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AFCC-CA President's Message

Your California Chapter made a significant contribution to the AFCC International Conference in Los Angeles where AFCC celebrated 50 years of innovation and planned for the future of the family and children.

At the Conference, our Executive Director, Marilyn Pallister staffed a California Chapter outreach table for members and attendees. Marilyn and our Vice President, Lulu Wong, created a very cool bookmark as a hospitality gift for attendees. As usual, Marilyn made lots of friends and introduced herself to many chapter members and conference attendees.

From the California Chapter perspective, the highlight of the conference was the Reception organized for California Chapter Members, Conference Sponsors, and other guests. The Reception provided a focal point for members to connect with new friends and see existing friends, too. Many

thanks for all who contributed to the organization of the Reception, including board members Lulu Wong and Matt Sullivan.

Finally, I extend many thanks to Mike Kretzmer who worked so hard to gain sponsors for the International Conference. And of course, to our sponsors, I express many thanks for helping make the 50th Anniversary Conference so successful.

Peter Salem, the AFCC Executive Director, kindly offered me the opportunity to welcome the AFCC International to Los Angeles. In my remarks, I observed that forecasting the future of family law can be very much like Alice when she arrived in Wonderland, she met the Cheshire cat. Alice asked, "Which way should I go?" The smiling cat replied, "Where do you want to go?" Alice responded, "It doesn't really matter where I go, as long as I go somewhere!" The Cheshire cat replied,

**The Honorable Thomas
Trent Lewis**
AFCC-CA President



"Since it doesn't matter to you where you go, then it certainly doesn't matter which way you go!" Anniversary celebrations are important times of reflection on the past and consideration of plans for the future. Here are just a few changes in the landscape of family law in the past decades. And of course, the question must be asked, "Where do we go from here?"

California has moved from a jurisdiction where divorce was determined based on marital fault into a state where dissolution of marriage is granted on a no-fault basis. The definition of marriage is being redefined with shifts away from traditional opposite sex marriage to a world where same sex marriage is increasingly recognized, tolerated, or opposed. Age qualified opposite sex couples in California may

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choose a Registered Domestic Partnership as a civil union hoping to protect certain federal and other state benefits subject to all the other rights and responsibilities of marriage without the "M" word. Oh yes, registered domestic partners are not free to marry until they terminate the partnership. Some call all of this a radicalization of social norms or morphed accommodations to protect other rights; others visualize the right to marry as a civil rights issue. Discussion about marriage remains part of the national dialogue with very divergent views. Is the right to same sex marriage part of the US Constitution; is it a matter reserved to the states; is there a different standard at the federal level from the state level? The history of America is rife with controversy about rights enumerated to the federal government with other rights reserved to the States. After all, we fought a Civil War over such issues. Will the US Supreme Court fill the next decade with a further series of 5-4 decisions? It took over three decades for the US Supreme Court to address issues related to interracial marriage after California declared such prohibitions unconstitutional.

Even in the past decade, the majority view in California has moved away from seeking to impose prohibitions on same sex marriage towards a gradual but meaningful acceptance that the marriage bond is gender neutral. Is the right to marry a matter for determination only by the States under the 10th Amendment; or is the right to marry protected under the US Constitution so that discrimination based on sexual orientation even at the State level violates equal protection and the right to life, liberty, and the pursuit of happiness?

When AFCC was birthed, the idea of same sex parentage or same sex parent adoption did not exist. Indeed, when AFCC was born sexual orientation or requests for gender reassignment were

still categorized as mental health issues. Now California has laws that prohibit parents from seeking counseling for children who express a gay orientation. Parents can seek counseling for a child for anything else, but sexual orientation is off limits. Is this counseling limitation a civil rights of the child issue or is it an inappropriate intrusion into parental autonomy and rights?

In earlier year's custom, social norms and case law prohibited parents from having an opposite sex significant other spend the night at the house with the children present; let alone a same sex intimate partner being present. Overtime, California law has lifted restrictions on intimate partners being present during a parent's custodial access time. California has shifted away from a culture where only an opposite sex married couples could adopt children, to single parent adoption, to same sex parentage adoption.

Before there was an AFCC, there was no organized, statewide, mandated family mediation program in California, let alone anywhere else in the world. Until only a few decades ago, the "tender years doctrine" preferred award of custody of young children principally to Moms. Domestic violence certainly existed, but there was very little research about patterns of violence, risk assessment, and impact on children.

Fifty years ago, the implementation of joint parenting and shared custody was almost unheard of; and the shift toward shared parenting has evolved since those early years. It took an intermediate appellate court decision that prohibited an award of joint custody to stimulate the State Bar of California to seek legislation permitting the court to order joint custody. The panel opined that if parents argued over custody too much, that wouldn't be good for children. This changing view about joint custody has circled back so that we now recognize that for some high conflict families, joint custody is not workable. And the social experiment continues.

The methods and means of child custody evaluations and assessments has moved from probation officers doing assessments to the use of a panoply of assessment tools implemented by diverse mental health professionals who are geared toward understanding family dynamics, individual psychological and social functioning. There are those researching how family reorganization through divorce impacts children. Even Sesame Street has a character whose parents are divorced!

What is the definition of the family unit? Again this year, Legislation has emerged in California and other states challenging the idea of a two-parent system. Court



Sesame Street's Gordon talks with Abby Cadabby about her parent's divorce.

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decisions in other states have recognized that a child can have more than two parents. Does this idea of extending the family to consider more than two parents go too far? Is this an erosion of the family unit so that we must draw a line in the sand? Shall we say, "This goes too far!" Some argue that the physical reality of the biological right to parentage must concede that a child may be bonded to many others regardless of biology. So does this mean that after a long term dating relationship, that a woman can come forward seeking rights of parentage of her former boyfriend's child? After all, doesn't current law provide that almost anyone can have visitation rights as opposed to the mantle and designation as a parent? Shall we discard as a relic the idea of the conclusive presumption of parentage for children conceived during marriage absent a timely challenge by the presumed father?

How many parents shall there be for a child? How will we restrict the number of parents? "Okay, three parents, but that's it!" What is the rational basis for limiting the number of parents at three only? Admittedly the common battle takes place between a presumed parent and a biological parent in proceedings with another biological parent. That being said, will stepparents and dating partners now have the right to claim parentage since existing law does permit for an order for stepparent visitation; and court's can make findings of parentage by estoppel as a means to enforce a child support obligation. This emerging discussion about more than two parents for a child is not limited to the LGBT community as case law shows us that frequently opposite sex parents or partners and biological parents will seek rights that are currently eclipsed by the two-parent model.

When AFCC was born there was no lawful means, and frequently little interest in parenting by surrogacy. In some states and countries surrogacy contracts are not permitted. Science has advanced sufficiently so that we can mix up a batch of genetic material, implant an embryo, and produce a child. But whose child is it? What happens if we separate the genes of several individuals, repackage those markers into "wonder child"? Now who's your daddy, or mommy for that matter? If we adopt the more than two parent model, can a donor of genetic material challenge parentage limitations placed in current statutes as impermissible limitations on parental rights?

In other parts of the world, surrogacy is permitted only by "compassionate surrogacy" without payment of a fee or expenses. Who is responsible for the unwanted or undesirable child? If surrogacy produces a special needs child, who is responsible for this child if the surrogate or contracting parties refuse to take delivery? If a boy child was desired, but a girl was produced, can the child be disavowed, so that no child support obligation can be impressed; if twins are produced but only one child was wanted, can the other child be abandoned? "We wanted brown eyes and blonde hair, not green eyes and freckles, forget it!" Shall these become matters of contract law or family law?

Science has sufficiently advanced so that cloning children is probably in the future regardless of current medical ethics or sensibilities. Do you confidently believe you will live in a world without a child being cloned during your lifetime? If this cloned child has donated genetic material from four different individuals, who has rights and responsibilities for the child? Will the rights of parents be determined by contract and statute as current law already provides for surrogacy in California? Who has rights or responsibilities for a cloned child



"When AFCC was birthed, the idea of same sex parentage or same sex parent adoption did not exist."

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enters the world without the "planned result" who bears responsibility for this child? Do you think it is beyond the bounds of narcissistic expression for someone to say, "The world needs another me!" Arguably the extreme narcissists will demur that, "I'm unique and one of a kind." Do you think this is Orwellian madness? Really?

What social values and mores will govern in child custody determinations in the future? Will the court be called upon to determine whether certain practices are acceptable while others are too offensive to consider. If a parent decides to serve a 17-year-old child a glass of wine at Thanksgiving, that's fine; but a parent sitting down and smoking marijuana with the same child is unacceptable.

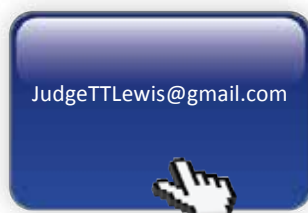
Will the court be the arbiter of whether a 10-year-old child has access to violent video games or goes to R rated movies? Is male circumcision protected based on tradition and religious expression; whereas female circumcision practiced in some communities is unquestionably abhorrent and an offensive violation of human rights and dignity? Is a parent entitled to force a boy to wear a Yarmulke (Kippah) as a permissible expression of religious preference; but a parent is not entitled to require a girl to wear a burka?

Of course, this may all sound like the musing of a Star Trek buff about a brave new world. Some may say, "the thing that bothers me the most, is that there are so many things that don't bother me anymore." Others cry out for the earlier, less complicated, traditional opposite sex monogamous family unit; and anything else is just morally offensive. Others celebrate an evolving social consciousness and tolerance. What ever view you may have about these changes, AFCC will be there to hear your voice, consider your views, and continue the discussion. So, what do you think? Are we headed for some form of social nirvana, or dystopia, or a little of both?

We have established a special email address for you to inform us of your thoughts: Newsletter@afcca.org. We encourage your comments.

In closing, I want to restate my thanks to all our Board members who work so tirelessly to advance the interests of the families and children of California through their efforts. And in this regard, I extend a special thanks to our Newsletter Editor, Steven Friedlander. And for your part, I would encourage you to contact me if you have ideas or want to participate further. I'm reachable at: JudgeTTLewis@gmail.com.

All my best, Thom ♦♦



**Judge Thomas Trent Lewis
Biography**

Judge Thomas Trent Lewis is the President of the Association of Family & Conciliation Courts; and he currently serves as the Assistant Supervising Judge of the Los Angeles Superior Court Family Law Department. Judge Lewis serves on the CJER Family Law Education Committee. He is a Fellow of the American Academy of Matrimonial Lawyers and Certified Family Law Specialist. During his career as an attorney he served as the Chair of the Board of Legal Specialization and President of the San Fernando Valley Bar Association. Judge Lewis is a member of the Rutter Group CFLR faculty; and he is an editor of the Hogoboom & King Rutter Group Family Law Practice.



Back to the Future: Serving California's Changing Families

By Lulu L. Wong
Conference Chair

Please join us at the lovely Intercontinental Mark Hopkins, February 7-9, 2014 for the AFCC-CA annual conference. Our conference committee is working diligently to provide a provocative, informative, and cutting edge program designed to provide you with enhanced insight and skills for your work with families and children. For those of you needing your domestic violence update, you may select from a four-hour DV institute or two workshops to meet your continuing education requirements.

If you are curious whether we are returning to the primary attachment theory, you will want to attend the plenary with Joan Kelly on the controversy over babies and overnights. If you want to know the truth and be able to decipher the myths behind recent neuroscience research, come hear Professor Melissa Hines from the University of Cambridge speak about brain development and behavior. If you want to know how to evaluate, litigate and resolve international relocation cases, Leslie Ellen Shear will share some tools with you.

The program will also include a judges' panel on innovations and ways counties in Northern California are maximizing resources, a custody evaluation writing institute which integrates forensic and clinical approaches by Robert Kaufman, Ph.D. and Daniel Pickar, Ph.D., and a workshop on appointment orders and

procedures statements post the Rand decision by Leslie Shear and Bruce Harshman, Ph.D. For those interested in the legal and psychological challenges to lesbian, gay and transgender families, Deborah Wald, Stacey Shuster, and Frederick Hertz will help you understand the ever changing legal options and emotional dimensions.

Besides the excellent program, we hope you will take advantage of the beauty and sights of the "jewel by the bay" and explore the many dining opportunities in San Francisco with colleagues, friends, and the AFCC family.

Be sure to save the date – February 7-9, 2014 and look for registration materials in the fall. See you in San Francisco!



Upcoming Events!

Back to the Future: Serving California's Changing Families
Intercontinental Mark Hopkins
February 7-9, 2014
San Francisco, California



Lulu L. Wong
Biography

Lulu L. Wong is a Certified Family Law Specialist in private practice in Napa and Sonoma Counties where she provides litigation, mediation, and collaborative law services. She is Vice-President of AFCC-CA. She is on the board of the Association of Certified Family Law Specialists (ACFLS, 2009 to present). She served on the Family Law Executive Committee (2001-2004) and was an advisor to FLEXCOM (2006-2007). She was chair of the Sonoma County Family Law Section (1998) and on the board of the Sonoma County Bar Association (1998 to 2000). She serves as a judge pro tem for settlement conferences. She is a contributing author to Child Custody Litigation and Practice (CEB, 2006). She received her B.A., magna cum laude, from Yale University in 1990 and her J.D. from the University of California at Davis in 1993.



Never-Married Parents and the Rights of Unwed Fathers in California

By Deborah H. Wald

Custody attorneys are used to dealing with the complexities of co-parenting plans and time share arrangements for divorcing or divorced parents; but these arrangements can be even more challenging when the child was conceived as the result of a casual or extra-marital relationship. Given complexities in the law regarding determinations of legal parentage, and given complexities in the interpersonal dynamics between parents who conceived children outside of committed relationships, these cases can be extraordinarily difficult. This article will address some of the legal issues raised, and possible approaches to resolving them in a way that maximizes the chance of the child ending up with two functioning and engaged parents.

1. Does the Woman Hold All the Cards?

A woman has the constitutional right to determine whether or not to continue with a pregnancy, without any input from the man who got her pregnant –

whether that man is her husband or a one night stand. The fact that the legal decision whether or not to terminate a pregnancy is exclusively the mother's often leads to an impression that the mother has all the power. In many ways, this is true until the baby is born – a pregnant woman can unilaterally decide to terminate or continue with the pregnancy; and she has the right to make autonomous decisions about such issues as prenatal care and childbirth. She also has the ability to hide the pregnancy from the biological father and can move from state to state while pregnant, without legal restraint. However, once there is a baby she no longer has full control, as the father (assuming he knows about the child) can pursue custody and/or visitation through the courts.

In working with never-married parents, it is common to encounter circumstances where the father-to-be encouraged the mother-to-be to terminate the pregnancy rather than

having the baby, often because of the lack of commitment in their adult relationship, and the mother-to-be unilaterally decided to move forward and have the baby. The encouragement to terminate the pregnancy is then seen by the mother-to-be as a statement of disinterest in the child by the father-to-be, and the mother-to-be is shocked and horrified when the father-to-be later asserts paternity and wants a meaningful role in the child's life. A common response to the father's request for involvement after the child is born is "how can I trust you with my baby now when you wanted to KILL her?!"

While the emotional positions of each parent often have substantial merit, from a legal perspective, whether or not a father wanted to have a child is completely irrelevant to a determination of paternity. As with no-fault divorce, the relative blamelessness of the parties in creating the situation that led to the child's birth is of little interest to the courts. What the courts care about, in almost all circumstances, is that the child has two parents who can share responsibility for the child's care and support. Helping our clients understand this early on can be critical to a positive outcome for these cases.

2. Determining Custody and Time Share

In matters of custody and time share, the California Family Code gives no preference to married parents. The Code specifically provides that: "The parent and child relationship extends equally to every child and to every parent, regardless of the marital status of the parents." (Family Code § 7602.) Further, our state Legislature has explicitly stated that it is the public policy of the state of California that children should have "frequent and continuing contact with both parents ..., and to encourage parents to share the rights and responsibilities of child rearing in order to effect this policy, except where the contact would not be in the best interest of the child." (Family Code Code § 3020(b).) To further this

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public policy objective, the Code sets forth that the first priority of the courts is to give custody to “both parents jointly ... or to either parent. In making an order granting custody to either parent, the court shall consider, among other factors, which parent is more likely to allow the child frequent and continuing contact with the noncustodial parent, ... and shall not prefer a parent as custodian because of that parent's sex.” (Family Code § 3040(a)(1).) What this means, in practical terms, is that a mother who tries to interfere with her baby's relationship with its father risks loss of custody to the father.

Despite these legal imperatives, the reality is that women who become mothers as a result of unintended pregnancies resulting from casual relationships often experience difficulty sharing parenting responsibilities with their babies' fathers. Particularly for women who are nursing, and therefore are intimately engaged with their babies every couple of hours around the clock, the prospect of leaving their babies in the care of men whom the mothers may not particularly like or trust can be extraordinarily challenging. Early psychological intervention is essential in these cases, to assist both parents in coming to terms with the challenges of co-parenting with what may be a relative stranger. Without this early intervention, many unwed mothers will engage in alienating or “gatekeeping” behaviors that can be highly problematic if they later have to appear in court for custody proceedings; and many unwed fathers will give up and allow themselves to be distanced from their children in ways that later may make active parenting challenging or impossible, to the potential detriment of parents and child.

3. What if the Mother is Married to Another Man?

The legal rights of an unwed biological father are much less predictable when the baby's mother is married to another

man. If the mother is married, her husband will be the presumptive father of the child. Whether that presumption is conclusive or rebuttable will depend on whether husband and wife were cohabiting at the time of conception, and on whether the husband is impotent or sterile. (See CA Family Code § 7540; *Michelle W. v. Ronald W.* (1985) 39 Cal.3d 354; *Rodney F. v. Karen M.* (1998) 61 Cal.App.4th 233.) In other words, if the husband had access to his wife at the time of conception, and is physiologically capable of having fathered the child, he will be conclusively presumed to be the father.

If, on the other hand, the woman was not cohabiting with her husband at the time of conception, or if her husband is physiologically unable to conceive a child, the marital presumption is rebuttable. (See CA Family Code § 7611(a).) However, even with the rebuttable presumption, an unwed father lacks standing to challenge the marital presumption unless he has been able to establish himself as the child's presumed father. (*Family Code § 7630; Dawn D. v. Superior Court* (1998) 17 Cal.4th 932.)

What this means, in practical terms, is that a married woman has a right to raise her child with her husband regardless of the way that child was conceived, and regardless of whether she and her husband were cohabiting when the child was conceived, unless and until she allows the child's biological father to establish an actual relationship with the child. Once the biological father and the child have an established parent-child relationship, the father obtains standing under Family Code § 7630(b), as well as having a constitutional liberty interest in a continued relationship with his biological offspring. (For a very thoughtful and complete discourse on the statutory and constitutional issues raised by a scenario such as the one discussed here, see *Brian C. v. Ginger K.* (2000) 77 Cal.App.4th 1198.)

It is worth noting here that most of the cases addressing the marital presumption involve women who already were married to men at the time they conceived extra-marital children. However, for purposes of the rebuttable marital presumption of Family Code § 7611(a), neither the Family Code nor the case law interpreting it appears to distinguish between women who had extra-marital affairs and women who married between conception and childbirth. Family Code § 7611 simply states that: “A man is presumed to be the natural father of a child if ... (a) He and the child's natural mother are or have been married to each other and the child is born during the marriage, or within 300 days after the marriage is terminated by death, annulment, declaration of invalidity, or divorce, or after a judgment of separation is entered by a court.” The plain language of the statute suggests that the key factor is birth during the marriage, not conception during the marriage. In practical terms, this means that a single woman can conceive a child and then marry prior to the child's birth, and thus deprive the child's father of standing to pursue a paternity action. The only way for an unwed father to protect against this eventuality is to file a paternity action as soon as possible after learning of the pregnancy, as once he has filed for paternity he will not lose statutory standing if his baby's mother subsequently married. (See *Fuss v. Superior Court* (1991) 228 Cal.App.3d 556.)

4. What if the Mother is Married to A Woman?

The marital presumptions, discussed above, should apply equally whether the child is born into a marriage between a same-sex couple or a different-sex couple. Further, the presumption should apply to a child born into a state registered domestic partnership equally to a child born into a marriage, as per Family Code § 297.5. Thus, if a woman in a legal same-sex union (whether

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marriage or domestic partnership) has an extra-marital affair with a man, and then returns to her same-sex spouse or partner pregnant, the spouse/partner should be presumed to be the child's second parent and the biological father should lack standing to challenge that presumption unless and until he has an established relationship with the child. (Dawn D. v. Superior Court (1998) 17 Cal.4th 932.)

The use of the word "should" in this section is due to the lack of published case law on the application of the marital presumptions to same-sex couples. However, our state Supreme Court issued an admonition in *Strauss v. Horton* (2009) 46 Cal.4th 364, 411, that "although Proposition 8 eliminates the ability of same-sex couples to enter into an official relationship designated 'marriage,' in all other respects those couples continue to possess, under the state constitutional privacy and due process clauses, 'the core set of basic substantive legal rights and attributes traditionally associated with marriage,' including, 'most fundamentally, the opportunity of an individual to establish—with the person with whom the individual has chosen to share his or her life—an officially recognized and protected family possessing mutual rights and responsibilities and entitled to the same respect and dignity accorded a union traditionally designated as marriage.' ... Like opposite-sex couples, same-sex couples enjoy this protection not as a matter of legislative grace, but of constitutional right." Given this admonition, failure to accord the same weight to marital presumptions for same-sex couples as are accorded to marital presumptions for different-sex couples would be unconstitutional.

There is considerable misinformation circulating in our communities and on the internet about what it means to be a "parent." Sadly, the complexity of California parentage law can add to this confusion, rather than helping clarify it.

It is incumbent on the professionals involved in never-married parent cases – whether attorneys or therapists – to help our clients reach an understanding of their mutual obligations to each other and their children that minimizes the animosity frequently seen in these cases and optimizes the chances that the children's emotional and financial needs will be met.



New Email Address

We invite you to email us at our new email address newsletter@afcc-ca.org with your feedback, reactions, suggestions or thoughts about our newsletter.

We look forward to hearing from you!



Deborah H. Wald
Biography

Deborah H. Wald is the founder of Wald & Thorndal, PC, a full-service family law practice serving the needs of families throughout Northern California. While her law partner Paul Thorndal primarily focuses on Dissolutions, Ms. Wald's primary practice areas include Parentage Litigation, Adoption and Assisted Reproduction Law. Ms. Wald is a member of the Family Law Executive Committee of the State Bar of California (FLEXCOM), and is a fellow of the American Academy of Assisted Reproductive Technology Attorneys and the Academies of California Adoption and Family Formation Lawyers. She also is Chair of the National Family Law Advisory Council for the National Center for Lesbian Rights. She received her B.A. from the University of Massachusetts/Amherst, and her J.D. from Northeastern University School of Law in Boston, Massachusetts.



Reflections on the 50th Anniversary Conference of AFCC

By Kathy Richards, Esq.

The 50th Anniversary Conference at L.A. Live! was my third national AFCC conference over the last four years. It was interesting, inspiring, educational, fun and exhausting. For me it started Tuesday evening with drinks in the lobby bar with colleagues and ended on Saturday morning with workshop 85. Here are a few reflections about what transpired in between and what I learned.

Wednesday was the pre-conference Institutes; I chose Institute 7 - Listening to Children in Divorce Processes: An Effective Semi-structured Interview Model, which was presented by Joan Kelly, Ph.D. This all day institute was one of the main reasons I decided to attend the conference. As an attorney who often represents minors, the opportunity to spend the day with Joan Kelly was too good to pass up. I was not disappointed. Dr. Kelly offered anecdotes from her own experiences as well as research to demonstrate that talking to children about separation and divorce can be helpful to parents, to mediators, to courts and, perhaps most

importantly, to the children themselves. Research shows that 91% of children want some involvement in the process; preferably by talking with family members. A key principle was repeated throughout the day: we are not talking about asking children to express their preference (referred to by Joan Kelly as a "toxic" word) but rather to describe how the separation affects their lives and how much time they get to spend with their parents. As part of the Institute, we also engaged in small group exercises, which provided a bit of levity at my table.

I love the idea of having a structure for interviewing a child; it ensures that important points get covered and it allows the interviewer to really listen instead of focusing on what to ask next. As you will see, the use of checklists resonated for me as I made my way through the conference.

The Opening Reception on Wednesday evening provided the opportunity to network and renew acquaintances from past conferences. The Thursday opening session was enhanced by the appearance

of Abby Cadabby and the Sesame Street video. What a great partnership for AFCC. For me, it was the perfect antidote to the scary scenarios presented by James Steyer from Common Sense Media.

Then I was on to Workshop 5 - Best Interests of the Child Standard: Legal and Psychological Perspectives. The checklist theme reappeared here as Judge Trent Lewis talked about the importance of having unified standards based on positive parenting traits, not negative ones. He stressed the importance of focusing on "the" child at issue - not the mythical child. According to Judge Lewis, the most important sources for what type of evidence is helpful to a Court making a best interests determination are IRMO of Carney and IRMO LaMusga. As an attorney, the take-away for me was the recognition that there are no risk-free choices and it is important to present a wide breadth of evidence on the strengths of each parent and the benefits of those strengths to the child.

I played hooky from workshops the rest of Thursday through Friday morning. My sister and I took in some of the food, culture and sights in the area. A highlight was going to see The Scottsboro Boys at the LA Music Center. We did take time to stop by the California Chapter reception and caught up with some colleagues there.

Friday afternoon brought me to Workshop 51 - Fifty Years of Cognitive Science. The checklist focus here was how checklists are useful tools for evaluators for identifying and mitigating biases in procedures and thinking. The panel discussed the importance of what the Honorable Marjorie Slabach described as "showing your work". The emphasis was on (1) the importance of procedural and cognitive processes that avoid simplified thinking and (2) systematically following protocols so as to avoid jumping to conclusions. As a person who reads custody evaluation reports, I welcome the use of checklists

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that help reduce the likelihood of surprise endings - you know, that moment when you turn to the last page and you are bewildered at the recommendations?

My next stop was Workshop 65 - How Does the Child Gain a Voice? The research presented here that the majority of children want responsibility in the decision making process but not authority dovetailed with Joan Kelly's presentation two days earlier. I have to confess that much of this presentation was over my head and difficult for my attorney brain to understand. However, it was a great example of one of the wonderful things about the national AFCC conference; that is, the opportunity to step out of your own arena and expose your brain to new concepts. "Mentalize" is not a word I had ever heard before and I am not sure I can define it now but listening to the presentation stimulated my brain cells. As minor's counsel, what I came away with was that in this era of emphasis on hearing of the voice of the child, equal, if not more, attention needs to be placed on how much weight to put on that voice.

By the time Friday evening came, I was exhausted. I headed to the reception and silent auction. After perusing the auction items and listening to the excited bidders, I decided I did not have enough energy left for the banquet. I headed back to my room and my book. The next morning on the elevator, I learned that I had missed a really great time.

Workshop 74 - The Nexus Between Parent Deficiencies and Parent-Child Interactions was my next stop. The focus of this presentation was research on the effect of parental deficiencies on three specific parenting skills: nurturing, teaching and co-parenting. David Weinstock and John Moran emphasized that a parent's deficits do not necessarily

equal a lack of parenting skills. Labeling or diagnosing is not the key; the key is whether there is a functional impairment. They described a questionnaire they regularly use with children to help assess whether a parent exhibits any functional impairments. As an attorney, this provides more insight into what to look for in reviewing custody evaluation reports and what questions to ask an evaluator. A questionnaire is not a checklist but provides consistency and meshes with the goal of "showing your work".

The last stop for me was Workshop 85 - Family Restructuring Therapy. As minor's counsel, the dilemma of what to do when a child is estranged from a parent is all too familiar. In my experience, there is often pressure from the estranged parent to force contact with the child. This workshop offered some demonstrations of action focused directive therapy, which I found instructive. Also very helpful was the reminder that there are different types of conflicted families and only some of them are created by an alienating parent.

These few thoughts and comments are my own and not intended to summarize or represent any of the presenters' work. I got what I hoped to get from the conference - lots of food for thought, a renewed energy for my work and continued appreciation for all of the smart and caring people who work with families. I look forward to a good conference in Toronto next year.

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Kathy Richards Esq.
Biography

Kathy Richards received her BA in Sociology from Sonoma State University in 1991 and her JD from Golden Gate University School of Law in 1997. After internships at San Francisco Family Court as well as two different family law offices during law school, she began practicing family law as an associate at Nachlis and Fink. In 2000, she became a solo practitioner. The focus of her practice remains family law. She represents clients in court, in reaching negotiated settlements, and clients who are in mediation; and also provides mediation services.

From 2000 - 2006 she also practiced Dependency Law, representing parents and children. Since 2000 she has represented children by court appointment in family law and, in that time, has represented more than 100 children. Her practice also includes probate guardianships. She has extensive trial experience in both family law and dependency. She has represented clients in complex custody matters involving custody evaluations and trials.

Ms. Richards is a member of a number of professional organizations, including the Association of Family and Conciliation Courts (AFCC); the National Association of Children's Counsel (NACC); the Bar Association of San Francisco (BASF); BASF Family Law Section (former secretary, former vice-chair); and the BASF Legal Referral Panel for Family Law.



AFCC-CA Legislation Update

By
Diane Wasznicky
Chair, Legislative Committee

The CA Chapter has been quite busy on legislation this year, even revisiting a bill that was vetoed last year. Below is a summary of the bills we commented on and their status as of the end of June. The session is not technically over until this fall when the Governor will have time to sign/veto those bills approved by the Legislature. We will update again for the next Newsletter.

This year was also the first year of a two year legislative session so some bills, as you will see, are being held over to allow more time for further comment and drafting. You can review our position letters via the link provided in this issue.

1. AB 251

This bill would have given local courts the ability to utilize electronic reporting in family courts if there were no court reporters available to do this vital task. Our Board supported this bill as noted in our letter. Unfortunately, this bill did not get passed out of committee this year and is now a two-year bill.

2. AB 414

This bill sought to change the existing threshold requirement for seeking grandparent visitation (currently must show a pre-existing relationship with the child). Our Board felt the removal of this language would not be appropriate unless additional language were added for the court to consider whether or not the grandparent had an existing relationship with the child and the reasons/circumstances that may have prevented that or not in the particular case.

We sent a letter outlining our concerns and our position to Support if Amended as indicated. This bill never got out of committee and is now a two year bill so further action may occur next year.

3. AB 522

This bill added language to the statute which now mandates cases be dismissed after five years if they have not been completed. The Board supported the bill which made exceptions for custody,

visitation and personal conduct orders which had been made in a Domestic Violence case. This bill passed through the Legislature already and was signed into law as this Newsletter was going to press.

4. AB 958

This is a bill proposed initially by the Board of Behavioral Sciences. This proposed legislation was discussed by our Chapter President in his column in the last Newsletter, seeking feedback from our members.

This bill proposed to amend the existing process that gives the court the discretion as to whether to release a custody evaluation to the BBS or Board of Psychology when requested. The amended language would have made it mandatory for the court to release the evaluation if requested by the licensing board.

The AFCC Board had serious concerns with this bill and sent a detailed letter outlining those concerns. This bill did not get out of committee and is now a two year bill. We will continue to watch this and review it again as needed.

5. SB 274

This bill is a reincarnation of last year's SB 1476 which was vetoed by the Governor. We opposed SB 1476. After careful consideration and much debate we opposed SB 274. This new version of what is referred to as the "multi-parent" bill is far better than SB 1476 was. However, there were still serious concerns that we had raised with SB 1476 that were not adequately addressed in our opinion.

The bill has passed out of the Judiciary Committees and is currently back in the Appropriations Committee. It is very likely to pass out of the Legislature before the end of the session and go to the Governor's desk. The Board considered whether to do a letter requesting a veto but no consensus was reached so no "veto" letter will be sent.

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