work product review focuses on three elements. The first is methodology, with respect to (a) the use (or lack thereof of) appropriate procedural safeguards; (b) the techniques utilized in interviewing the parents; (c) the techniques utilized in interviewing the children; (d) the manner in which parental interactions were observed and recorded; (e) the manner in which parent-child interaction sessions were observed and recorded; (f) the quantity and relevance of documents secured by the evaluator for verification purposes; (g) the manner in which collateral sources were selected; (h) the reliability of the collateral source information obtained; (i) the manner in which collateral source information was corroborated; (j) the selection of assessment instruments; (k) the administration of assessment instruments; (l) the interpretation of assessment data; (m) the integration of assessment data with other data sources; (n) respect for role boundaries; (o) indications that alternative hypotheses were generated and explored; and (p) the creation, maintenance, and production of appropriate records.

The second element is the apparent manner in which opinions were formulated. Specifically, (a) whether consideration appears to have been given to non-supporting data and, where discrepant data were encountered, the steps that were taken to resolve the discrepancies; (b) whether consideration appears to have been given to pertinent statutes and case law; and, (c) whether indicators of evaluator bias are present, such as the application of a double standard; the use of insulting terminology in describing the non-favored parent; the use of glowing terminology in describing the favored parent; the assignment of minimal importance to possible parenting deficiencies in the favored parent; the assignment of much importance to reported flaws in the non-favored parent; the apparent wholesale acceptance of the favored parent’s perspective; and, the apparent rejection of the non-favored parent’s perspective.

The third element is the effectiveness with which findings and opinions have been communicated to the intended recipients of the evaluator’s report, as reflected in (a) the inclusion (or lack thereof) of all the information reasonably needed by the litigants, their attorneys, and the court; (b) avoidance of (or appearance of) personal perspectives presented in the guise of professional opinions; (c) acknowledgements (or lack thereof) of the known limitations of psychological knowledge, techniques, and data; (d) the

inclusion (or lack thereof) of and discussion of non-supporting data; (e) the inclusion (or lack thereof) of a reasonably detailed presentation of assessment data; (f) an articulation (or lack thereof) of the criteria employed in examining the best interests standard; and, (g) a cogently articulated nexus (or lack thereof) between findings reported and opinions expressed.

Appropriate testimony from work product reviewers can be of significant benefit to courts. Even the most effective cross-examination cannot provide the substantive contribution to the record that is provided by well-articulated testimony from a reviewer. In a hotly contested California case, a court appointed evaluator acknowledged, under cross-examination that “mistakes get made. I made a mistake.” When evaluators concede that they have erred, judges are alerted to the fact that they may need to attach less weight to their appointed evaluators’ input than they otherwise might have. That’s helpful, but it pales in comparison to the helpfulness of a full explanation of the implications of identified errors for the adjudication of the issues in dispute.

Where errors have been made and identified, but the record lacks a clear explanation of the relevance of the errors, the risk remains that evaluators’ input will be assigned inordinate weight. In an often-discussed New York case (*Ochs v. Ochs*, 193 Misc. 2d 502 [N.Y. Sup. 2002]), reference was made by the court to the “essential role played by the court-appointed neutral forensic psychologist in custody litigation...” (at 505). There is reason for concern that too many judges fail to recognize that neutrality does not guarantee competence.

In 1964, Kaplan described a dynamic that he referred to as *observational bias*—the tendency to look where it’s easy to see, even when the thing being looked for is more likely to be located where it is hidden from view. As explained by Kaplan, the dynamic, sometimes referred to as the drunkard’s search, can be traced to an old joke about a police officer who encounters an inebriated individual searching for something under a streetlight. The drunkard states that he has lost his keys, and the police officer assists in the search, but, asks the man if he’s sure that this is where his keys were dropped. The man replies that he thinks that he dropped his keys in the park, but the light is better under the streetlight. The tendency to look where it’s easiest to see has been referred to by Freedman (2010) as the “streetlight effect.”

A report prepared by a court appointed evaluator may seem to provide the illumination needed by a judge who is struggling with a complex dispute concerning issues of access and custody, but where there is light there are likely to be shadows, and the answers needed by the judge may be lying in the shadows. My concern regarding the potentially harmful effect of significantly flawed reports is that if they are admitted into evidence, they will be referred to with a reasonably foreseeable negative impact on judicial decision making. It is my position that judges who must make their decisions without advisory input from court appointed evaluators will make wiser decisions than will judges who are being guided by flawed input.

It will never be possible to develop the type of research design that would enable us to ascertain what types of professional experiences lead to improvements in our work products. It is likely, however, that the quality of custody evaluations will improve as evaluations are scrutinized, notwithstanding the fact that much of the scrutiny occurs in an adversarial context. It should be noted that many evaluators (and not just novices) have their work reviewed by experienced colleagues.

My strong endorsement of testimony by work product reviewers must be coupled with a cautionary note. Judges must recognize that the opinions that can responsibly be formulated on the basis of such a review are opinions concerning the quality of the work that was reviewed. A reviewer is not in a position to generate opinions regarding the adults and children who were assessed by the evaluator whose work has been reviewed.

*David Martindale, board certified in forensic psychology by the American Board of Professional Psychology, was the Reporter for the [AFCC Task Force on Model Standards of Practice for Child Custody Evaluation](#). A significant portion of his income is derived through the performance of work product reviews such as those described here.*

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## Virtual Poster Gallery

Posters representing current research, practice and policy were displayed at the AFCC 52nd Annual Conference in New Orleans. Click the links below to view PDF versions of the posters displayed.

### [Child Adjustment in Joint Physical Custody: A Meta-Analytic Review](#)

Amandine Baude, PhD, and Sylvie Drapeau, PhD, Laval University, Québec, Canada

### [An Exploration of Children's Experiences in the Overcoming Barriers Family Camp](#)

Sevil Deljavan, PhD (student), Michael Saini, PhD, Factor-Inwentash Faculty of Social Work, University of Toronto, Toronto, Ontario, Canada, and Robin Deutsch, PhD, William James College, Newton, Massachusetts

### [Development of Parenting Plans for Children with Unique Needs](#)

Jan Faust, PhD, ABPP, and R. Elyse Heidelberg, MS, Center for Psychological Studies, Nova Southeastern University, Ft. Lauderdale, Florida

### [Between Help and Authority: Custody Evaluators' and Judges' Views on their Practice Context and Role](#)

Elisabeth Godbout, PhD, and Michael Saini, PhD, University of Toronto, Toronto, Ontario, Canada



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An interdisciplinary and international association of professionals dedicated to improving the lives of children and families through the resolution of family conflict.

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