EXEMPLARY MENTAL HEALTH AND SOCIAL SERVICE PROJECTS GUIDE

The mission of the ABA Child Custody and Adoption Pro Bono Project ("The Project") is to design and implement programs and policies that foster children’s well-being, development and safety during custody matters. The Project focuses on pro bono representation of children in divorce, guardianship, adoption, parentage and civil protective order cases.

The Child Custody and Adoption Pro Bono Project is jointly sponsored by the ABA Standing Committee on Pro Bono and Public Service and the ABA Family Law Section. The Project is administered by and housed at the ABA Center for Pro Bono. The Project was established in February 2001 through a grant from Bill and Melita Grunow, in memory of their niece, Ann Liechty, a dedicated child law advocate.

The focus of the Project’s 2005 grant year was to bring mental health and social services to child custody advocacy. Three areas of needs were targeted: (1) the need for more mental health and social service training, mentoring, partnering, consulting and cross-education of legal professionals with mental health or social services professionals; (2) ways for children’s attorneys to tap into free or low-cost mental health or social services for their clients; and (3) development of local mental health or social service resource materials for children’s attorneys with their clients.

Incorporating mental health and social services into child representation is critical to prevent lawyers from representing children in a vacuum. Moreover, holistic advocacy is very important in family and child-involved cases. Mental health and social services
are often what provide children with long-term benefits, well after the legal proceeding has ended. But, many lawyers are not trained or are unfamiliar with the need and/or availability of these services. In higher conflict cases, the child is at a greater risk for physical and emotional abuse. Furthermore, the anger and conflict between parents and other adults may prevent them from focusing on their awareness of their children’s needs. Attorneys working with children should be trained to identify their client’s emotional distress needs and be able to advocate for proper interventions.

This “Mental Health and Social Services Guide” describes the project information for the five programs that were awarded grant funding in 2005 from the ABA Child Custody and Adoption Pro Bono Project. Additionally, the Guide includes other ideas for incorporating mental health or social services into representing children in the legal system.

We hope that this Guide will prompt increased conversation and action to bring more mental health and social service awareness and services to children’s legal representation, as well as enhance networking among programs doing and wishing to do exactly that.

This Guide and all of the referenced supplemental materials are available on the ABA Child Custody and Adoption Pro Bono Project’s website, www.abachildcustodyproject.org.
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The 2005 ABA Child Custody and Adoption Pro Bono Project Grant Recipients
CHILDREN’S LEGAL SERVICES, HOUSTON

PROGRAM DESCRIPTION

The mission and focus of Children’s Legal Services, (CLS), of Houston is to provide zealous and informed legal advocacy to children who are involved in the legal process. CLS is a not-for-profit 501(c)3 organization providing multidisciplinary training for lawyers and other professionals working with traumatized and maltreated children trapped in the legal system. In addition, CLS is appointed by the juvenile and family courts as pro bono attorneys representing children in dependency and domestic violence cases.

CLS seeks to provide resource information to lawyers and other child welfare organizations, provide legal assistance with legal research in areas of child welfare and offer training materials designed to increase knowledge, awareness and effective advocacy for children.

MENTAL HEALTH PROJECT DESCRIPTION

CLS partnered with the University of Houston Forensic Psychology Services, “UH FPS”, to provide mental health evaluations and services to children in custody cases for free or very minimal costs. They collaborated to set up legal and mental health referrals. UH FPS conducted research and developed protocols for parents with children. CLS also met with Family Courts to obtain referrals for legal and mental health services and discussed project goals. CLS had follow-up contact with the court and judges for referrals and created an Order Appointing Amicus and referral.
Initially, UH FPS and CLS met with local family court judges to discuss the program and how the project could provide assistance to the court and children with special mental health issues. In addition, protocols, including a manual for parents to help their children transition through the divorce, an appointment process, a referral/intake system and an “Order Appointing Amicus” were presented to the court. CLS also created various law student volunteer case management forms including initial case information sheets and needs assessment for referral purposes. Further, they created a law student volunteer case information/training information packet. CLS had roundtable discussions with a South Texas College of Law student volunteer group on pro bono opportunities through the pro bono honors project. They met with law student volunteers on case assignment, case strategy, conducting interviews, records and requests, drafting and requesting discovery, referral resources, and updating the resource lists from various advocacy organizations. CLS law student volunteers created a referral network as a uniform data base including twenty-two different local resources. In turn, CLS created a uniform training program for law students with the use of the training materials from the ABA Child Custody and Adoption Pro Bono Project. Finally, CLS participated in a seminar hosted by Phi Alpha Delta law fraternity at South Texas College of Law on children’s legal issues and community services. The target audience was youth from area Houston junior and senior high schools. Topics included domestic violence, health care, juvenile law, housing and consumer law and access to health care information.

CLS sponsored a training program in June 2005 in which thirty lawyers and law students participated. Topics at the training included: working with agencies, ethical
issues for mental health professionals and attorneys, respective duties and responsibilities, and zealous advocacy. The manual for the training included: questionnaires, release forms, sample pleadings and forms, case contact information, case notes, required statutes, the ABA Standards, sample letters and a resource referral list.

CLS also evaluated cases for referral to local community services groups for additional assistance including: food stamps, social security, TANF, GED classes, domestic violence counseling, conflict resolution, parenting classes and special education.

CLS uses the following referral resources for its cases: SAFE program; Office of the Attorney General, Victim Assistance Office; Bay Turning Point, Humble Area Assist Ministries, Houston Area Women’s Center, YMCA, Salvation Army, Children Cope, ESCAPE, DePelchin, Harris County CPS, Children’s Assessment Center, Aid to Victims of Domestic Abuse BIPP program, Houston Community College Workforce Development, Lone Star Legal Aid, Houston Volunteer Lawyers, Harris County Dispute Resolution, Texas Children’s Hospital, (ChiPs program), Southwest Defender Program—special education Equal Justice Works Program, Katy Christian Ministries, and Neighborhood Centers.

**CHILDREN THE PROJECT SERVES**

Nine children between the ages of three and sixteen have been served pursuant to the project so far. The children served in the cases have been involved in domestic violence, child physical and sexual abuse and the murder of one parent by the other. Attorneys have reviewed the children’s court files and filed appropriate pleadings,
conducted an assessment of the child’s needs and researched case law and CLE materials as necessary on a case by case basis. Furthermore, the attorneys interviewed children, parents, caregivers, relatives, school officials, friends, day care, law enforcement and child protective services workers regarding the child and the parents. They requested the medical and education records of the child. The attorneys also conducted initial and follow-up home visits, including contact before each court hearing. They conducted telephone and e-mail conferences with parents and other attorneys working on the case, they provided resource referral information to parents and caregivers and provided additional resource information for treatment, if available.

PROFESSIONALS INVOLVED IN THE PROJECT

In addition to the staff and attorneys working with the program, a group of seven law student intern volunteers, seven graduate student intern volunteers and various social service groups, legal providers and child advocacy organizations have committed to serve children on a pro bono basis through the funded project.

A PROJECT CASE

In one particular case in this program, the mental health services provided to the children were crucial in identifying the needs of the children. CLS found that the mother was not going to make efforts to change or improve her ability to parent. Therefore, instead of focusing on the parents in the case, CLS focused on developing skills for the children to use and appropriate therapy to address their emotional needs.
CHALLENGES FACED BY THE PROJECT

CLS had difficulty getting referrals from the court. They were not able to serve the children they had projected at the initiation of the project. CLS also had problems educating the court on the protocols and procedures for referral. Some of the issues that prevented referrals were: 1) the referrals received did not meet the protocol criteria, 2) the child was already receiving mental health services, 3) the parent/caregiver had insurance or additional resources for mental health assistance, or 4) the child was over the age criteria set forth in the protocols.

Furthermore, CLS had difficulty recruiting pro bono attorneys to take child cases. CLS reported that the Houston Bar Association has attempted to address this issue with little success. As a result, CLS was not able to recruit as many lawyers as they had hoped.

CLS had problems tracking the information for referral resources due to the large number of resources available. CLS provided the parents with a general resource list and followed with additional specific referrals. Also, CLS had difficulty updating the referral resource guide. They did not anticipate the voluminous nature of the project and have not been able to create a database that could be easily updated.

NEEDS ADDRESSED BY THE PROJECT

CLS had come to see a great need for more training, mentoring, partnering, consulting and education for pro bono attorneys or pro bono program staff attorneys. Additionally, CLS needed more avenues for attorneys to access free or low-cost mental
health or social services for child clients. Third, CLS saw a need for developing local mental health or social service resource materials.

ADVICE FOR PROGRAMS WHO WISH TO REPLICATE THE PROJECT

For programs who wish to replicate CLS’s project, they suggest that programs develop the project with the court or individual judge before launching this type of project. Also, CLS advises that programs set clear, written roles and protocols with all of the stakeholders signing off on a collaborative partnership, and establish a defined system for tracking referrals. Lastly, they recommend that programs set small key goals with qualitative and quantitative measures.

In order to make the project replicable by other local, state or national entities, the Houston Bar Association in conjunction with the Aid to Victims of Domestic Abuse is working on an Amicus Attorney Program. CLS is also looking at developing a clinical program at South Texas College of Law. Finally, the Mental Health Association of Houston is researching with other child advocacy groups the possibility of a mental health project.

BUDGET INFORMATION

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<td>• South Texas Fundraiser $1,000</td>
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<td>• General Operating $29,500</td>
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administrative and staff support

- $600 for office space
- $1,000 for travel, parking and misc.
litigation costs
- $100 for office supplies
- $28,800 for Pro Bono Attorney
  hours (288 hours at $100 an hour)

CONTACT INFORMATION

For further information regarding CLS’s project, contact the program director, Barbara Stalder 713-652-3814. Barbara can also be reached at bjstalder@yahoo.com or at Children’s Legal Services, 1415 Fannin, Suite 300, Houston, TX, 77056. The current status of the Houston project may have changed since the date this Guide was published. If you have any difficulty reaching Barbara, or have comments, questions, or concerns, please see the ABA Project’s website, www.abachildcustodyproject.org to locate current ABA contacts.

MATERIALS AVAILABLE

- Family Transition Solutions Child Manual
- Family Transition Solutions Parent Manual
MONTANA LEGAL SERVICES ASSOCIATION

PROGRAM DESCRIPTION

Montana Legal Services Association (MLSA) is a statewide agency providing access to justice for low income individuals in need of civil legal assistance. MLSA’s client services include attorney advice; representation through a pro bono attorney; support from a self-help clinic; pro se materials; referral to the MLSA family law mediation program; and access to an information website.

MLSA conducts an extensive family law practice in recognition of the vulnerability of Montana families to problems which require legal assistance for resolution. MLSA priorities include family law legal assistance in cases of marriage dissolution, parenting plans and orders of protection. MLSA manages or provides referrals for most of the local pro bono programs in Montana. Accordingly, MLSA prioritizes support for attorneys who provide pro bono service in the area of family law. MLSA locates and assigns pro bono attorneys for children in custody cases when requested by the court, including divorce, parenting plan and civil protective order cases.

MENTAL HEALTH PROJECT DESCRIPTION

MLSA developed the Montana Child Custody Pro Bono Project attorney training packet to address the need for mental health consideration in legal representation of children in custody and parenting plan actions. The emphasis of the project is to increase attorney understanding and knowledge of how family transitions impact children, and how to recognize a child client’s mental health issues. The result of the project is a training packet for Montana attorneys who volunteer to represent children in custody and
parenting plan actions. MLSA collaborated with attorneys, judges, a physician and mental health professionals to create written materials and a video for attorneys who represent children in both custody and parenting plan actions.

Chapter I of the materials includes basic legal information that pertains to representing a child client and a *Child Warning Signs Guide*. The project director conducted individual and collaborative meetings to produce a *Child Warning Signs Guide* for Montana attorneys. A.W.A.R.E., a statewide children’s mental health provider in Montana, partnered with MLSA on the project by providing children’s mental health resources and professional consulting. *The Child Warning Signs Guide* describes particular indicators, differentiated by a child’s age, which may suggest that a child client is at risk for mental health difficulties. In addition, the materials include a statewide resource list of children’s mental health agencies in Montana.

Chapter II of the *Montana Child Custody Pro Bono Project* emphasizes skills specific to working effectively with a child client. The chapter focuses on specific communication skills and advocates for a child-centered residential schedule for each child. The First Judicial District of Montana provided a Power-Point presentation entitled “Children First” to include in the training materials, which helps parents understand their child’s needs throughout the divorce.

The training materials include an appendix which includes relevant Montana statutes, Montana Model Rules of Conduct, two relevant Montana cases, the ABA Standards of Practice for Lawyers Representing Children in Custody Cases and the 2006 draft of the Uniform Representation of Children in Abuse and Neglect and Custody
Proceedings Act. In addition, there is a bibliography of both legal and mental health sources for the *Montana Child Custody Pro Bono Project* research.

Finally, a 35 minute DVD accompanies the written materials. MLSA worked with Vid-Tek Productions in Helena Montana to develop the DVD which is narrated by Brian Morris, a Montana Supreme Court Justice. The DVD follows the same two chapters as the written materials. The participation of a Supreme Court Justice encourages Montana attorneys to seriously consider the training. Vid-Tek strongly emphasizes the importance of portraying the human interest inherent in training lawyers to represent children. Therefore, the video includes two child actors in scenes with attorneys and several playground scenes. Furthermore, the video contains interviews with three district judges, an attorney experienced in child custody representation and Dr. Ira Lourie, child psychiatrist and medical director of A.W.A.R.E. MLSA anticipates the Montana State Bar to approve three continuing legal education credits for the training.

**CHILDREN THE PROJECT SERVES**

The goal of the Montana Child Custody Pro Bono Project is to provide pro bono legal representation for children involved in child custody or parenting plan actions in Montana District Courts. Cases are identified through the MLSA intake process.

**PROFESSIONALS INVOLVED IN THE PROJECT**

MLSA, as the sole statewide source of pro bono family law services for low income Montana citizens, currently lists sixty-five attorneys as willing to represent children in dissolution and parenting plan actions. MLSA expects that once the video
and training materials are more readily available, MLSA will be able to recruit more pro bono attorneys for this work.

A PROJECT CASE

As of the print time for this Guide, MLSA was not currently able to provide information about a case handled pursuant to the grant because the training materials had not been distributed to attorneys who are interested working with the project.

CHALLENGES FACED BY THE PROJECT

MLSA encountered some obstacles while working on their project. First, MLSA had difficulty persuading mental health providers to promote an assessment tool which did not require scoring by a trained, licensed professional. Additionally, attorneys were apprehensive about the ramifications of attempting to directly assess a child client’s well-being. Some of the attorneys’ concerns included questions about competencies required by a mental health assessment, access to both parents’ information about a child client, and rules of evidence pertaining to discovery. The mutual concern about blending professional competencies was a catalyst for a shift in the planned project.

Initially, the assessment segment of the project involved providing attorney education about a range of child mental health assessment tools. Later, however, the professionals contributing to the project shifted their focus from education about an existing screening assessment tool toward developing a “Warning Signs” check list for attorneys who represent children. Education regarding screenings and tools most
appropriately administered by a licensed mental health provider was considered by project contributors too far removed from the legal practice of representing children.

However, mental health and legal professionals agreed that attorneys representing children are appropriately situated in the case to observe signs or symptoms that their young clients may be distressed beyond the range of normal response to parental conflict. This idea developed into producing a specific guide for children’s mental health information and referrals which would provide resources for Montana attorneys who may need access to or collaboration with a child mental health specialist.

A second obstacle MLSA encountered was the need for basic information about how to communicate with children. Attorneys and mental health providers jointly identified the need for some basic information about how to communicate with children. In response, the project director expanded the training packet resources to include information about how children use language to describe their experiences and to comprehend abstract concepts such as time and kinship which may be related to their representation.

A third obstacle faced by MSLA was the blending of representation and guardian ad litem roles in the state of Montana. The ABA Standards of Practice for Attorneys Representing Children in Custody Cases recommend that the role of an attorney be clarified immediately upon appointment, but attorneys in practice in Montana were divided on the issue of clarification of roles. The confusion is accentuated by the courts because some judicial districts, as a matter of course, allow the blending of attorney and guardian ad litem roles. MSLA reported that one of the most compelling problems is the reality of scarce resources for child representation in the rural parts of Montana where
professionals recognize that a blending of responsibilities is simply a reality of practice. This distinction led to interesting discussions among the professionals regarding the appropriate role for an attorney, with reluctance to insist on pure attorney representation because of the risk of the court declining to give any representation or voice.

The final obstacle MLSA encountered was producing the training video. MLSA discovered that the process requiring design, writing, taping and editing the DVD was intensive and complex. The creation of the script for the video which supports and emphasizes the written training materials mandated an additional component for the project and required script writing skills. Vid-Tek Productions specializes in working with non-profit agencies to make video programs available for less cost than private sector companies. However, it became very clear that the evolved MLSA video project was more expensive than originally anticipated. Fortunately, both A.W.A.R.E. and the local child therapist donated some time to the project and were able to re-configure the budget to give Vid-Tek additional resources and improve the quality of the video training. Also, the steps to produce a video are a parallel, simultaneous, project which meant that the work was doubled. Each element of the written materials was adapted or redesigned for the video production, which proved to be time intensive. Furthermore, MLSA learned that the skill set to produce a video differs from the skill set readily available in a public interest non-profit agency. The video production required the project director to be available to work extensively with the videographer and an Americorps VISTA volunteer placed at the Montana Supreme Court with script writing experience.
NEEDS ADDRESSED BY THE PROJECT

MLSA identified a great need for more training, mentoring, partnering, consulting and education for pro bono attorneys or pro bono program staff attorneys. Additionally, MLSA needed more avenues for attorneys to access free or low-cost mental health or social services for child clients. Third, MLSA saw a need for developing local mental health or social service resource materials.

ADVICE FOR PROGRAMS WHO WISH TO REPLICATE THE PROJECT

MLSA took three steps to make their project replicable by other local, state or national entities. First, each task or action is delineated in outline form for distribution to entities that may want to replicate the project. Second, the ABA Standards for Representing Children are included in the packet and are a sound foundation for the addition of specific state or local standards in other geographic areas. Third, the literature review and research conducted for the project is broad and drawn from professional juried journals. The bibliography is included in the packet.

MLSA advises programs that they may have difficulty changing long-established practices to fit advocating for the child. MLSA also warns programs to expect apprehension about professional competencies and how representing children requires a broadening of traditional professional competencies for attorneys.

MLSA suggests that programs obtain a diverse group of professionals to collaborate on their project including judges, attorneys, child welfare clinicians and mental health professionals to determine ways to best represent children. MLSA’s project necessitated collaboration between attorneys and mental health professionals.
which were groups that do not have a natural affinity. MLSA found that there are assumptions and stereotypes which may have to be addressed during the course of the project, and it may be the mental health professionals who are the most entrenched.

**BUDGET INFORMATION** (ABA Grant information only)

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<td>• $79 for the training binders</td>
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**CONTACT INFORMATION**

The contact for information regarding MLSA’s 2005 ABA Child Custody and Adoption Pro Bono Project is:

Dana Toole – Project Director  
616 Helena Ave, Ste. 100  
Helena, MT 59601  
406-442-9830, ext. 21.  
dtoole@mtlsa.org
MATERIALS AVAILABLE

• Written Materials:
  1. Introduction: Welcome Letter, Brook’s Quote (*Creighton Law Review*), Special Thanks
  2. Chapter One: Representing Children—what attorneys need to know
  3. Chapter Two: Child Clients—how to meet specific needs of a child client
  4. Appendix
  5. Bibliography
  6. Children’s First Power Point Presentation
  7. Front Labels

• Montana Child Custody Pro Bono Project DVD (35:52 minutes) which accompanies and supports written training materials.
COMMUNITY JUSTICE INC., WISCONSIN

PROGRAM DESCRIPTION

Community Justice Inc., (CJI), partnered with the Rainbow Project to fulfill the goals of their project. CJI is a non-profit public interest law firm with four staff attorneys. The focus of CJI is to provide broad-range civil legal services to low-income individuals up to 300% of the Federal Poverty Guideline (FPG) on a sliding fee scale relative to income. CJI’s mission also includes community collaboration and education.

CJI receives a large number of referrals from Wisconsin’s legal service corporation, which estimates that due to financial constraints, it is unable to serve approximately 80% of eligible clients even by its modest eligibility criteria of 125% of the FPG. CJI provides legal services in a broad range of substantive areas, including landlord-tenant, employment, disability and mental health, discrimination, consumer and public benefits. However, approximately 50% of intakes are for family law matters, including divorce, child custody, child support, child welfare, domestic violence, injunctions, adoptions and guardianships. CJI has two staff attorneys whose practice is primarily dedicated to family law.

The Rainbow Project is a non-profit mental health agency, with ten full and part-time staff. All clinical staff have master’s level or above training in social work, education psychology, or counseling psychology. This mission of the Rainbow Project is to serve children who have been victims of child abuse, neglect or sexual abuse, witnesses to domestic violence, or identified as “at risk” coming from families where stress factors in the home environment indicate a high potential for abuse. The Rainbow Project provides short and long term individual counseling, comprehensive assessments,
in-home family treatment, field sessions to help children ease transitions to day care, school programs or foster care, parent education, advocacy, and follow-up and evaluation services for past clients. The Rainbow Project also has a separate prevention program and is actively involved in a community education and interagency coordination to promote awareness, information and training on the effects of child abuse and domestic violence.

MENTAL HEALTH PROJECT DESCRIPTION

To address the needs for providing legal services to children who disclose abuse during the divorce process and to children seeking civil protective relief, CJI developed resource materials and conducted trainings for attorneys and mental health practitioners.

The first half-day training sponsored by CJI was held on December 2, 2005 for attorneys and mental health practitioners on child abuse injunctions and related issues. Fifty-six people attended the training and eleven attorneys filled out applications to take a pro bono case through the project. Lunch and Continuing Legal Education (CLE) credits were provided. Also, several other attorneys expressed an interest and commitment to the project.

Resource materials were developed for and distributed at the training. The director of Child Advocacy at the Task Force on Family Violence, Cyrus Behroozi, J.D., discussed the law surrounding child abuse injunctions in Wisconsin. The Director of training for the residency program in Child and Adolescent Psychiatry at the University of Wisconsin-Madison, and consulting psychiatrist to the Rainbow Project, Hugh
Johnston, M.D., discussed his outline: “Mental Health Issues: Child Abuse Disclosures in the Context of Divorce.”

Also at the training, the Rainbow Project distributed materials including information regarding indicators of sexual abuse and the impact of trauma on children. Furthermore, resource materials from other community agencies on related issues were also distributed to the participants.

The Rainbow Project had a second, more informal, “brown bag” scheduled for April 21, 2006. But due to an emergency, their speaker cancelled. CJI and The Rainbow Project are applying for local funding to continue the programs either twice a year or quarterly during 2006-2007.

CJI also conducted recruitment efforts by developing a referral base and identifying attorneys interested in representing children through the project. They developed intake forms and a volunteer attorney application to process referrals.

**CHILDREN THE PROJECT SERVES**

To date, one child has been directly served by the funded project. Despite the low number of children served thus far, CJI believes that their training produced an important indirect impact by providing a forum for professionals to connect with one another and improve their practice on behalf of children. Furthermore, this training recruited and trained attorneys for child abuse injunction cases and child custody cases involving child abuse. Children have benefited through the project by: 1) training professionals who will serve them; 2) providing better communication among service providers; and 3) distributing resource materials for the community.
PROFESSIONALS INVOLVED IN THE PROJECT

One volunteer attorney and three CJI staff attorneys served children on a pro bono basis through the funded project. Fourteen attorneys, one in addition to CJI staff, committed to serve children on a pro bono basis through the project. One mental health/social work professional, in addition to Rainbow staff, agreed to serve children on behalf of the project. There is also a significant interest among law students and several judges who attended the training to serve children through the project. A UW law student, Regan Quick-Severin, 3L, has been named the recipient of the Dane County Bar Association (DCBA) Law Student Pro Bono Award for her services over the past year to CJI. Sarah Helvey, director of the CJI project, was also recognized for her work in providing legal services to low-income and unrepresented individuals.

A PROJECT CASE

Through its project, CJI learned the value of bringing mental health services into child representation, especially in cases of child sexual abuse. In one such case a five-year-old child began to act out sexually and disclosed sexual abuse committed by his father. The mother of the child came to CJI concerned about allowing unsupervised visits with the child’s father in light of their recent separation and pending divorce action. A volunteer attorney agreed to provide representation in the child abuse injunction on a pro bono basis and a CJI staff attorney agreed to provide representation to the mother in the divorce case on a sliding fee scale. The child abuse injunction case was dismissed without prejudice due to a change of venue issue and the client, who was indigent and was unable to afford even CJI’s reduced rate for the divorce case. Nevertheless, CJI
provided a valuable two-hour consultation to the client and a referral to the local Legal Service Corporation. The child continued to receive mental health services through the Rainbow Project to address the issues related to the disclosure of sexual abuse. This case shows the value of incorporating mental health services into child representation.

**CHALLENGES FACED BY THE PROJECT**

CJI found that start up time for recruiting attorneys took longer than anticipated. However, they have begun and continue to develop the referral base and are establishing themselves as a resource in the community. CJI will continue the pro bono component as cases become available through intake. They also intend to continue efforts with community partners to establish more restraining order resources in Dane County.

**NEEDS ADDRESSED BY THE PROJECT**

CJI had come to see a great need for more training, mentoring, partnering, consulting and education for pro bono attorneys or pro bono program staff attorneys. Additionally, CJI needed more avenues for attorneys to access free or low-cost mental health or social services for child clients. Third, CJI saw a need for developing local mental health or social service resource materials.

**ADVICE FOR PROGRAMS WHO WISH TO REPLICATE THE PROJECT**

CJI’s resource materials are available for replication by other local, state or national entities. All forms and information developed for their project will be available to other entities for replication purposes.
CJI would advise other programs wanting to replicate this project to broaden their scope. Child abuse injunctions in the context of divorce are a very specific issue. Children and families facing abuse need representation and mental health services in a variety of capacities and services should not be limited by a project that is too narrowly defined.

Secondly CJI would advise other programs, as they have done, to reach out to partnering organizations, individual legal and mental health practitioners and judges to address local issues. Simply starting the conversation and creating a forum and coalition of interested individuals and agencies has been healthy for their community and the children in it.

**BUDGET INFORMATION**

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<tr>
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<th>COMMUNITY JUSTICE, INC.</th>
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<td>• $2328.67: in-kind contribution from CJI</td>
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<td>• $1,500: development and cost of training/resource materials, staff time for training, consultation</td>
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<td>• $100: cost of PR for training</td>
<td>• $1,000: for second training—to be rescheduled</td>
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<td>• $167.80: lunch at training</td>
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<td></td>
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<td>$2,328.67: Project Director’s time</td>
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<td><strong>TOTAL</strong></td>
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**CONTACT INFORMATION**

For more information regarding CJI’s 2005 grant, contact Sharyl Kato at the Rainbow Project. Sharyl can be reached at 608-255-7356, ext 21 or at skato@therainbowproject.net. The current status of the Wisconsin project may have changed since the date this Guide was published. If you have any difficulty reaching Sarah, or have comments, questions, or concerns, please see the Project’s website, www.abachildcustodyproject.org to locate current ABA staff contacts.

**MATERIALS AVAILABLE**

- Training announcement
- Training registration form
- Volunteer lawyer application form
- CLPP Supporter Form
- Intake Form
- Training Evaluation
- Conference Handouts

1. Child Abuse Injunctions in Wisconsin, Cyrus Behroozi, J.D.
2. Mental Health Issues: Child Abuse Disclosures in the Context of Divorce, Hugh Johnston, M.D.
3. Rainbow Project Handout

• Court Forms

1. Petition in Juvenile Court for Temporary Restraining Order and/or Injunction (Child Abuse)

2. Notice of Hearing for Temporary Restraining Order (Child Abuse)

3. Injunction (Child Abuse)
KANSAS LEGAL SERVICES

PROGRAM DESCRIPTION

Kansas Legal Services (KLS) is a statewide non-profit organization dedicated to helping Kansas citizens meet their basic needs through the provision of essential legal, mediation, and employment training services. KLS was formed in 1977 to make legal assistance more widely available to the poor. Since then KLS has progressively focused its efforts on special needs individuals such as victims of domestic violence, the homeless, the elderly, farmers, people with disabling conditions, children in foster care and their families and people who need basic life skills and employment training. KLS strives to eliminate the causes of poverty and mitigate its effects by helping individuals achieve and maintain self-sufficiency and family supporting employment.

KLS serves more than 25,000 individuals in all 105 Kansas counties through thirteen legal services, two mediation and six employment training offices located across the state.

MENTAL HEALTH PROJECT DESCRIPTION

To address the need for representation and support of children in custody cases, KLS’s project involves two components: 1) an interactive sourcebook for youth aged 6 to 14, to encourage youth to work through emotional and mental health issues that may arise from their experiences in custody court proceedings and 2) training sessions for Guardian Ad Litem (GAL) attorneys and mediators on how to use the sourcebook with children involved in custody cases and how to help youth access services and information.
The sourcebook is entitled “Being a Kid Isn’t Easy” and is directed to children in divorce proceedings. It includes activities to familiarize children with court personnel; “how to” activities dealing with anger, confusion and other emotions; and education on expectations and feelings and ways to express themselves in the legal process. This sourcebook has been used at four GAL Trainings in Dodge City, Lawrence, Salina and Wichita, Kansas. Dr. Jane Adams, a children’s mental health professional, was consulted in the development of the sourcebook and presented at each of the GAL trainings. Dr. Adams also presented at GAL trainings on children’s mental health and mental health resources in Kansas. Dr. Adams is the director of Keys for Networking, an advocacy agency for children with serious emotional disorders (SED) and their families. Keys for Networking is also the U.S. Department of Education’s Parent Information and Resource Center in Kansas.

Additionally, Washburn University Law School students helped develop the sourcebook and assisted in placing the sourcebook on the KLS website. www.kansaslegalservices.org.

The four trainings presented for Guardians Ad Litem, attorneys and mediators covered how to use the sourcebooks with children involved in custody cases and how to help youth access mental health services and information. KLS organized the trainings around topics including: children’s mental health issues, advocacy and disability; the criminalization of disability; roles and responsibilities of attorneys; and foster care’s impact on youth. Evaluation surveys from the trainings show that the participants felt that the training was effective and worth their time and that the learning objectives of the training were clearly expressed and clearly achieved.
CHILDREN THE PROJECT SERVES

The children served by the program thus far are those who have been represented by GALs and other attorneys in Kansas, including KLS attorneys in all types of cases in which children are involved. GALs/attorneys were trained in using the sourcebooks with their clients as an introduction to referring them to services in their geographic locale. Referral sources include courts in Kansas, child welfare agencies, social service agencies, and community health centers. The sourcebooks have been and will continue to be distributed as requested by the referring entities. No income guidelines are required for the book distribution. The clients of GALs have no income qualifications as they are appointed when the court deems it appropriate.

PROFESSIONALS INVOLVED IN THE PROJECT

Approximately 200 professionals received the first run of the sourcebook. KLS distributes the sourcebook at their Children’s Advocacy Resource Center, through its pro bono panel as well to the advisory boards of the 13 individual KLS legal services field offices. KLS also will distribute the sourcebook at future Guardian ad Litem trainings, legal aid organizations, to SRS offices across the state, to private attorneys—particularly those who work with pro bono clients, family resource centers, and other counseling agencies who work with children, the Supportive Families Community Action team in Topeka and on the KLS website.
A PROJECT CASE

KLS is not handling any cases pursuant to the grant because this project did not involve direct representation of children. However, numerous attorneys have already used the sourcebook that was distributed at the GAL trainings, and one attorney requested twenty additional copies for a case-related issue.

CHALLENGES FACED BY THE PROJECT

KLS felt that they did not make sufficiently clear, at the outset, the goals that they expected the sourcebook to address. Because of that, significant revisions of the sourcebook were needed.

NEEDS ADDRESSED BY THE PROJECT

KLS had come to see a great need for more training, mentoring, partnering, consulting and education for pro bono attorneys. Additionally, KLS identified the attorneys’ need to access free or low-cost mental health or social services for child clients. Third, KLS saw a need for developing local mental health or social service resource materials.

ADVICE FOR PROGRAMS WHO WISH TO REPLICATE THE PROJECT

Other local state or national entities are free to replicate the KLS sourcebooks. If an agency wants to write its own sourcebook, KLS suggests the following steps:

1. Conduct a review of similar publications (if any exist) for children going through the court process.
2. Research books/articles and studies of children's mental health issues regarding trauma, divorce, family upheaval, etc.

3. Consult with experts in children's mental health on effective and sensitive ways to communicate with children in trauma.

4. Write the book.

5. Have the book reviewed by children's mental health experts prior to field-testing.

6. Field-test the book with children and the professionals who work with them.

7. Gather as much feedback as possible.

8. Revise the book using the feedback.


10. Revise the book.

11. Print, distribute and place on website.

BUDGET INFORMATION

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<thead>
<tr>
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<td>• $3,152.00—Publication of 1,600 soft cover books at $1.97 each</td>
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<td>• Approximately 150-200 staff in-kind contribution hours</td>
<td>• $1,200—Children’s mental health consultant/reviewer and presenter at 4 trainings</td>
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CONTACT INFORMATION

For further information regarding KLS’s sourcebooks, contact Tom Stratton, Project Director, Kansas Legal Services-Topeka, 712 S. Kansas Ave., Suite 201, Topeka KS, 66603. Tom can also be reached at 785-354-8531 and at strattont@klsinc.org.

MATERIALS AVAILABLE

• “Being a Kid Isn’t Easy.” Sourcebook. (The sourcebook will be available by request from KLS and also on its website: www.kansaslegalservices.org)

• Jane Adams Bibliography

• GAL brochure

• GAL training agenda

• GAL training evaluations from sessions one, two, three and four
THE PRO BONO PROJECT’S CHILDREN’S LAW PROGRAM, LOUISIANA

PROGRAM DESCRIPTION

The Pro Bono Project, “PBP”, was established in 1986 by the Louisiana Bar Foundation to provide free civil legal services to the poor through the use of pro bono attorneys. PBP’s mission is to provide free quality civil legal services to the poor by engaging volunteer attorneys to render pro bono services.

The Pro Bono Project mobilizes members of the private Bar to provide pro bono legal services in civil matters to individuals whose incomes are at or below the federal poverty level. Since Hurricane Katrina, to make up for the shortfall of volunteer attorneys available (since many attorneys are dealing with their own post-hurricane problems) PBP has fortified itself with 3.5 full-time attorneys, in addition to a legion of volunteer students, interns, and out-of-state volunteer attorneys who have come to assist for differing periods of time. In normal times, PBP has only 1.5 attorneys on staff.

PBP has well-established, long-standing mutual referral relationships with numerous social service and poverty law legal services providers in the community, including New Orleans Legal Assistance, the Legal Aid Bureau, Loyola and Tulane Law School Clinics and the Advocacy Center for the Elderly and Disabled. Collaboration among legal services agencies serving indigent populations is common protocol. PBP differs from agencies with similar missions in that the Project utilizes a volunteer, rather than a staff-based model.
MENTAL HEALTH PROJECT DESCRIPTION

The ABA-funded project is intended to identify mental health services for children in disputed custody cases, to train their attorneys in the needs they and their families may be experiencing, and to provide some of these needs in the form of custody evaluations carried out by supervised social work students.

The American Bar Association has agreed to allow the Children’s Law Program to extend the grant period through April 30, 2007. The purpose of this extension is to allow the New Orleans Pro Bono Project additional time to implement the grant due to unforeseen circumstances and effects from Hurricane Katrina.

CHILDREN THE PROJECT SERVES

The demographics of the target children are not clear since Hurricane Katrina devastated the city and its inhabitants. The projections as to how many people will return, who will return, and when, change on a weekly basis. The children are intended to be of any age or race, but they will all be members of indigent families, most of whom do not already have legal representation of any type. The racial composition of Orleans Parish before Hurricane Katrina was 65% African-American and 35% Caucasian.

The cases the children are involved in are primarily ones in which neither parent has counsel but the parties are unable to reach agreement on custody or visitation issues. The Pro Bono Project then will assist in drafting a consent agreement. In other cases, the court will ask for PBP’s intervention because a custody evaluation is needed but the parties cannot afford to pay for it. In rare cases, The PBP will be involved even though the parents are represented, because the custody dispute is particularly acrimonious or
allegations of sexual abuse have been lodged, and the court has seen fit to appoint separate counsel for the child.

In all cases, The PBP will condition its assistance on children receiving mental health services as needed, and on using attorneys who have received training in the mental health issues involved in custody disputes.

PROFESSIONALS INVOLVED IN THE PROJECT

The PBP children’s project uses two highly experienced social workers, one of whom specializes in child development and the other in custody evaluations. To a limited extent, the social worker who has been acting for several years as a consultant to The Pro Bono Project Child In Need of Care cases (abuse and neglect) will also participate.

These two individuals are negotiating now to leverage the assistance of the Schools of Social Work at local universities, to have students trained and supervised to carry out custody evaluations. They will participate in this in-school training. An agreement in principle has been reached on this, but the details are yet to be determined.

These individuals also will, as a team with the Child Advocate Attorney at The Pro Bono Project, deliver the training for volunteer attorneys.

A local non-profit agency will deliver the arts-based expressive and therapeutic workshops for the parents and the children themselves, as it has been doing for several courts in this region for a number of years. Families must make a token payment to the agency for these workshops.
A number of local mental health service agencies, ideally, would meet some of the needs for family or one-on-one counseling identified in the course of the ABA project, but current circumstances suggest that this will not be possible. The needs are currently enormous for free or low-cost services and the waiting lists are apparently endless.

The volunteer attorneys are the other set of professionals involved.

A PROJECT CASE

The PBP project has not yet launched its operations, so it has no examples to provide at this time.

CHALLENGES FACED BY THE PROJECT

The ABA project’s biggest challenges are the lack of free or low-cost mental health services and custody evaluations available to clients. This situation was dire before Hurricane Katrina but it has gotten, if possible, worse since then as many mental health professionals, of all types and providing services at different levels of cost, have left the city. For the immediate future, in all likelihood, the PBP project will have to provide all the custody evaluations required in the cases it works with and will see important mental health therapy needs go unmet.

Another important challenge is the financial difficulty in which the local universities, and specifically the Schools of Social Work, find themselves since Hurricane Katrina. They can ill-afford at this time to do extra work without compensation, or ask faculty members to do so, no matter how compelling the cause.
NEEDS ADDRESSED BY THE PROJECT

It is hoped that to varying degrees the PBP project will answer 1) the immediate needs of some children to have their voices heard and their parents educated to their needs; 2) the need for reproducible, low-cost training for volunteer attorneys to understand the mental health issues that run through these types of cases; 3) the need for these attorneys ultimately to educate the judges who, mostly out of frustration at the lack of information available to them, seek to have attorneys act as custody evaluators; 4) the need for the court system to institutionalize the use of custody evaluations; and 5) the need for a reproducible, low-cost source of custody evaluations for indigent parents.

ADVICE FOR PROGRAMS WHO WISH TO REPLICATE THE PROJECT

The ABA project is in too early a stage, and is dealing with circumstances so far from the norm, that advice does not seem appropriate at this point.

BUDGET INFORMATION

The fee for both social work trainers will not exceed $10,000. Parents will be charged $50 apiece for the custody evaluations carried out by students, to be paid as an honorarium to the Schools of Social Work providing the students and supervision. They will pay their token workshop fees, for both themselves and their children, to the delivering agency.

CONTACT INFORMATION

For more information regarding PBP’s project, please contact: Catherine Drake, Child Advocate Attorney at 504-581-4043 or cdrake@probono-no.org.
MATERIALS AVAILABLE

No materials are available at this time, but PBP will deliver them when they are developed. At the very least, some type of handbook will be developed as a take-away material for the attorneys who receive training in child development, mental health issues related to divorce and custody, and the custody evaluation process.
Other
Mental Health and
Social Service
Projects
Put Something Back (PSB) is a division of Dade County Legal Aid and is a joint Pro Bono project of the Dade County Bar Association and Eleventh Judicial Circuit Court. PSB organizes members of the private bar to provide free civil legal services to low-income individuals, children and families in Miami-Dade County. To date approximately 225 volunteers attorneys participated in this program to represent children. PSB coordinates a wide range of projects, such as Adopt-an-Agency, Bankruptcy Assistance Clinics, Child Advocacy, Guardian Ad Litem, Habitat for Humanity and Wills on Wheels. PSB also works with Victim Services Center, a nonprofit mental health agency whose mission is to resolve the impact of traumatic events on individuals, including children, using group and individual therapy.

Put Something Back assigns attorneys to represent clients in Divorce, Custody, Paternity, Child support, Adoption and Visitation cases. In addition, PSB assigns attorneys to act as GALs in contested custody and Dependency proceedings. These GALs are charged with assessing what is in the best interests of the child involved in the case and reporting those findings to the Court.

MENTAL HEALTH PROJECT DESCRIPTION

PSB emphasizes to their staff and pro bono attorneys the need for a holistic view toward client counseling. PSB has compiled a complete list of the various mental health and social services agencies that are located throughout Dade County. If an issue arises they either contact Switchboard of Miami, a Health Crisis Network Hotline, or the mental health or social services agency directly to help expedite assistance to their clients. PSB
lets their pro bono attorneys know up front to contact them if these issues arise so that PSB staff can make the appropriate referral. PSB has pamphlets and brochures from various mental health and social service agencies to either give directly to the client or send to the attorney with the pro bono referral so they can then forward the materials to the client. Clients in these situations need to have a piece of paper with names and numbers to turn to if need be.

CHILDREN THE PROJECT SERVES

PSB has served thousands of children and currently serves approximately two hundred children per year. The ages range from infants to 18 and 19 year olds aging out of Foster Care. The races are varied: White, African American, Hispanic, Haitian, South American, Russian, and Oriental. The socioeconomic status is normally below the federal poverty guidelines.

PROFESSIONALS INVOLVED IN THE PROJECT

Over 7,000 attorneys in Miami-Dade County have signed up and joined Put Something Back in order to deliver pro bono civil legal assistance to the financially disadvantaged in our community.

A PROJECT CASE

One of PSB’s volunteer attorneys was assigned to represent twin boys who were in the custody of the father. The mother had executed an agreement that the father could have custody of the boys, but she wanted to change custody based upon the ill-treatment
of the father and her failure to understand the agreement at the time she executed. The father limited the boy’s time with her and there were signs of mental intimidation. In a very hard fought bitter battle, the volunteer attorney recommended that the mother gain custody of the children and the father relinquish primary residential parenting. Appeals were taken but the mother’s petition was upheld. The volunteer attorney expended approximately 100 hours on this case.

**CHALLENGES FACED BY THE PROJECT**

The main challenge has been recruiting enough family law attorneys to handle these various cases. There is a certain number of practicing family/child law attorneys in Miami-Dade County. The demand for these practitioners easily outweighs the actual number of family law attorneys available to handle these matters. In addition, it is difficult to locate a Spanish or Creole speaking attorney in some instances.

**NEEDS ADDRESSED BY THE PROJECT**

PSB had come to see a great need for more training, mentoring, partnering, consulting and education for pro bono attorneys or pro bono program staff attorneys. PSB recognized early on that the need for these resources outweighed their availability. As a result, PSB made a commitment to educating attorneys that practiced in other areas of the law that were interested in issues relating to children in custody and adoption cases. PSB had held trainings at the local courthouse to educate attorneys about collaborating with mental health professionals in the community. In partnering with Lawyers for Children America, PSB went to large law firms around Miami for in-house
trainings in Dependency law. It attracted associates who otherwise would not be involved in this level of litigation for years to come in their practice. PSB also has an extensive list of available Mentors who are experienced in custody and adoption cases. These mentors are assigned to new or inexperienced attorneys to act as “of counsel” to the pro bono attorney as they go through the cases. If an issue arises that the pro bono attorney is not familiar with, he or she can bounce it off to the mentor so as to guide them through the case.

Additionally, PSB needed more avenues for attorneys to access free or low-cost mental health or social services for child clients. PSB also saw a need for developing local mental health or social service resource materials.

ADVICE FOR PROGRAMS WHO WISH TO REPLICATE THE PROJECT

PSB advises programs to incorporate a training and mentoring component to their projects. It is highly likely that a program will not have enough attorneys that specialize in this area to handle the demand. A way to address this situation is to have trainings at local law firms to educate attorneys in this area of law and then assign an experienced mentor to act as “Of Counsel” to them as they handle a particular child’s case.

BUDGET INFORMATION

PSB did not receive funding from the American Bar Association for this mental health work, but previously received a grant for the GAL domestic violence project.
CONTACT INFORMATION

For more information, please contact Karen Ladis at ladis@dadelegalaid.org or by phone at 305-579-5733, ext 2247.

MATERIALS AVAILABLE

- Guardian ad Litem (GAL) program description
- GAL seminar agenda
- GAL seminar flyer
- Parental Alienation Syndrome information sheet
- Professional collaboration document
- Expert document
- The ethical and legal dilemma of therapists serving as experts
- Chapter 64B19-18 consent testing document
- Chapter 64B19-19 Records document
- Lawyer’s request for records documents
- Chapter 64B19-18.007 Requirements for Forensic Psychological Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes
- “How to talk to children about violence” document
THE CHILDREN’S LAW CENTER, CONNECTICUT

PROGRAM DESCRIPTION

The Children's Law Center of Connecticut, Inc. (CLC) is a non-profit agency founded in 1993. CLC provides indigent children with experienced lawyers who give them a voice in family court. They also provide information in legal matters involving children and advocate in support of legislative policies that advance the well being and best interest of children.

CLC works to protect poor children involved in family court by providing high quality legal services and advocating for policies that advance the well being and best interests of children. Through its work representing children the organization seeks to achieve the most stable, safe, and beneficial arrangement for children who are caught in the middle of a family crisis such as a custody battle, divorce or other chronic family conflict.

MENTAL HEALTH PROJECT DESCRIPTION

CLC recently added a mental health professional to the staff in the spring of 2006. CLC hired a Marriage and Family Therapist to work in partnership with the Staff Attorneys to collect collateral information and put into place needed services for their young clients.

CONTACT INFORMATION

For more information, please contact Justine Rakich-Kelly at clc@clcct.org, or by phone at 1-860-232-9993.
LEGAL SERVICES FOR CHILDREN, SAN FRANCISCO, CALIFORNIA

PROGRAM DESCRIPTION

Legal Services for Children’s (LSC) is a non-profit organization founded in 1975. LSC’s attorneys and social workers provide free legal and social work services to children and youth in the San Francisco Bay Area. Their mission is to ensure that their clients have access to the support and services they need to become healthy and productive young adults. LSC’s holistic services empower clients and actively involve them in critical decisions about their lives.

LSC’s team advocacy approach enables them to provide a wide spectrum of services. They represent children in legal guardianship, dependency, school discipline, immigration, emancipation, and restraining order proceedings. Their social workers provide crisis intervention, case management, counseling, and psychosocial assessments. They have a diverse staff with broad language capacity (Spanish, Mandarin, Cantonese), and a wide range of cultural identities and backgrounds. Supporting the work of LSC in-house attorneys and social workers, a panel of pro bono attorneys provides over 3,000 hours per year of free legal assistance and advocacy to our clients. They are a well-known community resource, and they participate regularly in numerous collaborative efforts with other community based organizations.

MENTAL HEALTH PROJECT DESCRIPTION

LSC’s Guardianship Project prevents children who can no longer safely live with a parent from unnecessarily entering the overburdened foster care system. LSC’s attorneys, social workers, legal and social work interns, and pro bono attorneys work
closely with children to ensure they are living in safe and stable homes with trusted adults. This typically involves establishing a legal guardianship with a relative or other adult friend with whom the child has an existing stable and trusting relationship. A legal guardianship also allows children to receive any applicable government benefits through their guardian.

Coupled with the legal guardianship, staff social workers create safety plans, provide crisis intervention, make appropriate referrals to other social service agencies in the community, and provide direct counseling.

CHILDREN THE PROJECT SERVES

Last year, LSC provided direct legal representation and social work services to 217 clients in guardianship matters. Through their intake line and weekly drop-in clinic, LSC provided advice and referrals to an additional 357 youth and caring adults. The majority of children served by this project already live with a relative or other trusted adult, but need a guardianship to stabilize and legalize the situation. Many of these children have been abused or neglected by a parent, or were referred from emergency response units in San Francisco and Alameda. Others are runaway youth needing immediate support and help finding accessible shelter.

PROFESSIONALS INVOLVED IN THE PROJECT

The project is staffed by LSC’s 7 in-house attorneys and 4 social workers, with the support of the 83 attorneys who serve on our pro bono guardianship panel. All cases referred to a pro bono attorney are supervised by an LSC attorney who provides technical
assistance and support as needed. LSC also has an “Attorney of the Day” available Monday-Friday from 1:30-5:00 for assistance.

A PROJECT CASE

In one case, an adolescent client disclosed her history of sexual abuse and exploitation to her LSC social worker, who helped her find a therapist and begin to come to terms with this abuse. The client’s LSC attorney helped her to enroll in school and obtain tutoring to make up for the education she had missed out on when she lacked a stable home and an involved caretaker. Finally, her social worker helped her obtain a part-time after school job so she would have a legal and positive source of income.

LSC’s client recently turned eighteen, and is still living in her guardian’s home. She is enrolled in a continuation high school and continues to work at her part-time job. Although she still struggles with the after-effects of so many years of abuse and neglect, her guardianship the LSC staff has had a positive impact on her life. Now that she has a stable home, a stable education, and a stable job, she has developed new self-confidence and self-respect. She is also beginning to plan for her future, and in the next year she plans to move into her own apartment and to enroll in community college.

CHALLENGES FACED BY THE PROJECT

In the past few years, the pro bono component of the guardianship project has grown exponentially: since 2003, the value of pro bono services donated has more than tripled. The recent successful expansion of LSC’s pro bono panel poses new challenges in its administration and management. In order to successfully maintain an effective and
efficient pro bono panel, and to make sure the children’s social and mental health service needs are addressed, LSC must keep volunteers engaged and active with the panel. This includes building their relationship with other community providers referring cases to LSC, assigning an appropriate and manageable number of cases to the panel, tracking the progress of each open case, completing an evaluation for each closed case, and keeping each attorney engaged and interested in the panel. Each of these tasks requires significant time to administer and coordinate.

NEEDS ADDRESSED BY THE PROJECT

LSC has recognized the need for more training, mentoring, partnering, consulting and education for pro bono attorneys or staff attorneys. In response to this need, LSC recently reorganized its pro bono referral process. Previously, volunteer attorneys relied on a rotating “Attorney of the Day” to provide support and technical assistance. Now, in addition to the “Attorney of the Day”, each pro bono case is assigned to a specific LSC attorney, who oversees the case.

LSC has also recognized the need for increased methods for attorneys to access free or low-cost mental health or social services for child clients. LSC’s social workers, who are actively involved in pro bono cases, are well versed in local resources and aid attorneys in accessing these resources for clients.

Furthermore, LSC has recognized a need for the development of local mental health or social service resource materials.
**BUDGET INFORMATION** (general operating budget)

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**CONTACT INFORMATION**

For more information regarding LSC’s program, please contact Abigail Trillin, Managing Attorney, at 415-863-3762 or by e-mail at abigail@lsc-sf.org.

**MATERIALS AVAILABLE**

• Guardianship Manual
Other Ideas

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54
CROSS-TRAINING AMONG PROFESSIONALS

One method for increasing collaboration between attorneys and mental health and social service professionals would be to develop a cross-training for attorneys, mental health and social service workers that would help them improve their practice in custody cases. Professionals may be more likely to attend the training if CEU and CLE credits were provided.

Speakers at the training could include mental health professionals, members of the local judiciary and attorneys who practice in the areas addressed by the program. Topics for speakers may include issues such as:

1. Techniques for interviewing children.
2. Understanding cross cultural differences.
3. Assessing the parties’ credibility.
4. Evaluating the suitability of a parent’s residence as the primary residence for the children.
5. Assessing the ability of each parent to be a primary caregiver.
7. Children’s responses and adaptation to guardianship and adoption.
8. Techniques for determining parenting capacity/parental fitness.
9. Understanding psychiatric drug interactions and psychological testing.
10. Representing the child client who has been diagnosed with a mental illness.
11. Foster care placement of children.
12. Reunification of children with their parents.
13. The State’s custody of children in the juvenile justice system.

15. Privileges and who can waive certain rights.

16. Standards for representing the child’s best interest.

17. Stress management for professionals working on the cases.
Many jurisdictions would benefit from creating a comprehensive referral guide including relevant free or low-cost, accessible mental health and social services for children, their families and guardians.

The first step to accomplish this goal may be to do a comprehensive review of all services that are available to children who are involved in a custody or domestic violence matter. Existing resource guides, phone books and word of mouth could be used to locate resources. The second step would be to compile that information into materials that are accessible, easy-to-read, and targeted not only to attorneys, paralegals and judges but that can be accessed and utilized by pro se individuals on behalf of children as well. The third step would be to incorporate these materials into cross-trainings for attorneys, judges, and service providers. The fourth step would be to identify gaps in services and to convene stakeholders to begin to address these gaps. The final step would be to produce an electronic form of the Guide which will be continually updated. The status of mental health and social service agencies is constantly changing. Therefore, it is necessary to continually update the status of all mental health and social service resource materials so they remain current.

Once compiled, the guide should be organized into a format which can be easily accessed by readers, including judges, service providers and legal professionals. The guide should be comprehensive, in that it would include not only contact information, but an explanation of when and in what situations the program can be most helpful. The guide also should explain whether there are steps that individuals can take to more easily take advantage of the service such as: obtaining a court order mandating a service; an
order requiring payment by another party; obtaining a referral from the court; or
obtaining financing through a third party such as Medicaid.

Guides should be distributed through the courts, agencies, schools and attorneys.
A press release on the guide could be issued in order to make the public aware of it.
SERVICES FOR CHILDREN AND THEIR FAMILIES

Examples of services that could be targeted for children and their families could include:

1. Behavioral, anger management, or therapeutic services.
2. Free or low-cost mental health services.
3. Educational assessment and support.
4. Mentoring programs.
5. Recreational and occupational therapy.
7. Services for child victims and witnesses of domestic violence.
8. Transitional living programs for families.
10. Post Adoption Services
13. Social services to help access public benefits, insurance and appropriate housing.
14. Referrals for developmentally or physically disabled children.
15. Grief counseling if a family member has died.
16. Stress management services for attorneys, as well as other professionals involved in the program.
HIRING A MENTAL HEALTH OR SOCIAL SERVICE PROFESSIONAL

Programs may want to consider hiring on their staff a mental health or social service professional to assist attorneys in representing children. One example could be to hire a pediatrician, psychologist, psychiatrist, or social worker who would coordinate with attorneys to identify any concerning issues that should be addressed for the child or children involved in the case. The mental health or social services provider could then use his or her professional skills to work with the community to provide the appropriate resources for the child’s needs. This method would lighten the workload of attorneys and may persuade attorneys, who otherwise thought they were too busy, too uninformed or not adequately trained, to take on a pro bono child custody case.
Materials as listed in the Guide

California

Guardianship Manual

Florida

- Guardian ad Litem (GAL) program description
- GAL seminar agenda
- GAL seminar flyer
- Parental Alienation Syndrome information sheet
- Professional collaboration document
- Parental Collaboration document
- Expert document
- The ethical and legal dilemma of therapists serving as experts
- Chapter 64B19-18 consent testing document
- Chapter 64B19-19 Records document
- Lawyer’s request for records documents
- Chapter 64B19-18.007 Requirements for Forensic Psychological Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes
- “How to talk to children about violence” document

Houston

- Family Transition Solutions Child Manual
Materials as listed in the Guide

- Family Transition Solutions Parent Manual

Kansas

“Being a Kid Isn’t Easy.” Sourcebook (The sourcebook will be available by request from KLS and also on its website: www.kansaslegalservices.org

- Jane Adams Bibliography

- GAL brochure

- GAL training agenda

- GAL training evaluations from session one

- GAL training evaluations from session two

- GAL training evaluations from session three

- GAL training evaluations from session four

Montana

1. Introduction: Welcome Letter, Brook’s Quote (Creighton Law Review), Special Thanks, Index

2. Chapter One: Representing Children—what attorneys need to know

3. Chapter Two: Child Clients—how to meet specific needs of a child client

4. Appendix and Table of Contents, Montana

5. Bibliography

6. Children’s First Power Point Presentation

7. Front Labels

Wisconsin

Materials as listed in the Guide

Training announcement flyer, Training Sign-in Sheet, Training Final Letter

Training registration form

Volunteer lawyer application form

CLPP Supporter From

Intake Form

Training Evaluation

- Child Abuse Injunctions in Wisconsin, Cyrus Behroozi, J.D.
- The Rainbow Project Handout
- Mental Health Issues: Child Abuse Disclosures in the Context of Divorce, Hugh Johnston, M.D.
- Petition in Juvenile Court for Temporary Restraining Order and/or Injunction (Child Abuse)
- Notice of Hearing for Temporary Restraining Order (Child Abuse)
- Injunction (Child Abuse)
The ABA Child Custody and Adoption Pro Bono Project

wishes to thank Kelly Whalen, 2006 Summer Intern from Loyola University Chicago School of Law, for her assistance in preparing this Guide, as well as to all of the included programs for taking the time to provide the necessary information.
Jane Adams, Ph.D.

Biography

Dr. Jane Adams is the Executive Director of Keys for Networking, Inc., the Kansas state organization of the Federation of Families for Children's Mental Health. Keys for Networking is also the Kansas Parent Information and Resource Center. Dr. Adams serves as an executive board member of the Federation of Families for Children's Mental Health. She is a member of the Kansas Social Rehabilitation Services 2002 Task Force to explore the role of state mental hospitals in community-based continuum of services for children. She has served as an appointee to the Governor's Mental Health Planning Council, the 1997 Topeka State Hospital Closure Committee, and the 2001 Legislative Hospital Review Commission.

As director of Keys for Networking since 1994, Dr. Adams has been instrumental in securing the Medicaid Home- and Community-based Services waiver for Kansas children with severe emotional disabilities. Kansas is one of only three states to offer Medicaid-funded choices to allow parents to raise children with severe emotional disabilities at home. In addition, she has provided the leadership to mobilize families statewide to contact their legislators to secure mental health parity, Healthwave coverage at 200% of the poverty level, and funding for a statewide mental health system of care for children and their families.

Dr. Adams has authored and co-authored such products as the Keys CD-ROM and online WrapAround Training modules (Strengths-based planning, Cultural Competence, Family Involvement, and School Mental Health Collaboration); "STAR, A five module CD-ROM Parent Guide to Proactive Discipline"; "Blamed and Ashamed", a youth-directed national research study of co-occurring mental health, substance abuse treatments; "Best Practices in Facilitating Meaningful Family Involvement in Educational Decision Making" for school psychologists; "Moving Forward Together: Parent Professional Partnership;" Children Time Forgot, A Study of Children Who Died While Incarcerated in the 1800s; and others.

Dr. Adams served as an Associate Professor of Special Education in Learning Disabilities and Behavior Disorders at Washburn University in Topeka, Kansas and as principal/special education director of Kansas' largest institution for 200 adjudicated male juvenile offenders. She received her Master's and Ph.D. from Kansas State University, and her Bachelor's degree from Marymount University in 1969. Dr. Adams has two grown children.
Chapter I
Appendix

MCA 40-4-212  ............................................. Appendix 1
Montana Model Rule of Conduct 1.6  .............. Appendix 2
MCA 40-4-219(c)  ............................................. Appendix 3
Montana Model Rule of Conduct 1.14  .............. Appendix 4
MCA 40-4-205  ............................................. Appendix 5
MCA 40-4-215  ............................................. Appendix 6
Jacobsen v. Thomas
2004 MT 273;323 Mont. 183  ............................... Appendix 7
Rolfe v. Rolfe
1985 216 Mont. 39; 699 P.2d  ............................... Appendix 8
Montana Model Rule of Conduct 1.8(f)  .............. Appendix 9
American Bar Association Standards of Practice for Lawyers Representing Children in Custody Cases* ............................................. Appendix 10
2006 Uniform Representation of Children in Abuse and Neglect and Custody Proceedings* proposed draft, scheduled for final review July 6, 2006  ............................................. Appendix 11

*Note: Comment sections of the ABA Standards of Practice and the draft Uniform Code provides invaluable discussions of legal issues for child clients and attorney
Chapter II
APPENDIX

First Judicial District of Montana Children First
Orientation Materials ........................................... Appendix 12
Being a Kid Isn’t Easy
Being a Kid Isn't Easy

This book is designed for children involved in divorce cases. It should be used as a bridge to ease open communication between adults and children.

The project is funded, in part, by a grant from the American Bar Association Child Custody and Pro Bono Project

2005 - 2006

Kansas Legal Services
Children's Advocacy Resource Center

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Roger McCollister, Chief Executive Officer
Being a kid isn’t easy. That’s what Alex thinks. Up until a while ago everything was fine. Alex went to school, rode his bike, read books and played games with his friends. But last year his Mom and Dad started fighting a lot. Sometimes they yell at each other and sometimes they don’t talk at all. It’s been hard for Alex to be around them. He spends a lot of time in his room so he won’t hear them fighting.

Last week, Alex’s Mom and Dad told him that they are going to get a divorce. A divorce is when a Mom and Dad decide to live apart from each other and not be married anymore. Alex wanted to know which parent he would live with. His parents said they
were working that out. For now, Alex is going to live with his Mom and see his Dad on Wednesday nights and every other weekend.

It seems like everything has changed. Alex doesn’t know what is going to happen to him.

Alex is surrounded by people who love him and will help him find his way through. Help Alex find his way through the maze below:
Alex has a lot of new and different feelings. Alex feels sad because his Mom and Dad are sad. His Mom cries a lot when she thinks Alex can’t hear her. Alex wants to make her happy again, but he doesn’t know how.

He also feels if he would have behaved better, his parents would have stayed together. Alex feels like it is his fault they are breaking up. The people around Alex have told him that they love him very much. He did nothing to cause this. Alex still thinks that if maybe had had not been bad, his parents would not be getting a divorce. Alex is going to try to be very good so his parents will get back together.

Alex needs to know that Moms and Dads are adults and they make their own decisions. Children are never the cause or the solution to adult problems. IT IS NEVER THE CHILD’S FAULT. Alex’s parents did not separate because he was bad. Being good won’t bring his parents back together again.

**BREAK THE CODE!**

\[
\begin{array}{cccccccc}
9 & 20 & 19 & 14 & 5 & 22 & 5 & 18 & 20 & 8 & 5 \\
9 & 20 & 19 & 14 & 5 & 22 & 5 & 18 & 20 & 8 & 5 \\
3 & 8 & 9 & 12 & 4 & 19 & 6 & 1 & 21 & 12 & 20 \\
A=1 & F=6 & K=11 & P=16 & U=21 & Z=26 \\
B=2 & G=7 & L=12 & Q=17 & V=22 \\
C=3 & H=8 & M=13 & R=18 & W=23 \\
D=4 & I=9 & N=14 & S=19 & X=24 \\
E=5 & J=10 & O=15 & T=20 & Y=25 \\
\end{array}
\]
Sometimes when Moms and Dads get a divorce, they have already agreed where the children will live. They know how they will divide everything up. Alex’s parents haven’t decided this yet. If they cannot agree, they will go to Court and a Judge will decide where Alex should live. We will talk more about that later.

Alex is finding out that it is hard to cope with all the changes in his life. He is used to having his Mom and Dad living with him. Now he has to visit his Dad at his dad’s new apartment and live with his Mom most of the time. His Mom and Dad fight each time they see each other.

Alex needs to remember that even though his Mom and Dad aren't getting along or living together, they both love him very much. His parents tell him that a lot.

It will take some time for Alex to put the pieces back together and make everything fit in his life. Solve the puzzle below by making the words fit together:

**Clues**
1. When a Mom and Dad decide to live apart
2. Your Mom and Dad
3. When someone cares for you very much
4. When things become new a different
5. Where you live.
Alex is very angry that his Mom and Dad are getting a divorce. He feels like they have upset his life and he just wants things to go back to the way they were before.

Alex has to learn some new words - custody and visitation. Custody means the agreement his parents will have about who will make decisions in Alex’s life and where he will live. He will live part of the time with one of his parents, and have parenting time, or visitation, with his other parent.

Alex’s Mom and Dad are arguing a lot over custody and visitation. It’s hard for Alex because he loves and wants to live with both of them. He doesn’t want to hurt either of his parents. He doesn’t want to choose one over the other.
Alex is also afraid of what is going to happen to him. Will he have to move and change schools? If he does, will he be able to make new friends?

He is busy thinking about things. It's hard to listen to his teacher in school. Last week Alex was thinking about his parents fighting and worried about what was going to happen in the future. His teacher was telling the class how to do new problems in Math. Alex wasn't listening. All the other kids in his class were doing the new problems, but Alex didn't have a clue what to do.

Alex just got a big, fat F on his Math test. Some of his other grades aren't any better. And Alex isn't just having trouble with his grades in school.
Alex is so angry. He’s mad at his parents for not getting along and changing everything. It’s hard for Alex to tell his parents that he’s mad at them, so he keeps it inside. He doesn’t want to talk to his parents about how he is feeling because they are already upset.

Anger has a way of coming out whether you want it to or not. Even though Alex thinks he’s keeping his anger inside of him, he finds that he gets mad at his friends more than he used to. He also gets upset easily if things don’t go the way he planned.

Alex’s friend, Billy, knows that Alex is having trouble at home. Billy found out that it’s sometimes hard to be a friend. While Billy and Alex were having lunch one day, Billy took some of Alex’s food. They always share their food. This time it made Alex really mad and he yelled at Billy. Billy got mad and said some bad things to Alex. They got very loud in the cafeteria and said things that hurt each other. Alex and Billy have never been really mad at each other before. They both had to go to the Principal’s Office.

Billy talked to his Mom that night. She told him that everything is changing for Alex. Sometimes when you hurt inside, you get angry with people that are not the reason for the pain. Billy understood that Alex wasn’t really mad at him for taking his food. The anger he was holding inside burst out at a bad time for Billy.
Billy is a very good friend. The next day at school, he and Alex talked about the fight. They are friends again. Alex has learned he can talk to Billy about his parents’ divorce and what is going on in his life. Billy is a good listener.

Alex’s teacher, Mrs. Smith, is worried about him. Mrs. Smith has Alex’s mom come to the school to talk about Alex’s problems. She tells Alex and his Mom that it is normal for Alex to be angry, scared and worried. She suggests that Alex go to a counselor.

A counselor is someone Alex can talk to about his feelings. He can tell the counselor that he feels torn between his mother and father. He doesn’t want to talk to one parent about the other. It’s good to have someone outside his family to talk with. The counselor helps him understand that the divorce is not his fault and he doesn’t have to pick sides.

The counselor also helps Alex talk about his feelings and fears. This helps Alex find a better way to work through his anger without fighting. It also helps him pay attention in school.
Sometimes it's hard to figure out just what you are feeling and what is making you feel that way. Find the words in the puzzle below. When you find a word, mark it off the list. Someday you will be able to erase these feelings about things that are happening in your life right now.

Word List
DIVORCE  PROBLEMS  WORRY  YELLING
COURT  FIGHTS  ARGUE  ANGER
SCHOOL  CUSTODY  SADNESS  VISITATION
GRADES  FEAR  SCARED
Alex's Mom and Dad aren't agreeing on much these days. They have been arguing for a long time about where Alex will live. Sometimes they say bad things about each other. Alex feels caught in the middle. He loves both of his parents and it makes him sad that they are so mad at each other.

Alex's parents are going to Court. The Judge will decide the times Alex will be with each parent.

Alex's Mom and Dad each have a lawyer. The lawyer's job is to show the Judge their client's side of an argument. Alex may have his own lawyer. His lawyer is called a Guardian ad Litem. The Guardian ad Litem's job is to talk to Alex and give an opinion to the Judge as to what is in Alex's best interest. The Guardian ad Litem will speak for Alex in Court.

Alex wonders what Court is like and what a Judge does. Here are some of the people who are in the courtroom and what they do.

**Judge:** The Judge usually wears a black robe and sits at a big desk in the courtroom. Everyone stands up when the Judge walks into the courtroom. The judge does many things. He is like a referee at a ball game and makes sure everyone plays by the rules. After hearing what Alex's Mom and Dad want, the Judge will make a decision.

**Bailiff:** You will know the bailiff when you see him or her. The bailiff makes sure people who go to court obey the rules. The bailiff usually wears a uniform like a police officer. The bailiff is a special police officer just for the Court.

**Court Reporter:** Sometimes a court reporter will be in the courtroom. This is a person who writes down every word that is
said. The court reporter usually sits near the judge and types on a small machine. People in court have to speak slowly and clearly so the court reporter can hear all of the words.

**Witnesses:** People who come to court to tell what they have seen or heard are called witnesses. When a witness comes to court, they have to raise their hand and make a special promise, called an oath, that they will tell the truth. They take a special seat in the courtroom and the lawyers ask them questions.

The Judge has a very important job. He or she hears lots of people argue all day long. The Judge then has to decide what should happen. Even though Alex's Mom and Dad believe their side is right, the Judge will have to decide.

**You be the Judge.**
Read the following cases and then make a decision:

1. John finds a kitten in his yard. The kitten has no collar or tags. John feeds the kitten and brings him into his house because it's cold outside. John asks around the neighborhood to see if anyone lost a kitten and no one has. He calls the local newspaper and places an advertisement that says he found a kitten and to call him. No one calls. John names the kitten and takes care of it. Two months later, the kitten is playing in his front yard. A lady, Mary, is walking by. She says what a cute kitten it is and that she had one that looked just like it but ran away over two months ago. She said that she was on vacation and the girl who was looking after the kitten let it out of the house. John admitted that he found the kitten and had asked everyone in the neighborhood about it. Mary said she was on vacation at that time. She didn't read the newspaper and didn't see the ad. John thinks she should have looked for the kitten before now and
made more of an effort to find the kitten. He has taken care of the kitten for two months and feels it is his. Mary said the kitten is hers and she has a picture of it when she brought it home. She wants the kitten back.
If you were the Judge, who would you give the kitten to and why?

2. Daisy is in a store looking at books. She picks up a book that she is thinking of buying. She starts looking at other books, loses track of time and is late to catch her ride. She runs out of the store and then realizes she still has the book and forgot to pay for it. She says she was going back into the store to return the book, but the security guard catches her outside and says she was stealing it. She was headed back towards the store when he caught her. He calls the police. They say she stole the book. Daisy has stolen things from stores before, but not for a long time. She learned her lesson and doesn't steal anymore. Do you think she was going to take the book back to the store or was she stealing it? What would you do to her if you were the Judge?
The Judge decided that Alex will live with his Mom during the week and live with his Dad on the weekends. It is going to take a while to get used to seeing his Mom and Dad not living together and having their own homes. Alex is glad that he is staying in the same school and is able to see his friends. He has his own room at his Dad’s house and likes spending time there. Sometimes Alex wishes his Mom and Dad would live together again.

It is normal for Alex to want his Mom and Dad to live together. Most kids who have divorced parents wish for this. The longer Alex sees his Mom and Dad living their lives apart from each
other, the easier it is for him to know that they are going to stay apart.

Draw a picture of you at your Mom's house.
Draw a picture of you at your Dad's house:
See how many words you can make out of:

**MY FUTURE IS BRIGHT**

_________________  ___________________  ___________________
_________________  ___________________  ___________________
_________________  ___________________  ___________________
_________________  ___________________  ___________________
_________________  ___________________  ___________________
_________________  ___________________  ___________________
_________________  ___________________  ___________________
_________________  ___________________  ___________________
_________________  ___________________  ___________________
_________________  ___________________  ___________________
Puzzle solutions:

- **BREAK THE CODE!**
  - 1 + 5 = never the
  - 2 + 3 = child's fault

Unscramble the words:

1. PYAHIP → **HAPPY**
2. LIDHIC → **CHILD**
3. ARTPEN → **PARENT**
4. RUCOT → **COURT**
5. GUJDE → **JUDGE**
6. TORAETYN → **ATTORNEY**
7. MEOH → **HOME**
8. REAC → **CARE**
Bibliography:
Montana Legal Services Association
2005 Child Custody Pro Bono Project
Mental Health Children:


Spokane County Superior Court. *Child Centered Residential Schedules.* Spokane County Bar Association, Spokane, Washington.


**Legal Child Custody Information:**


CHAPTER I – REPRESENTING CHILDREN: WHAT ATTORNEYS NEED TO KNOW

The Chapter I section of written materials provides legal information about representing children.

What to Know About Representing Children:

1) The Role of the Attorney  
   Pages 4 - 8

   a) MCA 40-212  Best Interest of the Child  
      Appendix 1

   b) Attorney Client Relationship

      (1) Directly represent the child - client is able to direct the case

         (a) Model rule of conduct 1.6 applies  
             Appendix 2

         (b) MCA 40-4-219(c) considerations  
             Appendix 3

      (2) Represent the Best Interests of the Child - client is too young to direct the case

         (a) Model rule of conduct 1.14 applies  
             Appendix 4

         The Court Could:
            (i) Appoint a GAL
            (ii) Order Testing/evaluation of child

   c) Attorneys maintain client privilege; make sure you have been appointed as the attorney.

   d) Guardian ad litem’s report to the court/testify; make sure you have not been appointed as guardian ad litem

      (1) MCA 40-4-205  
          Appendix 5

      (2) MCA 40-4-215  
          Appendix 6

      (3) Jacobsen v. Thomas
          2004 MT 273;323 Mont. 183  
          Appendix 7

      (4) Rolfe v. Rolfe
2) Collateral Attorney Relationship with those who know the child

   a) The party responsible for payment for a child's representation should make informed consent and understand privileged information at the outset of the case.

      (1) Model Rule of conduct 1.8(f)

   b) Power Imbalance Issues

      (1) Power differentials are inherent in every adult child relationship.

      (2) Attorney awareness of his/her personal values and judgments is imperative.

   c) Attorneys be able access and consult with professionals regarding the following:

      (1) Child development
      (2) Child memory and memory retrieval
      (3) Children and language
      (4) Social and emotional needs of children
      (5) Impact of divorce/family transitions on children

3) Steps in the Life of the Case

   a) Meet with the parties’ attorneys separately without clients present.

   b) Meet with each parent separately. One strategy for talking with the parent is to ask each one: If I recommend the children live with the other parent then what do you need to make that work for you

   c) Gather as much information to review as possible including the legal file, transcriptions from hearings, and any reports

   d) Talk with the children, together first and then separately

      (1) Go to the children’s homes to talk to them with their parents. This means a visit to each parent's home when the children are there.
Then, during home visits, meet with the children separately, ask to see their bedrooms, favorite toys/games/pets, etc.

(2) Meet with the children on a regular basis throughout the process of developing recommendations, or maintain some method checking in with or on the children.

(3) Meet with the children to explain your recommendations.

e) Interview any professionals involved in the case, preferably in person which encourages candid conversation and elicits more information.

f) Even after a final order, these cases may come to life again with requests for revisions, so remain available over time for modifications.

American Bar Association Section of Family Law Standards of Practice for Lawyers Representing Children in Custody Cases Appendix 8


4) Court: the child’s perspective Page 18

a) Court dates are challenging for every child.
In 2003 the American Bar Association approved the “ABA Section of Family Law Standards of Practice for Representing Children in Custody Cases” Much of the information in Chapter I of this training is based upon the ABA standards, which are included in the appendix.

**What to know #1:**

Upon appointment to represent a child in a custody dispute, it is critically important to clarify the role of the attorney.

In child custody disputes the court is required by MCA 40-4-212 (Appendix 1) to use the Best Interest of the Child as the standard for parenting plan determinations. One important service you can provide as a child’s attorney is to support the court’s required focus on your client’s best interests. MCA 40-4-212 defines and delineates the aspects of a child’s best interest which must be considered by the court. The subsections of MCA 40-4-212 define each factor the court must consider, provide information about timelines for parenting plan modifications, and guidance regarding child support.

**There are two possibilities for your relationship with a child client:**

1. Directly represent the child. The client is able to direct the case.
   a. Attorney client relationship with an older child is governed by Rule 1.6 of Professional Conduct (Appendix 2).
      
      b. Montana Code 40-4-219(c) (Appendix 3) directs that the court may consider the wishes of a child 14 or older. There is a legal presumption that the child impacted by a custody dispute may provide input for the court, but the child does not decide matters of their parent’s custody.

2. Represent the Best Interests of the Child. The client is too young to direct the case.
   a. Attorney client relationship with a younger child is governed by Rule 1.14 of Professional Conduct (Appendix 4).

As a child’s attorney, develop an attorney-client relationship with the child. Make sure this relationship is built on a foundation that is unbiased, unprejudiced, and independent.

If a client’s age is between 11 and 14, a gray area of client driven case determination, then the attorney is critically important in determining whether the case is direct representation or representation of the best interests.
The court would have several options to determine competency.

1. Appoint a guardian *ad litem* to investigate the best interests of the child under MCA 40-40-205 (Appendix 5).

Montana Code 40-4-205 establishes that the courts may appoint a guardian *ad litem* “to represent the interests of a minor dependent child” and that an attorney may serve as a guardian *ad litem*.

However, the roles of attorney and guardian *ad litem* are different.

An attorney must maintain client privilege, which can be a unique challenge with a child client. Attorneys may file motions, objections, briefs, call witnesses and conduct cross examinations. Attorneys may not testify.

A guardian *ad litem* may conduct investigation regarding facets of the child’s situation and must generate a written report for the court, as well as be available to testify. In addition, the guardian *ad litem* may be assigned other duties by the court.

In Montana, it can be a challenge to keep the roles between the child’s attorney and the guardian *ad litem* clear, and it is important to define roles upon assignment of the case. In some Montana communities the practice is for the attorney to represent the guardian *ad litem* rather than represent the child.

In November 2004, the Montana Supreme Court released a decision in the Jacobsen v. Thomas case (Appendix 7). The court’s decision addressed the differentiation of a child’s attorney from a guardian *ad litem*:

“An attorney appointed by a trial court to represent a child is not also the guardian ad litem. Mont. Code Ann. § 40-4-205 states a guardian ad litem may be an attorney. This indicates that lay persons may act as guardians. Therefore, the statute contemplates a guardian ad litem has a unique role to protect the interests for the child. This role is different from the traditional advocacy role played by attorneys. When a court appoints a guardian ad litem under § 40-4-205, unless the court specifically indicates it intends the guardian to act as an attorney representing the child, the guardian is not to act as an attorney. Instead, the guardian is required to fulfill the statutory role to objectively aid the court in its decisions regarding the best interests of the child. Mont. Code Ann. § 40-4-215 applies to Mont. Code Ann. § 40-4-205, in that a guardian...
ad litem must testify and be subject to cross examination if they give evidence concerning an investigation.”
2004 MT 273; 323 Mont. 183; 100 P.d 106; 2004 Mont. LEXIS 499. HN7

In addition, the court found:

We hold that when a court appoints a guardian ad litem under § 40-4-205, MCA, unless the court specifically indicates it intends the guardian to act as an attorney representing the child, the guardian is not to act as an attorney. Instead, the guardian is required to fulfill the statutory role to objectively aid the court in its decisions regarding the best interests of the child. Section 40-4-215, MCA, applies to the § 40-4-205, MCA, in that a guardian ad litem must testify and be subject to cross examination if they give evidence concerning an investigation. 2004 MT 273; 323 Mont. 183; 100 P.d 106; 2004 Mont. LEXIS 499. *P32

In Jacobsen v. Thomas, the court referred to another Montana Supreme Court decision:

As the parties pointed out, we have not previously addressed this issue. However, we have held that an attorney appointed by the court to represent a child is not also the guardian ad litem. Rolfe, 216 Mont. at 52, 699 P.2d at 86.

The Rolfe v. Rolfe decision is provided as Appendix 8.

The Montana Supreme Court decision is consistent with the ABA Standards of Practice for Representing Children in Child Custody Cases, which require an attorney not to act as a guardian ad litem for a child.

In Montana, rarely are there the resources for a family to sustain the cost of both an attorney, and a guardian ad litem in a disputed parenting plan action. Most often children are simply unrepresented, occasionally the court appoints a guardian ad litem. When the guardian ad litem is also an attorney, then it can be a challenge to differentiate the roles; the decision above provides clear guidance for attorneys in Montana appointed under § 40-4-205, MCA.

Additional options for the court to clarity the child/attorney relationship are as follows:

2. Order testing/evaluation of child to determine cognitive ability, emotional and social maturity.
   a. Testing may be ordered in some cases to provide the court additional information even if the client attorney relationship is not an issue.
The following excerpt from the ABA Standards of Practice for Lawyers Representing Children in Custody Cases also addresses the child client attorney relationship. See Appendix 10 for the complete ABA Standards.

II. SCOPE AND DEFINITIONS

A. Scope

These Standards apply to the appointment and performance of lawyers serving as advocates for children or their interests in any case where temporary or permanent legal custody, physical custody, parenting plans, parenting time, access, or visitation are adjudicated, including but not limited to divorce, parentage, domestic violence, contested adoptions, and contested private guardianship cases. Lawyers representing children in abuse and neglect cases should follow the ABA Standards of Practice for Representing a Child in Abuse and Neglect Cases (1996).

B. Definitions

1. “Child’s Attorney”: A lawyer who provides independent legal counsel for a child and who owes the same duties of undivided loyalty, confidentiality, and competent representation as are due an adult client.

2. “Best Interests Attorney”: A lawyer who provides independent legal services for the purpose of protecting a child’s best interests, without being bound by the child’s directives or objectives.

Commentary

These Standards and these definitions apply to lawyers fitting these descriptions regardless of the different titles used in various states, and regardless of whether the lawyer is appointed by the court or retained by the child.

A lawyer should be either a Child’s Attorney or a Best Interests Attorney. The duties common to both roles are found in Part III of these Standards. The unique duties of each are described separately in Parts IV and V. The essential distinction between the two lawyer roles is that the Best Interests Attorney investigates and advocates the best interests of the child as a lawyer in the litigation, while the Child’s Attorney is a lawyer who represents the child as a client. Neither kind of lawyer is a witness. Form should follow function in deciding which kind of lawyer to appoint. The role and duties of the lawyer should be
tailored to the reasons for the appointment and the needs of the child.

These Standards do not use the term “Guardian Ad Litem.” The role of “guardian ad litem” has become too muddled through different usages in different states, with varying connotations. It is a venerable legal concept that has often been stretched beyond recognition to serve fundamentally new functions, such as parenting coordinator, referee, facilitator, arbitrator, evaluator, mediator and advocate. Asking one Guardian Ad Litem to perform several roles at once, to be all things to all people, is a messy, ineffective expedient. A court seeking expert or lay opinion testimony, written reports, or other non-traditional services should appoint an individual for that purpose, and make clear that that person is not serving as a lawyer, and is not a party. This person can be either a non-lawyer, or a lawyer who chooses to serve in a volunteer non-lawyer capacity.
What to Know #2:
Collateral Attorney relationship with those who know the child

Party responsible for payment in non pro bono cases:
When a parent, guardian or perhaps other third party is responsible for payment to the child’s attorney, then it is important to clarify that client privilege is maintained, and payment for representation does not include access to attorney client information.

Rule 1.8(f) (Appendix 9) of Professional Conduct directs that the payer for a child competent to direct the case should make informed consent and understand privileged information at the outset of the case.

Consultations necessary to represent children:
Children are complex, in part because their brains are not fully developed. The final development of the human brain typically occurs in late teens or early twenties; and the last part of the brain to develop is the prefrontal cortex governing judgment, complex problem solving and impulse control. Thus, it is critically important for attorneys who represent children to learn to routinely consult with mental health, child development, and child welfare professionals.

A few good accessible resources about child development, such as articles, books, or developmental charts may also be very useful to attorneys representing children. See the bibliography in section V of this training for additional information.

Critical areas of expertise for consultation are:

1. Child development
2. Child memory and memory retrieval
3. Children and language
4. Social and emotional needs of children
5. Impact of divorce/family transitions on children

Chapter II includes a resource list of child mental health centers, agencies, and providers in Montana. Those are also resources for experts in child welfare.

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Power Imbalance Issues

Power differentials are inherent in every adult child relationship. Although we were all children, most adults have forgotten some fundamental realities of childhood. Children are not typically in control of basic daily routine such as what and when they eat, what they wear, how or when they are transported. A child’s schedule and recreation may be dictated and so on.

In order to nurture, educate and protect children we require that they respond to and rely on the authority of adults. Children are dependents; they need adult care and supervision. Simultaneously, it is critically important adults serving as professionals for a child to remember that the child will endow adults with power. A child may chose not to question or dialogue with an adult, not because there are not questions they would like to ask, but because dialogue with an adult may be unacceptable or disrespectful in their experience. It is the adult’s responsibility to recognize the power differential and to actively compensate to prevent unarticulated assumptions from impacting decision making in the child’s case.

[Example:] The following are suggestions of what a child’s attorney could say if the child is not asking questions:

Open ended question: Young children may be confused by an open ended question, but there is no harm is beginning with a broad question simply to help your child client begin to talk with you.

“Sometimes kids wonder about things, but then they don’t tell grown-ups what they are wondering. Is there anything we’ve talked about today that you wonder about?”

Directed question: When the broadly phrased questions elicit confusion, or no response, then a directed more specific question is more appropriate.

“If I were you, I might be wondering things about court. Do you have any questions about court or judges?”

There is more specific information about talking with children in Chapter II.

Attorney awareness of personal values and judgments is imperative when working with a child client. Put simply, what is best for the attorney’s children or child relatives may not be best for a child client. It is important to remain in a professional capacity and refrain from imposing individual values upon the child’s case. In nearly every culture, children elicit a sense of collective responsibility from adults. It is important to apply facts to a child client’s case.
What to Know #3:
Steps in the Life of the Case:

1. Meet with the parties’ attorneys separately without clients present.

2. Meet with each parent separately.

3. Gather as much information to review as possible such as the legal file, transcriptions from hearings, and any reports.

4. Talk with the children - together first if there are siblings and then separately.
   a. Try to encourage the parents not to remain present, even in the waiting room, while you meet with the children.
   b. Show the child client your office. Let them get oriented about their surroundings.
   c. When you talk with the children you do not ever ask directly what they want; rather you ask as many questions as possible about what they need, what would make them feel comfortable, and how you could help them.
   d. Go to each parent’s home to talk to the children with their parents. This may mean two separate home visits. During home visits meet with the children separately, and ask to see bedrooms, favorite toys/games/pets, etc.
   e. Meet with the children on a regular basis, or maintain a method of checking in directly with or on the children, throughout the process of forming your recommendations. Keep in mind that as weeks and months pass in the life of a case, the children are growing and changing.
   f. Meet with the children to explain your recommendations

5. Interview any professionals involved in the case, preferably in person.

6. Even after a final order, these cases may come to life again with requests for revisions, so you could find you need to remain available over time for modifications.
The following excerpt from the ABA Standards of Practice for Lawyers Representing Children in Custody Cases addresses the tasks involved in a child representation case. See appendix 10 for the complete ABA Standards.

D. Initial Tasks

Immediately after being appointed, the lawyer should review the file. The lawyer should inform other parties or counsel of the appointment, and that as counsel of record he or she should receive copies of pleadings and discovery exchanges, and reasonable notification of hearings and of major changes of circumstances affecting the child.

E. Meeting With the Child

The lawyer should meet with the child, adapting all communications to the child’s age, level of education, cognitive development, cultural background and degree of language acquisition, using an interpreter if necessary. The lawyer should inform the child about the court system, the proceedings, and the lawyer’s responsibilities. The lawyer should elicit and assess the child’s views.

Commentary
Establishing and maintaining a relationship with a child is the foundation of representation. Competent representation requires a child-centered approach and developmentally appropriate communication. All appointed lawyers should meet with the child and focus on the needs and circumstances of the individual child. Even nonverbal children can reveal much about their needs and interests through their behaviors and developmental levels. Meeting with the child also allows the lawyer to assess the child’s circumstances, often leading to a greater understanding of the case, which may lead to creative solutions in the child’s interest.

The nature of the legal proceeding or issue should be explained to the child in a developmentally appropriate manner. The lawyer must speak clearly, precisely, and in terms the child can understand. A child may not understand legal terminology. Also, because of a particular child’s developmental limitations, the lawyer may not completely understand what the child says. Therefore, the lawyer must learn how to ask developmentally appropriate, non-suggestive questions and how to interpret the child’s responses. The lawyer may work with social workers or
other professionals to assess a child’s developmental abilities and to facilitate communication.

While the lawyer should always take the child’s point of view into account, caution should be used because the child’s stated views and desires may vary over time or may be the result of fear, intimidation and manipulation. Lawyers may need to collaborate with other professionals to gain a full understanding of the child’s needs and wishes.

F. Pretrial Responsibilities

The lawyer should:

1. Conduct thorough, continuing, and independent discovery and investigations.

2. Develop a theory and strategy of the case to implement at hearings, including presentation of factual and legal issues.

3. Stay apprised of other court proceedings affecting the child, the parties and other household members.

4. Attend meetings involving issues within the scope of the appointment.

5. Take any necessary and appropriate action to expedite the proceedings.

6. Participate in, and, when appropriate, initiate, negotiations and mediation. The lawyer should clarify, when necessary, that she or he is not acting as a mediator; and a lawyer who participates in a mediation should be bound by the confidentiality and privilege rules governing the mediation.

7. Participate in depositions, pretrial conferences, and hearings.

8. File or make petitions, motions, responses or objections when necessary.
9. Where appropriate and not prohibited by law, request authority from the court to pursue issues on behalf of the child, administratively or judicially, even if those issues do not specifically arise from the court appointment.

Commentary
The lawyer should investigate the facts of the case to get a sense of the people involved and the real issues in the case, just as any other lawyer would. This is necessary even for a Child’s Attorney, whose ultimate task is to seek the client’s objectives. Best Interests Attorneys have additional investigation duties described in Standard V-E.

By attending relevant meetings, the lawyer can present the child’s perspective, gather information, and sometimes help negotiate a full or partial settlement. The lawyer may not need to attend if another person involved in the case, such as a social worker, can obtain information or present the child’s perspective, or when the meeting will not be materially relevant to any issues in the case.

The lawyer is in a pivotal position in negotiations. The lawyer should attempt to resolve the case in the least adversarial manner possible, considering whether therapeutic intervention, parenting or co-parenting education, mediation, or other dispute resolution methods are appropriate. The lawyer may effectively assist negotiations of the parties and their lawyers by focusing on the needs of the child, including where appropriate the impact of domestic violence. Settlement frequently obtains at least short-term relief for all parties involved and is often the best way to resolve a case. The lawyer’s role is to advocate the child’s interests and point of view in the negotiation process. If a party is legally represented, it is unethical for a lawyer to negotiate with the party directly without the consent of the party’s lawyer.

Unless state law explicitly precludes filing pleadings, the lawyer should file any appropriate pleadings on behalf of the child, including responses to the pleadings of other parties, to ensure that appropriate issues are properly before the court and expedite the court’s consideration of issues important to the child’s interests. Where available to litigants under state laws or court rules or by permission of the court, relief requested may include, but is not limited to: (1) A mental or physical examination of a party or the child; (2) A parenting, custody or
visitation evaluation; (3) An increase, decrease, or termination of parenting time; (4) Services for the child or family; (5) Contempt for non-compliance with a court order; (6) A protective order concerning the child’s privileged communications; (7) Dismissal of petitions or motions.

The child’s interests may be served through proceedings not connected with the case in which the lawyer is participating. For example, issues to be addressed may include: (1) Child support; (2) Delinquency or status offender matters; (3) SSI and other public benefits access; (4) Mental health proceedings; (5) Visitation, access or parenting time with parents, siblings; or third parties; (6) Paternity; (7) Personal injury actions; (8) School/education issues, especially for a child with disabilities; (9) Guardianship; (10) Termination of parental rights; (11) Adoption; or (12) A protective order concerning the child’s tangible or intangible property.

G. Hearings

The lawyer should participate actively in all hearings and conferences with the court on issues within the scope of the appointment. Specifically, the lawyer should:

1. Introduce herself or himself to the court as the Child’s Attorney or Best Interests Attorney at the beginning of any hearing.

2. Make appropriate motions, including motions in limine and evidentiary objections, file briefs and preserve issues for appeal, as appropriate.

3. Present and cross-examine witnesses and offer exhibits as necessary.

4. If a child is to meet with the judge or testify, prepare the child, familiarizing the child with the places, people, procedures, and questioning that the child will be exposed to; and seek to minimize any harm to the child from the process.

5. Seek to ensure that questions to the child are phrased in a syntactically and linguistically appropriate manner and that testimony is presented in a manner that is admissible.
6. Where appropriate, introduce evidence and make arguments on the child’s competency to testify, or the reliability of the child’s testimony or out-of-court statements. The lawyer should be familiar with the current law and empirical knowledge about children’s competency, memory, and suggestibility.

7. Make a closing argument, proposing specific findings of fact and conclusions of law.

8. Ensure that a written order is made, and that it conforms to the court’s oral rulings and statutorily required findings and notices.

Commentary

Although the lawyer’s position may overlap with the position of one or more parties, the lawyer should be prepared to participate fully in any proceedings and not merely defer to the other parties. The lawyer should address the child’s interests, describe the issues from the child’s perspective, keep the case focused on the child’s needs, discuss the effect of various dispositions on the child, and, when appropriate, present creative alternative solutions to the court.

A brief formal introduction should not be omitted, because in order to make an informed decision on the merits, the court must be mindful of the lawyer’s exact role, with its specific duties and constraints. Even though the appointment order states the nature of the appointment, judges should be reminded, at each hearing, which role the lawyer is playing. If there is a jury, a brief explanation of the role will be needed. The lawyer’s preparation of the child should include attention to the child’s developmental needs and abilities. The lawyer should also prepare the child for the possibility that the judge may render a decision against the child’s wishes, explaining that such a result would not be the child’s fault.

If the child does not wish to testify or would be harmed by testifying, the lawyer should seek a stipulation of the parties not to call the child as a witness, or seek a protective order from the court. The lawyer should seek to minimize the adverse consequences by seeking any appropriate accommodations permitted by law so that the child’s views are presented to the court in the manner least harmful to the child, such as having the testimony taken informally, in chambers, without the parents
present. The lawyer should seek any necessary assistance from
the court, including location of the testimony, determination of
who will be present, and restrictions on the manner and
phrasing of questions posed to the child. The child should be
told beforehand whether in-chambers testimony will be shared
with others, such as parents who might be excluded from
chambers.

Questions to the child should be phrased consistently with the
law and research regarding children’s testimony, memory, and
suggestibility. The information a child gives is often misleading,
especially if adults have not understood how to ask children
developmentally appropriate questions and how to interpret their
answers properly. The lawyer must become skilled at
recognizing the child’s developmental limitations. It may be
appropriate to present expert testimony on the issue, or have an
expert present when a young child is directly
involved in the litigation, to point out any developmentally
inappropriate phrasing of questions.

The competency issue may arise in the unusual circumstance of
the child being called as a live witness, as well as when the
child’s input is sought by other means such as in-chambers
meetings, closed-circuit television testimony, etc. Many
jurisdictions have abolished presumptive ages of competency
and replaced them with more flexible, case-by-case analyses.
Competency to testify involves the abilities to perceive and
relate. If necessary and appropriate, the lawyer should present
expert testimony to establish competency or reliability or to
rehabilitate any impeachment of the child on those bases.
What to Know #4: 
Court: the Child’s Perspective

In Montana, it is rare for a child to be present for a parenting plan proceeding. However, if the child is old enough to be informed about court dates, then the court date will present some type of challenge for every child. Similarly, if a child client is going to be interviewed in camera by the judge, that event will also be challenging for the child.

On behalf of a child client, the attorney should consider age appropriate preparations or explanations about court proceedings an important part of representation. Even when the child will not attend court proceedings, court preparation is necessary.

1. Ask the child client to tell you their current understanding about ‘court.’ In the absence of good information, children will often develop their own construct about important proceedings. An accurate explanation is important.

2. Consider that a child’s parents may have provided any number of scenarios about what will happen in court; the judge’s role; and what will happen to the child after court. Providing accurate information which your child client can understand is critically important, and may genuinely reduce confusion and apprehension for your child client.

3. If a child client will be meeting with the judge, then it is important for the child to have an opportunity to ask questions about the in camera meeting process, including the judge’s name, information about others who may be present at the meeting, how long the meeting will last, and what will be done with the information from the meeting with the judge.
CHAPTER II – CHILD CLIENTS:
HOW TO MEET SPECIFIC NEEDS OF A CHILD CLIENT

The Chapter II materials provide information specific to working with a child client, including warning signs that could indicate serious distress.

Specific Needs of a Child Client:

1) Talking with children effectively is different than talking with an adult  Pages 22 - 24
   a) Life experience:  
      A child only knows their own experience
   b) Meanings of questions:  
      Five ways questions are used/perceived
   c) Conceptual development:  
      numbers, kinship, prepositions
   d) Words with double meanings

2) Family transitions, or co-parenting disputes, are stressful for children.  Pages 25 - 44
   a) Many children will weather a family transition without developing any long term or severe difficulties.
   b) Some children who experience a family transition or co-parenting dispute may develop problems socially, emotionally, physically, and educationally.
      i) Attorneys should be familiar with red flags that a child client’s distress is becoming severe and may need referrals for support. Red flags change with the child’s age.

Montana Legal Services Association
Child Custody Warning Sign Guide  Pages 26 - 39

Child Mental Health Resource List  Pages 40 - 44
3) It is imperative for a child’s attorney to have contact with:
   Page 45
   
a) the child client’s physician;
   
b) the child client’s school or child care center; and
   
c) anyone who the child identifies as a significant relationship
      i) coach
      ii) pastor
      iii) neighbor
      iv) scout, 4-H, service club leader.

4) Children need parenting plans they can count on. Page 46
   
a) Waiting for a parenting plan, especially in a chaotic situation without predictable routine, may impact a child’s development.

5) Child-centered parenting plans and residential schedules. Pages 47 - 49
   
a) Years 0-3
   
b) Years 3-6
   
c) Years 6-12
   
d) Years 12-17
How #1:
How to talk with children

The guidelines below apply absolutely to children between the ages of 2 and 10; and often apply to young people who are chronologically over the age of 10 but whose language usage is not consistent with their age. Although a child client may have an impressive vocabulary and sentence structure, attorneys need to remember that use of words is not the same as comprehension of meanings.

Framing:
Before an attorney begins to elicit information from a child client, the attorney’s role in relation to the child must be ‘framed.’ Since children operate with limited life experience, they do not have a context for every adult. Framing is as simple as giving the child a context, a reason why you are talking.

1. In simple words tell the child what your job is.
2. In simple works tell the child why it is part of your job to talk with them.

[Framing example for a child between 4 and 8 years old:]
The five sentences below will help the child understand why you are talking to them, and give the child enough information to form their own questions for you.

“I have an office in town. I help kids when their families are changing. My job is to know about rules and laws for parents. I will talk with you. I will learn what you believe is important. My job is to help.”

Questions:
Questions have five different functions.

1. Elicit information – Do you know the neighbors?
2. Test knowledge – Where is the Dairy Queen?
3. Make suggestions – Why don’t you paint it purple?
4. Give direction – Would you please put the toys away?
5. Make accusations – Why did you leave the gate open?

In a child’s view, an adult is a person of authority, thus being questioned by any adult may cause some worry. In school, children are expected to provide an answer whenever they are questioned. Some parents, or other adults, use

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questions to children abusively. Sometimes children will feel pressured to provide answers even if they really don’t know the information, or even when they do not understand the questions.

Attorneys need accurate meaningful information from child clients. It is important to tell the child that “I don’t know” or “I don’t understand” are appropriate responses when they talk with their attorney. Children like examples, and a chance to practice what they are being asked to do. An attorney can create a practice opportunity, and build relationship simultaneously, by asking a question the child cannot possibly answer.

**[Example for practicing I don’t know:]**

“Let’s practice saying I don’t know.”

“Holly, what color is my house?” or “Aaron, what do I call my dog?”

After you ask the question, listen to the response and acknowledge that you knew there was no way they could give you the correct answer – and you expect them to say “I don’t know” whenever they don’t know the answer. Some children need to do this practice exercise twice to feel confident. If your client seems confused about the concept then practice a couple more “I don’t know” questions.

**Conceptual Language:**

When an attorney needs specific information from a child client it may be necessary to talk about abstract concepts, and although the child may use vocabulary which describes the concepts the child may not use the words accurately.

1. **Numbers:** Counting words and the ability to say numbers in a correct sequence is not a demonstration of understanding numerical values. The question “How many times did that happen?” will probably elicit a numerical answer, but the number may not have any meaning.

   Attorneys can use the first time/last time strategy to try to learn how long something has been happening. “Tell me about the first time that happened?” or “When was the last time that happened?”

2. **Kinship:** Children under the age of 10 are still learning family relationships. Asking a young child to tell you about the biological or legal relationships in their family may add confusion to the conversation. Try to obtain kinship information from a collateral source. Kinship terminology and familial roles differ with culture. It is
important for a child’s attorney to be informed about the culture of the family.

3. **Prepositions:** The relationship in space of objects to other objects, or people to objects, or people to people is extremely abstract for a child. Prepositions are the words that demonstrate location in space for people and objects. If the attorney must have information about where the child was in relation to an object, or another person, then it is important to learn if the child client can use prepositions accurately. The best way to gain information about where the child was, or what happened, is to ask the child to demonstrate what happened. Provide a teddy bear and another object and ask the child “Use the teddy bear to show me what happened so I can make sure I understand.” Prepositions may add confusion to the conversation.

4. **Double Meanings:** The legal arena is rich with words that can confuse a child, such as party, hearing, court, strike, minor, case, charges, swear, and before. If a child client is participating in formal legal conversations it is important for the child’s attorney to recognize words with double meanings and provide an explanation to the child. If the child is going to attend a hearing, or talk with the judge, it is critically important to review the formal vocabulary of the courtroom as part of preparation for court.
How #2: How to help a child client cope with family transition

Change is stressful for people at any age. Even positive change can cause stress and anxiety. As dependents, children have little control over family changes which impact their lives. Many children weather changes in the family with a normal and manageable amount of distress; other children will need some extra help with their stress during a family transition. The more prolonged conflict between parents, the more likely a child will suffer intensely or develop problems which need intervention.

A change in the family may feel like a loss to a child; thus, some sadness, frustration or even anger is an appropriate response. If the child continues to participate in a daily routine and to meet responsibilities reasonably well, then it is likely the child’s reactions are not going to interfere with growth or learning. The sad feelings may ebb and flow over time as the child adjusts to the new family configuration, new locations, and changed schedules.

An intervention is a planned response to a problem. Therapy, counseling, or evaluation of parents and/or the child are all standard family transition interventions. An unnecessary intervention for a child whose responses are simply normal will only increase stress. One Montana judge sums it up by saying he doesn’t approve of sending children to therapists when it’s the parents who have the problem. It makes no sense!

Child assessment is a broad, complicated process which requires a licensed professional who is trained in administering and scoring results for tests and screenings of children. A child’s attorney, however, should be training to recognize Warning Signs and Red Flags as indicators of a child client’s distress.

Warning Signs and Red Flags: The key for a child’s attorney to recognize when a child may need intervention is to be alert for warning signs and red flags. A red flag is some type of change or difference in the child’s behavior or ability that was not present prior to the family transition.

The presence of a red flag may be an indicator that there is a problem, and the absence of any red flags is not an assurance that there is not a problem.

A child’s attorney is a critical link to support for a child who is struggling. Parents may become so distracted by divorce or custody disputes that they temporarily abdicate normally competent parenting and simply fail to focus adequately on their child’s experience.
Warning Sign Guide for Children’s Attorneys:

Most children are normal. They accomplish their developmental tasks within the average time frame. Their behavior is appropriate for their age, and they enjoy and are loved by their parents.

Developmental tasks are predictable expected skills and abilities every healthy child will accomplish within an established age range. Child development is tied to brain development; in that sense it is a physiological process. The absence of developmentally expected skills and abilities for a child’s age is solid reason for concern.

Behavioral norms are also predictable and expected for every healthy child with considerations of differences of temperament, personality, and environment. The presence of behaviors which are younger than a child’s age, or older than a child’s age, or behaviors which interfere with relationships, day to day normal living, or the child’s safety are solid reason for concern.

<table>
<thead>
<tr>
<th>Warning Signs: Developmental</th>
<th>Warning Signs: Behavioral</th>
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<tbody>
<tr>
<td>✓ Chronic physical illness</td>
<td>✓ Consistently oppositional behavior at any age (continually challenging rules and limits)</td>
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<tr>
<td></td>
<td>✓ Frequently inconsolably sad or angry to the point of disruption of day to day routine and ability to accomplish and complete age appropriate tasks</td>
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## Warning Signs:

### Developmental

- ✓ Low birth weight (below 5 pounds 8 ounces)
- ✓ No response to sounds including a lack of eyes moving.
- ✓ Infant unable to use eyes to look at and follow a face held 12-24 inches from the infant’s face

### Behavioral

- ✓ Sleep Disturbances (frequent waking, unable to sustain sleep for at least two hours)
- ✓ Eating / Feeding problems
- ✓ Failure to discriminate mother (or primary care giver) from others
- ✓ Apathetic, withdrawn (no facial or physical expression of interest in social interaction)
**Warning Signs: Developmental**

- Infant not using eyes to follow a person’s movement across a room
- Infant’s head is not supported by the neck when held in a sitting position

**Warning Signs: Behavioral**

- Sleep Disturbances (frequent waking, unable to sustain sleep for at least two hours)
- Eating / Feeding problems
- Parents’ who don’t enjoy their child (don’t look at their children when feeding them, don’t hold their children often, propping bottles rather than holding during feedings)
- Parent’s describing frequent inconsolable lengthy crying jags by the infant
- Excessive irritability by infant
<table>
<thead>
<tr>
<th>Warning Signs: Developmental</th>
<th>Warning Signs: Behavioral</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Not eating any solid foods still exclusively bottle or breast fed</td>
<td>✓ Sleep Disturbances (frequent waking, unable to sustain sleep for at least four hours)</td>
</tr>
<tr>
<td>✓ No vocalized babbling sounds</td>
<td>✓ Eating problems</td>
</tr>
<tr>
<td>✓ Baby should be using both hands to grasp/grab/hold objects within reach; including holding a bottle.</td>
<td>✓ Frequent inconsolable lengthy crying jags by the infant</td>
</tr>
<tr>
<td></td>
<td>✓ Baby is not suspicious when strangers approach</td>
</tr>
<tr>
<td></td>
<td>✓ No interest in objects or play</td>
</tr>
<tr>
<td></td>
<td>✓ Unusual movements: continual rocking, head banging, obsessive finger sucking</td>
</tr>
</tbody>
</table>
### Warning Signs: Developmental

- ✓ Children who cannot move on their own (rolling around counts as moving). Should be pulling themselves up on furniture, crawling, rolling
- ✓ Should be waving, picking up food with fingers, and pointing to interesting things and absence of these physical behaviors is of concern.

### Warning Signs: Behavioral

- ✓ Sleep Disturbances
- ✓ Eating difficulties: food refusal, finicky eating
- ✓ Frequent inconsolable lengthy crying jags by the infant
- ✓ Doesn’t notice or care when parents leave and fails to become agitated or withdrawn when a stranger approaches, or when a stranger picks them up and leaves the room.
- ✓ Low frustration tolerance, unable to persist trying an activity or task due to frustration
### Warning Signs: Developmental

- ✓ Speaks fewer than 5 words,
- ✓ Doesn’t point at items
- ✓ Not walking at all
- ✓ Not making sounds
- ✓ No response to one simple instruction from a caregiver – such as come here

### Warning Signs: Behavioral

- ✓ Sleep disturbances
- ✓ Eating difficulties: food refusal, finicky eating
- ✓ Doesn’t respond to any social interactions
- ✓ Poor or no eye contact
- ✓ Frequent inconsolable crying or raging episodes
### Warning Signs: Developmental

- Doesn’t understand or use any words to communicate – should be talking even if only parents understand the meaning of words.
- Is not trying to, or succeeding in running
- Is not able to hold a marker and make lines on paper

### Warning Signs: Behavioral

- Expresses many fears
- Aggressive biting, hitting or throwing even after receiving directions to stop those behaviors
- Clings to primary caregiver even in familiar situations or locations
- Inconsolable after 20 minutes of crying or tantrum
- Regression to younger behaviors – crawling instead of walking or stops sleeping through the night
### Warning Signs: Developmental

- Shows severe anxiety, crying or tantrums, about separation from parents
- Cannot say name and age
- Cannot hold fork/spoons for meals
- Is not talking well enough to be understood at least partially, by a stranger

### Warning Signs: Behavioral

- Has no out of home social interaction time
- Is or has been asked to leave a day care setting due to aggressive behavior – such as biting, hitting
- Is or has been asked to leave a friend’s house due to aggressive behavior
- Parents should be able to tell attorney about the make believe games played by their child
**Warning Signs:**

<table>
<thead>
<tr>
<th>Developmental</th>
<th>Behavioral</th>
</tr>
</thead>
<tbody>
<tr>
<td>✓ Is not talking well enough to be clearly understood by a stranger</td>
<td>✓ Bites others</td>
</tr>
<tr>
<td>✓ Child is not dressing herself or himself.</td>
<td>✓ Smears his/her own feces</td>
</tr>
<tr>
<td></td>
<td>✓ Is not toilet trained completely during the daytime</td>
</tr>
<tr>
<td></td>
<td>✓ Regresses with toilet training. Begins to wet or soil pants after successful toilet training.</td>
</tr>
<tr>
<td>Warning Signs: Developmental</td>
<td>Warning Signs: Behavioral</td>
</tr>
<tr>
<td>-------------------------------</td>
<td>--------------------------</td>
</tr>
<tr>
<td>✓ Can't skip</td>
<td>✓ Deliberately breaking objects</td>
</tr>
<tr>
<td>✓ Has difficulty holding a pencil or crayon to allow drawing</td>
<td>✓ Hurting animals</td>
</tr>
<tr>
<td>✓ Is unable to complete a three step task in the order given (e.g. pick up your toy, put it in the toy box, and come here)</td>
<td>✓ Regresses with toilet training</td>
</tr>
<tr>
<td></td>
<td>✓ Any infliction of pain, or injury to himself</td>
</tr>
</tbody>
</table>
### Warning Signs: Developmental

- ✓ Has not mastered basic reading skills
- ✓ Disrupts activities with peers – developmentally should be able to play cooperatively
- ✓ Disrupts classroom – developmentally should be able to sit in class and follow directions from a teacher

### Warning Signs: Behavioral

- ✓ Refuses to attend school despite parents’ efforts
- ✓ Begins to act angry or make angry statements to their primary caretaker
- ✓ Complaining of physical ailments in the morning on school days
- ✓ Identified by teacher as a behavior problem
### Warning Signs: Developmental

- Learning problems that require special education assistance at school
- Disrupts social peer play with negative activities

### Warning Signs: Behavioral

- No best friend
- Disrupts social peer play with negative activities
- Diagnosed with a chronic illness (e.g. rheumatoid arthritis, diabetes) fewer than 5 percent of children have chronic illness which limits activity

- Trying to be the “perfect child”

---

### Warning Signs: Developmental

- ✓ Should be an onset of puberty with appropriate physical growth and change during these years.
- ✓ Difficulty adjusting to the next grade or level in school – not keeping up academically with peers even with prior academic success

### Warning Signs: Behavioral

- ✓ No friends
- ✓ Sexual activity
- ✓ Prolonged family discord which the child can describe – discord between the adults when the child is present
- ✓ Decline in school performance
- ✓ Alcohol or drug use
- ✓ Delinquency or destructive behavior
- ✓ Repeated (more than two) referrals for discipline at school
- ✓ Lack of accountability about what, where, when and who they are with when not at home
- ✓ Trying to be the “perfect child”

---

**11-14 YEARS**
### Warning Signs: Developmental
- Cannot link cause and effect
- Unable to link two or more variables to solve a problem
- Sudden decline in grades could indicate an undiagnosed developmental gap

### Warning Signs: Behavioral
- “Loner”
- Promiscuity
- Prolonged family discord which the child can describe – discord between the adults when the child is present
- Decline in school performance
- Seriously delinquent behavior – not status offenses
- Out of home placement – either mandatory or voluntary
- Alcohol or drug use
- Depression
- Lack of involvement with school activities, hobbies, or employment
If you are concerned that your client is exhibiting any red flags, then it is important to consult with a child mental health professional.

Montana’s geographic diversity, particularly in our extremely rural areas, may present some challenges in locating a certified or licensed professional for consultation.

The resources below are suggestions about how to locate child mental health or social service resources from anywhere in Montana. The agencies below are licensed in Montana as a Mental Health Center.

[Child Mental Health Resources:]

Multiple Services areas statewide:

1. A.W.A.R.E.  
   Contact:  www.aware-inc.org

2. Youth Dynamics Inc.  
   Contact:  www.youthdynamics.org

3. IN-CARE Network Inc.  
   Contact:  406-294-9616  
             2906 2nd Ave  
             Billings, MT 59601

4. Youth Homes, Inc.  
   Contact:  406-721-2704  
             P.O. Box 7616  
             Missoula, MT 59807

West of the Continental Divide:

5. Northwest Behavioral Health  
   Contact:  406-844-2890  
             7325 Hwy 93 South  
             Lakeside, MT 59922

6. Western Montana Regional Community Mental Health Center  
   Contact:  406-728-6817
7. Bitterroot Valley Education Cooperative  
   Contact: 406-777-2494  
   300 Park St.  
   Stevensville, MT 59870  

East of the Continental Divide:  

8. Eastern Montana Mental Health Center  
   Contact: 406-234-1687  
   2508 Wilson Street  
   Miles City, MT 59301  

9. Alta Care of Montana  
   Contact: 406-494-4183  
   55 Basin Creek Rd.  
   Butte, MT 59701  

10. Golden Triangle Community Mental Health Center  
    Contact: 406-761-2100  
    915 1st Ave.  
    Great Falls, MT 59401  

11. Golden Triangle Community Mental Health Center  
    Contact: 406-443-7151  
    900 N. Jackson  
    Helena, MT 59601  

12. Intermountain Children’s Home  
    Contact: 406-442-7920  
    500 S. Lamborn  
    Helena, MT 59601  

13. New Day Inc.  
    Contact: 406-254-2340  
    301 Coburn Rd.  
    Billings, MT 59601
Public School Systems:

Children in every Montana community are attending school. Educators and administrators in local public school system are a good source of information about social and mental health services in your geographic area. If it is difficult to locate child mental health resources nearby, then contact your school system and inquire about child welfare professionals.

Montana Division of Child and Family Services:

The child protective system works closely with child mental health providers all over the state, and can serve as a local resource for attorneys representing children in non-dependent neglect cases. Your local county office of Child and Family Services is a good resource. There are five regional Child and Family Service offices:

[Child and Family Services Regional Offices:]

Eastern Region I

(Carter, Custer, Daniels, Dawson, Fallon, Garfield, McCone, Phillips, Powder River, Prairie, Richland, Roosevelt, Rosebud, Sheridan, Treasure, Valley, and Wibaux)

Contact: Regional Administrator
PO Box 880
708 Palmer
Miles City, MT 59301
(406) 232-1385
(406) 232-6755 Fax

North Central Region II

(Blaine, Cascade, Chouteau, Glacier, Hill, Liberty, Pondera, Teton, and Toole)

Contact: Regional Administrator
2300 12th Avenue South
Suite 201
Great Falls, MT 59405
South Central Region III

(Big Horn, Carbon, Fergus, Golden Valley, Judith Basin, Musselshell, Petroleum, Stillwater, Sweet Grass, Wheatland, and Yellowstone)

Contact: Regional Administrator
2525 4th Avenue North, Suite 309
Billings, MT 59101
(406) 657-3120
(406) 657-3178 Fax

Southwest Region IV

(Beaverhead, Broadwater, Deer Lodge, Gallatin, Granite, Jefferson, Lewis & Clark, Madison, Meagher, Park, Powell, Silver Bow)

Contact: Regional Administrator
316 North Park
PO Box 817
Helena MT 59624
(406) 444-2030
(406) 444-1681 (FAX)

Western Region V

(Flathead, Lake, Lincoln, Mineral, Missoula, Ravalli, Sanders)

Contact: Regional Administrator
2677 Palmer Street, Suite 300
Missoula, MT 59808
(406) 523-4100
(406) 523-4150 Fax
Private Individual Mental Health Providers:

Montana requires licensing for psychologists, licensed clinical social workers, licensed professional counselors, and licensed addictions counselors. The phone book is a good resource for the individual practitioners in your geographic area. When you call to consult about a child case, begin by asking if the provider is experienced working with children.

[Professional associations are also a good resource:]


4. Montana Psychological Association – wtp.net/mpa
How #3:  
Collateral Contact for the Child’s Attorney

In order to develop a comprehensive picture of a child’s life, their needs, likes and dislikes, their interests, the attorney will need to contact other adults who know their child client well.

Keep in mind that, as mentioned in Chapter I, children elicit a sense of collective responsibility from adults and expect the collateral contacts to have biases and opinions. It is important to apply facts to a child client’s case so the attorney may have to spend time prioritizing the information from collateral contacts based upon the context of those relationships and the parental dispute.

1. At least one contact with a child’s physician is important. A current health history may provide useful information for decision making. Generally physicians will not see their young patients too often so they may not have a close relationship, but physicians are a critical source of information.

2. Attorneys for children will want to contact their client’s teacher or child care provider; these contacts are experienced adults who see the child daily and can provide information about:
   a. warning signs and changes in the child’s behavior since the parenting dispute began;
   b. learning progress;
   c. social behaviors;
   d. emotional states;
   e. the parents; and
   f. family and other close relationships.

3. Ask your young client who is important to them. Whomever they identify is potentially a source of important information about the client. Any adult leader of youth activities, long term neighbors, spiritual leaders, or coach may be good impartial contacts who will help the attorney understand the child.

When an attorney represents a child, collaboration is central to the case. Gathering information and asking for recommendations from others who know the young client is essential to reach disposition of the child’s best interests.
How #4
Advocate for a Plan the Child Can Count On

The purpose of childhood is to learn how to make sense of the world, in order to grow up and live well. Children, in their limited experience, may only interpret the world based upon whatever meaning is provided by their caregivers.

Children require an adult caregiver to interpret the environment, thus one very important task of infancy early childhood is to develop a strong primary relationship with a caregiver who will help interpret the environment and consistently meet the child’s needs.

1. When family transitions cause chaos and disorganization in the family for a short time, six months or less, children will probably tolerate the changes and accommodations just fine.

   a. How the child responds to changes and even short terms chaos is closely related to the age and developmental stage of the child. It is important for a child’s attorney to anticipate significant milestones in the child client’s future and inform the court about the need for planning.

   [Example: A 5 year old ready to begin kindergarten]

   Kindergarten is an important milestone for children. Ideally the child would know in advance which school they will attend, have opportunity to visit the classroom and meet the teacher prior to the first day, know who will take them to school and who will pick them up, and have a clear path of communication between the teacher and parents.

   But, if parents are distracted with divorce or disputes, perhaps moving residences or changing jobs, then the basic supports for their five year old may not be available and the kindergartener may become anxious about school.

   When parents dispute their respective responsibilities to their children, the stability and consistency children need from day to day may be compromised. A child’s attorney can advocate for their child clients need to have a solid plan in place even while the parents are in turmoil.
How #5
Attorneys Can Inform the Courts of Child Centered Parenting Plans

In Montana, several judicial districts have implemented an orientation for parents who file for dissolution or parenting plans. The orientations last about two hours and parents are ordered to attend prior to finalizing their parenting plans. From community to community the curriculums vary, but have common objectives:

1. To educate parents about child development and child centered parenting plans and residential schedules.

2. To educate parents about the elements of a parenting plan

3. To educate parents about their options for dispute resolution
   (a) to encourage parents to use the courts appropriately

The curriculums have been researched and written collaboratively by family law attorneys, child mental health providers, and district court staff. The materials are research based, not simply opinions.

The following information is from the First Judicial District’s orientation titled Children First. The complete presentation is included in the materials in Appendix 12.

Residential Schedule Recommendations:
AGES 0-3:
   1. Contact with each parent every day or two that is predictable and routine
   2. Living and child care arrangements that don’t change often
   3. One primary home

AGES 3-6:
   1. Frequent and regular contact with each parent
   2. One primary home
   3. Up to week long contacts with the other parent on an occasional basis
4. The same child care provider

AGES 6-12:
1. Longer periods of time with each parent
2. One primary home is not as important, but overnight transitions during the school week are to be avoided
3. Strong communication between parents and rules that are the same at each home are very important

AGES 12-17:
1. Consistency between parents regarding rules and limits
2. A high degree of communication between parents

A child-centered and age appropriate residential schedule is critically important for children whose parents do not live together. Parents love their children and typically both parents want to be with their children at every opportunity. Particularly for young children, parents need to consider the child’s experience of a residential schedule which has frequent transitions between homes.

[Example from the Children First presenters:]

I want each parent in the class to take a moment and imagine the following scenario.

One day your attorney hands you some papers, a court order from the judge. You have had no control over how this order was written, or what evidence the judge heard to reach these conclusions. You have to follow the order, it is legally enforceable.

The order says your children will stay in the family home, and you and your co-parent will each rent separate apartments to live in when you are not the residential parent. The children will not have to move.

You locate an apartment and make arrangements to move in. You have to decide how to obtain and arrange the furniture, household goods and clothing you need each day for living in your apartment.

You change your mailing address to your new home in your
apartment, and you arrange your newspaper delivery to your apartment as well. You order a phone for your apartment, and set up an answering machine.

You arrange for your employer to know both your addresses and all your phone numbers in case you must be reached after work hours.

Every week on Wednesday after work you pack up everything you will need for the following week and you take it to your family's home and move in for your parenting time. You live in the family home for one week, and then on Wednesday after work you pack up everything you brought from your apartment and move back to your apartment for one week.

Each week when you change residences you must play catch upon all the little things you missed at each residence while you were gone.

Every Wednesday, Every Week, All Year, Year after Year.
64B19-18.004 Use of Test Instruments.
¶(1) The Board finds that the inappropriate use of test instruments is harmful to consumers. The Board finds further that a need exists to set out the minimum standard of professional practice maintained and required of psychologists who use test instruments in the psychologist’s practice of psychology.

¶(2) A psychologist who uses test instruments in the psychologist’s practice of psychology:

(a) Must consider whether research supports the underlying presumptions which govern the interpretive statements which would be made by the test instrument as a result of its completion by any service user;

(b) Must be able to justify the selection of any particular test instrument for the particular service user who takes the test at the instruction of the psychologist;

(c) Must integrate and reconcile the interpretive statements made by the test instrument based on group norms, with the psychologist’s independent professional knowledge, evaluation and assessment of the individual who takes the test;

(d) Must specify in the test report the name of each person who assisted the psychologist in the administration of the test, and the role which that person played in the administration of the test.

¶(3) A psychologist who uses test instruments may not release test data, such as test protocols, test questions, assessment-related notes, or written answer sheets, except
(1) to a licensed psychologist or school psychologist licensed pursuant to Chapter 490, F.S., or Florida certified, or

(2) after complying with the procedures set forth in subsection 64B19-19.005(6), F.A.C., and obtaining an order from a court or other tribunal of competent jurisdiction, or

(3) when the release of the material is otherwise required by law.

When raw test data is released pursuant to this paragraph, the psychologist shall certify to the service user or the service user's designee that all raw test data from those test instruments have been provided. Psychologists are expected to make all reasonable efforts to maintain the integrity of the test protocols, modalities and instruments when releasing information as provided herein.

¶(4) In performing the functions listed at subsection (2) of this rule, the psychologist must meet with the test subject face-to-face in a clinical setting unless the psychologist has delegated the work to a psychological intern, psychological trainee or psychological resident in a doctoral psychology program approved by the American Psychological Association.

¶(5) It shall be a violation of this rule for a psychologist to sign any evaluation or assessment unless the psychologist has had an active role in the evaluation or assessment of the subject as required by subsection (4) of this rule. A psychologist may not sign any evaluation or assessment that is signed by any other person unless the psychologist is signing as a supervisor in conjunction with an evaluation or assessment performed by a psychological intern, psychological trainee or psychological resident.

¶(6) “Test instruments” are standardized procedures which purport to objectively measure personal characteristics such as intelligence, personality, abilities, interests aptitudes, and neuropsychological functioning including evaluation of mental capacity to manage one's affairs and to participate in legal proceedings. Examples of such tests include intelligence tests, multiple aptitude batteries, tests of special aptitudes, achievement tests, and personality tests concerned with measures of emotional and motivational functioning, interpersonal behavior, interests, attitudes and other affective variables.

Specific Authority 490.004(4) FS. Law Implemented 490.003(4), 490.009(1)(r), (s), (v), (w) FS. History–New 6-14-94, Formerly 61F13-20.004, Amended 5-19-97, Formerly 54AA-18.004, Amended 3-25-02.
64B19-18.005 Consent for Treatment of Minors.

For the purpose of discipline, the Board will not consider it a violation for a psychologist to treat a minor in an emergency situation, such as crisis intervention, without the consent of an adult so long as the psychologist abides by state law governing the emergency treatment of minors. Nor will the Board consider it a violation for a psychologist to treat a minor upon the psychologist’s receipt of written permission from any adult who claims to have authority to consent to treatment. This rule, however, may not be used to circumvent other disciplinary action against the psychologist in the substantive provision of treatment to the minor.

Specific Authority 490.004(4) FS. Law Implemented 490.009(2)(s) FS. History–New 6-14-94, Formerly 61F13-20.005, Amended 1-7-96, Formerly 59AA-18.005.

64B19-18.006 Prohibition Against Treating Psychologists Performing Forensic Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation.

It is a conflict of interest for a psychologist who has treated a minor or any of the adults involved in a custody or visitation action to perform a forensic evaluation for the purpose of recommending with which adult the minor should reside, which adult should have custody, or what visitation should be allowed. Consequently, a psychologist who treats a minor or any of the adults involved in a custody or visitation action may not also perform a forensic evaluation for custody, residence or visitation of the minor. This subsection does not limit a psychologist who treats a minor from providing a court or a mental health professional performing an evaluation with information about the minor from the psychologist's perspective as a treating psychologist, so long as the psychologist does not violate confidentiality.

64B19-18.007 Requirements for Forensic Psychological Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes.

¶(1) When an evaluation is for the purpose of making a recommendation to a court regarding custody, residence or visitation of a minor, the psychologist must, at least, communicate with the parties seeking custody of the minor or their legal representatives, and with the mental health professionals and the primary medical physician, if any, who are treating the minor, unless excused from doing so by court order. If a party fails to participate in the evaluation process, the psychologist shall so advise the court.

¶(2) To perform psychological evaluation of minors for the purpose of making a forensic recommendation regarding custody or visitation, a psychologist must have training in child development and child psychopathology. In addition, the psychologist must have training in family dynamics, and in legal issues and guidelines regarding child custody.

*Specific Authority 490.004(4) FS. Law Implemented 490.009(2)(s) FS. History–New 6-14-94, Formerly 61F13-20.007, Amended 1-7-96, Formerly 59AA-18.007.*
64B19-19.002 Definitions

A “client”, or “patient” is that individual who, by virtue of private consultation with the psychologist, has reason to expect that the individual’s communication with the psychologist during that private consultation will remain confidential, regardless of who pays for the services of the psychologist.


64B19-19.0025 Standards for Records

To serve and protect users of psychological services, psychologists’ records must meet minimum requirements for chronicling and documenting the services performed by the psychologist, documenting informed consent and recording financial transactions.

¶(1) Records for chronicling and documenting psychologists’ services must include the following: basic identification data such as name, address, telephone number, age and sex; presenting symptoms or requests for services; dates of service and types of services provided. Additionally, as applicable, these records must include: test data (previous and current); history including relevant medical data and medication, especially current; what transpired during the service sessions; significant actions by the psychologist, service user, and service payer; psychologist’s indications suggesting possible sensitive matters like threats; progress notes; copies of correspondence related to assessment or services provided; and notes concerning relevant psychologist’s conversation with persons significant to the service user.

¶(2) Written informed consent must be obtained concerning all aspects of services including assessment and therapy.
¶(3) A provisionally licensed psychologist must include on the informed consent form the fact that the provisional licensee is working under the supervision of a licensed psychologist as required by Section 490.0051, F.S. The informed consent form must identify the supervising psychologist.

¶(4) Records shall also contain data relating to financial transactions between the psychologist and service user, including fees assessed and collected.

¶(5) Entries in the records must be made within ten (10) days following each consultation or rendition of service. Entries that are made after the date of service should indicate the date the entries are made, as well as the date of service.

Specific Authority 490.004(4), 490.0148 FS. Law Implemented 490.002, 490.0051, 490.009(2)(s), (u), 490.0148 FS. History–New 11-23-97, Amended 10-22-98, 5-14-02.

64B19-19.003 Maintenance and Retention of Records.

¶(1) Licensed psychologists shall maintain psychological records for each service user and shall record information concerning consultations and/or services rendered by the psychologist to the service user within a reasonable time following that consultation or the rendition of that service.

¶(2) Except as provided in subsection (4) of this rule, the licensed psychologist shall maintain full and total responsibility for and control of all psychological records relating to users of the licensee's psychological services and of the users of the psychological services rendered by any person under the supervision of the licensed psychologist.

¶(3) Except as provided in subsection (4) of this rule, complete psychological records shall be retained by the licensed psychologist for a minimum of 3 years after

(a) the completion of planned services or
(b) the date of last contact with the user,

whichever event occurs later in time. Thereafter, either the complete psychological records or a summary of those psychological records shall be retained for an additional 4 years.

¶(4) A licensed psychologist is not required to retain psychological records if the psychologist's patients were assigned to the psychologist by a business entity which agrees to maintain and retain the confidentiality of the psychological
records consistent with Rules 64B19-19.005 and 64B19-19.006, F.A.C., and subsections (2) and (3) of this rule.


64B19-19.005 Releasing Psychological Records.

¶(1) Any licensed psychologist who agrees to provide copies of psychological records to a service user, a service user’s designee, or a service user’s legal representative, shall be accorded a reasonable time, not to exceed thirty (30) days, to make final entries and copy the psychological records, and may condition release of the copies upon payment by the requesting party of the reasonable costs of reproducing the records.

¶(2) Any licensed psychologist who opts to issue a report rather than provide copies of psychological records to a service user, a service user’s designee, or a service user’s legal representative, shall issue the report within thirty (30) days of the request, and may charge a reasonable fee for the preparation of the report and may condition the issuance of the report upon payment of the reasonable fee.

¶(3) The psychologist’s notes pertaining to psychological services rendered may be considered raw data as provided by subsection 64B19-18.004(3), F.A.C., at the discretion of the psychologist and therefore can be released only

(1) to a licensed psychologist or school psychologist licensed pursuant to Chapter 490, F.S., or Florida certified, or

(2) when the release of the material is otherwise required by law.

Children First
First Judicial District
Children First Orientation

- How Judges are Assigned
  - A = Judge McCarter
  - B = Judge Sherlock
  - C = Judge Honzel

- Number of Domestic Relations Cases per year per judge
  - 333 Domestic Relations Cases per year per judge

- Average length of hearings
  - $\frac{1}{2}$ of one day or less
Children and Court Cases

- Children may not attend court

- Court procedures are traumatic and stressful for children, even when the children are not in court
Children and Court Cases

- MCA states the court may consider a child’s wishes when the child is age 14 or older.

- Judges rarely, if ever, meet face to face with children.
  - Judges may scare the child.
  - Judges will not ask the child “Which parent do you want to live with?”
Court and Judge’s Rulings

- Judges are highly trained officials
- Judges do not have crystal balls
- Courts must rule based upon the “Best Interest of the Child” standard

- Judges may need more information
  - Parenting Assessments, Home Studies
  - Guardian ad litem’s
  - Psychological Evaluations
Children’s Reactions to Dissolution

• Confusion

• Sadness

• Anger

• Attempts to get parents back together
YOUR GOAL:
SUCCESSFUL CO-PARENTING

• Well adjusted children
  - Loving & trusting both parents
  - Positive support from family as they grow

• Well adjusted parents
  - Cooperating for the good of the children

Mutual respect
Living independent, successful lives
How to co-parent by creating Parenting Plans

• That will work for your children
• That will work for you
Co-parenting

- How to talk about your co-parent
- Managing children’s activities
- Clothing for the children
- Relationships with relatives
- Exposure to alcohol, tobacco
- Unexpected schedule changes
There IS a lot to decide
(In the Best Interests of the Children)

• Tax status
• Change in circumstances
  – Schedule/work/living arrangements
• Special needs
• Religious education
• A plan for future decision making
Why it can be so hard to make parenting plan agreements:

• Your world is changing:
  - You and your co-parent may disagree right now
  - Children’s needs cannot be put off for later

• Change causes normal feelings:
  - Loss & Grief
  - Anger & Defensiveness
  - Overwhelmed by details and demands on your time
Co-parent Communication
Decision Making

• Parenting Communications

• Decision Making
  - Emergency
  - Every Day
  - School/Health/Spiritual
Parenting Plan Objectives

- Protect Best Interests of Minors
- Physical Care of Minor Children
- Maintain Emotional Stability & Minimize exposure to parental conflict
- Provide for changing needs as children grow & mature
- Sets authority and responsibility for each parent
- Helps avoid future court battles over children
Residential Schedule

- Pre-school ages
- School Year Schedule
- Holidays
- Winter/Spring Vacations
- Summer Vacation
- Other Vacations with Parents
Transportation & Exchanges

• Where
• When
• Who
Factors in Parenting Arrangements

- Developmental Level
- Behavioral Style
- Cooperation between Parents
Developmental Level

- Age in Years
- Emotional Age of Child and of Each Parent
Birth to Three Years

- Contact with each parent every day or two that is predictable and routine

- Living and Child Care arrangements that don’t change often

- One primary home
Three to Six Years

- Frequent and regular contact with each parent
- One primary home
- Up to week long contacts with the other parent on an occasional basis
- The same day care provider
Six to Twelve Years

- Longer periods of time with each parent
- One primary home is not as important but overnight transitions during the school week are to be avoided
- Strong communication between parents and rules that are the same are very important
Adolescence

- Consistency between parents regarding rules and limits
- A high degree of Communication between parents
Behavioral Style
(of child and each parent)

- Activity Level
- Adaptability
- Reaction to a New Situation
- Rhythmicity

- Intensity
- Mood
- Distractibility
- Persistence
- Sensory Threshold
Some children have more difficulty going back and forth between parents due to their behavioral style.
Some parents have more difficulty with their children going back and forth due to their behavioral style.
MCA Required Access to Information & Notice Section

• Access to information about your child’s medical, dental, psychological, and school records.

• Notice to co-parent of:
  – moves
  – Employers
  – Health insurance
  – Phone and address
Child Support & Health Insurance

- **Child Support**: an entitlement for your children
  - Montana Child Support Enforcement Division
  - Financial Affidavits

- **Health Insurance**
  - Private, Employer, Group
  - CHIPS
  - Medicaid
Dispute Resolution Plan

• Notify your co-parent about the disagreement

• How will you avoid court in the future?
  – Attorneys Negotiate
  – Mediation
  – Counseling
Regular Review of the Parenting Plan

• Children Grow and Change: Constantly
  – Annual Review
  – Every Other Year
Ways to make these recommendations more flexible
Cooperate
Communicate
Support each other
Cooperation between Parents

• Level of Communication

• Ability to work together for the best interests of the child
A NEW PARENTING RELATIONSHIP
From Intimate to Businesslike

Intimate:
• Casual
• Spontaneous
• Courteous
• Based on give & take
• Sharing a life together

Businesslike:
• Formal
• Planned
• Courteous
• Based on being reliable & following through
• Sharing your children together
Effects of Conflict between Parents

- Need for the child to take sides
- Poor self esteem
- Emotional disturbance
- Poor academic performance
- Delinquency
YOU DO HAVE CHOICES:

• NEGOTIATE TOGETHER - Talk it out yourselves

• USE ATTORNEYS TO NEGOTIATE - Attorneys work it out, and check back with you as needed to finalize decisions.

• MEDIATE - Get together with an impartial third party

• USE ATTORNEYS TO GO TO COURT - Attorneys prepare evidence, professionals evaluate parenting situation, witnesses testify in court, judge makes the decision

What’s Best for YOUR Kids?
What is best for your children?

- ATTORNEYS GO TO COURT
- USE ATTORNEYS TO NEGOTIATE
- MEDIATE
- NEGOTIATE TOGETHER
When Parents Can Work Together

• Children will be still be distressed for a short time
• Good adjustment by the child before long
• Both Parents can continue to enjoy their child
• Parents can help each other
CHILDREN'S RIGHTS
WHEN PARENTS NO LONGER LIVE TOGETHER
1. Let us love both of you

Please don’t make us take sides
2. Don’t argue when we can hear
3. Don’t say bad things about each other

And - Don’t let other people say bad things about each other when we can hear
4. Don’t use us to give messages to each other

Talk to each other when you need to
5. Follow the schedule unless you both agree to change it
6. If you move away, call us, write us, don’t forget us
7. Try to agree about what’s best for us
Let us love both of you
CHILDREN’S LEGAL PROTECTION PROJECT
INTAKE FORM

DATE ___________________

NAME OF CONTACT ______________________________________________________

ADDRESS __________________________________________________________________________

COUNTY ________________________

PHONE NUMBERS:
(1) ____________________ (H / W / C)
(2) ____________________ (H / W / C)

CHILD(REN)’S NAME(S) ______________________________________________________

CHILD(REN)’S D.O.B.(S) ________________________

REFERRED BY: ____________________________________________________________

OPPOSING PARTY OR PARTIES: ________________________________________________

CONFLICT CHECK (ALL PARTIES) DATE & INITIAL ____________________________

HOUSEHOLD SIZE ___________ HOUSEHOLD INCOME $__________________________ (M / Y)

DETAILS: _____________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
_________________________________________________________________________
HAS DHS BEEN INVOLVED? IF SO, WHAT IS THE STATUS? _____________________________________

NAME OF WORKER: ________________________________________________________________

IDEAL RESOLUTION OF ISSUE: ______________________________________________________

CASE NO & JUDGE _________________________________________________________________

NOTABLE CCAP CASES ____________________________________________________________

FOR OFFICE USE ONLY

_____ DO NOT OPEN CASE FILE

DATE CALL MADE TO CONTACT: _________________

By _______________________________

DATE NON-RETENTION LETTER SENT: _________________

SIGNED BY: _______________________________

REFERRAL MADE (IF ANY): _______________________________

~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~~

_____ OPEN CASE FILE

DATE OPENED: _________________

ASSIGNED TO: ____________________
CHILDREN’S LEGAL PROTECTION PROJECT
OF DANE COUNTY
A PARTNERSHIP OF THE RAINBOW PROJECT INC. AND COMMUNITY JUSTICE INC.

CLPP TRAINING
Friday, December 2, 2005

REGISTRATION FORM

DATE: ____________________

NAME: _________________________________________________________________

FIRM/AGENCY: __________________________________________________________

ADDRESS: _______________________________________________________________

CITY/STATE/ZIP: _________________________________________________________

PHONE: ___________________________ EMAIL: _____________________________

PRIMARY PRACTICE AREA/S: _______________________________________________

HOW DID YOU HEAR ABOUT THIS TRAINING? __________________________________

DO YOU HAVE ANY QUESTIONS OR ISSUES YOU WOULD LIKE TO BE ADDRESSED DURING THE PANEL DISCUSSION OR AT FUTURE TRAININGS?

PLEASE RETURN THIS FORM TO:
ATTORNEY SARAH HELVEY
PROJECT DIRECTOR, CHILDREN’S LEGAL PROTECTION PROJECT
222 S. HAMILTON STREET, STE, 22
MADISON, WI 53703

The Children’s Legal Protection Project is supported by a grant from the American Bar Association (ABA) Child Custody Pro Bono Project.
Succeeding in Making Family Court Ordered Psychological Evaluations Work: Explaining Roles and Rules
by Jerome H. Poliacoff, Ph.D., P.A.

The Family Court regularly faces making decisions 'in the best interest of the child' for which it needs more than counsel's biased argument upon which to base its decision. Psychological evaluations, ordered by the Court, are increasingly a key element in the Court's decision making practice.

This purpose of this article is to provide the Family Court, and those attorneys practicing before it, an understanding of the rules that govern Court ordered psychological evaluations. Hopefully this knowledge will save the Court time, and will provide the prudent attorney tools for effective utilization, or cross examination, of the Court's experts. Ultimately the ambition is to support the Family Court to properly, and productively, utilize the services of appointed psychologists to assist in making decisions in the 'best interest of the child'.

ORDER OF REFERRAL

Upon appointing a psychologist as an expert in assisting the Court the order should contain unambiguous language concerning five vital elements:

1. the scope and purpose of the evaluation;
2. the manner in which privilege, confidentiality and records release ought to be handled;
3. who is permitted to testify as an expert (dual role conflicts);
4. protections available for the evaluator (designating the evaluating psychologist as guardian ad litem) and
5. how payment should be made.

Attending to these issues in advance will illuminate hurdles that are already explained in statute, administrative code, ethical guidelines and/or practice parameters – but which are unknown to the ordinary family attorney.

THE SCOPE AND PURPOSE OF THE EVALUATION: Explicitly state the reason for the evaluation, i.e., custody, visitation, relocation, etc., and the reasons why it is an issue at the present time.

Background: Typically, and clinically, the Court translates its concerns for the 'best interests of the child' as disquiet about 'parenting capacity' – often the raison d'etre for the Court ordered evaluation in the first place.

F.S. 61.13 specifies that one of the determinative factors in making a custodial recommendation is the mental health of the parent(s). Yet all too often the Court's order calls only for an evaluation of the child(ren). Under this statute it is not possible to evaluate only the child(ren) as, at the very minimum, to do so would be in direct violation of F.S. 61.13!

This statutory factor derives from both empirical research and from various practice parameters\(^1\) that direct that in order to assess the child's needs in divorce proceedings, the functioning and parenting capacity of the adults must be assessed. This is further codified in F.A.C. Section 64B19-18.004(b) Use of Test Instruments which directs an assessing psychologist to justify the selection and use of a test instrument, based on the purpose or evaluation question to be answered.

For instance, The Psychological Services Plan for the Eleventh Judicial Circuit of Florida, Family Division (hereinafter "the Service Plan") states, in part:

"Psychological testing is appropriate for several reasons.
It can be used to confirm or invalidate clinical impressions or questions raised by either parent regarding the psychological fitness of the other parent...."\(^2\)

'The Service Plan' goes on to direct that:

"Clinical Interviews should be conducted with all individuals involved in the case – both parents, minor children – as well as any collateral parties who are significant in the minor children's life."\(^3\)

The order, then, must also provide that any and all collateral parties be available for the purpose of the evaluation (grandparents, significant other, new spouse, siblings, housekeeper, nanny or school personnel) even


\(^3\) Id. Section V: Specific Guidelines for Family Court Psychological Evaluations, B. Clinical Interviews, page 5.
through such persons are not technically parties to the suit or motion before the Family Court.

*Practical considerations:* The family attorney considering requesting an expert’s evaluation, or challenging an expert’s opinion, ought to thoroughly review the practice parameters referenced above to assure compliance with established standards of evaluation procedures.

During the initial conference with the Court appointed psychologist counsel for both parties should offer a position statement regarding their client’s view of the issue at hand. Such a document, becoming part of the record, serves to clarify the objectives of the evaluation, informing the expert how the parties perceive the other parent’s position and role – a fundamental element in the Court’s consideration of the factors delineated in F.S. 61.13, and essential in the expert’s appraisal process.

(2) **THE MANNER IN WHICH PRIVILEGE, CONFIDENTIALITY AND RECORDS’ RELEASE SHOULD BE HANDLED:** Once a report has been authored and issued, counsel has a legal right to subpoena these records in order to discharge their obligation to best represent his/her client by having access to the files which serve as the basis for the expert’s findings and recommendations.

At the same time (and often misinterpreted as adversarial or obstructionist) it is the psychologist’s professional and legal obligation to attempt to see that such records, most particularly ‘raw data’, are not misinterpreted and not misused.

*Background:* This is partly because test item responses, and often the computerized interpretations of psychological test results, only generate hypotheses to be accepted, rejected or modified on the basis of the clinical observations and judgment of a competent professional, and, partly based on test security requirements.

To prevent misuse or misinterpretation of the test data, as well as to afford protection to the test publishers’ copyright, F.S. 490, F.A.C. 64B18, the Ethical Code of the American Psychological Association, and the Specialty Guidelines for Forensic Psychologists direct that the release of such records and test results occur only when the interpretation of the results will be performed by a person who is trained and competent in psychological testing and assessment (i.e., released to another psychologist). This safeguard (i.e., requirement that records only be released to another psychologist) has been recently maintained in Florida Supreme Court Rule 12.363.

*Practical considerations:* Be prepared to utilize the services of a second, consulting psychologist to serve as another interpreter of the test procedures and results, or specify at the outset how, and to whom, which records will be released (to make possible the attorneys right to examine evidence) and how they will be protected (to uphold the psychologist’s statutory obligations).

An additional consideration, more often than not overlooked, is F.A.C. 64B19-19.006 (4) which instructs that no mental health records be produced in the absence of a signed/authorization/release by the person(s) holding privilege to the requested record(s). Unless otherwise specified a Court order does not, ipso facto, discharge the evaluating psychologist from his obligation to obtain authorization from the service user (person being evaluated) to release records.

(3) **DEFINING WHO IS PERMITTED TO TESTIFY AS AN EXPERT (dual role conflicts):** The Court and counsel ought to recognize the ethical and legal dilemma for the treating psychologist who attempts (or is also asked) to be the Court’s expert on behalf of his/her patient.

The role of being both the patient’s (litigant’s) therapist and forensic expert (a ‘dual role conflict’) is incompatible with good patient care, and runs counter to existing clinical and forensic practice guidelines.

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4 See: F.A.C. Chapter 64B19-18.004 (Use of Test Instruments), Section (6), “Test instruments” are standardized procedures which purport to objectively measure personal characteristics such as intelligence, personality abilities....Examples of such tests include intelligence tests, multiple aptitude batteries, and personality tests....

5 See: F.A.C. Chapter 64B19-18.004 (Use of Test Instruments), Section (3), “A psychologist who uses test instruments may not release raw test data, such as test protocols, test questions, or written answer sheets, to any person other than another licensed psychologist or in response to a judge’s order”.

6 A psychologist is defined as a person trained at the doctoral level in psychology and meeting the requirements of licensure in the State of Florida as evidenced by the issuance of a current and valid license to practice psychology in the State of Florida, or having a current and valid license from another state in which the requirements are essentially equal to those of Florida. See: F.A.C. 64B19-18.004 (3).
Background: The psychologists’ ethical code directs that “a psychologist refrains from taking on professional or scientific obligations when preexisting relationships would create a risk of such harm”. Recognizing that the likelihood for becoming enticed into a dual role conflict increases in litigation the code goes on to exhort that “In most circumstances, psychologists avoid performing multiple and potentially conflicting roles in forensic matters”.

In a similar fashion, the Specialty Guidelines for Forensic Psychologists\(^8\) denotes the following:

“Forensic psychologists recognize potential conflicts of interest in dual relationships with parties to a legal proceeding…and avoid providing professional services to parties in a legal proceeding with whom they have personal or professional relationships that are inconsistent with the anticipated relationship”.

The most recent, and the most specific, of these practice guidelines, the Guidelines for the Conduct of Child Custody Evaluations\(^9\), emphatically states:

“Psychologists generally avoid conducting a child custody evaluation in a case in which the psychologist served in a therapeutic role for the child or his or her immediate family or has had other involvement that may compromise the psychologist’s objectivity….In addition, during the course of a child custody evaluation, a psychologist does not accept any of the involved participants in the evaluation as a therapy client. Therapeutic contact with the child or involved participants following a child custody evaluation is undertaken with caution….”.

Lest it be considered that this proscription is the sole duty of an evaluating psychologist other specialty (i.e., forensic) psychological organizations have long recognized, and sought to limit, circumstances in which dual functions are performed by a single individual. For instance, the Ethical Guidelines for the Practice of Forensic Psychiatry explicitly state:

“A forensic psychiatrist should generally avoid agreeing to be an expert witness for, or perform an evaluation on, his patient for legal purposes because a forensic evaluation usually requires that other people be interviewed and testimony may adversely affect the therapeutic relationship”\(^10\)

Based on the aforementioned, and recognizing that ethical codes of conduct do not necessarily have the force of law, the Board of Psychology approved F.A.C. 64B19-18.006, titled “Prohibition Against Treating psychologists Performing Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation”.

And, if the title weren’t sufficiently explicit, the text goes on to direct that

“It is a conflict of interest for a psychologist who has treated a minor or any of the adults involved in a custody or visitation action to perform a forensic evaluation for the purpose of recommending with which adult the minor should reside, which adult should have custody, or what visitation should be allowed”.

Practical considerations: Under both the test of “general acceptance” in the relevant professional community\(^11\), and the "good grounds given what is known" test of Daubert\(^12\), forensic assessment by a patient’s therapist does not generally provide a reliable basis for a forensic assessment and therefore should be avoided by


\(^12\) Daubert v. Merrell Dow Pharmaceuticals, Inc. 113 S. Ct. 2786 (1993)
the ethical psychologist and viewed skeptically by
the courts.

The temptation exists to use treating therapists as forensic experts on behalf of their patients because of erroneous beliefs about efficiency, candor, neutrality, and expertise. In a word, “Don’t!”

(4) PROTECTIONS AVAILABLE FOR
THE EVALUATOR (designating the evaluating psychologist as guardian ad litem\(^{13}\):) Perhaps a fearsome reason that many otherwise qualified psychologists decline a Family Court’s request to conduct a custody, or other evaluation, is the high liability risk associated with such evaluations.

Background: In a recent commentary O’Donohue and Bradley\(^{14}\) note that there is a lack of a useful operational definition of ‘the best interests of the child’ and that values permeate testimony (often with a marked lack of an adequate psychological theory). While ‘experts’ may claim to base their judgments on the integration of many arrays of data, research, according to Koocher\(^{15}\), suggests that subjective beliefs are largely illusory.

It is not surprising then that an unhappy, disappointed, or disgruntled parent (i.e., the one not prevailing before the Court) might easily turn their unhappiness into a complaint to AHCA (Agency for Health Care Administration) for the evaluator’s alleged failure in the evaluation process. A review of APAIT (American Psychological Association Insurance Trust) correspondence to insureds, or its claims history, quickly reveals that participation in custody evaluations is by far one of the highest liability risk areas facing psychologists today.

Practical considerations: To afford the psychologist a framework of independence from potentially vindictive action on the part of one of the parents the Family Court is well within its authority to avail itself of F.S. 61.404, which states “if the Court finds it is in the best interest of the child, the Court may appoint a guardian ad litem to act as the next friend of the child, investigator or evaluator, not as attorney or advocate” (emphasis added).

Appointing the psychologist/evaluator as a guardian ad litem would afford the umbrella of quasi judicial immunity consistent with F.S. 61.405, which states “Any person participating in a judicial proceeding as a guardian ad litem shall be presumed prima facie to be acting in good faith and in so doing shall be immune from any liability, civil or criminal, that might otherwise be imposed”.

Robert Woody\(^ {16}\) has further suggested that the Courts could be protected from any potential abuse of such immunity if the Florida Board of Psychology were to adopt a rule, which might eventuate in a statute, along the following lines:

If a complaint against a court-appointed psychologist is relevant to child custody, visitation, or abuse, the Florida Board of Psychology will accept the complaint only:

1. if the complainant was a party to the action;
2. the allegations were submitted to the Court;
3. the court-appointed psychologist received an opportunity to present a defense against the allegations in the Court; and
4. the Court issued an order or judgment that the court-appointed psychologist did not perform the services to the satisfaction of the Court.

(5) HOW PAYMENT SHOULD BE
MADE: Everybody likes to be paid for their labor. Frequently this elemental aspect of the Court’s

\(^{13}\) Special acknowledgement is made to Robert H. Woody, Ph.D. attorney, psychologist, and president elect of the Florida Psychological Association whose thoughts and actions form the framework of this section, based on materials presented by him at the Florida Psychological Association’s February 19, 2000 seminar ETHICS, LAW, AND PROFESSIONALISM: Practical Strategies for Reclaiming Mental Health Practice from Managed Care, the Government, and the Legal System.


\(^{16}\) See: Footnote 2
order is overlooked on the assumption that the psychologist will deal directly with the litigants about fees, or more frequently of late, psychologists are being proposed as the Courts' experts because their name appears on the panel providers list of the litigants' health insurance carrier.

**Background:** The usual range of fees in Miami-Dade County is between $150 to $300 per hour for in office consultation or document review, and an equal amount per hour for court related testimony (depositions or appearances, waiting time, travel time, or late canceled depositions or appearances). A typical and thorough evaluation may take upwards of thirty hours\(^\text{17}\) to complete. Thus, an evaluation, before any deposition or Court appearance, may cost anywhere from $4,500 to $9,000!

If one were to attempt to appoint a psychologist from a litigant's health insurance provider panel there is no telling what the qualifications, or interest in conducting such an evaluation, are of such a psychologist. Additionally most, if not all, health plans require a demonstration of medical necessity before reimbursement will be considered. I know of no plan, or insurance coverage, which will reimburse for services directed by the Court to answer legal questions.

**Practical considerations:** At a pre-evaluation conference call with counsel for both parties anticipated time and costs should be discussed. Payment should be made by counsel on behalf of their client, rather than the litigants being directly billed.

Requesting that payment be made on behalf of the parties by their respective counsel defines in advance the fees and conditions for payment, and defines the 'service user' (a term used frequently in the Rules of the Board of Psychology in place of 'patient' or 'client') as the Court and or its representatives, and not the person being evaluated as the 'client' or 'patient'\(^\text{18}\).

\(^\text{17}\) Per party charges of: Testing (3 to 4 hours); Initial interview and history taking of the parent alone (2 hours); Interview of parent and child together (1 to 2 hours); Interview with the child (2 hours); Subsequent interview of the parent alone (1 to 2 hours); Interviews of parents as a couple, and usually with the guardian ad litem (other than the psychologist) (1 hour); Records review and report preparation (4 to 6 hours), or a total of 14 to nineteen hours per party, charged at the going hourly rate.

\(^\text{18}\) For instance F.A.C. 64B19-18.006 Prohibition Against Treating Psychologist Performing Forensic Evaluations of Minors for the Purpose of

This practice puts all parties on notice at the outset as to the prospective financial cost, and more frequently assures payment to the psychologist evaluator.

Finally, providing for a ten hour escrow retainer, held against final unpaid costs, or billed against, at the outset of the evaluation process will avert undue delay later in the process as bills for services become due.

**CONCLUSIONS:**

If one were to develop David Letterman's "Top Ten Item Checklist for a Family Court Ordered Evaluation", based on the material presented in this article, it would read like this:

1. Be explicit in stating the purpose/goal for the proposed evaluation
2. Be explicit in stating the underlying reasons/concerns for the psychological evaluation
3. Direct that all persons relevant to the child's life be allowed to be interviewed as needed
4. Address the issue of records release
5. Address the issue of records protection
6. Allow for the provision (per Supreme Court Rule 12.363) of another psychologist to be appointed or named to receive records (a/k/a 'raw data')
7. Do not appoint the litigants' treating therapist to be the evaluator
8. Do appoint the assessing psychologist as a guardian ad litem evaluator
9. Be explicit about who is responsible for payment and how it is to be made
10. Become familiar with the psychologists' ethical and practice guidelines, governing administrative code, and Florida statutes that apply to the evaluation process.

In other words, 'an ounce of prevention is worth a pound of cure'.

Addressing Custody, Residence or Visitation proscribes the dilemma of being caught in the dual role of therapist and evaluator. Were the evaluator to receive payment directly from the person being evaluated, or worse yet attempt to seek insurance reimbursement the examinee would be ipso facto a direct service user or patient and the evaluator would be immediately in violation of the administrative code!
CROSS EXAMINATION: THE RULES OF THE GAME

Cross examination is the litigator’s greatest weapon, but properly playing the game requires knowledge of the rules and maximum preparation. An ill-prepared cross-examination is risky. Effective cross examination is a learned skill, and as in any game, only practice makes perfect. The purpose of the game is to show that the direct testimony is out of context, exaggerated or false.¹ However, the problem facing the lawyer is that the opponent’s witness does not want to cooperate.² Cross examination is the means by which the advocate exposes the exaggerations and falsity of the direct testimony and fills in the blanks to tell the whole story. However, since the witness is uncooperative, the game is never easy. Unlike an athlete, who may be born with a “natural ability”, cross examination, as a skill is learned. By most accounts, “cross examination is the most difficult skill for the advocate to master”³, however, through practice and adherence to some simple basic rules any trial lawyer can be at the top of the game.

Irving Younger’s Ten Commandments⁴ are the most widely cited rules of the game.⁵ They are:

1. **BE BRIEF**: This rule speaks not to the time duration of your cross, but rather to the points you use to attack the witness, fill in the blanks, or use the witness to prove a part of your case. Limit your cross to only the most important and necessary points. Do not cross examine a witness who did not hurt your case and/or who cannot testify to additional facts that would help your case. If the witness did not hurt or add to your case, and you give in to the temptation to cross, you may harm your case and lose valuable points. The late Irving Younger in the Art of Cross-Examination, said, “It seems to be part of the young lawyer’s personality that he is afraid to say, ‘No questions on cross-examination.’” He thinks that his client will feel that he is not earning his

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⁴ *Younger, Irving, The Art of Cross-Examination.*

⁵ Pozner, Larry S. & Roger J. Dodd, in *Cross Examination: Science and Techniques* argue that there are only three rules: Leading Questions Only; One New Fact Per Question; and, Cross Examine in a Logical Progression to a Specific Goal. Even Younger recognized that there are really only six to seven rules, however, presenting them as the “Ten Commandments” is more effective. *Younger, Irving, The Art of Cross-Examination.*
fee, or that the judge will look down on him and say, ‘You are afraid. You can’t be a trial lawyer if you are afraid. You’ve got to do something.’ Not at all. The mark of the master is to do as little as possible; the courage to stand up and say, ‘No questions,’ when there is nothing to be gained by cross examination, is the mark of supreme mastery."

2. **USE PLAIN WORDS:** “Your job is to command instant comprehension” Rebel against your legal training and the impulse to use fancy complicated words; say “car” rather than “automobile” or “vehicle”. In this game you advance by asking short specific questions containing simple words.

   Include only one fact per question. “Think of cross-examination as a series of little facts – dots that the judge and jury will connect in their minds. When the fact-finders participate in your cross-examination by putting the picture together themselves, your picture

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becomes their idea. And because it is their idea, they believe it.”\textsuperscript{7} By keeping your questions short you minimize the opportunity for opposing counsel to object and interfere with the pace of your game and you “do not give the witness any wiggle room.”\textsuperscript{8} When you control the pace you control the witness; it is your game. For example, rather than asking, “You are currently employed as President and CEO of ABC Corporation, a family owned business?”, a better approach is:

You are currently employed?

You are the president of a corporation?

You are also CEO of the corporation?

The corporation that employs you is ABC corporation?

ABC Corporation is a family business?

While at first blush it may appear that taking this approach may cause delay, it actually speeds up the pace; these questions could be asked in rapid progression, getting the witness into the habit of answering a


series of monosyllabic answers, that do not require an explanation.

Avoid questions where the “fact” being asked is subject to interpretation. For example, in trying to establish the witness’ ability to work and earn a living, rather than asking, “You are able to work?”, a question that may lead to the following answer: “Depends on what you mean by ‘able’ or ‘work’”. Instead, you may want to ask the following:

Q: You have a college degree?
A: Yes.
Q: You worked outside the home for wages during the marriage?
A: Yes.
Q: You worked outside the home for six years during the marriage?
A: Yes.
Q: Your last position was as a supervisor?
A: Yes.
Q: You supervised 5 employees?
A: Yes.
Q: You held the supervisor position for 2 years?
A: Yes.
Q: You worked as a supervisor in 1998 and 1999?
A: Yes.
Q: In 1998 you earned $50,000.00?
A: Yes.
Q: In 1999 you earned $60,000.00?
A: Yes.
3. **ASK ONLY LEADING QUESTIONS:** “The point of cross-examination is not to get information from the witness, but to have the witness agree that what you say is true. You are the real witness on cross, and it is your turn to talk.”

All answers on cross examination should be “Yes”, “No”, or “I do not know”. By asking leading questions the lawyer establishes control. You control the witness when your questions do not provide the witness an opportunity to provide harmful testimony. A true leading question not only suggests the answer, it declares it. It is the time to put words in the witness’ mouth; to make him go where you want him to go. While on direct you tell a story, on cross you **never** start a question with

Who
What
When

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Jacqueline M. Valdespino, Esquire
Valdespino & Associates, PA
2641 Abaco Avenue
Miami, FL 33133
(305) 442-1200
Where

How

Why

Questions that begin with any of the above are open ended and cause the loss of valuable points in the game.

4. **BE PREPARED--NEVER ASK A QUESTION TO WHICH YOU DO NOT ALREADY KNOW THE ANSWER:** “Cross examination is not the time to discover new facts. It is not the time to be curious.”  

Since we are allowed to take discovery in family cases, this rule takes on great importance. If you are handling a case, which economically does not support the taking of depositions, request admissions, propound written deposition questions or serve interrogatories. “If you have not adequately conducted your investigation before trial, cross examination is not the time to do it.”

The cross examination should not be put together during the witness's

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direct examination. Cross examinations that are put together during the
direct often lead to a long and tedious cross-examination the pursues
every disagreement between you and the witness. Instead of
conducting a focused examination that makes two or three memorable
pints, it leaves the impression that you performed a comprehensive
quibble-fest, leaving no molehill unexplored.”

5. **LISTEN TO THE ANSWER:** Since preparation is the first step in an
effective cross examination, there is a temptation to stick to the script.
However, if you do not listen to the answer, you may miss an
opportunity to impeach the witness with prior inconsistent testimony. Or,
on the other hand, if you do not listen to the answers you may not hear
the favorable testimony that you are seeking to obtain and you miss the
opportunity to end the examination on a strong point.

6. **DO NOT QUARREL WITH THE WITNESS:** Regardless of what the
witness testifies to, do not argue with the witness. When you ask a

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14 McElhaney. James W., “A Well Planned Attack: Preparing Cross-

15 Burke, Peter M., & Gianfranco A. Pietrafesa, An Introduction to Cross-
Examination, New Jersey Lawyer, the Magazine, December 1998.
question, and “the answer is contradictory, absurd, patently false, irrational, crazy or lunatic...Stop. Sit down. You have finished when you get that kind of answer.” Arguing is legally improper. Do not argue with the witness because in doing so, you give the witness the ability to explain the inconsistency. It is more effective to argue the point to the judge during closing argument.

7. **DO NOT PERMIT THE WITNESS TO EXPLAIN:** Most judges allow the witness to explain the answer, at length, if necessary. However, with the use of leading questions, timing, pace and intonation, the lawyer can control the witness and limit the explanations. If a witness explains an answer, follow with a question that needs no explanation. Get the witness out of the habit of explaining. In the alternative speed the pace of the questions. This is most effective when the questions are very short.

8. **DO NOT ASK THE WITNESS TO REPEAT THE TESTIMONY GIVEN**

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16 *Younger, Irving, The Art of Cross-Examination.*

17 *Mauet, Thomas A., Trial Techniques.*

18 *Younger, Irving, The Art of Cross-Examination.*
ON DIRECT: Repetition leads to acceptance. If you allow the witness to repeat the direct testimony, the judge may believe it or accept it as fact. Repetition of direct testimony only serves to reinforce it in the mind of the judge. Rather, keep your goal in mind: to point out the exaggerations and/or falsities of the direct testimony.

9. LIMIT QUESTIONING: AVOID ONE QUESTION TOO MANY: At the ABA’s Family Law Trial Advocacy Institute, held yearly in Houston, Texas, this is referred to as going over the “So Bridge”. You want to avoid the “So Bridge”. An example of one too many questions, is as follows:

Question: Your wife was a volunteer parent teacher?
Answer: Yes.
Q: Your wife was active in the PTA?
A: Yes.
Q: Your wife was a soccer mom?
A: Yes.
Q: Your wife takes the children to every practice?
A: Yes.
Q: Your wife took the children to every game?
A: Yes.
Q: Your plays tennis?
A: Yes.
Q: Sometimes your Wife’s tennis matches conflicted with the soccer games?
A: Yes.
Q. When her tennis matches conflicted the soccer games she attended the soccer games?
A. Yes.
Q. Explain to the Court why you never did these things for your children.
A. She would not return to work even after the children started school. I had to go to work and make a living so that she could do those things. I wanted to do them, but someone had to financially support the family.

Going over the “So Bridge” in this example takes away from the conclusion that your client is a wonderful mother. “Your cross-examination should only suggest the point... Your closing argument will drive the point home.”

10. **SAVE THE EXPLANATION FOR SUMMATION:** The “Why” is answered during closing argument. “Resist the urge to draw out the cross-examination so the judge or jury comprehend at once the nature of our questioning, and the brilliance of the cross-examiner. Pull it together during summation.”

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20 McCurley, Mike & Kim W. Mercier, “Cross Examination”.

Jacqueline M. Valdespino, Esquire
Valdespino & Associates, PA
2641 Abaco Avenue
Miami, FL 33133
(305) 442-1200
In Cross Examination: Science and Technique, the authors point out that while Judge Younger’s Ten Commandments are a good beginning, they are also limiting. “Irving Younger meant the ‘Ten Commandments of Cross-Examination’ to be an anchor for beginners and a guideline for journeymen—not the measure of excellence.” However, a word of caution, until you have perfected the basics, try and adhere to the rules of the game, no matter how limiting. While cross examination is a matter of style, you must first start with the basics. In every game there are drills that must be practiced before achieving mastery; these rules are the foundation upon which your skill grows. With time, and practice you will develop a style that works for you, and the limitations of the commandments can be lifted. Practice and you will win the game.

----------------------------------

CURRICULUM VITAE

PERSONAL: BORN  June 18, 1948  New York, New York

EDUCATION: BACHELOR  1970  The City College of New York  Psychology and Economics  
MASTERS  1975  The University of Miami  Counseling Psychology  
DOCTORATE  1982  The University of Miami  Counseling and Clinical Psychology  

LICENSE:  Psychologist, Florida (1984), (#PY3449)

CERTIFICATION:  Certificate of Professional Qualification in Psychology, The Association of State and Provincial Psychology Boards (1999), (CPQ #457)  
Family Mediator (2002), (#3759F) certified by the Florida Supreme Court  
Parenting Coordinator (2003) certified by the Eleventh Judicial Circuit  
Guardian Ad Litem (2003) certified by the Eleventh Judicial Circuit Guardian Ad Litem Program to act in family law cases

PROFESSIONAL:  
1984 to Present  Independent practice of child, adolescent, adult, and forensic psychology.  
2002 to present  Non-lawyer Member of the Florida Bar Grievance Committee for the Eleventh Judicial Circuit  
1988 to Present  Co-Founder and Head of Psychology Services of Attention Deficit Hyperactivity Disorder Center for Assessment and Treatment.
PROFESSIONAL continued:

1988 to 1998  Co-Founder and Chief of Child Psychotherapy Services at *Sunset Mental Health Associates*.

1987-1995  Supervisor of Child Psychology Interns at the *Northwest Dade Community Mental Health Center* in a Seminar on Child Assessment and Diagnosis.

1992-1995  Consulting Psychologist in Managed Care Relations at *Grant Center of Deering Hospital*.

1987-1992  Director of Adult Unit Group Psychotherapy Program at *Charter Hospital of Miami*.

1977-1982  Staff Psychologist at *Children's Psychiatric Centers of Miami* (Pre-doctoral internship and post-doctoral training).

1973-1977  Visiting Instructor in Education at the *University of Miami* (Coral Gables).

ORGANIZATIONS:

Member, *American Psychological Association*

Member, *Florida Psychological Association*

Member, *National Parent Coordinators Association*

CONTINUING EDUCATION:

**Biennium March 1, 2002 to May 31, 2004**

May 2004  Domestic Violence Update (2.0 Hours)  Preventing Errors in Mental Health Practice (2 Hours)  Ethics and Statutes Affecting the Practice of Florida Psychology (3 Hours), *Program Services, Inc.*

December 2003  American Psychological Association, Clinician’s Research Digest - 2002 (15.0 Hours)

November 2003  The Florida Institute for Cooperative Parenting, *Parenting Coordination Training* (8.0 hours)

The Eleventh Judicial Circuit Parenting Coordination Training (4.0 hours)

October 2003  The Guardian Ad Litem Program of the Eleventh Judicial Circuit, *Guardian Ad Litem Volunteer Training Program* (30 hours)
CONTINUING EDUCATION continued:

**Biennium March 1, 2002 to May 31, 2004 continued:**

- **January 2003** Cooperative Parenting Institute, Atlanta & The Georgia Psychological Association, *Therapist as Parent Coordinator* (13.0 Hours)
- **April 2002** Florida Supreme Court Family Mediation Training Program By *Mediation Services, Inc.* [Mel Rubin, Esq.] (40.0 Hours)
- **April 2002** American Psychological Association, Clinician’s Research Digest - 2001 (15.0 Hours)
- **January-June 2002** PsychoEducational Resources, Inc. (PER), *The Complete Practitioner: Mental Health Applications* (6.0 Hours)

**Biennium March 1, 2000 to February 28, 2002**

- **February 2002** American Psychological Association, Clinician’s Research Digest - 2000 (15.0 Hours)
- **December 2001** American Psychological Association, *Tarasoff and Beyond: Legal & Clinical Considerations in the Treatment of Life-Endangering Patients* (3.0 Hours)
- **September 2001** Florida Psychological Association, *Freud v. Holmes: Working With or Against Lawyers* (2.0 Hours)
- **March 2001** Florida Psychological Association, *Mental Health Changes in the Elderly: Diagnosis and Treatment* (3.0 Hours)
- **February 2001** Jewish Family Services of Greater Miami, *6th Annual Parenting Conference* (3.5 Hours)
- **January-Dec 2001** PsychoEducational Resources, Inc. (PER), *The Complete Practitioner: Mental Health Applications* (12.0 Hours)
- **August 2000** Florida Psychological Association,
  - *Ethical Record Keeping For Florida Psychologists* (2 Hours),
  - *Ethical Principles That Need Consideration When Providing Services Electronically* (1 Hour)
CONTINUING EDUCATION continued:

**Biennium March 1, 1998 to February 28, 2000** continued

**February 2000**
*Ethics, Laws and Professionalism: Practical Strategies for Reclaiming Mental Health Practice from Managed Care, the Government, and the Legal System* (3 Hours)

**February 2000**

Florida Psychological Association,
- *Abuse in Families - Domestic Violence* (1 Hour),
- *Update on Domestic Violence For Florida Mental Health Professionals* (1 Hour),
- *Understanding Depression: Diagnosis, Assessment, and Treatment* (1 Hour),

**January 2000**
Nova Southeastern University Center for Psychological Studies & American Psychological Association Insurance Trust, *Legal and Ethical Risks and Risk Management in Professional Psychological Practice, Sequence II*: General Risk Management Strategies (6 Hours)

**January/Dec 2000**
PsychoEducational Resources, *Mental Health Treatment Applications* (12 Hours)

**December 1999**
Lorman Education Services, *Florida Family Law* (6 Hours)

Florida Psychological Association, *Testing Hispanic Populations* (1 Hour)

**November 1999**
American Psychological Association,
- *Risk Management With Potentially Dangerous Patients* (9 hours),
- *Psychology in Litigation and Legislation* (10 hours)

**October 1999**
Florida Psychological Association,
- *Clinical Psychology In the School: Establishing a Working Relationship* (1 hour),
- *Fresh Legal Perspectives: Psychologists in Dual Relationships* (1 Hour)
CONTINUING EDUCATION continued:

**Biennium March 1, 1996 to February 28, 1998**

February 1998  National Business Institute, *Using the Psychology Expert in Custody and Visitation Issues in Florida* (7 hours)

January 1998  Florida Psychological Association, *Law and Ethics for Florida Mental Health Practitioners* (3 hours)

November 1997  South Miami Hospital *The Physician’s Role in Domestic Violence* (1 hour) and *Living With HIV* (1 hour),

Lorman Business Center, Inc., *Litigating and Avoiding Litigation of Employment Discrimination Cases* (7 hours)

October 1997  Medical Education Services, Inc. *Confidentiality of Medical Records* (6 hours)

September 1997  Nova Southeastern University, *Forensic Neuropsychology* (7 hours)

April 1997  University of Miami School of Law, *Criminal and Juvenile Justice: Clinical and Legal Issues*, including:
- Challenging Psychological Testing in Court,
- Cross Cultural Issues in Forensic Assessment,
- The Juvenile Offender: Competency, Insanity and Disposition, &
- Juvenile Justice: Kids and the Death Penalty (7 hours)


November 1996  Florida Psychological Association, *Ethical and Legal Issues for Florida Mental Health Practitioners* (3 hours)

April 1996  Board of Psychological Examiners, Business Meeting sponsored by State of Florida Agency for Health Care Administration, *Professional Ethics and Legal Issues* (3 hours)
CONTINUING EDUCATION continued:

**Biennium March 1, 1994 to February 28, 1996**

April 1996  
Eleventh Judicial Circuit Court and the Dade County Bar Association Family Courts Committee, *The Annual Family Law View From the Bench* (3.5 hours)

January 1996  
CME, Inc., *Understanding Domestic Violence* (1 Hour)  
Professional Academy of Child Custody Evaluators,  
- *Custody Evaluations as an Important Part of Clinical Practice &*  
- *How to Conduct A Comprehensive Custody Evaluation* (14 Hours)

January 1995  
CME, Inc., *Modern Clinical Psychiatry Update: Affective Disorders and ADHD* (4 Hours)

November 1994  
University of Minnesota, *Disruptive Behavior Disorders in Childhood and Adolescence: Attention Deficit, Oppositional, and Conduct Disorders*, with Dennis Cantwell, M.D. (6 Hours)

November 1994  
University of Massachusetts Medical Center Department of Psychiatry, *Attention Deficit Hyperactivity Disorder in Children and Adults: Diagnosis, Assessment and Treatment*, with Russell A. Barkley, Ph.D. (7 Hours)

October 1994  
The Department of Psychiatry, College of Physicians and Surgeons of Columbia University, *Therapeutic Management of Attention Deficit Disorder* (2 Hours)

April 1994  
The Psychiatry Department of the University of Massachusetts  
- *The Cost Efficient Management of ADHD* (6 Hours)  
- *Surviving ADHD in Adolescence* (6 Hours)  
- *ADHD in Adults* (3 Hours)

**Biennium March 1, 1992 to February 28, 1994**

February 1994  
The University of Miami School of Law and Grant Center of Deering Hospital *Children, Mental Health, and the Law: Child Custody and Juvenile Justice* (21 Hours)
January 1994  National Consortium of Professionals in Attention Deficit Disorders, *Comprehensive Training Program in ADD/ADHD Evaluation and Treatment Program* (32 Hours)

December 1993  Florida Mental Health Institute at University of South Florida, *Florida Forensic Examiner Training* (14 Hours)

April 1993  National Law and Mental Health Institute at Nova University, *Personal Injury Litigation and Expert Testimony* (21 Hours)

Forensic and Clinical Psychology Associates and the University of Miami School of Law, *Psychological and Psychiatric Testimony in Court* (21 Hours)

February 1993  National Education Network, *Breaking Up Is Hard To Do: How to Deal With Children, Families, Divorce and The Law in Florida* (6 Hours)

**PUBLICATIONS AND PRESENTATIONS**

Current  Invited speaker at PTA, Bar Associations, & National Seminars on Current Topics of Interest including:

Fall 2005  The Dade County, Bar Put Something Back: The Nuts and Bolts of Family Law, invited presentation, *Psychologists’ Dual Role Conflicts*


January 2002  *Succeeding in Making Family Court Ordered Psychological Evaluations Work: Explaining Roles and Rules*, sponsored by The First Family Law American Inn of Court
PUBLICATIONS AND PRESENTATIONS continued:

September 2001  
*Child Custody & Visitation in Florida*, sponsored by National Business Institute

September 2001  
*Psychologists & Lawyers Working Together*, sponsored by The Dade County Psychological Association

Summer 1999  

Summer 1999  

May 1999  

Challenging Psychological Testimony in the Courtroom, for CLEonTAPE.com, Lunchtime Seminars, in Miami, FL.

November 1997  
*Psychological Disabilities and the Americans With Disabilities Act: Recent EEOC Enforcement Guidance: Working With Psychologists as Consultants*, for Lorman Business Center, WI.

*The Analysis and Defense of Emotional Injury Claims in Tort & Employment Litigation*, to:

- March 1997  
  The law firm of: *Adorno & Zeder, P.A.*

- September 1997  
  The law firms of:
  o  *Geiger, Kasdin, Chames, et al*,
  o  *James K. Clark, P.A.*
  o  *Panter & Panter, P.A.*

- October 1997  
  The law firm of: *Muller, Mintz, Kornreich et al*

- July 1999  
  The law firm of *Davis, Silver & Levy, P.A.*

- March 2000  
  The law firm of
  o  *Holland & Knight, LLC*
  o  The law offices of *Dade County School Board*

- May 2000  
  The law firm of *George, Hartz, Lundeen*

- July 2000  
  The law firm of *Steel, Hector, Davis, LLP*

- May 2002  
  The law firm of *Morgan Lewis Bockius, LLP*
PUBLICATIONS AND PRESENTATIONS continued:


April 1997  Attention Deficit Hyperactivity Disorder: Its Impact on Family Law Cases, invited presentation to Dade County Bar Association Family Law Division


June 1994  Invited presentation for Law Offices of Peters, Robertson, Lax, Parsons and Welcher's Annual Seminar on Risk Management Evaluation of Emotional Damages from a Psychologist's Perspective

April 1994  Baptist Hospital of Miami Psychological Approaches to Time Management for Nursing and Administrative Personnel

October 1993  Dade County Bar Association, Family Law Division The Role of Psychological Testing in Custody Litigation

January 1993  American Academy of Matrimonial Lawyers, Florida Chapter, Winter Retreat Understanding Attorney and Client Personality Types in Custody Litigation

The Children’s Legal Protection Project is supported by a grant
from the American Bar Association (ABA) Child Custody Pro Bono Project.

SIGN IN SHEET

<table>
<thead>
<tr>
<th>NAME</th>
<th>ORGANIZATION</th>
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GALCRM2.doc
GALFAM (2).doc
HOW TO TALK TO CHILDREN ABOUT VIOLENCE.doc
Lawyer's Request for Records.doc
PARENTAL ALIENATION SYNDROME.doc
parental collaboration document.doc
professional collaboration information.doc
Psychologist Expert.doc
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SEMINAR.doc

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FTS_Parent Manual.doc

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GAL Training Agenda.doc
GAL Training Eval 2.doc
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GAL Training Evaluation 1.doc

montana

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0leaseDonate!.doc
0LPPIntakeForm.doc
0lyerDec2CLPPtraining2.doc
0lunteerLawyerAPPLICATION.doc
0nferenceRegistrationForm.doc
0ticeDec2TrainingFINAL.doc
0valuation.doc
WI Grant Project (6).pdf
Materials as listed in the Guide

California

Guardianship Manual

Florida

- Guardian ad Litem (GAL) program description
- GAL seminar agenda
- GAL seminar flyer
- Parental Alienation Syndrome information sheet
- Professional collaboration document
- Parental Collaboration document
- Expert document
- The ethical and legal dilemma of therapists serving as experts
- Chapter 64B19-18 consent testing document
- Chapter 64B19-19 Records document
- Lawyer's request for records documents
- Chapter 64B19-18.007 Requirements for Forensic Psychological Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes
- “How to talk to children about violence” document

Houston

- Family Transition Solutions Child Manual
- Family Transition Solutions Parent Manual

Kansas

“Being a Kid Isn't Easy.” Sourcebook (The sourcebook will be available by request from KLS and also on its website: www.kansaslegalservices.org
- Jane Adams Bibliography
- GAL brochure
- GAL training agenda
- GAL training evaluations from session one
- GAL training evaluations from session two
- GAL training evaluations from session three
- GAL training evaluations from session four

Montana

1. Introduction: Welcome Letter, Brook's Quote (Creighton Law Review), Special Thanks, Index
2. Chapter One: Representing Children—what attorneys need to know
3. Chapter Two: Child Clients—how to meet specific needs of a child client
4. Appendix and Table of Contents, Montana
5. Bibliography
6. Children's First Power Point Presentation
7. Front Labels

Wisconsin

Training announcement flyer, Training Sign-in Sheet, Training Final Letter
Training registration form
Volunteer lawyer application form
CLPP Supporter From
Intake Form

Training Evaluation

- Child Abuse Injunctions in Wisconsin, Cyrus Behroozi, J.D.
- The Rainbow Project Handout
- Mental Health Issues: Child Abuse Disclosures in the Context of Divorce, Hugh Johnston, M.D.
- Petition in Juvenile Court for Temporary Restraining Order and/or Injunction (Child Abuse)
- Notice of Hearing for Temporary Restraining Order (Child Abuse)
- Injunction (Child Abuse)
The Ethical (and Legal) Dilemma of Therapists Serving as Experts

Introduction: The usual standard of practice for a forensic psychiatric or psychological evaluation (whether in a dissolution action or a tort claim) for use by the Courts in South Florida [as elsewhere] is governed by both ethical guidelines and specific statutory requirements.

Such an evaluation typically includes the administration of appropriate psychological tests, conducting an extended clinical interview, and where possible, the gathering of data from collateral sources of information.

If objectivity is to be achieved in the conduct of an evaluation for the Court then, by its very nature, psychological or psychiatric treatment, should not be construed as a forensic evaluation and should not be considered a substitute for comprehensive evaluation for the reasons described below:

The Therapist: In most jurisdictions, a properly qualified therapist, if requested to do so by a patient or ordered to do so by a court, may properly testify to facts, observations, and clinical opinions for which the therapy process provides a trustworthy basis. This testimony may include the history as provided by a patient; the clinical diagnosis; the care provided to a patient; the patient's response to that treatment; the patient's prognosis; the mood, cognitions, or behavior of the patient at particular times; and any other statements that the patient made in treatment.

A therapist may properly testify, for example, that Ms. Jones was unhappy in her marriage for many months before seeking therapy for herself or child. The therapist may report that he observed Ms. Jones to be tearful, and extremely anxious. The therapist may properly testify that he or she observed, and that Ms. Jones reported, symptoms that led to a diagnosis of depression or anxiety.

The therapist may also describe the particular type of treatment, Ms. Jones' response to that treatment, and her prognosis. The therapist may properly testify that the primary focus for the therapy was an unhappy marriage or conflicts in parenting styles.
Therapist or Expert?: To be admissible, an expert opinion must be reliable and valid to a reasonable degree of scientific certainty. It is improper for the therapist to offer an expert opinion that the marriage or conflicts about parenting was the proximate cause of her depression rather than a car accident, job termination, or bereavement.

This is true for two reasons:
First, the type and amount of data routinely observed in therapy is rarely adequate to form a proper foundation to determine the psycholegal [as opposed to the clinically assumed] cause of Ms. Jones' impairment, nor is therapy usually adequate to rule out other potential causes.

Second, and more significantly, such testimony engages the therapist in conflicting roles with Ms. Jones, the patient.

Professional Guidelines: Psychological and psychiatric organizations have sought to limit these situations when dual functions are performed by a single psychologist or psychiatrist. In increasing detail and specificity, professional organizations have discouraged psychologists and psychiatrists from engaging in conflicting dual professional roles with patient—litigants.

The Ethical Guidelines for the Practice of Forensic Psychiatry, note: A treating psychiatrist should generally avoid agreeing to be an expert witness or to perform an evaluation of his patient for legal purposes because a forensic evaluation usually requires that other people be interviewed and testimony may adversely affect the therapeutic relationship.

In a very similar vein, the Specialty Guidelines for Forensic Psychologists indicate the following: Forensic psychologists avoid providing professional services to parties in a legal proceeding with whom they have personal or professional relationships that are inconsistent with the anticipated relationship. When it is necessary to provide both evaluation and treatment services to a party in a legal proceeding (as may be the case in small forensic hospital settings or small communities), the forensic psychologist takes reasonable steps to minimize the potential negative effects of these circumstances on the rights of the party, confidentiality, and the process of treatment and evaluation, [p. 659].

The Committee on Psychiatry and Law, Group for the Advancement of Psychiatry concluded in 1991 that
While, in some areas of the country with limited number of mental health practitioners, the therapist may have the role of forensic expert thrust upon him, ordinarily, it is wise to avoid mixing the therapeutic and forensic roles (p. 44).

Recognizing this inherent conflict, and the potential for the misuse, no matter how well intentioned, of psychologists’ expertise the Florida Board of Psychological Examiners adopted Rule 64B19-18.007, F.A.C. - Effective September 30, 2004 which states:

2 (b) The psychologist who has accepted an appointment as an evaluator shall not serve as guardian ad litem, mediator, therapist or parenting coordinator regarding the children in the instant case. The psychologist who has had a prior role as guardian ad litem, mediator, therapist or parenting coordinator shall not accept an appointment as an evaluator for the children in the instant case.

**Scope of Expert’s Evaluation:** An evaluation completed by an expert, as opposed to a therapist, should include [a] the administration of appropriate psychological tests, [b] conducting extended clinical interviews, [c] the gathering of data from collateral sources of information (whether by review of relevant documents or interviews with collateral sources of information, or both), [d] a review of relevant empirical research related to the evaluation issue, and [e] the preparation of an expert report, per the local rules governing the admissibility of experts’ opinions.

For a Court to avail itself of useful and unbiased opinion in the formation of its decisions, it should be able to rely on expert testimony that is as **objective** as possible. This dictum is articulated in the American Academy of Psychiatry and the Law Ethical Guidelines for the Practice of Forensic Psychiatry, Section IV:

> The forensic psychiatrist... adheres to the principles of honesty and striving for objectivity. His clinical evaluation and the application of data obtained to the legal criteria are performed in the spirit of such honesty and striving for objectivity. His opinion reflects this honesty and striving for objectivity.

The Specialty Guidelines for Forensic Psychologists "specify the nature of desirable professional practice by forensic psychologists" [p. 656] and caution that psychologists "take special care to avoid undue influence upon their methods.

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1 64B19-18.007 Requirements for Forensic Psychological Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes.
procedures and products, such as might emanate from the party to a legal proceeding in the conduct of their evaluations [p.661].

In conducting a custody evaluation F.A.C. 64B19-18.007 directs that (2) The minimum standard of performance in court-ordered child custody evaluation and family law proceedings includes, but is not limited to, the following: (a) The psychologist shall adhere to the “APA Guidelines for Child Custody Evaluations in Divorce Proceedings,” effective July, 1994, and the “Specialty Guidelines for Forensic Psychologists,” effective March 9, 1991. These guidelines are incorporated by reference.

The Rationale for Avoiding a Dual Role Conflict: At first blush the prospect of using a therapist already familiar with the family or family members would seem to be the ideal professional to further engage as an expert or evaluator. Attorneys may be inclined to use therapists as forensic experts on behalf of litigants exists because of an mistaken belief about efficiency, neutrality, and expertise.

Using a therapist as expert appears efficient because the therapist has already spent time with the litigant and knows much about him or her that others do not. Add to this the expectation of saving additional expense and a therapist would appear to be an ideal choice as an expert.

Further, a therapist would not appear to be the attorney's hired gun who came into the case solely to assist in advancing or defeating a legal claim or defense. Thus, a therapist's assessment may appear more neutral and less immediately subject to financial incentives to reach a particular result than does a separate forensic evaluation.

However, as can be seen in the table below the therapeutic and forensic roles demand different and inconsistent orientations and procedures

<table>
<thead>
<tr>
<th>Conflict domain</th>
<th>Clinical</th>
<th>Forensic</th>
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<tbody>
<tr>
<td>Whose client is it?</td>
<td>Client of the psychologist</td>
<td>Client of the attorney</td>
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<tr>
<td>Legal protection against disclosure</td>
<td>Psychologist-patient privilege</td>
<td>Attorney-client and attorney-work-product privileges</td>
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<tr>
<th>Conflict domain</th>
<th>Clinical</th>
<th>Forensic</th>
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<tr>
<td><strong>Evaluative attitude</strong></td>
<td>Psychologist: Supportive, accepting, and empathic</td>
<td>Forensic evaluator: Assessor, usually neutral, objective, and detached</td>
</tr>
<tr>
<td>**Areas of professional</td>
<td>Psychologist must be competent in clinical assessment and treatment</td>
<td>Forensic evaluator must be capable in forensic evaluation procedures and</td>
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<tr>
<td>competency**</td>
<td>of the patient's impairment</td>
<td>relevant psycholegal issues</td>
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<tr>
<td><strong>Application of expertise</strong></td>
<td>Psychologist uses expertise to test rival diagnostic hypotheses to identify appropriate therapeutic intervention</td>
<td>Forensic evaluator tests different sets of rival psycholegal hypotheses generated by the elements of the law applicable to the case</td>
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<td><strong>Degree of scrutiny to which information is subjected</strong></td>
<td>Therapy is based on information from the person being treated, that may be incomplete, grossly biased, or honestly misperceived</td>
<td>Forensic examiner offers opinions regarding historical truth and validity of the psychological aspects of a litigant's claims</td>
</tr>
<tr>
<td><strong>Assessment procedure and degree of structure</strong></td>
<td>Psychological evaluation is less complete and less structured. Patient provides structure. Patient and psychologist work to define the goals of interaction.</td>
<td>Forensic evaluators conduct highly structured assessments using structured interviews supplemented with a battery of psychological tests</td>
</tr>
<tr>
<td><strong>Adversarial aspect</strong></td>
<td>Psychotherapeutic process is rarely adversarial</td>
<td>Forensic evaluation is adversarial in that evaluator seeks information that both supports and refutes litigant's legal assertions</td>
</tr>
<tr>
<td><strong>Goals of the relationship</strong></td>
<td>Psychotherapy is predicated on a working alliance, geared to the patient's benefit</td>
<td>A forensic evaluation strives to obtain objective information that may ultimately aid a trier of fact</td>
</tr>
<tr>
<td><strong>Effect of examiner's attitude</strong></td>
<td>Positive relationship between the success of the therapist-patient alliance</td>
<td>Forensic examiner must be detached, skeptical, and must carefully question</td>
</tr>
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</table>
and success in therapy what the litigant presents. It is less likely that his or her judgment-laden testimony would cause serious or lasting emotional harm to the litigant

**Conclusion:** Unfortunately the Courts, and attorneys, are slow to recognize this inherent conflict of roles. Until recently, despite explicit ethical precepts addressing this dual role conflict, there have not been any reported judicial decisions that have addressed the exclusion of a forensic assessment by a psychologist or psychiatrist who serves as a litigant's therapist although the adoption of F.A.C. 64B19-18.007 may change both the law and the practice of psychology in the Family Court.

Nevertheless it should be evident that deviating from the ethical codes or practice guidelines, and now, from administrative codes governing professional practice, is an appropriate and effective basis for impeaching a witness.

**ENDNOTES**


B The ethical principles of both the American Psychiatric Association and the American Psychological Association require that when a treating psychiatrist or psychologist believes it may later become necessary to comment to a third party [such as an employer or insurance company], this is to be discussed fully with the patient as early as is feasible.
Treating clinicians know [or should know] that awareness of the probability of disclosure affects the patient's conversations and disclosures to some extent, and this in turn affects the validity of any forensic participation.

The purpose and goals of the treating clinician are fundamentally different from, and often conflict with, those of the forensic expert: The treater has fiduciary and ethical obligations to the patient which demand that the patient's interests and wishes be placed before all else. The forensic consultant's responsibilities, on the other hand, are to objectivity and to the court. Although often a lawyer's agent, both the law and professional ethics demand that the forensic professional be objective in both commission and omission; he or she has no obligation to the litigant or "evaluatee" [and does not refer to that person as his "patient"] [See also: Strasburger, L.H., Gutheil, T.G., Brodsky, A.: On wearing two hats: Role conflict in serving as both psychotherapist and expert witness. American Journal of Psychiatry 154(4):448-456, 1997].


The Specialty Guidelines for Forensic Psychologists are especially clear in this regard:

Where circumstances reasonably permit, forensic psychologists seek to obtain independent and personal verification of data relied upon as part of their professional services to the court....(VI-(F), p.662 ) ....forensic psychologists attempt to corroborate critical data that form the basis of their professional product....(VI-(F),I, p.662).
1. Was the session well organized?

2. Was the session stimulating and interesting?

3. Was the information during the session presented clearly?

4. Are there any additional topics, which should have been covered during this training session?

5. If you could change this training session, what would you do?

6. Were written materials helpful to you in gaining a better understanding of the topic?

7. How has this training expanded your sensitivity to issues addressing the children and families you serve?

8. Can you describe at least one element that you will change in your daily practice as a result of this training, or that has been reinforced as a result of this training?

9. Do you have any suggestions for issues to be addressed at future trainings or brown bag discussions?

10. Do you have any questions about the Children’s Legal Protection Project of Dane County?

11. Additional Comments:

Optional:

Name: ________________________________

THANK YOU FOR ATTENDING!

The Children’s Legal Protection Project is supported by a grant from the American Bar Association (ABA) Child Custody Pro Bono Project.
RULE 12.363. EVALUATION OF MINOR CHILD

(a) Appointment of Mental Health Professional or Other Expert.

(1) When the issue of visitation, parental responsibility, or residential placement of a child is in controversy, the court, on motion of any party or the court's own motion, may appoint a licensed mental health professional or other expert for an examination, evaluation, testing, or interview of any minor child or to conduct a social or home study investigation. The parties may agree on the particular expert to be appointed, subject to approval by the court. If the parties have agreed, they shall submit an order including the name, address, telephone number, area of expertise, and professional qualifications of the expert. If the parties have agreed on the need for an expert and cannot agree on the selection, the court shall appoint an expert.

(2) After the examination, evaluation, or investigation, any party may file a motion for an additional expert examination, evaluation, interview, testing, or investigation by a licensed mental health professional or other expert. The court upon hearing may permit the additional examination, evaluation, testing, or interview based on good cause shown that further examinations, testing, interviews, or evaluations would be in the best interests of the minor child.

(3) Any order entered under this rule shall specify the issues to be addressed by the expert.

(4) Any order entered under this rule may require that all interviews of the child be recorded and the tapes be maintained as part of the expert's file.

(5) The order appointing the expert shall include an initial allocation of responsibility for payment.

(6) A copy of the order of appointment shall be provided immediately to the expert by the court unless otherwise directed by the court. The order shall direct the parties to contact the expert or investigator appointed by the court to establish an appointment schedule to facilitate timely completion of the evaluation.

(b) Providing of Reports.

(1) Unless otherwise ordered, the expert shall prepare and provide a written report to the attorney for each party or the party, if unrepresented, and the guardian ad litem, if appointed, a reasonable time before any evidentiary hearing on the matter at issue. The expert also shall send written notice to the court that the report has been completed and that a copy of the written report has been provided to the attorney for each party or the party, if unrepresented, and the guardian ad litem, if appointed. In any event, the written report shall be prepared and provided no later than 30 days before trial or 75 days from the order of appointment, unless the time is extended by order of the court.
(2) On motion of any party, the court may order the expert to produce the expert's complete file to another qualified licensed mental health professional, at the initial cost of the requesting party, for review by such qualified licensed mental health expert, who may testify.

(c) Testimony of Other Professionals. Any other expert who has treated, tested, interviewed, examined, or evaluated a child may testify only if the court determines that good cause exists to permit the testimony. The fact that no notice of such treatment, testing, interview, examination, or evaluation of a child was given to both parents shall be considered by the court as a basis for preventing such testimony.

(d) Communications with Court by Expert. No expert may communicate with the court without prior notice to the parties and their attorneys, who shall be afforded the opportunity to be present and heard during any such communication between the expert and the court. A request for communication with the court may be informally conveyed by letter or telephone. Further communication with the court, which may be conducted informally, shall be done only with notice to the parties.

(e) Use of Evidence. An expert appointed by the court shall be subject to the same examination as a privately retained expert and the court shall not entertain any presumption in favor of the appointed expert's findings. Any finding or report by an expert appointed by the court may be entered into evidence on the court's own motion or the motion of any party in a manner consistent with the rules of evidence, subject to cross-examination by the parties. The report shall not be considered by the court before it is properly admitted into evidence.

Committee Note

1997 Adoption. This rule should be interpreted to discourage subjecting children to multiple interviews, testing, and evaluations, without good cause shown. The court should consider the best interests of the child in permitting evaluations, testing, or interviews of the child. The parties should cooperate in choosing a mental health professional or individual to perform this function to lessen the need for multiple evaluations.

This rule is not intended to prevent additional mental health professionals who have not treated, interviewed, or evaluated the child from testifying concerning review of the data produced pursuant to this rule.

This rule is not intended to prevent a mental health professional who has engaged in long-term treatment of the child from testifying about the minor child.
CALLING ALL CHILD ADVOCATES!

WHO: Attorneys, guardians ad litem, social workers, mental health practitioners, domestic violence advocates, judges, commissioners, family court counselors, students, anyone interested in children and families in the legal system

WHAT: FREE TRAINING
A light lunch will be provided (please bring your own beverage)

WHEN: FRIDAY, DECEMBER 2, 2005 FROM 12:00-2:30 P.M.

12:00-1:00 – Child Abuse Injunctions in Wisconsin
   Cyrus Behroozi, J.D.
   Director of Child Advocacy
   Task Force on Family Violence, Milwaukee, WI

1:00-2:00 – Mental Health Issues: Child Abuse Disclosures in the Context of Divorce
   Sharyl Kato
   Director and Child & Family Therapist
   The Rainbow Project, Inc., Madison, WI

2:00-2:30 – Panel Discussion: Emerging Issues at the Intersections of Child Custody, Domestic Violence and Mental Health
   Confirmed to date:
   Hon. Mary Beth Keppel
   Dane County Family Court Commissioner
   Kristin Hoffschmidt
   Domestic Abuse Intervention Services, Madison, WI
   Dr. Hugh Johnston
   Consulting Psychiatrist, The Rainbow Project, Inc., Madison, WI

WHERE: ROOM #201 OF THE CITY COUNTY BUILDING IN MADISON

FOR MORE INFORMATION & TO REGISTER CONTACT:

Sarah Helvey
(608) 204-9642
sarah@communityjusticeinc.org

SPONSORED BY:

CHILDREN’S LEGAL PROTECTION PROJECT
OF DANE COUNTY
A PARTNERSHIP OF THE RAINBOW PROJECT INC. AND COMMUNITY JUSTICE INC.

The Children's Legal Protection Project is supported by a grant from the American Bar Association (ABA) Child Custody Pro Bono Project.
Montana Child Custody Pro Bono Project Attorney Training

Sponsored by Montana Legal Services Association and A.W.A.R.E., Inc.

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MLSA
Montana Legal Services Association
Family Transition Solutions

Children’s Manual

Director: John P. Vincent, Ph.D.
Assistant Director: Tonya Inman, Ph.D.
Program Coordinators: Ehrin Lovria, M.A. & Ginny Fullerton, M.A.
Staff members: Lauren Miller & Jason Cooper
Introduction

Between 1970 and 1996, the proportion of children living with one parent grew from 12 to 28 percent (U.S. Census Bureau, 1998). In 1994, over 18 million children in the United States were living with only one parent, and approximately two thirds of those were with divorced or separated parents (U.S. Census Bureau, 1994). Evidence suggests that children from divorced homes function more poorly than children from homes with continuous marriages, and child distress in response to divorce appears to be on the rise (Amato, 2001; Amato & Keith, 1991). Specifically, children with divorced parents score significantly lower on measures of academic achievement, conduct, psychological adjustment, self-concept, and social relations. However, not all children respond to divorce the same way, and some problems may vary based on developmental level (Emery & Kitzmann, 1995). In a meta-analysis of child outcomes, children in primary or secondary school exhibited more distress, relative to preschoolers and college students.

Divorce is a stressful process that involves numerous changes in the child’s environment. Many children of divorce have been exposed to parental conflict, before and/or after the divorce, in addition to experiencing stressful circumstances that often accompany changes in family structure. Children often experience changes in family income, residence, and school, and the quality of relationships with the custodial and noncustodial parents is likely to decrease due to custody arrangements and fewer resources. Family stability is an important aspect of child development, with implications for academic performance (Ackerman, Brown, D’Eramo, & Izard, 2002; Weisner & Garnier, 1992) as well as overall emotional adjustment (Ackerman et al., 2002; Martinez & Forgatch, 2002). Given that, by definition, divorce implies considerable instability, it is not a surprise that children exhibit adjustment problems in response to the divorce process.

Given the considerable heterogeneity in divorce processes and children’s responses, the goal of any preventive intervention program should consider the child within their environmental context and provide the necessary support and skills to assist the child in coping with feelings, situations, and problems often accompanying divorce. Cognitive-behavioral interventions have received empirical support in the treatment of children in divorced homes (Winslow et al., 2004; Pedro-Carroll & Alpert-Gillis, 1997; Alpert-Gillis, Pedro-Carroll, & Cowen, 1987; Stolberg & Cullen, 1983), but children continue to experience numerous difficulties despite the rise in prevention programs (Amato, 2001). Thus, further efforts are needed to improve the quality of care provided to children and families going through the divorce process. The current manual is based on the conceptualization of divorce as a traumatic life event, offering a unique perspective that allows for additional stress-focused components to the cognitive-behaviorally based approach. Treatment is aimed at reducing the stress that accompanies divorce by correcting maladaptive appraisals and helping children to acquire and practice skills to cope with stressful situations.

* Portions of this manual have been adapted from the Children of Divorce Intervention Program (Children’s Institute Inc. ©1992, 1994, 1997, 1999 JoAnne Pedro-Carroll, Linda Alpert-Gillis, Sharon Sterling, Sara E. Sutton, Aaron E. Black) and the Divorce Adjustment Project (Stolberg, A. L., & Mahler, 1994).
Treatment Components

Children’s Program

Treatment objective

The aim of treatment is to reduce the impact of divorce by:
- Providing a safe and supportive environment to discuss the divorce.
- Reframing divorce-related misappraisals.
- Teaching and rehearsing skills designed to improve children’s ability to cope with divorce.

Target Population

Eligible children include 1st through 5th graders whose parents have recently divorced or are currently in the divorce process. Treatment will be tailored to children’s developmental level, such that separate treatment groups will be provided for (a) 1st through 3rd graders, and (b) 4th and 5th graders. Group activities will be tailored accordingly, although the major components of treatment will remain the same.

Activities

Activities specific to children’s developmental levels are integrated into each therapy session. Please refer to activity addendums at the end of each session when indicated.

Organization

Individual pre-assessment session

Phase I: Divorce Appraisals and Emotions
- Session 1: Introductions, rationale, reduce divorce stigma
- Session 2: Divorce appraisals and emotion skills training
- Session 3: Emotion skills

Phase II: Problem-solving skills training
- Session 4: Anger management and relaxation training
- Session 5: Handling anger & conflict

Phase III: Anger management and preparation for termination
- Session 6: Problem-solving skills training: steps
- Session 7: Evaluating problems: Solvable or unsolvable?
- Session 8: Review skills & Termination

Individual post-assessment session
**Frequency and length of sessions**

The program is designed as a weekly one hour and 20 minute group session for 8 weeks.

**Group size**

The size of the group may vary but should include between 3 and 8 children.

**Before you begin**

Therapists may develop their own style and/or tailor some of the material when conducting groups. Be sensitive to variation among children and among groups. Remember that not all children are equipped with the same skills, and not all children respond to divorce the same way. Thus, it is necessary to evaluate each child’s skill level and provide treatment designed to benefit every group member. It is crucial that therapists encourage support and provide a comfortable and welcoming environment in which children can feel safe learning new skills and sharing private thoughts and feelings. Divorce can be a painful and stressful experience, but remember that humor and play activities can be excellent resources and facilitate adaptive coping when used appropriately.

Thus, therapists’ primary challenges involve achieving balance in two ways: 1) Providing a service that is specifically tailored enough to address core problems while also educating at as general of a level as necessary to reach and assist every member of the group. 2) Maintaining an atmosphere that is sensitive to the experience of divorce in order to allow emotional processing and skill building while also encouraging enjoyment.

**Handling suspected child abuse and neglect**

Reasonable suspicion of child abuse or neglect warrants reporting to Child Protective Services (1-800-252-5400 or https://www.txabusehotline.org). Before reporting an incident, please discuss your suspicion with your supervisor.

**What to do if you suspect serious emotional, academic, or behavior problems.**

The program is designed as a preventive intervention to assist children in coping with divorce. The program is not designed to treat children with severe clinical problems. A child with clinically significant emotional, academic, or behavioral problems may deserve more specialized attention. Group cohesiveness and participation requires that children are not exhibiting significant disruptive behaviors. Therapists should be prepared to make appropriate assisted referrals in the event that a child is experiencing severe difficulties. Please apply clinical judgment and consult with your supervisors to differentiate “distress” from severe psychopathology.

**Dinosaur Game**

Even though the dinosaur game is only scheduled for Session 1, the therapists should play the dinosaur game at the end of each session if time allows.

**Parenting Program**

Parent participation is an important part of the overall program. At least one parent is encouraged to attend a simultaneous parent group. Please refer to the Parenting Manual for more information.
SESSION 1

Introduction

Objectives

1. Introduce children and begin to develop group cohesiveness.
2. Explain purpose/rationale of group to children.
3. Begin to reduce stigma of “divorce” in children.

Materials

Group Folders (with Take Home Packet) for each child
Blackboard/chalk or Easel/Markers.
3 by 5 cards
Pencils box
“It’s Not Your Fault, Koko Bear” By Vicky Lansky
Dinosaur Game

Procedure

1. Introduction of children and therapists.
   
   a) Therapists introduce themselves, welcome everyone, and say that we are going to spend some time getting to know each other.
   
   b) Play the introduction game. Start at one point in the group with a child giving his/her name. Then the next person states the first person’s name and adds their own. The third person states the name of the first, then the second, then adds his or her own. This continues until everyone has stated his or her name. The therapists should participate and go last (make sure you remember everyone’s name).
   
   c) Pair up and find out more about each other. Have children pair up (therapists pair up with kids as well, it may be necessary to have one group of three if there is an odd number of participants), find out information about each other, and then introduce their partners to the group. Encourage the children to find out about where their partner goes to school, their interests (hobbies, experiences, activities they enjoy) and their family (composition, number of brothers and sisters). Children should also be asked to respond to one specific question: “What are two good things about you?” When introducing the exercise to the children, this question should be written up on the blackboard. Allow partners to interact for about ten minutes and then begin the introductions. One of the therapists should go first and model the procedure by introducing their partner. Then their partner should introduce them and other partners should take turns introducing each other until everyone has been introduced.

2. Present group norms/expectations.

   a) Discuss rationale and activities/norms of the group in kid terms.

   b) Mention the need for confidentiality. State that things said in the group are sometimes very private things and should not be talked about outside the group. Encourage children
to discuss things they learned in group and their experiences with their parents and others, but to not share any information about the other group members.

c) Tell the children that this is a special group, but that the rules are similar to those at school. Have them develop some of the rules while the therapist writes them down on the chalkboard. Make sure that certain rules are on the chalkboard: respectful of each other at all times, only one person should talk at a time, hands to themselves, and no talking when other people are talking. Also, they should not tease or make fun of each other or fight during the group. There will also not be any food or toys in the group. If they bring food or toys they need to be left outside of the room until the group is over.

d) Have the children establish a name for the group. Write this name up on the blackboard and then have them decorate the front of their notebook with the group name and their own name. Explain that they will be taking this folder home with them after each session and bringing it back to the next session. Make sure they understand that this is their “special” folder and that they do not have to share anything in it with other people unless they choose to.

3. Discuss purpose of group and reactions to group.

a) The leaders should speak positively about the opportunity to learn more about each other and then point out one thing that is common to all the children in the group — they have all been through or are going through a separation/divorce. Indicate that this is one reason for having the group, so that they can learn from each other and learn more about the process of going through a separation/divorce. You can say something like:

“Now we have all met each other, learned a little bit about each other, and decided on a name for our group, [state group name]. One of the reasons that we are meeting together is to talk with each other about one thing that all of you have in common. All of you have parents who are divorced or separated. We want to hear what your parents not living together means to you. Let’s start by talking about what the word divorce means and what it means when parents separate. (Let group members give examples. Add that it means that parents are not married anymore and that they will not be living together, if this was not already said.)

This group is a great time for us to learn from each other and talk about the changes you have been through since your parents’ divorce or the changes that you might expect in the future. When your parents get divorced, it can cause some really big changes in your life. This can make things pretty tough sometimes, that’s why here, we get to share and talk about those changes and your feelings about those changes in your family. This group will give you the chance to better understand some challenges kids have when their parents get separated or divorced, and we will learn ways to deal with some of the challenges you may be having with the divorce.”

b) The leader should engage the group in a discussion of their feelings of being in the group. Inquire as to what they thought the purpose of the group was and what they expect from it.

c) Pass out 3 by 5 cards to all of the children and ask them to write down (older group) or
draw (younger group) on them the most difficult thing for them about their parents’ separation/divorce. Note: Kids might need help spelling/writing. Put the cards in the box and have the children take turns drawing out a card, reading it, and discussing feelings about it or similar experiences. Children are free to decide if they want to identify their own responses. Explain the whole procedure for the exercise to them at the beginning. State again what the children all have in common; they have been through a separation/divorce. They will be discussing their feelings about the divorce, as they just did, and they will think of ways to solve any problems they are having related to their parents’ divorce over the course of the group.

d) Discuss common concerns that many children from divorced families have that they may not have mentioned. Examples: Parents fighting in front of you, parent telling you something mean about the other parent, having to go back and forth between parents and houses, having to be away from your friends and your things while you visit the other parent, one parent tells them to say things to the other parent that they do not want to say, don’t like the men/women my mom/dad dates, feeling caught in the middle between parents, feeling angry a lot, having a hard time during the holidays going back and forth between parents’ houses.

4. Discuss “Why do you think your parent’s are not together?”

a. “Many kids who have parents who are separated or divorced wonder why they do not want to be together. What are your ideas about why your parent’s are not together anymore?”

b. If it appears that a child is stuck on blaming a particular person, challenge the children throughout the discussion by asking if it helps to blame someone, if children can really cause their parents to separate, etc. Inquire into whether they can talk to their parents about this issue and question whether they think they have a right to know. At all times present and uphold separation/divorce as a decision made by adults that the adults are responsible for. Remind them that their parents are not divorcing them, they are divorcing each other. Also remind them that they might never really know why their parents decided to get a divorce and that this is “okay.”

c. Emphasize that children do not have control over the divorce or many of the decisions that their parents make. Help them to understand that they do have control over many other aspects of this situation, such as telling and showing their parents how they feel and what they are thinking about their parents’ decisions. They also have some control over how they act when certain events happen. For instance, they might feel really mad when their friend or sibling takes their favorite toy/video game/jewelry/etc. It is okay to feel mad, but they have control over whether they hit their friend/sibling or yell, or make a better choice and talk to the other person about wanting their toy back.

5. Discuss different types of families and transitions that divorced families go through.

a) Tell the children that we are going to talk about the many different types of families and specifically the different types that people from divorced families might expect to see. Ask them to name all the different kinds of families they can think of (e.g. single parent families, biological families, blended families etc.). Discuss that all families change in some ways over time and that divorce/separation is just one type of change (e.g., children grow-up and move out, a new baby is introduced to the family).
b) Ask the children to talk about their own families and talk about their feelings about their families (leaders can talk about their families and feelings about their families as well – in hypotheticals of course). Identify the types of families that are represented in the group.

c) Emphasize that almost all families have times that are good and times that are not so good. Have the children identify a good time and a not so good time (not related to the divorce) their family had in the past (e.g., birth, wedding, death in family or death of pet, moving, etc…). Discuss how their family will continue to have times that are good and times that are not so good in the future. Bring up some of the issues that group members may face in the future (e.g. remarriage of a parent, step-parents, and step-siblings) and encourage them to talk about their feelings about such situations. Some children may have fears or questions about their parents’ remarriage or other issues and these should be addressed. Those members who may have already gone through some such transitions can share their experiences of what it was like for them. Emphasize at all times that all types of families are okay and that all have both their good and not so good times. Say that sometimes change is difficult, but that often things can improve after a change. Ask the group members for examples of other changes that may have been difficult, but that they coped with and it turned out okay in the end. (Example: beginning first grade in a new school, going to another school, get in a fight with a friend but they work it out.)

6. Therapist will read the book “It’s Not Your Fault, Koko Bear” to the younger kids group. Go over book prior to session in order to pick out several questions to ask (several questions are listed on each page.) After reading the book, ask group members for their reaction to the book and how their experience was similar or different from Koko Bear’s.

7. Play the Dino Game

8. Introduce topics for next week.

   a) Mention that we will be discussing feelings next week. Some feelings are good and some are not so good, but they are all natural and normal.

   b) Ask members to think about what causes feelings in them and to write down or draw on Worksheet #1 in their “Take Home Packet” a time in the next week when they had a good feeling and a time when they had a not so good feeling. They will share this with the group at the next meeting.

Homework

Worksheet #1 in the Take Home Packet: Draw or write a time in the next week when you had a good feeling and another when you had a not-so-good feeling.
Worksheet #1

Draw or write about a time this week when you felt...

**Good**

**Not So Good**

*Great! We’ll share this with our group next session*
SESSION 2
Divorce Appraisals and Emotion Skills Training

Objectives

1. Help children identify and label feelings in others.
2. Elicit sharing of difficulties related to divorce.
4. Help children learn to distinguish feelings in themselves.

Materials

Example handout of last session’s homework (completed by therapist)
Blackboard/chalk or easel/markers
List of feelings (for therapist’s reference)
Descriptions of feeling situations
Feelings cards/Feelings book
Art supplies for ‘Feeling Masks’ (paper plates, Popsicle sticks, crayons, markers, glue)

Procedure

1. Review Session 1

   a) Review the proceedings of group 1, mentioning that we spent some time getting to know each other better. Review the rules and expectations of the group.

   b) Mention again that going through a divorce/separation is a common experience to all group members. Briefly review the purpose of the group and focus on the sharing of feelings, stating that this is one of the goals of group this week.

2. Share the project from Session 1

   a) Review the project from week 1 (Worksheet #1). Remind the kids that each was to write down or draw a time when they had a good feeling and a not-so-good feeling in the prior week. The therapist can model the task by bringing in an example worksheet. Ask who would like to share their worksheet with the group and encourage a discussion of the situations and feelings.

   b) Encourage all children to share, but do not force any to talk if they do not wish to. Attempt to point out similarities and differences among the children in the types of feelings they are reporting and the situations that led to those feelings. This information can then be used in a smooth transition to the discussion of diversity of feelings and experiences of feelings.

3. Discuss diversity of feelings and experiences of feelings

   a) State that there are many different kinds of feelings, some feel good and some do not feel so good. Ask the children to think of as many feelings as they can. As they name feelings, ask them to provide an example of a time in which they experienced that feeling. If they are unable to think of a time when they felt this way, ask them what might make someone else feel that way. List the feelings they mention on the board. If they have difficulty
generating a large number of feelings, one of the therapists should assist by mentioning several, using the feelings list provided with this manual (pg. 15).

b) Feelings Related to Divorce: Ask children to share their feelings about their parents’ separation and then ask them which are good feelings and which are not so good feelings. Emphasize that most people have more than one feeling about something and that this can sometimes be confusing, but that it is normal.

“You parents’ divorce can bring up a lot of different feelings. What are some feelings about divorce that you have had? What good and not so good feelings do you have about your parents’ divorce?”

c) After children are allowed to provide their initial responses to the question above, read the feeling situations on page 16. Ask them to discuss how they would feel in the situation. Encourage more than one response to each situation and point out that not all people feel the same way in all situations. There are lots of different feelings and different people sometimes feel different ways about the same things. Use the example that some people are afraid when they go on a rollercoaster while other people might feel excited. If they have difficulty generating feelings, go through the feelings list and ask whether or not a certain feeling is likely given the situation.

d) Emphasize that people can experience more than one feeling at a time. Give examples: If you get a good grade on a quiz you may feel happy and proud. If you see your parents fighting you might feel sad and scared.

4. **External states and introduction of “feelings charades”**

a) Talk about the differences between internal states and external states when one has a particular feeling. Explain that we experience the feeling inside of us and that we also might show that feeling by the way we look or act. Say that this week we are going to talk mostly about the external states, or how people look on the outside when they are feeling something. You can say:

“You have done a great job naming a lot of feelings. There are many different ways that we can understand what feelings other people are having. For example, you know that someone is probably happy if you see them smiling. The face that a person makes is one way to figure out how someone else is feeling. Can you give me some other examples?” (Use examples from their homework and feelings from the list that they have just generated.)

b) **Feeling Charades**: The therapist chooses a situation/feeling card from a stack and acts out the feelings for the group. Have them guess the feeling, [i.e., Model the game for the kids.] Now have the children act out the feelings without using any words or noises, just their body position and facial expressions. If the group is large enough, divide the children into groups and explain that the goal is to guess what the feeling is before the other group. Each child should get a turn portraying a feeling.

c) Discuss with the group members that sometimes a person will show how they are feeling, but we often do not know why they have that feeling. We will talk in later sessions about how to ask others why they are feeling a certain way. Also explain that other times a person does not show on their face or with their body how they are feeling. They keep their feeling inside. Sometimes we need to ask how a person is feeling and why. These
are subjects we will discuss in more detail later.

5. **Making Feeling Masks:** Ask children to make a mask showing a feeling that they have about the divorce. After they have finished the activity, have them talk about the mask and help them name the feeling if they do not know the word for it.

6. **Discuss feelings in parents**

a) Ask the children to draw a picture of the last time they remember seeing feelings in their parents (i.e., what did their parent look like when they had that feeling). While the children are drawing, the therapist can encourage the children to share some of their observations about feelings in their parents and discuss what made them think he/she had that feeling. If they are having difficulty thinking of examples, ask them to think of the last time their parent was mad, sad, happy, etc… and how they knew that’s what their parent was feeling. Also encourage discussion of the situations that led to the parents’ feelings and how the parents behaved.

b) Lead the children in a discussion of the difficulty of divorce for parents. Point out any instances from the discussion when a divorce related situation led to a not-so-good feeling in a parent. Encourage discussion about the difficulties children have noticed that their parents have with the divorce. Also point out to the children that sometimes when a parent is upset it may be related to the divorce, even though the children do not know about it. As a consequence of this, sometimes a parent might act angry or upset with them when really they are upset about other things.

c) Ask kids to think of a time they were upset or angry and took it out on someone else. (e.g., You are mad that your mom will not let you go over to your friend’s house. You then yell at your little brother even though he has not done anything.)

7. **Introduce topics for next week.**

a) Mention that we will be discussing feelings some more next week and will be learning more about how to talk about our feelings and what to do with our feelings.

b) Ask members to watch for feelings that their parents have over the next week and to draw or write down on Worksheet #2 in their “Take Home Packet” times in the next week when their parent was happy, sad and angry and what they looked like. Also have them draw or write down on Worksheet #3 in their “Take Home Packet” a time when they had a good feeling and a time when they had a not so good feeling about the separation/divorce. They will share this with the group at the next meeting.

**Homework:** Draw or write about a time in the next week when a parent is angry, happy, and sad. And draw or write about a time that you had a good feeling and a time when you had a not so good feeling about the separation/divorce. Try to name those feelings. Have mom and/or dad help with this project if necessary.
Worksheet #2

Your parent’s have feelings just like you do! Draw or write about a time over the past week when your Mom and/or Dad were angry, happy, and sad. Ask Mom or Dad for help if you need it.

______________________________
Happy

______________________________
Angry

______________________________
Sad
Worksheet #3

Draw or write about a time that you had a good feeling and a time when you had a not so good feeling about your parents' separation. Try to name those feelings.

_____________________________________________________

Good

This feeling is called________________

_____________________________________________________

Not So Good Feeling

This feeling is called______________
FEELINGS LIST (for therapist’s reference)

**Younger Children**
Sad
Angry
Lazy
Mad
Silly
Loved
Lonely
Scared
Excited
Worried

**Older Children**
Embarrassed
Proud
Upset
Disappointed
Frustrated
Happy
Jealous
Pleased
Surprised
Guilty
Calm
Impatient
Confused
Hopeless
Hopeful
(plus those listed above)
FEELING SITUATIONS

1. When my mother/father goes out on a date I feel _______
2. When my mother/father is supposed to pick me up and comes late I feel __________
3. When friends ask me about why my parents got a divorce I feel __________
4. When my mother and father fight I feel __________
5. When my mother/father yells at me, I feel __________
6. When my mother(father) says bad things about my father(mother) I feel _
7. When I think about what’s happening to my family I feel ____________________
SESSION 3
Emotion Skills

Objectives

1. Help children recognize antecedents, internal states, and behaviors in relation to feelings.
2. Help children learn how to communicate their feelings in an effective way.

Materials

Several copies of the list of feelings the children generated in session 2 (1 for each child)
Feelings cards
“I felt ____ because _____.” Worksheets
‘Felt Person’ and Velcro cut-outs

Procedure

1. Review Session 2

   a) Ask if there are any questions about the last group.

   b) Remind the group that one of the main topics for the last group was feelings. State that last week the focus was on what feelings look like on the outside. This week we are also going to talk about how our bodies feel inside and how people are alike and different in that way.

2. Review Worksheet #2 and Worksheet #3. Ask the children to take turns sharing when they noticed that their parent was angry, sad, and happy and to explain how they could tell that their parent had this feeling. Also have them share their good and not so good feelings about the separation/divorce. Ask other children if they had similar feelings. If a child did not complete their worksheets, have extras that they can work on during the discussion.

3. Discuss and distinguish between causes of feelings, the feelings themselves, and behavior that results from feelings.

   a) Display the list of feelings that was created in session 2. Give each child a copy of the list that was generated. Emphasize again to the children that some of these feelings feel good, and some feel not so good. Explain that feelings themselves are never bad or wrong even though they are not always fun to feel and that feelings are just reactions that people have when certain things happen. Remind them that they can have more than one feeling at a time. Ask the children for examples of things that might happen that would help someone to have some of the feelings listed (be sure to include good and not-so-good feelings). The therapist can start with an example – you get a good grade on a test. (Happy, proud, excited) If they have trouble coming up with examples: When you see your mom and dad argue (sad, angry, upset, scared). When your friend gets the toy/jeans, etc. that you really wanted. (Angry, jealous, sad). When you trip in front of the class at school. (Embarrassed, upset, silly).

   b) Then discuss that some feelings make us want to do some things and other feelings make us want to do other things. In other words, feelings may influence how we act or behave. Ask the children for examples of what they might want to do if they had some of the feelings on the list. Then question the children: Do the feelings make them do those things or just make them want to do those things? During this discussion emphasize the fact that
the feelings we have and the things we do are separate, even though feelings may make us want to do certain things. You can say:

“Often depending on what we are feeling, we start doing different things. When we feel happy, we might feel like seeing our friends or laughing. What are some other things you feel like doing when you are happy? What about if you are worried/scared/proud? What are some things you feel like doing when you are angry? You mentioned that you feel like [yelling/hitting, etc.] when you are angry. Does feeling angry make you [ex.] or make you feel like you want to [ex.] Feelings do not make us do anything, but sometimes they make us feel like they are making us do something. The feelings we have and what we do are separate. Just because you are feeling angry, you do not have to [ex.]”

3. The Felt Person and Discussing internal differences in feelings: Engage the children in a discussion of how they recognize that they have particular feelings. How do they know “inside” (physiologically) and how do they show their feelings? Using the felt person and the Velcro cut-outs, have the children stick the Velcro cut-outs on the felt person to represent what and where they feel the sensation (e.g., butterflies in the stomach when nervous) in the appropriate places. Encourage those who are willing to try and demonstrate what they feel physiologically when they have an emotion. Introduce the exercise by stating:

“Last week we talked about how people look on the outside when they have certain feelings. This week we are going to talk about what sort of things may go on in your body when you feel some of these feelings. For example, if you are getting on a roller coaster and you feel scared, you may feel your muscles get really tight and you might feel butterflies in your stomach. Can you think of some other examples?”

Other examples: excited (heart beating faster, skin flushed); scared (heart beating faster, skin flushed, shaking, butterflies in stomach, tired, not hungry, bad mood, trouble sleeping) happy (body feels good, often the opposite of scared responses); sad (tired, not hungry, upset stomach, cranky, trouble sleeping).

4. Introduce ways to talk to parents about feelings

a) Max’s story (Why we should tell others how we feel). Read the following story to the children and then ask the questions that follow.

“Now we are going listen to a short story. Max’s parents are divorced and live in different houses. He lives with his Mom, but this is the weekend that he is at his Dad’s house. Max’s best friend invited him over to his house for a sleepover. Max really wants to go to his friend’s house. He asked his Dad if he could go to his friend’s house, his Dad said no because his dad doesn’t get to see Max very often. Max still really wanted to go to his friend’s house and thought it was really unfair that he could not go just because he doesn’t see his dad very much. Max feels really mad and sad when his Dad tells him that he cannot go to his friend’s house. Max hits his Dad’s leg and yells “This is not fair and you are not nice!” and runs out of the room. His Dad takes away his video games as punishment for hitting and yelling.”

What did Max do when he was feeling mad and sad? Did the feelings make him do this or
just make him want to do it? What happened because of the choices Max made? What are some other ways that Max could have dealt with this situation?” (Introduce idea of telling his Dad how he felt and why instead of throwing something and getting in trouble.)

b) Telling Mom and Dad (and others) about how we feel. Provide the following introduction to this topic to the group:

“Sometimes we may feel scared or embarrassed to tell Mom, Dad, or other people how we feel, but it is important to tell others how we feel in order for them to understand us and help us. We’ve talked about how you can figure out feelings in other people, and how your body may start to feel different when you feel different ways. You may often know how you are feeling. You may recognize this because of how your body feels, like we talked about earlier. But other people, like your mom, dad, brother or sister, or friends may not always be able to tell what you are feeling and why. It is often helpful to put your feelings into words and think about why you are feeling that way. If you know the word for what you are feeling, it is easier to let your moms or dads, or anyone else, know how you are feeling. It is important to put your feelings into words because when other people really know how you feel, they can often help you and will understand you better. Sometimes kids will hit or yell to let their mom or dad know that they are mad, like Max did. We are going to talk about other ways to let Mom and Dad know what you are feeling. In later groups, we will talk about how Max might have solved his problem differently.”

5. Steps to tell Mom, Dad, or others how you feel

1. Get calm
2. Think of word for how you feel
3. What happened before you felt that way?
4. Tell Mom of Dad (or other person)

a) Tell the children that the first step to talking about our feelings is to calm down so we can communicate in a way that other people can understand.

“The first step in talking about our feelings to other people is to make sure that we are calm. Sometimes you might feel very strong or painful feelings, like being sad, mad, hurt, annoyed. You may even feel some strong or painful feelings because of things that happen in your parents’ divorce. These are feelings that are really good to tell your parents. Sometimes we need to calm down first before we can talk about our feelings. There are times with strong emotions where we act before we think about how we are feeling and what action we will do. In Max’s story, it would have been helpful for him to take a minute and calm down so that he would not hit his Dad or yell. This way he could let his Dad know with words that he was mad. Max could take deep breaths (demonstrate) in order to calm down. What are some other things you do to try and calm down or relax?”

Examples of how to calm down –Say “calm down” to yourself, talk with a friend/sibling, count to 10, draw a picture, write down how you feel, do something else fun: ride a bike, play a game, etc. Tell them that they will be learning some additional ways to relax in next week’s session.

b) Explain that the next step is to think of the word for what you are feeling.
“Once you have calmed down, you have completed the first step. Now you are ready for step 2, figure out the word for how you are feeling. Whenever you are feeling strong or painful feelings, and you may realize this because your body starts to feel different (tight muscles, butterflies in stomach), take a second and think about what your feeling is called. Max could have calmed down by taking deep breaths and then, once he was more calm, he could think about what his feeling is called. Max realizes that he is sad and angry.”

c) Inform children that the third step is to think of why they are feeling that way.

“Step 3 is to think of why you are feeling this way. Max was sad and angry because he really wanted to go to his friend’s house for the sleepover.”

d) Review the last step on communicating feelings. Emphasize that it is important to talk in a “normal” voice and not yell. They should also let mom or dad know when they have something they want to talk to them about and ask when would be a good time so they can have their parent’s full attention.

“Now, Max is ready for step 4, to tell his mom or dad. This way he does not have to hit or yell to let his mom and dad know how he is feeling. Mom and dad will understand him better and may be able to help out. It’s hard for people to help us when we are yelling and hitting because they get angry and do not understand what is really bothering us.”

7. Now let’s try some examples. Hand out “I felt __because___.” Worksheet. Using the second part of their homework (Worksheet #3), have the children draw or write why they were feeling those good and not so good feelings last week. If they did not bring their worksheet, ask them to think about a time that they were happy and a time they were sad about the divorce. Go through the steps to practice with them.

8. Expressing Divorce Related Feelings

a) Tell the children that we are going to learn about how to tell mom and dad when they are angry or sad about something divorce related and what is helping them feel this way. If appropriate, discuss with the group some situations from the previous exercise and what would be the best way the child could tell someone his/her feeling. Direct the children toward using language that is not inflammatory and that does not include a blaming tone.

b) After a discussion of each problem, let the children perform a role-play in which the child can act out the response that the children decided is the best. Ask for reactions from the observers of the role-play and discuss the feelings elicited in the antagonist in the role-play to point out the usefulness of not blaming.

9. Other’s people’s behavior. Discuss that other people’s feelings can influence how we feel. Give examples: when Mom is angry, that might make us feel mad, sad, etc… Even though other people’s feelings can influence our own feelings and our reactions, we are responsible for our own feelings and reactions and no one “forces” us to feel a certain way. You have control over how you feel!

10. Homework: Have kids complete “I felt, because” Worksheet (Worksheet #5) for next week. Also, write down a time that you told someone about your feelings during the week (Worksheet #4).
Worksheet #4

It helps to tell other people we trust about our feelings. Here are the steps to follow when you want to tell someone how you are feeling:

1) Get Calm
   Ways to calm down:

2) Think of the word for how you feel

3) Think about what happened before you felt that way

4) Tell mom, dad, or someone else you trust

Describe a time when you told someone about your feelings.

This week I told ___________ about my feelings.

What feelings did you talk about?

How did it make you feel?

What did the other person do when you told them?
Worksheet #5

We learned about the names of feelings and some things that might help us to feel that way. During the week, fill in the blank spaces below with how you were feeling and what helped you to feel that way. Also, write down a time that you told someone about your feelings during the week.

Day 1: I felt___________because__________________________________.

Day 2: I felt___________because__________________________________.

Day 3: I felt___________because__________________________________.

Bonus Items:
I felt____________because______________________________________.
I felt____________because______________________________________.
I felt____________because______________________________________.
I felt____________because______________________________________.
SESSION 4
Anger Management

Objectives

1. Help children understand anger in terms of general feelings model.
3. Provide children with possible positive strategies for dealing with anger.
4. Teach relaxation strategies to manage emotional states.

Materials

Felt Person and Velcro cut-outs
Blackboard/chalk or easel/markers

Procedure

1. Review last week’s group.
   
a) Ask if there are any questions about the week before and discuss anything they bring up.

   b) Review their homework from the previous week. (I felt , because worksheet and a time when they told someone else about their feelings.) Correct any misattributions of their feelings (e.g., “he made me feel angry). Reinforce their efforts to communicate their feelings and discuss how it made them feel.

2. Discussion of anger.
   
a) Start off by discussing anger and relating it back to some of the general things discussed during the session on emotions.

   “Anger is an emotion that is natural and normal. Everyone gets angry sometimes. While angry feelings are never bad, some of the things that people do when they have angry feelings can be bad. Remember Max...when he hit is dad, he was feeling angry. While it was okay that he felt angry, it was not good that he hit his dad. He could have found a better way to share his angry feelings. We will be talking about anger and some of the good ways to handle anger today. We will also learn how to tell when we are getting angry so we can do something about it before it gets worse.”

   b) Discuss why it is so important to learn how to manage our anger.

   “Learning better ways to handle our anger is important for several reasons. It helps us feel better overall. It also helps us get along with other people better. Learning good ways to respond to angry feelings can also help us make the right decisions and not hurt other people or ourselves.”

   c) Ask children what types of things lead up to them being angry. Try and get responses from all of the children and gradually start to pull for divorce related situations that lead them to be angry. You might say:
“Lots of different things might lead us to be angry and it differs for each person. You have mentioned that (example from group) makes some of you angry, and (example from group) makes others angry. What things related to your parents’ divorce have made you angry? (e.g., the divorce itself, moving, not having both parents at home, having to pack things for a visitation every other weekend, etc...).” Examples of non-divorce related triggers are being teased, having a teacher who is mean to you, not getting a toy you wanted, someone lying to you or starting a rumor about you.

d) Discuss the anger cycle. Explain that there are several different parts to anger. First, there is the thing that leads us to be angry (e.g., someone makes fun of you), then there are physical signs of anger or feelings in your body. Also, there are “angry thoughts” and angry feelings we have. Sometimes the things we think can make our anger worse. Then there is what we do with our anger, our behavior or actions. Start by talking about the feelings in your body when you are angry.

e) Ask them how it feels when they get angry; what their body feels like. Point out similarities and differences in the ways the children feel and reemphasize that feelings are not always alike for all people as discussed in previous sessions. Using the felt person ask the children to identify what kind of things go on in their body when they are angry using the Velcro cut-outs. Have them take turns depicting their “anger response” on the felt person. Physical sensations include increased heart rate and body temperature, shortness of breath, face turning red, sweating, butterflies in your stomach or feeling sick to your stomach, your voice gets louder and you might talk faster, clenched teeth, shakiness, hands clenched in a fist, crying. Let them know that the sooner they can notice these feelings, the sooner they can do something to stop the anger cycle and make themselves feel better.

f) Discuss with the children what they feel like doing when they are angry. At this point, do not evaluate the effectiveness of their reactions, just brainstorm.

g) If the children do not mention aggressive and destructive responses, add them to the list. Point out that even though one often feels like doing something aggressive or destructive when one is angry, one doesn’t have to do such things. Say that doing such things sometimes makes the situation worse, and it is important to think of the consequences of what one does when one is angry. Tell them that we are going to talk about good and bad ways of dealing with anger.

h) Create two columns on the blackboard or easel and label one “good” solutions, and one “not so good” solutions. Tell the children that good solutions to anger are those that make the situation better and “not so good” solutions are those that make the situation worse. Ask the children to sort the list they already generated into good and not so good solutions. Once these have been sorted, ask for other examples of good solutions. Not so good solutions might include breaking things, throwing things, hitting, yelling, calling people names, and cursing. Good things include talking a “time-out” to cool down (remove self from the situation), going to your room, exercise, relaxation techniques, deep breathing, listen to music, talk to a friend or family member, distract yourself (do something like clean your room), read, pray, write in a journal.

i) Ask the children to talk about why the things in the “not so good” solutions column are not so good solutions. Emphasize that they can hurt other people or themselves, they can get in trouble, they can break something they care about, and most of the time, it does not make them less angry.
j) Emphasize how the items in the “good” solutions column all can have more positive outcomes. Also note that what works for one person might not work for another person, so they each have to find the “good” solution that works best for them. Emphasize that this might take some time and some trial and error. Also emphasize that it is good to talk about our feelings with someone, even if it is not the person that we are angry with. You can state:

“Often we need to be able to tell others how we are feeling. As we discussed before, other people do not always know how we are feeling, so if you are feeling sad and angry because your Mom or Dad on visitation will not let you go to see your friend because it is your weekend with your Dad, you get angry and yell and throw something. What do you think would happen if you yell and throw something at your parent? They would become angry too and you could get in trouble. Can anyone think of another way to deal with being angry with your mom or dad? How might you let them know that you are angry?”

4. Introduce relaxation strategies: Remind the children that one of the physical reactions to anger is for our muscles to get tight and our heart beats faster. Inform them that they are going to learn ways to relax their bodies, which will make them feel more calm. Let them know that they can use these techniques when they are experiencing other emotions as well (e.g., anxiety, fear).

   a) Instruct the children in muscle relaxation. They can use muscle relaxation whenever they feel butterflies, or their body feels tight, or they feel nervous, angry, etc… Have them practice making their body stiff like a robot and loose like a wet noodle. They should tense for 10 seconds and relax for 30 seconds, repeating this procedure 2-3 times (see Worksheet #6).

   b) Deep breathing. Inform the children of another way to relax. They can do this with relaxation or without. Demonstrate taking a deep breath so that your stomach pushes out when you breathe like there is a balloon inside. Then show them how to exhale with your stomach going back in. They should always breathe in through the nose and out through the mouth. Ask children to practice, and they should all be breathing loudly so you can hear it. Provide individual assistance when needed.

After this, acknowledge that these are difficult skills to consistently use and that it takes practice.

Finally, give a general review of anger, highlighting the types of things that lead to anger, what anger feels like, and what it makes one want to do. Emphasize that being angry is not a bad thing, and that having angry thoughts about hurting others or such things are also not bad and will never actually hurt the person. Everyone has these thoughts and feelings. The thoughts and feelings are not bad, but if you act on these thoughts and feelings, something bad might happen. Also explain that keeping our angry feelings inside, ignoring them, and not dealing with them can also be bad, which is why it is so important to learn how to handle our anger in good ways.

5. Homework: Tell kids to practice relaxation three times this week with mom or dad before the next session. Have them record this practice on the relaxation handout (Worksheet #6) in their “Take Home Packet”.

25
Worksheet #6

Relax...

1. Sit in a comfortable chair in a quiet spot

2. Practice belly breathing for 6 breaths
   a. Breath in slowly through your nose—as though there is a ball in your belly that you are filling up with air
   b. Breath out slowly through your mouth—as though you are blowing a bubble

3. Squeeze your hands into fists like you are squeezing lemons and hold for 5 seconds

4. Relax like a wet noodle!

5. Scrunch your face, shoulders, and neck, like you are a body builder squeezing lemons and hold for 5 seconds.

6. Relax like a wet noodle!

7. Squeeze your belly muscles like an elephant is stepping on your belly and hold for 5 seconds

8. Relax like a wet noodle!

9. Lift up your legs like a drawbridge and squeeze your leg muscles and hold for 5 seconds. Point your toes!

10. Relax like a wet noodle!

Wow! Great job!

Tell us when you practiced: ________________________________
SESSION 5
Handling Anger and Conflict

Objectives

1. Normalize emotions related to the experience of conflict
2. Assist children in processing their feelings about conflict between their parents
3. Assist children in developing a plan to ensure their emotional and physical safety during conflict

Materials

Blackboard/chalk or Easel/markers
Character Toys

Procedure

1. Review of last week’s group.
   a) Ask if there are any questions about the material covered last week.
   b) Review the discussion of anger from last week and how their homework assignment went. Address any obstacles the children had in practicing the relaxation training. Start the group by practicing the relaxation procedure once.

2. Normalization of Conflict

   Remind children that in the last session, they discussed things they could do when they are feeling angry to reduce those feelings and communicate those feelings to others. Inform them that in today’s session, they will be focusing on what to do when “other people” are angry, specifically their parents. Remind them that anger is a natural emotion that everyone experiences and that sometimes people do things without thinking about how it will affect other people when they are angry, including their parents. Normalize the experience of conflict in their families and their emotions in response to these conflicts. The therapist can state:

   “Everyone argues with other people once in awhile, even parents. Can you remember a time when you had an argument with someone?”

   Elicit examples from the children about arguments they might have had with someone (friends, siblings, parents). Let them know that it is perfectly normal to have disagreements with other people and that we are going to be learning some ways to handle those disagreements in good ways in future sessions.
3. Introduction to Character Toys

The use of character toys (dolls) can be used as a safe way for children to enact and discuss parent conflict. The therapist should introduce the family of dolls to the kids. The therapist should take out the mother and father dolls, and the group may decide on the number of siblings or other family members. Children should be asked to volunteer take one of the parent dolls and the other family members selected. If there are not enough dolls for the group, children can take turns. The therapist may choose to take one of the parents. Children should first be instructed to “free-play” with the dolls in order to get comfortable. The therapist should ask group members or a specific group member “what to do next” for the parent doll. Children will likely not need to be explicitly directed to begin enacting parent conflict. However, the therapist may need to “instigate” conflict with the parent doll. Once conflict has started within the family, the therapist may want to keep the conflict going for awhile, as a form of exposure as well as an opportunity to assess coping strategies. Before ending the exercise, the therapist should have an opportunity to praise adaptive coping and provide direction for children who appear “stuck.” All of this can be done in the context of play with dolls. Discussion of the child’s real-life home environment will likely be unnecessary and may disrupt the activity at this point. Children may engage in a couple of rounds of play, especially if all children did not get a chance to actively participate. The group facilitators should encourage the children to enact specific details about arguments through active listening and encouragement. Make sure to ask the children how “the child” feels during the conflict and ask the children in the group if they have ever had those feelings during an argument between their parents. Normalize the emotions that the children report experiencing and inform them that everyone responds differently to these situations and that they might feel sad, scared, angry, or many other emotions during conflict.

3. Process Emotions Experienced in Response to Conflict

Remind the children of all the emotions they mentioned experiencing (or the character toys experienced) in response to their parents’ conflict and add any obvious ones (anger, fear, etc…) that they may have left out. Ask the children to discuss some of the thoughts they (or the character dolls) have when they see or hear their parents arguing. If they are having difficulty with this task, tell them that other children in similar situations have reported the following thoughts and then ask them if they have ever had similar thoughts.

My mom and dad don’t love each other.
My mom and dad don’t love me.
I wish they would stop fighting.
I’m scared that my mom or dad might hurt the other parent.
I don’t like it when mom/dad talks to dad/mom like that.
I wish I could do something to stop the argument.
I feel bad about myself when my parents argue about me.
I’m scared that one of my parents might hurt me when they are angry.
If I wasn’t here, my parents would not argue.

Process these thoughts/feelings with the children and let them know that these are normal
thoughts in this situation. Help them assess whether these thoughts are accurate, or just something that they feel. Emphasize that these are adult arguments that they have no control over and that they are not responsible for the conflict, even if the conflict is about them. Also emphasize that parents sometimes have a hard time expressing their feelings with each other and agreeing on things, and that this does not mean that they do not love the child.

3. Discuss “feeling caught in the middle.”

Encourage the children to share if they have felt “caught in the middle” of their parents. Questions might include: “Do you ever feel like your Mom or Dad want you to take sides with them?” “Does one parent ever want you to tell-on the other after you visit?” and “Have you ever only been able to invite one parent to something you really wanted to invite both of them to?” Encourage a discussion of the feelings that these situations and similar ones lead to in the children. Encourage them to withdraw from conflicts between parents and emphasize that such conflicts are not their responsibility. Discuss things they can say to a parent if they feel “caught in the middle.” Initiate another round of character play similar to play enacted earlier in session, although this time with more direction toward feeling “caught in the middle.” In order to provide such direction, the therapist may want to take the role of a child in this activity, depending on the group. The therapist might model appropriate responses such as, “I don’t feel comfortable talking about that,” or “That’s something for you and daddy to talk about.” Also help children to deal with loyalty conflicts. Challenge any beliefs that they may hold that if they love one parent completely, they cannot love the other completely or that they will hurt one parent if they show love or affection towards the other parent.

4. Identifying conflict in parents and developing “Conflict Coping Skills”.

Get all group members to identify some of the warning signs that their parents are going to fight/argue. Draw on the role-play exercise for examples if necessary. A therapist or child volunteer should write these signs on the board and elicit more ways to identify conflict. These identifiers might include raised voices, specific facial expressions, certain content, and other nonverbal behaviors. Ask the children to discuss what types of behaviors they exhibited in response to their parents’ conflict. (e.g., hiding, yelling at their parents, asking their parents to stop, getting in between their parents, covering their ears, etc…).

Develop “Conflict Coping Skills” cards with group members. Ask group members what they could do when they think that Mom and Dad are going to fight. These might include going to their room to do something relaxing (e.g., listen to music, read, color), talking to their parents later about how the argument made them feel (review session 3), discussing their fears with another trusted adult (teacher, relative, counselor). Also include what to do if the conflict becomes physical. In these situations, children should always remove self from the situation by going to his/her room and locking the door if necessary, going outside, or going to a friend’s house. Actions such as calling police, getting a neighbor, and protecting younger siblings should be evaluated for instances in which they are appropriate. If the child suspects he/she is in immediate danger, all of these actions are appropriate. How does a child determine whether he/she is in danger? Discuss potential situations (such as extreme violence, parents throwing things, weapons, threats), answer questions, and encourage the children to always act on the safe side if they are unsure. Have them write (or help them write) the solutions generated on index cards and let them know that they can review these
cards anytime that they are in a conflict situation to help them handle the situation. Solutions should include responses for mild conflict, moderate conflict, and severe conflict. They should also include a “safety person” outside the immediate family to talk with if they are concerned about any conflicts that are occurring.

Close the session by reminding children that they cannot prevent their parents from fighting, but they can tell them how their fights make the child feel. Review strategies of communicating these feelings (i.e. waiting until conflict has ceased, using feelings words, discussing emotion skills in previous sessions, etc.).

5) **Homework**: Take home card and put it in a safe place.
SESSION 6  
Problem Solving Skills Training

Objectives

1. Present social problem solving model.
2. Provide practice with social problem solving model.
3. Help children deal with sharing divorce situation with peers.
4. Help children with goal definition.
6. Discuss consequences of solutions.

Materials

SPS cartoon handouts (blank and filled in)  
SPS steps on poster board or easel (or blackboard)  
SPS steps handout (non-cartoon)  
Character Toys

Procedure

1. Review Session 5.
   a) Review with the children what happened in the last group. Mention that they talked about their experience with conflict and encourage discussion and questions related to this topic.
   b) Ask if any of the group members found themselves in a conflict situation in the last week and have them discuss the experience, focusing on their feelings and coping strategies.

2. Introduce social problem solving model.
   a) Introduce the goal of learning about how to solve problems and challenges, beginning with creating the definition of a problem/challenge. Ask the children to define. Make sure the group’s definition includes: something that happens that causes not-so-good feelings and needs to be solved. Or when we need to make a decision and do not know what to do.
   b) Give the children the cartoon handouts describing the problem/challenge solving situation, and the written out problem/challenge solving steps. Explain each of the steps to them as the steps are written on an easel or blackboard.
   c) Tell the children that you are now going to show an example of how the problem solving steps are used. A concrete scenario should then be presented by the therapists (e.g., one therapist takes the other’s pencil). Go through the steps with the children to solve the problem, and then act out the solution they decide is the best.
Outline of example:

1. One therapist grabs the other therapist’s pencil
2. Ask them “What is the problem”? 
3. Write down on blackboard the problem (Friend grabbed my pencil)
4. Ask them “What is the goal?”
5. Write “Let friend know that I want my pencil back.”
6. Ask: “What are ways you could do this?” Write down their suggestions, include all suggestions, even silly ones.
7. Ask them about the consequences of each of their suggestions. “If you told your friend that you want your pencil back, what could happen? What good things, what bad things?”
8. Ask what is the best choice.
9. Try the suggestion that they pick. The therapist should act out the suggestions. Respond appropriately (i.e. if it was not a helpful suggestion, demonstrate this.
10. Ask, “What happened after I made this choice?”
11. Pat yourself on the back or try again?

3. **Emphasize goal definition**

   a) Emphasize for the children the importance of setting a goal when trying to solve a problem/challenge. Explain to them that it will help them in determining what is the best thing for them to do, and will also help them to decide whether or not their problem/challenge really has been solved. Point out that the more specific the goal is (e.g., get my pencil back vs. feel better) the more helpful the goal will be.

   b) Ask each of the children to think of a problem or challenge they had during the week (divorce or non-divorce related). Then ask them to state what the goal would be. If they have difficulty in defining a reasonable and specific goal, guide them and also seek feedback for them from the rest of the group. A therapist should write down the problems/challenges and the goals on the board. Then point out how each goal is specific.

   c) At this time hand out the blank cartoon problem solving sheets, and have the children write down their problem and goal in the appropriate space.

4. **Focus on generating solutions**

   a) Tell the children that we are going to practice thinking up solutions. Tell them it is important to think up as many solutions as possible when trying to solve problems. Encourage a general discussion about solutions and define a solution for them as a way of solving a problem and reaching a goal.

   b) Ask each child to again share their problem with the group and then read to the group what their goal is. Then, as a group, generate as many solutions for each problem as possible. Do not evaluate the solutions at this point, but if the children are stuck with a particular theme (e.g. several different aggressive or fighting solutions) identify that as a general theme and then ask them to think of other solutions not related to that theme.

5. **Talk about consequences:** How can you tell if a solution is a good one?

Tell the children that in order to tell if a solution is a good one, it is helpful to ask three questions
about the solution. These questions are:

1. WHAT MIGHT HAPPEN NEXT?

2. WOULD YOU WANT THIS TO HAPPEN?

3. IS THE SOLUTION A GOOD ONE?

The therapist should write the questions on the board and say,

“These questions help someone decide if a solution is a good one or a bad one. First, we must think ahead to what is likely to happen next if we try the solution. Second, we must decide if this is something we want to happen. Finally, if it is something we would like to happen, if it gets to our goal without causing any other problems, we can decide it is a good solution.”

Use several of the solutions that the children introduced in #4 and discuss the possible consequences of each using the questions above.

Bring out the character toys and allow the children to play. If a “problem” does not occur among the children/dolls within a couple of minutes, the therapist may initiate a problem and then facilitate enactment of coming to a solution as a group. The problem may or may not be divorce-related.

Children may engage in 1 or 2 exercises involving problem resolution. Example of non-divorce-related problem: friend wants to watch a TV show, but child wants to play outside.

6. **Assign project for next week.**

Ask the children to practice the social problem solving steps with problems they encounter in the next week. Also ask them to pick a particularly difficult problem for them that deals with the divorce, write it down, and bring it in for the group to work on in the next session. You might need to give them some examples (e.g., I want both of my parents to come to my baseball game, but they don’t like to be with each other, I don’t like it when my mom says bad things about my dad.)

**Homework**

Practice SPS and bring in a difficult divorce related situation to share with group next week.
PROBLEM SOLVING STEPS

1. WHAT'S THE PROBLEM OR CHALLENGE??

2. SAY THE GOAL

3. THINK OF YOUR CHOICES

4. WHAT COULD HAPPEN AFTER EACH CHOICE?

5. TRY OUT BEST CHOICE

6. WHAT HAPPENED AFTER YOU MADE YOUR CHOICE?

7. PAT YOURSELF ON THE BACK, OR TRY AGAIN

HOW CAN YOU TELL IF A SOLUTION IS A GOOD ONE?

In order to tell if a solution is a good one, it is helpful to ask three questions about the solution. These questions are:

1. WHAT MIGHT HAPPEN NEXT?

2. WOULD YOU WANT THIS TO HAPPEN?

3. IS THE SOLUTION A GOOD ONE?

These questions help someone decide if a solution is a good one or a bad one. First, we must think ahead to what is likely to happen next if we try the solution. Second, we must decide if this is something we want to happen. Finally, if it is something we would like to happen, if it gets to our goal without causing any other problems, we can decide it is a good solution.
INSERT SPS WORKSHEET
SESSION 7
Problem Solving Skills and Divorce

Objectives

1. Help children distinguish between solvable and unsolvable problems.
2. Provide practice in utilizing SPS skills, with emphasis on divorce related problems.
3. Help children deal with loyalty conflicts.

Materials

Scenario cards (including some unsolvable problems)

Procedure

   a) Remind the children about what was done in the last group; learning the problem solving steps. Briefly review the problem solving steps with them by asking them questions and encouraging them to generate the steps.
   b) Ask how their practice of the SPS went over the past week. Encourage all of them to share their experiences and encourage suggestions and comments from the other group members.

2. Review problem solving steps with a divorce-related problem
   a) Ask children to discuss the divorce-related problem they identified for homework. If they did not complete the assignment, assist them in identifying a problem during the session. Ask if one of the problems given by a group member is pertinent to all group members. Use a problem that many can relate to and go through the problem solving steps as a group.

3. Discuss solvable and unsolvable problems.
   a) Say that the problem solving steps that were learned in the last group can be very helpful in getting along with other people, but using the steps cannot solve some problems. Ask the children if they can think of any examples of problems that cannot be solved by using the problem solving steps. If they have difficulty thinking of examples, give them some help. Try to start off with rather concrete non-emotional problems (e.g., physical characteristics that cannot be changed) and then move on to interpersonal problems (e.g., can’t get everyone to like you) and finally to divorce related problems (e.g., can’t stop parents’ fighting).
   b) Point out to the children that there is a difference between solvable and unsolvable problems, and that it is good to determine whether a problem can be solved before one tries to use the problem solving steps on it. Tell them that people often get very discouraged if they try to solve problems that really are unsolvable.
   c) Lead the children in a discussion of the characteristics that are common to problems that are not solvable. Ask them if they noticed anything similar about the examples that have been talked about. Make sure one of the characteristics discussed is that problems that
involve the behavior of other people and not themselves are often unsolvable problems.

“We have talked about problems that you can solve. Sometimes there are problems that we cannot solve because we are not responsible for them. Many times kids from divorced families want to solve problems that they didn’t make and cannot solve. Kids may feel that they caused some problems that are not their fault. What are some problems you want to solve that might not be your problems to solve? (Examples: Want your parents to get back together, but they do not want to. Your mom has started dating somebody, but you don’t want her to. You want to see your noncustodial parent everyday.)

d) Lead the children in a discussion of ways to handle unsolvable problems. Ask them for examples of things they do when they are faced with things that are problems but that they can do nothing about. Encourage them to find someone they can trust to talk to about the problem, to disengage from the problem by playing with other children their own age or playing on their own, or by working on other problems that are solvable. Try to include talk about specific divorce related unsolvable problems (e.g., getting parents back together again) and offer alternative behaviors for each. Present the scenarios with solvable and unsolvable problems given in the accompanying handout and ask if it is solvable or unsolvable, encourage discussion.

“There are problems that we cannot solve that we still feel sad or mad about. Has that ever happened to you?”

Remind them that it is normal to have these feelings to problems we cannot solve. We are learning ways to deal with these feelings here and to talk to people, especially their parents, about these feelings.

“There are problems that we cannot solve that we still feel sad or mad about. Has that ever happened to you?”

“Your parents made the choice to get divorced. Have you ever felt like you wanted them to get back together? What did you do? Did it help?”

4. Practice SPS.

a) Ask the children to share the difficult problem situation they were to bring in again. In each case, ask the group if the problem is solvable or unsolvable and encourage a discussion of their answers. If the group decides that the problem is solvable, have them role-play the problem solving steps with the child playing him/herself and other children filling in other roles for the situation. All children should participate in the steps.

b) If there is time in the group, have the children role-play the SPS steps for the problems deemed solvable on the solvable and unsolvable problems worksheet. Try to include all of the children in important roles at some point.

5. Termination discussion and project for next week. Remind the children that the next week is the last time the group will be meeting. Tell them that we will have to say goodbye to each other and it will also be the last time that they can ask questions about the divorce in this group. Ask them to think about what they have learned in the group and what the group has meant to them, and be ready to share that with the group in the next session. Also ask them to think of other things about the divorce that they would like to ask questions about and tell them that they will have a chance to ask in the next group. Encourage the children to continue practicing the SPS skills at home and tell them they will have an opportunity to share how they have used them in the next group.
1. Your friend has called and asked you to spend the night, but you need your mom’s permission. You have a weekend babysitter. There is no way to get her permission. (unsolvable)

2. Your father has made arrangements to pick you up at 7:30 Friday evening to spend the weekend with him. It is now 10:30 p.m. and your dad has neither shown up nor called to let you know about a change of plans. (unsolvable??)

3. Every time you bring home your report card, your mother emphasizes the bad grades and does not pay any attention to the good grades. (solvable)

4. You have been taking a karate class, but after the divorce your mom says there will be no money to pay for them. There is no other way for you to get the money for karate. (unsolvable)

5. You have been cast in the school play, but rehearsals are after school and you have to come home to take care of your younger brother. There is no one else who can take care of your brother, and he can’t come to the rehearsal. (unsolvable)

6. You have to clean the house on Fridays for your mother, but your brother comes home and wrecks the house right after you finish cleaning and just before she arrives. (solvable)

7. You spend the weekends with your dad, but lately his girlfriend is always there and he spends more time talking to her than to you. (solvable)

8. Even though your Mom and Dad are separated, they still fight a lot. You’ve really been trying to figure out a way to get them to like each other again. (unsolvable)

9. You have to move from your house to an apartment after your parents’ divorce. The new landlord doesn’t allow pets, and your dog can’t move with you. (unsolvable)

10. Your parents keep saying nasty things about each other to you. It upsets you to hear them put each other down. (partially solvable - you may not be able to get them to stop fighting with each other, but you can let them know how you feel about it)

** Don’t take the solvable/unsolvable labels on these problems as absolute truth. Depending on how the children define the specific problem and set their goal, they may come up with a solvable problem. They can also be very creative.
SESSION 8
Termination

Objectives
1. Deal with termination of the group.
2. Reinforce practice of things learned in the group.
3. Deal with any unaddressed issues.
4. Help children deal with finality of parents’ divorce.
5. End group with a positive growth-producing attitude.

Materials
Graduation Certificates for all group members
I am special because…. Sheets.

1. Termination discussion and review of last week.
   Remind the children that this is the last time that the group will be meeting. Briefly review the prior week’s group. If there are any questions about group 7 deal with them at this time. Even if there are no questions, go through what was done in session 7.

2. Elicit any unanswered questions/concerns regarding divorce.
   Tell the children that since this will be the last time the group is meeting, this will be the last time they have a chance to ask questions or talk about things in their family that they wonder or are concerned about. Encourage them to bring up these things at this time. Address the issues that the children bring up, and encourage everyone in the group to participate in discussion of the topics that are brought up.

3. Share about the meaning of the group for the children.
   a) Remind the children that they were to think about what they had learned in the group and what the group had meant to them. Encourage them to share these things with the group. The therapists can aid in this process by sharing what made the group special for them.
   b) Draw pictures of the group family. Ask children to include the group name in the picture. Encourage the children to express their feelings about the group and its ending. It may help to ask them to think about how they felt on the first night they came to the group and to compare how they feel tonight. Point out that the group is special and they have gotten a chance to get to know some other special people.
   c) Discuss saying goodbye and encourage an expression of feelings from the children about saying goodbye to the people in the group. The children may be interested in doing some role-plays about saying goodbye. If so allow them to do this.

4. I’m Special Because…
   Have each child state one good thing about each of the other children in the group. The therapist will write these down on their I am special…. sheet and will give the sheet to the child at the end of the session. The therapists should add some of their own items to the sheet.
5. **Discuss “is it for real?”**

Ask the children if they sometimes wonder if their parents will get back together. Encourage a discussion of their feelings about such thoughts. Some members may have parents that are only separated and others may have parents that are divorced. Reemphasize to the children during the discussion that there is nothing they can do to get their parents back together again and that sometimes it is best to accept the reality of the situation and try to make the best of it. There will likely be a wide range of thoughts and feelings about this issue, so discussion could be very lively and helpful.

6. **Present the graduation certificates and I am special because…sheets to the children.**

7. **End the group with a closing circle.**

Encourage everyone to say any last thing they would like to say about the group or the members of the group. Therapists should model by talking about their feelings about the group and the members of the group. Allow group members to share in this manner for a few minutes and then bring the group to a close.
Family Transition Solutions

Parent’s Manual

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Introduction

Between 1970 and 1996, the proportion of children living with one parent grew from 12 to 28 percent (U.S. Census Bureau, 1998). In 2003, over 18 million children in the United States were living with only one parent, and approximately two thirds of these were with divorced or separated parents (U.S. Census Bureau, 2003). Evidence suggests that children from divorced homes function more poorly than children from homes with continuous marriages, and child distress in response to divorce appears to be on the rise (Amato, 2001; Amato & Keith, 1991). Specifically, children with divorced parents score significantly lower on measures of academic achievement, conduct, psychological adjustment, self-concept, and social relations. However, not all children respond to divorce the same way, and some problems may vary based on developmental level (Emery & Kitzmann, 1995). In a meta-analysis of child outcomes, children in primary or secondary school responded more poorly to divorce relative to preschoolers and college students.

The adverse consequences of divorce are well documented in the literature, especially for children involved in high-conflict divorces. Many have characterized the divorce process as a form of “trauma,” and there is some preliminary evidence that life events and prolonged periods of stress can produce trauma symptomatology. Many children of divorce have been exposed to parental conflict, before and/or after the divorce, in addition to experiencing stressful circumstances that often accompany changes in family forms. Children often experience changes in family income, residence, and school. Family stability is an important aspect of child development, with implications for academic performance (Ackerman, Brown, D’Eramo, & Izard. 2002; Weisner & Garnier, 1992) as well as overall emotional adjustment (Ackerman et al., 2002; Martinez & Forgatch, 2002). Given that, by definition, divorce implies considerable instability, it is not a surprise that children exhibit adjustment problems in response to the divorce process. Furthermore, the quality of relationships with both the custodial parent and non-custodial parent are likely to decrease due to custody arrangements and fewer resources. Divorcing parents often give less time and attention to their children during the divorce process. This has the potential to be particularly detrimental to their adjustment given the overwhelming feelings children often experience in response to the divorce.

Given the considerable heterogeneity in divorce processes and children’s responses, the goal of any preventive intervention program should consider the child within their environmental context and provide the necessary support and skills to assist the child in coping with feelings, situations, and problems often accompanying divorce. Cognitive-behavioral interventions have received empirical support in the treatment of children in divorced homes (Winslow et al., 2004; Pedro-Carroll & Alpert-Gillis, 1997; Alpert-Gillis, Pedro-Carroll, & Cowen, 1987; Stolberg & Cullen, 1983), but children continue to experience numerous difficulties despite the rise in prevention programs (Amato, 2001). Thus, further efforts are needed to improve the quality of care provided to children and families going through the divorce process, especially families characterized by high levels of conflict. Kelly (2002) noted that interventions are more likely to benefit children from divorced families if they assist in containing parental conflict, promote authoritative and close relationships between children and both parents, enhance economic stability, and involve children in effective interventions that help them have a voice in shaping more individualized and helpful access arrangements. The intervention program of the current investigation, Family Transition Solutions (FTS), attempts to
address most of these areas in addition to other components seen by the investigators as crucial to post-divorce adjustment.

The Family Transition Solutions (FTS) program takes the unique approach of addressing multiple factors that affect child’s adjustment to divorce at the same time in an effort to maximize healthy adaptation to this transition. This program takes a different approach than previous cognitive-behavioral treatments in that it conceptualizes high-conflict divorce as a traumatic life event and incorporates techniques shown to be effective in the treatment of trauma symptomatology. The FTS program consists of 2 parts: a Children’s group and a concurrent Parent’s group. The groups were designed to last 8 weeks. The goal of FTS is to help children through the often traumatic experience of a family transition as well as provide the parents with the tools necessary to meet their child’s needs during and after this transition.

The parent component of the FTS program has several objectives. As noted, the parenting component of the intervention is critical as Emery (2004) indicated that parents’ reactions to the divorce are the most important determinant of child adjustment following the transition. In a review of the research from 1990-1999, Kelly (2000) found that re-litigation rates were lower, there were higher rates of willingness to have children spend time with the other parent, increased parent cooperation, and less likelihood of the parents putting their children in the middle of their disputes as a result of participation in a parenting program. The review also showed that high conflict parents benefited the most from such interventions. Arbuthnot and Gordon (1996) also reported that parent education programs dramatically lowered child exposure to parental conflict, thus improving child post-divorce adjustment. The primary objectives are to increase parent awareness and understanding of children’s responses to divorce and how their behavior can influence those responses (e.g., parenting inconsistencies, exposure to conflict). This group is not designed as a support group for divorcing parents, or a parenting group for managing behavioral problems. Parents who are believed to need help in these areas should be provided with appropriate referrals.

The children’s group was designed to treat 1st through 5th graders. The child treatment component aims to reduce the stress that accompanies divorce by correcting maladaptive appraisals and helping children acquire and practice skills to cope with stressful situations. In a supportive group environment, children will learn to: identify and express divorce related feelings; develop skills in social problem solving, effective communication, support seeking, and appropriate expression of anger; enhance perceptions of themselves and their families; and share common experiences in an effort to normalize the thoughts and feelings related to this family transition. Treatment will also focus on the child’s experience of conflict in the family and promote ways for the child to disengage from the conflict. It is proposed that such an intervention is best delivered in a group format given the importance of peer support and validation for children. Pedro-Carroll and Cowen (1987) noted that children are more comfortable discussing sensitive issues in groups with other children and groups help children normalize experiences (Pedro-Carroll and Cowen, 1987).

*Note: Several sections of this manual were revised from materials previously used by other groups at the University of Houston, in particular the Divorce Adjustment Program (DAP), Don’t Forget the Children Program (DFTC), and Victim’s Resource Institute (VRI) all run by John P. Vincent, Ph.D. and Gerald E. Harris, Ph.D., as well as Project Support, run by Ernest Jouriles, Ph.D. All other sources were referenced throughout the manual.*
Components

Parents’ Program

Goals
To provide divorced parents with school-aged children the tools for helping their children successfully navigate the transitions of divorce and facilitate healthy post-divorce adjustment, with special emphasis on establishing effective co-parenting relationships.

Target Population
Parents who are currently going through the divorce process or recently divorced with at least one child participating in the child group are required to participate in the parent’s group.

Organization
Prior to beginning the program, and following completion of the program, all parents and children will complete program evaluation measures.

Session outline

Phase I: Psychoeducation

Session 1: Introduction, getting to know the group, goals, and rules (including confidentiality and limits). Education on the impact of divorce on the family. Handouts.
Homework: Set aside 30 minutes one day this week to engage in an activity of your child’s choosing. If you have more than one child in group, do this with each child individually. Make a list of your strong-points as a parent, and the other parent’s strong-points as a parent.

Session 2: Review homework. Dinosaur game (from their child’s perspective) and the How Well Do You Know Your Children worksheet. Education on alienation—what it is, how it can happen inadvertently, the impact on children, fostering child’s relationship with the other parent, why this is important to the child. Role-play situations in which inadvertent alienation might occur.
Homework: Identify in writing at least two alienating behaviors you might engage in and two the other parent might engage in. Say at least 3 positive things about the other parent to your children this week. Write these down to discuss next week.

Phase II: Skills Building—reducing conflict

Homework: Practice stress management techniques.

Homework: Worksheet

Homework: 1) Choose 1 problem from each section of last week’s worksheet (top and bottom) to use problem solving steps on. 2) Remember to demonstrate and practice problem solving with your children. Do this at least 2 times this week. Make a note of each one and how it went, and any obstacles you encountered to completing the assignment. We will discuss your progress next session.

Phase III: Skills Building—parenting skills

Homework: 1) Identify areas of inconsistency in your parenting. 2) Enact at least 1 solution from last week’s assignment.

Session 7: Review homework. Continue parenting skills: praise/positive attention, behavioral management techniques. How to foster children’s self-esteem, help them manage their anger, and handle conversations with child about the other parent. Role play conversations about the other parent. 
Homework: Discuss child’s anger-management plan with them. Problem-solve ways you can help them with their plan. Praise homework.

Session 8: Review progress. Reducing risk for future problems. Discuss areas of concern for the future (e.g., setbacks, beginning to date). Discuss support resources that can assist in the process without litigation (e.g., friends, family, church, etc.) Have them generate a list of phone numbers they can refer to. Termination.
Note to Group Leaders

When running the group, please keep in mind that this manual is very cognitive and that the participants will be very emotional. As therapists, we need to take note of this fact and be sensitive to it. Try to avoid using psychological jargon, which may confuse participants. Throughout the manual, attempts were made to keep descriptions simple and at a level that most clients should be able to understand. At times, however, it may be necessary for you to generate simpler wording to help a client understand. Please be patient if this should occur.

Also, please try to elicit the information from parents wherever possible to get them to buy into the program – use Socratic questions as opposed to a lecture format – e.g., asking, “How long does it take for most kids to get over their parents’ divorce?” As opposed to just telling them that it takes 2 years for most of kids to resolve their feelings related to the divorce. Several opportunities for eliciting information have been noted throughout the manual, but feel free to do so where you see appropriate, even if not noted in the manual. DO NOT ignore all questions and skip to providing the answers to participants without giving them a chance to actually participate!

This icon is used throughout the manual to denote times where it would be appropriate or helpful to write answers on a blackboard or easel.
Troubleshooting Tips

1) **How to manage clients who monopolize a session** (e.g., talk too much): Try thanking them for their input and asking if any of the other group members have input, or moving on to the next topic. You can also ask for input from people you haven’t heard from when asking a question (e.g., “So-and-so has had a lot of great input today. How would the rest of you answer this question?”).

2) **How to engage clients who are becoming bored/falling asleep, have that glazed over look**: Try asking more questions of the group to get them involved. You can even ask people individually what they think about a certain topic. Also, make sure to vary your tone of voice (don’t speak in monotone…it’s boring).

3) **How to handle displays of strong emotions (anger, crying)**: Empathize that you know some of the topics we’re covering can be very difficult. If their outbursts are disruptive (e.g., yelling), calmly ask them to stop the behavior (e.g., “I know this can be difficult to talk about, but please try to keep your voice down.”). Remind them that the purpose of this group is to learn how to help their children navigate the transition of divorce, and that in order to be able to help their children they will need to be able to remain calm. Tell them that if they feel they need more support for their own difficulties with the transition, you can provide them with referrals. If the behavior becomes a habit, you may need to speak to the client in private about getting individual help to manage their emotions, since that is not the focus of this group. Speak to your supervisor before taking such action.

4) **How to handle clients when they do not complete their homework** – how much attention should be focused on getting them to complete it in session, etc.: Do not have the clients complete their assignments in session, but remind them that completing homework assignments is part of participation in the program (remember many of them will be court-ordered to participate), and that in order for them to get the full benefit of the program, they will need to complete the assigned work outside of session. Do spend a few minutes discussing what interfered with their completion of the assignment, problem solve how to avoid those problems in the future, and ask them to complete that assignment this next week in addition to the next homework assignment. Remember to check in with them the next week to make sure they do this (go over their assignments).

5) **How to handle oppositional behavior from clients** (“this doesn’t apply to me,” “I’m not going to do that.” “I’ll do it, but it will never work because my ex won’t do it.”): In general, try not to argue with clients about whether something will work or apply to them; this is only likely to cause more opposition. On occasion, if you have evidence that something does apply to a participant, you may gently remind them of this. Instead of arguing, empathize and attempt to reframe the situation. You may say things such as, “We understand that not all topics we cover will apply to every group member, but please listen for the sake of the other group members. You may find some of what we’re saying interesting, even if it doesn’t seem to apply to you at this time.” If a group member states that he or she will not do something, ask why and try to reframe and problem-solve as appropriate. If they say it won’t work, tell them they might be right, that not every technique we discuss will work for everyone, but ask them to try it as an experiment. Ask them what harm could come from trying, and suggest they may be surprised by the results—or they might prove you wrong. If they say they’ll
do it, but the other parent won’t, try saying something like, “I’m glad you’re willing to give it a try. I understand your concerns that it might not work, and of course you can’t make your ex do anything, but see what happens—your ex might surprise you. Let us know next week how it works.”

6) How to handle clients who want to be “co-therapists” for the rest of the group: Try to redirect them without being overly critical (we don’t want to shut them down so they stop participating). Similar to number 1 above, thank them for their ideas, and either direct your question to the rest of the group, or move on with the information you are providing. Do this consistently, and the client’s behavior should begin to decrease.

7) How to handle clients who ask too many questions: Commend them on their interest, but remind them of time constraints (e.g., “It’s great to see you’re so interested in this. Unfortunately, we don’t have time to answer all of your questions during session, but feel free to ask me afterwards.”).

8) How to handle clients who want support for their position on an issue – e.g., The Set-Up: Do not be drawn in to taking sides (the set-up may look something like “What if…” or “Don’t you think…”). Begin by trying to empathize/reflect and redirect (e.g., “It sounds like that’s pretty stressful for you…” then switch topics). If they push the issue, you may gently remind them that you are not there to take sides, and that what their children need is for their parents to come to an agreement (e.g., “I know this is difficult for you, but remember I’m not here to take sides. My job is to teach you skills for helping your children through this transition, and one of those skills is learning to compromise with the other parent so your children don’t feel like there are sides to take. Sometimes, for our children’s sakes, we have to give up the need to be right so we can get along.”).

9) How to handle fights between clients: Do not let them fight. Interrupt them. Remind them that this is a stressful time for everyone involved, and people tend to have strong opinions about these topics that may not always match. Sometimes, it may be necessary to listen to an opinion you don’t agree with, but it is not ok to attack other group members. Suggest that it can be informative to hear other people’s points of view, even if we do not agree with them, and this can be good practice for refraining from arguing when we disagree with the other parent.

10) How to handle clients who are being critical of or rude to other clients in the group: Similar to number 9 above, Remind them that this is a stressful time for everyone involved, and people tend to have strong opinions about these topics that may not always match. Sometimes, it may be necessary to listen to an opinion you don’t agree with, but it is not ok to attack other group members. Suggest that it can be informative to hear other people’s points of view, even if we do not agree with them, and this can be good practice for refraining from arguing when we disagree with the other parent. Be firm in not accepting this type of behavior.

11) Time management strategies for the group: There is a lot of information to be covered in each group. Try to keep an eye on the time, and if necessary keep discussions short or reduce the number of questions you ask. Try to use the techniques outlined above to keep the group on topic.
Phase I: Psychoeducation

Session 1:

Introduction, getting to know the group, goals, and rules (including confidentiality and limits). Education on the impact of divorce on the family. Handouts.

Homework: Set aside 30 minutes one day this week to engage in an activity of your child’s choosing. If you have more than one child in group, do this with each child individually. Make a list of your strong-points as a parent, and the other parent’s strong-points as a parent.

Introduction: Group leaders should begin by introducing themselves to the group and remind them of the rules and limits of confidentiality. They should be reminded that, in order to make group a safe place for people to share, they should not discuss other group members to anyone outside of session. They should also be encouraged not to spend time with each other outside of group (unless they are already friends) until after group ends, and not to invite other children from group to play with their children until following the end of group, to prevent other group members from feeling left out. Ask parents not to ask their children too many questions about the details of their group, but encourage them to let their children know that they would be happy to talk about what happened in the children’s group if the children would like to do so. They might say, for example, “I want your group to feel like a safe place for you to talk about the changes in our family, so I won’t ask you to tell me what happens in there, but I’d be happy to talk to you about it if you feel like you want to share with me or if you have any questions.”

An attendance sheet should be passed around. For the court-ordered groups, participants should be informed that this information will be sent to the ad-litem each week, since the group was court-ordered, allowing the courts to monitor their compliance. Assure them that, other than as prescribed in their consent documents and attendance, the details of their treatment will not be discussed with or reported to the court.

What to expect. In this group you will learn about:
- how divorce impacts children
- parental alienation
- problem solving and negotiation skills
- how to reduce conflict with the other parent
- how to manage your own stress
- behavior management techniques to use with your child
- other skills for helping your child through this family transition

This will be accomplished through:
- in-session education
- handouts
- role-play
- homework assignments
What not to expect. This group is not designed as:
- a support group for divorcing parents
- a venue to air your complaints about the other parent
- a generalized parenting class for handling severe emotional or behavioral difficulties in your child
- a place to make new friends

Be sure to note that, although we will be discussing the other parent at times, it will be done in a constructive, problem-solving manner. Note to Facilitators: Be sensitive to the fact that many of the families in the group are still in the litigation process, which can complicate matters.

At this point, group members should be asked to introduce themselves to the group (e.g., name, length of marriage, ages of children, current custody arrangements, whether or not divorce has been finalized, etc.).

Education: Answer any questions. Allow a brief period (maybe 5 minutes) for parents to discuss their feelings about attending group. Validate any feelings of trepidation, anger, etc. For groups that have been court-ordered, reframe that while this is court-ordered, they have the choice as to how much they take away and how beneficial it will be. Begin with psychoeducation on the impact of divorce. Note to facilitator: What we want to emphasize here is that most children can adjust to divorce in a healthy way, and parents’ behaviors have a major impact on their children’s adjustment to this transition. Hopefully this will motivate them to learn the material presented in the rest of the group sessions. (Therapists should emphasize this topic strongly.)

“We will begin by discussing the ways in which divorce impacts children.”

Divorce Statistics
Message: You and your children are not alone.
“There’s no denying that the transition your family is making right now can be stressful and difficult to navigate. At times it may feel like you and your children are somehow different or not a “normal” family because of this transition. Many parents often experience feelings of regret, guilt, and failure as both a spouse and as a parent. These feelings can make the transition feel even more difficult. It may help to realize that what you are dealing with is not that unusual in today’s society.”
The facilitator should ask questions about these statistics before providing them to keep parents involved. Some examples follow:

“What percent of marriages in the US do you think end in divorce?”
- As many as 50% of marriages end in divorce. This leads to over 1 million children being involved in a new divorce each year.

“How many children do you think are affected by divorce?”
- Almost half of children under the age of 18 will experience their parents’ divorce…so it’s likely that your children have friends or schoolmates who are experiencing, or have experienced, similar family transitions.
“How many children do you think live in single parent homes?”
- Being a single parent, or living with only one parent, is not that uncommon. Nearly 1/3 of children live with only one parent.

“How long do you think it takes for most parents to remarry?”
- A majority of parents will, however, remarry within 5 years. This means you, your children, and even the other parent, are likely to be faced with yet another transition to adjust to.
- Most families experience three stages of adjustment following divorce Teyber (1992): Initial Period of Disruption (life is chaotic, children and parents uncertain about the future, most painful stage), Transitional Period (parents try new lifestyles and reorganize family), and Period of Renewed sense of stability (children feel more secure stable pattern of interactions and exchanges between homes). So hang in there, it should get easier with time!

Child Adjustment
Message: This transition can be difficult for children, but most children are eventually able to adjust given a healthy environment during the adjustment phase.

“What does this mean for your children?”
- How do you think most children respond to divorce? How long do you think this response usually lasts?”
  - Immediately following divorce, and for one to two years on average, children are likely to respond to their parents’ divorce with distress, anxiety, and disbelief. Following this period, children may return to pre-divorce levels of functioning.

“What types of problems do you think children from divorced families are at risk for?”
- Most children who experience their parents’ divorce will respond with resilience. However, some children do not. Children from divorced families are twice as likely to seek the help of a mental health professional, up to twice as likely to have behavior management problems, and twice as likely to drop out of high school before graduation.
- Children who experience divorce are more likely to have lower academic functioning, to have marital or relationship problems as adults, to get divorced themselves, and to have difficulties with anxiety and depression.
- “This program is designed to reduce the likelihood of these outcomes.”

Parents’ Role
Message: You can impact your child’s adjustment

“Why do some children adjust to such family transitions with little difficulty while others exhibit lifelong problems? Aside from differences in children’s personalities, the way their parents deal with the transitions surrounding divorce can have a major
impact on children’s adjustment. In what ways might parents impact children’s adjustment to divorce?

- Parental conflict is a major stressor for children.
- The tendency of many divorcing parents to put their children in the middle of their conflict is even worse for children than the existence of conflict by itself. It is important for your children to be left out of parental conflict.
- Often children experience loyalty conflicts during a divorce and feel that they have to “take sides” with one parent over the other. This can happen in the absence of parental influence, but is even more likely when parents expose their children to their own conflicts.
- 3 in 5 children will feel rejected by at least one of their parents. This may be because of one parent making negative remarks about the other parent to the child, or because of lack of contact with the non-custodial parent. You can help your child learn to adjust to your family’s transition, and reduce his or her chances of feeling rejected.
- Children often feel that love is a “zero sum” concept. In other words, they feel that they cannot love both parents at the same time if their parents no longer live together or do not get along (i.e., if I love dad, I can’t love mom). Parents can either encourage this tendency or promote healthy adjustment with their actions and comments.
- The single greatest determinant of a child’s adjustment to divorce is the ability of the parents to successfully restructure their relationship to focus completely on parenting.
- In other words, the most important determinant of a child’s risk following divorce is what their parents do.

Have group generate a list of parental behaviors that are likely to have a negative impact on children (e.g., ask “What are some specific things parents can do during the divorce process that may negatively impact their children?”). Use the following list as a guide: refusal to speak to one another, delivering messages through the child, failure to separate one’s own feelings and needs from those of the child, refusing visitation to get back at the other parent, fighting with the other parent in front of the child, speaking negatively about the other parent to the child (including talk about the other parent not being a good parent, not paying child support, etc.), and not allowing the child to talk about the other parent.

“Children’s response to divorce is variable. Some children appear very distressed by their parents’ separation, while others do not. Children may have fears regarding divorce that they do not express.” Have the group generate a list of fears they think children might have. Compare their list to the following list of common fears:

- Fear that they will be divorced next. Children often don’t fully comprehend the meaning of divorce, and may fear that their parents will leave them or stop loving them—in their minds, “divorce” them.
• Fear that the divorce is their fault, and an accompanying belief that they can fix the problem. This is especially common in elementary-school-aged children.
• A feeling of losing control over their lives
• Fear that they will get divorced when they are adults
• Fear that their parent will stop loving them. This is especially likely when the non-custodial parent becomes less visible in the child’s life and is not consistent with visitations.
• Fear that they have to choose one parent over the other, and that their parents will get mad if they express love for or talk about the other parent.
• Embarrassment about the divorce
• Feeling that they are different from other children because of this experience.
• Fear of discussing the divorce or their feelings about this transition because it might make their parents upset.
• Fantasies of reunification or fears that reunification will not occur.

“These fears may interfere with the child’s functioning in school and with friends.”

**Children’s Needs**

Considering what you’ve discussed thus far, have the group generate a list of things they think are important for children during this transition. Fill in the gaps of their list with the following list of needs:

• To feel like they still have a family, it’s just set up differently now.
• To have a good relationship with both of their parents (in most cases).
• To not be put in the middle of their parents’ conflict
• Stability
• To know the divorce is not their fault and they can’t fix it—these are “adult” decisions.
• To be able to recognize the difference between problems or decisions that they have control over and those that are “adult” problems or decisions.
• To develop good coping skills.
• To feel self-confident and build self-esteem
• To hear that they do not have to take sides and it is ok to love both of their parents.
• To know that it is ok to feel sad or mad or scared
• To hear that both of their parents still love them.
• To hear that you will get through this transition together and will all be okay.
• To accept that divorce will really happen and that they will be able to adjust to that fact.

**The Transition**
“By now, you may have noticed our use of the word “transition” rather than “divorce” whenever possible. Does anyone have an idea why we are doing this?” Allow time for discussion, then continue.

“We have chosen to use the word “transition” because “divorce” implies a permanent disunion—a complete separation. “Transition,” on the other hand means a passage or movement from one place or condition to another. Why is this more appropriate for our purposes? In what ways are you and the other parent still tied together?” Allow parents to answer before continuing.

“Even though you might sometimes wish you could get rid of, or completely separate from, the other parent, this is not practical because you are still connected by your children. You share a common job: to raise these children to be happy, well-adjusted adults. Because of this, you will still need to interact with one another. But these interactions will take a different form than before. You and the other parent are still your children’s family, but your family will take a different form than before. This change in form is more consistent with the term “transition” than the term “divorce.” Throughout this program, we will use the word “transition” whenever possible, to emphasize this difference.

In this group, we will be helping you learn to interact with the other parent and your child in a way that will encourage positive adjustment. Your child or children will also be learning important skills for adjusting to the transition. If you are feeling depressed, anxious, bitter, or finding it difficult to adjust following your divorce, it is important for your child’s wellbeing that you seek additional help. If you think you need this, please contact the group leader for a referral.”

**Homework:** Set aside 30 minutes one day this week to engage in an activity of your child’s choosing. If you have more than one child in group, do this with each child individually. Make a list of your strong-points as a parent, and the other parent’s strong-points as a parent.
1. Divorce is almost always stressful for children. Most children do not want their parents to get a divorce, even when there was conflict within the family before the divorce. Many children will blame themselves for the divorce, or feel that it is their responsibility to keep the family together. It is also stressful for children to have less time to spend with a parent. Economic hardship also commonly follows divorce which may cause a great deal of stress for the parent and the children. Long divorce proceedings and high levels of conflict between parents may make it very difficult for children to adjust to their new family situation. However, when parents assist their children in making this transition in healthy ways and minimize conflict with the other parent, children's adjustment to the transition will be more timely and less distressful.

2. Divorce increases the risk that children will suffer from psychological, behavioral, and academic problems. Some children become sad or withdrawn for long periods of time. They may become depressed, anxious, or take on the adult role by caring for their parents instead of getting cared for by them.

3. Fortunately, most children whose parents divorce do not suffer these negative effects of the divorce. When a divorce is handled well by the parents, the children may become resilient. They become more capable of handling the stress in their lives without the negative side effects previously mentioned.

4. In some cases, the effects of divorce can impact children for the rest of their lives. Many children report that they continue to worry about divorce, their relationships with their parents and their own romantic relationships as adults. The painful memories of a divorce may stay with a child for many years.
4. Teenagers also tend to experience increased aggression, loss of self-confidence, and loneliness. Boys are more likely to be depressed than girls.

5. Following divorce, as many as 40 percent of parents are so stressed by the divorce that their child-rearing behavior suffers. They frequently change from rigid to permissive behavior and from emotionally distant to emotionally dependent.

6. After divorce, children tend to become more emotionally distant from both the custodial and non-custodial parent.

7. Divorce has been found to diminish the capacity of children to handle conflict. In their own marriages, children of divorced parents are more likely to be unhappy, to escalate conflicts, to reduce communication with their spouses, to argue, to shout when arguing, and to assault their spouses physically when they argue.
HOMEWORK

1) Set aside 30 minutes one day this week to engage in an activity of your child’s choosing. If you have more than one child in group, do this with each child individually.

2) Parenting strengths

My Parenting Strengths

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Other Parent’s Parenting Strengths

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Session 2:

Review homework. Complete How Well Do you Know Your Children worksheet. Dinosaur game (from their child’s perspective). Education on alienation—what it is, how it can happen inadvertently, the impact on children, fostering child’s relationship with the other parent, why this is important to the child. Role-play situations in which inadvertent alienation might occur.

Homework: Identify in writing at least two alienating behaviors you might engage in and two the other parent might engage in. Say at least 3 positive things about the other parent to your children this week. Write these down to discuss next week.

Review homework (5 min): Go around the group and ask each parent to report on what they did with their child/children and how it went. Discuss any difficulties with completing the assignment. Problem-solve how to avoid these difficulties in the future. Encourage parents to make a habit of spending time each week in child-directed activity. Go around again and discuss parenting lists. *Pay particular attention to other-positives. Let parents know that we will work on how to capitalize on their strengths, as well as those of the other parent, to improve communication

Dinosaur Game

“First, we’re going to play a game. Your children will be playing the same game in their group on a different day. Try to answer the questions as you think your child would.” Ask parents why they think we are having them do this activity. “Since divorce involves a major transition and stress for parents, it is sometimes easy to lose sight of the child’s experience. The idea behind playing this game is to help you get in touch with your child’s perspective of your family’s transition. Before we get started with the game, we’d like you to complete the How Well Do You Know Your Children worksheet. Don’t worry if you do not know the answers to the questions, many parents don’t. This exercise is meant to highlight what you do and don’t know about your child’s experience with the divorce.” Have the participants spend a few minutes completing the worksheet prior to playing the game. Once they have completed the worksheet, ask them for feedback on the experience. Did they know the answers to most of the questions? Are these things that they would like to know about their children if they don’t know them already?

Alienation Education (handout):

“You may have heard the term parental alienation before. Today, we are going to talk about what alienation is, how it can occur—even with parents who mean well—and how to avoid it. Unlike child abuse, parental alienation is not usually against the law. However, it can be just as detrimental to children, and can have legal implications, such as a change in custody, in some cases.”

“What is parental alienation?” Allow parents to answer. “Parental alienation occurs when one or both parents seek to align with their child or children against the other parent. When this is done, the parent usually attempts to portray him or
herself as all good and the other parent as all bad. The child often responds with a desire to sever ties with the alienated parent.”

“Some of you may be wondering, “What if my child really just does not like their other parent?” In some cases, children will see their other parent acting negatively and respond to this. This is especially true if the child was abused by the other parent. However, sometimes it is possible to alienate a child against their other parent without meaning to. In most cases, it is important to foster a relationship between your child and their other parent. Why do you think this is?” Allow parents to answer.

**Why is this important?** “It’s important because most kids see themselves as part Mom and part Dad. If one parent is portrayed as being all bad, the child might then see themselves as bad. It can be detrimental to a child’s self-esteem to feel like one of their parents has no good qualities and does not care about them. This also impacts the child’s relationship with the other parent, which is likely to interfere with a major source of support. Especially at this age, you and the other parent are your child’s primary source of support. It is important for your child to feel loved and supported by both of their parents, especially during stressful times such as the transition from living as one family to two families.”

“You may also wonder, “What if the other parent really doesn’t have any good qualities?” Most people have good qualities and bad qualities. It might be difficult to see the other parent’s good qualities right now, but try for your child’s sake. Although you might not currently have any positive feelings toward the other parent, or feel any need to have contact with him or her, you need to be able to separate your feelings and needs from those of your children. Chances are your child does have positive feelings toward the other parent, and does desire to have contact with the other parent, even if he or she does not express these feelings, or even indicates otherwise. Often, children will experience loyalty conflicts during divorce and will feel the need to take sides with one parent or protect a parent’s feelings. Sometimes children will develop two different stories, one for each parent, to ensure that they do not hurt either parent. For example, after a visitation, the child might tell the non-custodial parent that they had a great time, but tell the custodial parent that the visit was boring because they do not want to hurt anyone’s feelings. It is healthy for your child’s psychological development to be able to identify good and bad qualities in both of their parents and to express their feelings about each parent without fear of hurting either parent or making them angry.”

**How does parental alienation occur?** “As mentioned before, parental alienation is not always intentional. Sometimes parents believe they are acting in their child’s best interest, but their behaviors send the child the message that they should not like or enjoy time with their other parent. This is especially easy to do if you feel angry with or hurt by the other parent. Today we will go over some examples of things parents can say or do that may lead to alienation. We will also provide you with a handout that has more examples. Our goal here is not to make you feel like a bad person or a bad parent if you have engaged in any of these
behaviors. We all have a tendency to do some of these things sometimes. Rather, our goal is to help you recognize behaviors that, while perhaps understandable, may make it more difficult for your child to adjust to your family transition. By understanding the potential impact of these behaviors, you can attempt to avoid them in the future.”

Have the group generate a list of behaviors they think may be alienating. When explanations are provided in the examples below, have parents provide the possible reasoning before providing it to them.

Examples:

- Sending the message that the other parent is not acceptable. This may be done by not allowing the other parent to enter your home, or not allowing your child to bring home items from the other parent.
- Speaking negatively about the other parent in front of the child. This can include talking about things the other parent has done wrong such as missing visitations and not paying child support, insinuating that the other parent does not care about your child.
- Insisting on sticking exactly to the visitation schedule. For example, a parent might make the other parent wait in the driveway until exactly 6:00 before allowing the child to leave for a visitation.
- Not allowing the other parent their visitation when the child is ill, implying that the other parent cannot care for the child.
- Calling frequently to check on the child during their visitations with the other parent. This may indicate to the child that they are not safe with the other parent, or that they should feel guilty for leaving you alone to spend time with the other parent.
- Trying to interfere with the other parent’s time with your child. One way of doing this is by purposely scheduling the child’s activities during their visitation times.
- Only talking about the other parent’s flaws, not their positive qualities.
- Making the other parent’s flaws sound worse than they are. For example, calling the other parent an alcoholic if they have one drink in the child’s presence.
- Calling the other parent names, even if those names may be accurate (e.g., adulterer).
- Blaming the other parent for breaking up the family.
- Using “us” versus him or her language.
- Making comments about visitation that indicate that it will be a negative experience. For example, “You have to go visit your father now. I wish I could change it, but the judge says you have to. Don’t worry, it will be ok. Just try to have a good time.”
parents might think this is supportive and encouraging language, it sends the message to the child that they should not want to spend time with the other parent, that you do not want them to spend time with the other parent, that they have some reason to worry about spending time with the other parent, and that it will take effort to have fun with the other parent.

- Screening the other parent’s calls or interfering with calls.
- Making statements indicating that the other parent’s interest in the child’s life (e.g., phone calls, wanting to participate in school or extra-curricular activities) is harassment.
- Making negative comments about the other parent’s extended family, friends, or romantic interests (Reiterate why this is bad for kids).

If there’s time, role-play how to handle some of these situations in a more encouraging, less alienating manner. Inform parents that you will be explaining how to handle alienation—both how to behave in a less alienating manner and what to do if they feel they are being alienated—in more detail later in the group.

**Homework:** Identify in writing at least two alienating behaviors you might engage in and two the other parent might engage in. Say at least 3 positive things about the other parent to your children this week. Write these down to discuss next week.
HOW WELL DO YOU KNOW YOUR CHILDREN?

Are you a top notch observer, or do you need to improve your observation skills? This Quiz may surprise you.

Living with a child means nurturing, scolding, talking and listening. It means doing things together and doing things apart. But no matter how much time parents and children spend together, there are always some crucial or illuminating things they don’t know about one another.

To find out how well you actually know your youngster, answer the following questions. If you have more than one child, jot your answers on separate pieces of paper. Then schedule a time to sit down with each of your kids to see how well you did. This quiz will give you an opportunity to learn more about your family.

1. Does your child have friends whose parents are divorced?
2. What are your child’s feelings about the family transition?
   a. Does he/she feel guilty or embarrassed?
3. What is his/her biggest fear about this transition?
4. What does your child do when he/she is angry?
5. What does he/she do when anxious or scared?
6. What does your child like most about you?
7. What does your child like most about the other parent?
   8. How does your child feel about his/her current living/visitation situation?
PARENTAL ALIENATION AND DIVORCE
BEHAVIORS THAT CAUSE ALIENATION

Parental alienation can range from mild to severe. It is common for alienation to occur during a high conflict divorce. It is important that parents be aware of what alienation is, and the kinds of behaviors that cause it. The following are some examples of behaviors that lead to alienation.

- Promoting the idea that one parent is good, while the other is bad.

- Repeatedly making negative comments about the other parent in front of the child.

- Interrupting the child’s visits, cutting short visitation time, or otherwise not adhering to the visitation schedule.

- Sabotaging the other parent’s visits (for example: keeping the child up late the night before the visit, or scheduling activities for the child during the other parent’s visit).

- Blaming the other parent for the divorce or problems in the family.

- Destroying all physical reminders of the other parent such as pictures of the other parent and child, or the child’s extended family.

- Using guilt or manipulation to force the child into picking sides.

- Playing the role of “victim” to gain the affection or pity of the child (“I have nothing, your mother has everything”).

- Implying that the other parent is dangerous in some way.

- Making it known directly or indirectly that defending or showing affection for the other parent may cost the child the parents love and attention.

- Screens phone calls from the other parent, or does not inform the child of the other parent’s attempt to contact the child. Labels normal attempts to contact the child as “harassment”.

- Uses “us” language with regard to the divorce such as “Your mother is divorcing us” or “Your father is going to beat us in court.”

- “Badmouthing” the other parent’s new romantic interest (i.e., boyfriend/girlfriend).

- “Badmouthing” the other parent’s friends and family
Homework: Alienating Behaviors

Alienating Behaviors I engage in:
1.______________________________________________________________________
   ________________________________________________________________________
   ________________________________________________________________________

2.______________________________________________________________________
   ________________________________________________________________________
   ________________________________________________________________________

Alienating Behaviors the other parent engages in:
1.______________________________________________________________________
   ________________________________________________________________________
   ________________________________________________________________________

2.______________________________________________________________________
   ________________________________________________________________________
   ________________________________________________________________________

THREE POSITIVE THINGS I TOLD MY CHILD ABOUT THE OTHER PARENT
1.______________________________________________________________________
   ________________________________________________________________________
   ________________________________________________________________________

2.______________________________________________________________________
   ________________________________________________________________________
   ________________________________________________________________________

3.______________________________________________________________________
   ________________________________________________________________________
   ________________________________________________________________________
Phase II: Skills Building—Reducing Conflict

Many of the parents attending these sessions are experiencing inter-parental conflicts. Some may have communicated well in the past, but now have difficulty because of the stresses of divorce. Others may never have been able to communicate well, which may have led to their divorce. Group leaders should expect a range of parenting skills in each group, and should not assume that the parents have or do not have communication skills.

This phase of the program will cover two types of skills: problem-solving skills and negotiation skills. Problem-solving skills are most useful when attempting to solve an individual problem, or a common problem between people who have a similar end in mind. In this case, the similar end may simply be their child’s happiness or wellbeing, but they may have very different ideas about how to get there. Negotiation skills are most useful when people are not like-minded about an issue and have different ideas about how to resolve a problem.

Both of these types of skills will be important for parents to master, and for them to encourage in their children, who will be learning similar skills in their group. If parents can learn and apply these skills to co-parenting, they will provide a good model of interaction to their children. Remember, research supports the benefits of children witnessing appropriate conflict resolution between their parents.
Session 3:

Review homework (5 min each assignment): Go around the room and ask each parent to give examples of alienating behaviors for themselves and the other parent. Go around again and ask each parent for examples of positive comments they made to their children about the other parent. Ask them to note the context of these comments (e.g., when did they say it, what prompted it, how did their child respond).

Stress Management Education (handouts):

“Today we’re going to talk about stress and stress management techniques. Why do you think we are choosing to cover stress management in this program? How does stress management relate to our goal of teaching you to help your children adjust to your family transition?” Have them generate ideas, then answer.

“Everyone experiences stress. Excessive stress can be harmful to our health, leads us to make poor decisions, effects our relationships with others, and takes away from our enjoyment of life. By learning how to reduce and manage stress in our lives we can improve our health, relationships with others, and quality of life. Family transitions such as the one you are currently experiencing can be especially stressful to everybody involved. When people are experiencing a lot of stress, they sometimes find it difficult to perform other tasks effectively, such as parenting. Learning to manage your stress will not only help you be a more effective parent, it will also help you teach your children to effectively cope with stressful situations. Sometimes in order to take care of others, we have to learn to take care of ourselves first. By being able to reduce the stress involved with a divorce, we make the family’s transition a much more pleasant experience, especially for the children. Children often look to their parents to gain understanding of what the changes in their family mean. We can provide our children with an important feeling of safety and security by remaining as calm as possible during the divorce process.

“What is stress? Stress is a subjective feeling in response to events that are perceived as uncontrollable and/or threatening. Stress is not “out there” in our lives, representing something that has happened to us. Rather, stress lies in part in how we interpret and respond to those events. Thus, stress lies in between the event and the person. What happens when we feel stressed? An easy way to think of acute stress is as the “fight or flight” response. For example, imagine you are walking through the woods and you encounter a bear. What do you do? Chances are you freeze, your pulse quickens, your breathing gets faster, and your mind starts racing. You have to make a quick decision—can you fight the bear? Can you run away from it? What are your best chances of survival? In such a situation, our “fight or flight” response takes over. Our body and brain prepare to deal with the threat by becoming aroused. This is done through activation of the sympathetic nervous system. For example, our breathing and heart rate
increase. While in this state, it is difficult to think clearly, and people may say things or make decisions they would not have made, if they didn’t feel threatened. For some of you, contact with the other parent or going to court may make you feel threatened and result in a similar response. As you can see, you’re not likely to be able to make the most rational decisions about how to respond if you feel threatened in this way. Stress reduction techniques can help minimize this response and improve your ability to handle these situations.

“Stress can be internal or external. Internal stressors can be physical (infections, inflammation) or psychological. An example of an internal psychological stressor is intense worry about a harmful event that may or may not occur (e.g., worrying that your spouse might not return your child from a visitation). External stressors include adverse physical conditions (such as pain or hot or cold temperatures) or stressful psychological environments (such as poor working conditions or abusive relationships).

“Stress can be harmful or beneficial. What are some situations in which stress could be beneficial?” (the stress response can be an asset for raising levels of performance during critical events such as a sports activity, an important meeting, or in situations of actual danger or crisis.) “Do these situations have anything in common?”

“Stress that passes quickly is called acute stress, and can be useful in dangerous situations, such as the bear in the woods example. The activation of your sympathetic nervous system, which increases your heart rate, breathing rate and so on helps your body respond to the threat. When the threat passes, your body returns to its previous relaxed state. Common acute stressors include noise, crowding, isolation, hunger, danger, infection, and imagining a threat or remembering a dangerous event. When a stressor does not pass quickly, however, it can become chronic. A poor working environment, financial difficulties, or an abusive relationship are all examples of chronic stressors. When stress becomes chronic, your body never gets the chance to relax. This type of stress is more likely to cause physical or psychological harm over time. Acute stress can also be harmful if it occurs too frequently.”

Recognizing Stress:

“What are some current stressors in your life? What stressors might your children have?”

“Different people react to stress in different ways. There is no “right” or “wrong” way to handle stress, but some methods of stress reduction are likely to work better for you than others.

“How can you tell when you are getting stressed? What physical changes do you notice?”

Common reactions to stress include increased heart rate, shallow breathing, tense muscles, sweating, shaking, racing thoughts, upset stomach, headache, and hot flashes.
Ask each of the following questions, allowing participants to respond between questions. “How do you react when you become stressed (i.e., behaviors)? Do you do anything to try to calm yourself down? What have you found that works? What doesn’t work? What do your children do when they feel stressed? Does their behavior change? How do they try to deal with it? Are their methods effective?”

**Barriers to Stress Reduction:**
“Even though the idea of reducing stress usually appeals to people, it’s not always easy to accomplish. Reducing stress involves changing old habits and learning new ones, and this change can itself seem stressful at first. When you are used to feeling stressed all the time, the very idea of relaxation can feel threatening, because it is perceived as letting down your guard.

“Many people, especially parents, are afraid of being perceived as selfish if they engage in stress-reducing activities that benefit only themselves. However, reducing your stress can benefit not only you, but also those around you, by making you happier and healthier, and allowing you to handle difficult situations in the best possible manner.

“Many people also believe that certain emotional responses to stress, such as anger, are innate and unchangeable features of personality. Research has shown, however, that with cognitive behavioral techniques, individuals can be taught to change their emotional reactions to stressful events.

“It is essential to remember that reducing stress and staying relaxed clears the mind so it can initiate appropriate actions to get rid of the stress-ridden conditions.

**Stress Reduction Techniques:**
“The process of learning to control stress is life-long, and will not only contribute to better health, but a greater ability to succeed in one's own agenda.

**Remember,** no single method is uniformly successful: a combination of approaches is generally most effective, and, what works for one person does not necessarily work for someone else.”

**WHAT ARE SOME SPECIFIC STRESS REDUCTION METHODS?**

**Healthy Diet, Moderate Exercise, and Social Support**

“A healthy diet and exercise have been shown to be effective ways of reducing the negative effects of stress. Often when people feel stressed, they eat poorly or do not eat at all, especially if they are prone to experiencing gastrointestinal symptoms associated with stress. This can have a significant impact on your mood, so it is important to remember to eat well, even when you do not feel like it. However, this is not to say that a little Ben and Jerry’s won’t go a long way in raising your spirits! Also, exercise reduces stress by keeping you active and releasing chemicals in the brain that naturally improve mood and reduce stress. It also can give you a sense of accomplishment.
“Social support is also a key element in reducing stress. Friends and family can help us through stressful situations by providing the support needed to get through tough situations.”

**Cognitive-Behavioral Techniques**

“Cognitive-behavioral methods are very effective in changing how you think about and interpret a stressor, which can reduce stress significantly. They include identifying sources of stress, restructuring priorities, changing one's response to stressful situations, and finding methods for managing and reducing stress.”

**Identifying Sources of Stress.** “It can be useful to start the process of stress reduction with a diary that keeps an informal inventory of daily events and activities. While this exercise might itself seem stress producing (and yet one more chore), it need not be done in painstaking detail. A few words accompanying a time and date will usually be enough to serve as reminders of significant events or activities.

- The first step is to note activities that put a strain on energy and time, trigger anger or anxiety, or precipitate a negative physical response (e.g., a sour stomach or headache).
- Also note positive experiences, such as those that are mentally or physically refreshing or produce a sense of accomplishment.
- After a week or two, try to identify two or three events or activities that have been significantly upsetting or overwhelming.”

**Questioning the Sources of Stress.** “Then ask yourself the following questions:

- Do these stressful activities meet my goals or someone else's?  
- Have I taken on tasks that I can reasonably accomplish?
- Which tasks are in my control and which ones aren't?”

**Restructuring Priorities: Adding Stress Reducing Activities.** “The next step is to attempt to shift the balance from stress-producing to stress-reducing activities. Eliminating stress is rarely practical or feasible, but there are many ways to reduce its impact. Adding daily pleasant events may have more positive effects on the immune system than reducing stressful or negative ones.”

**Keep Perspective and Look for the Positive.** “Reversing negative ideas and learning to focus on positive outcomes helps reduce tension and achieve goals. The following steps using an example of a person who is alarmed at the prospect of giving a speech may be useful.” (Note to therapist: Try to work in an example with the other parent or child here. If you want, you can start with the speech example, and have them do an ex-spouse and child example as a group. You could also have them write down an example they encounter during the next week for homework.)
First, identify the worst possible outcomes.

Rate the likelihood of these bad outcomes happening.

Envision a favorable result.

Develop a specific plan to achieve the positive outcome.

Try to recall previous situations that initially seemed negative but ended well.

Spell out examples using these steps. Emphasize that stress is a subjective reaction to events and not inherent to the event itself. Stress can be increased or decreased by how the event is interpreted. For example, if you interpret your boss’s grunt to you after you say hello as a sign that she is upset with you, you are likely to find the event more stressful than if you interpret it as a sign that she might be upset with something else or is having a bad day. Encourage participants to adopt a solution-focused perspective with stressful situations rather than a problem-focused perspective.

**Expressing yourself.** Direct communication may not even be necessary. Writing in a journal, writing a poem, or composing a letter that is never mailed may be sufficient.

**Use Humor.** “Research has shown that humor is a very effective mechanism for coping with acute stress. Keeping a sense of humor during difficult situations is a common recommendation from stress management experts. Laughter not only releases the tension of pent-up feelings and helps keep perspective, but it appears to have actual physical effects that reduce stress hormone levels.”

**Relaxation Techniques**

“Since stress is here to stay, everyone needs to develop methods for invoking the relaxation response, the natural unwinding of the stress response. Some methods that have proven to be effective for many people include (see handout for details on each):

- **Deep Breathing Exercises.** During stress, breathing becomes shallow and rapid. Taking a deep breath is an automatic and effective technique for winding down. Deep breathing exercises consciously intensify this natural physiologic reaction and can be very useful during a stressful situation, or for maintaining a relaxed state during the day. Have participants practice “correct” deep breathing.

- **Muscle Relaxation.** Muscle relaxation techniques, often combined with deep breathing, are simple to learn and very useful for getting to sleep. In the beginning it may be helpful to have a friend or partner check for tension by lifting an arm and dropping it; the arm should fall freely. Practice makes the exercise much more effective and produces relaxation much more rapidly. Have participants practice a whole body relaxation (have them tense all of their muscles at once, hold for 6-7 seconds, then quickly release the tension and notice the feelings of relaxation for approximately 30 seconds).

- **Meditation.** Meditation, used for many years in Eastern cultures, is now widely accepted in this country as a relaxation technique. The goal of all meditative
procedures, both religious and therapeutic, is to quiet the mind (essentially, to relax thought). With practice, meditation reduces stress hormone levels and elevates mood. The practiced meditator can achieve a reduction in heart rate, blood pressure, adrenaline levels, and skin temperature while meditating. New practitioners should understand that it can be difficult to quiet the mind, and should not be discouraged by lack of immediate results. A number of techniques are available. A few are discussed in your handout.

- **Massage Therapy.** Massages can also help induce relaxation.

Can you think of any stress-reducing activities that you and your children could enjoy together? Where might you fit these activities into your schedule”? (e.g., going for a walk or bike ride, playing outside, going to the park, art projects)

**Maladaptive Coping:** “When we are feeling stressed, we want to find ways to make ourselves feel better in the fastest way possible. What are some unhealthy ways people might deal with stress?” Wait for answer. “Because of this desire, many people find themselves turning to drugs or alcohol to make themselves feel better, or avoid dealing with the source of the stress in hopes that it will resolve itself or just go away. As tempting as these alternatives might seem, they are not healthy ways of dealing with stress, and will likely just increase stress levels in the long run. They also do not teach our children how to handle stress in a healthy and effective manner. Even if you don’t think your child notices when you are stressed or how you handle it, they probably do.”

**Homework:** Practice stress management techniques
Stress Reduction Techniques

The process of learning to control stress is life-long, and will not only contribute to better health, but a greater ability to succeed in one's own agenda.

Remember, no single method is uniformly successful: a combination of approaches is generally most effective, and, what works for one person does not necessarily work for someone else. Try the approaches below to see what works for you.

1. Healthy Diet, Moderate Exercise, and Social Support:

   - Often when people feel stressed, they eat poorly or do not eat at all, especially if they are prone to experiencing gastrointestinal symptoms associated with stress. This can have a significant impact on your mood, so it is important to remember to eat well, even when you do not feel like it. However, this is not to say that a little Ben and Jerry’s won’t go a long way in raising your spirits!
   - Exercise reduces stress by keeping you active and releasing chemicals in the brain that naturally improve mood and reduce stress. It also can give you a sense of accomplishment.
   - Social support is also a key element in reducing stress. Friends and family can help us through stressful situations by providing the support needed to get through tough situations.

2. Cognitive-Behavioral Techniques

   - **Identifying Sources of Stress.** Keep a diary that keeps an informal inventory of daily events and activities. While this exercise might itself seem stress producing (and yet one more chore), it need not be done in painstaking detail. A few words accompanying a time and date will usually be enough to serve as reminders of significant events or activities.
     - The first step is to note activities that put a strain on energy and time, trigger anger or anxiety, or precipitate a negative physical response (e.g., a sour stomach or headache).
     - Also note positive experiences, such as those that are mentally or physically refreshing or produce a sense of accomplishment.
     - After a week or two, try to identify two or three events or activities that have been significantly upsetting or overwhelming.
   
   - **Questioning the Sources of Stress.** Then ask yourself the following questions:
     - Do these stressful activities meet my goals or someone else's?
     - Have I taken on tasks that I can reasonably accomplish?
     - Which tasks are in my control and which ones aren't?

   - **Restructuring Priorities: Adding Stress Reducing Activities.** The next step is to attempt to shift the balance from stress-producing to stress-reducing activities. Eliminating stress is rarely practical or feasible, but there are many ways to reduce its impact. Adding daily pleasant events may have more positive effects on the immune system than reducing stressful or negative ones.
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  o First, identify the worst possible outcomes.
  o Rate the likelihood of these bad outcomes happening.
  o Envision a favorable result.
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Relaxation Techniques. See the following handout for instructions.
## Relaxation Techniques

<table>
<thead>
<tr>
<th>Relaxation Methods</th>
<th>Specific Procedure</th>
</tr>
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<tbody>
<tr>
<td><strong>Deep Breathing Exercises.</strong></td>
<td>• Inhale through the nose slowly and deeply to the count of ten.</td>
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<tr>
<td>During stress, breathing becomes</td>
<td>• Make sure that the stomach and abdomen expand but the chest does not raise up.</td>
</tr>
<tr>
<td>shallow and rapid. Taking a deep</td>
<td>• Exhale through the nose, slowly and completely, also to the count of ten.</td>
</tr>
<tr>
<td>breath is an automatic and effective</td>
<td>• To help quiet the mind, concentrate fully on breathing and counting through each</td>
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<tr>
<td>technique for winding down. Deep</td>
<td>cycle.</td>
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<tr>
<td>breathing exercises consciously</td>
<td>• Repeat five to ten times and make a habit of doing the exercise several times</td>
</tr>
<tr>
<td>intensify this natural physiologic</td>
<td>each day, even when not feeling stressed.</td>
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<tr>
<td>reaction and can be very useful</td>
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<tr>
<td>during a stressful situation, or for</td>
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<tr>
<td>maintaining a relaxed state during</td>
<td></td>
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<tr>
<td>the day.</td>
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| **Muscle Relaxation.**              | • After lying down in a comfortable position without crossing the limbs, concentrate |
| Muscle relaxation techniques, often |  on each part of the body.                                                           |
| combined with deep breathing, are   | • Maintain a slow, deep breathing pattern throughout this exercise.                  |
| simple to learn and very useful for | • Tense each muscle as tightly as possible for a count of five to ten and then       |
| getting to sleep. In the beginning  |  release it completely.                                                              |
| it may be helpful to have a friend  | • Experience the muscle as totally relaxed and lead-heavy.                           |
| or partner check for tension by     | • Begin with the top of the head and progress downward to focus on all the muscles   |
| lifting an arm and dropping it; the |  in the body.                                                                        |
| arm should fall freely. Practice    | • Be sure to include the forehead, ears, eyes, mouth, neck, shoulders, arms and     |
| makes the exercise much more        |  hands, fingers, chest, belly, thighs,                                              |
| effective and produces relaxation   |                                                                                     |
| much more rapidly.                  |                                                                                     |
Meditation. Meditation, used for many years in Eastern cultures, is now widely accepted in this country as a relaxation technique. The goal of all meditative procedures, both religious and therapeutic, is to quiet the mind (essentially, to relax thought). With practice, meditation reduces stress hormone levels and elevates mood. The practiced meditator can achieve a reduction in heart rate, blood pressure, adrenaline levels, and skin temperature while meditating.

Some recommend meditating for no longer than 20 minutes in the morning after awakening and then again in early evening before dinner. Even once a day is helpful. (One should probably not meditate before going to bed: some people who meditate before sleep wake up in the middle of the night alert and unable to return to sleep.)

New practitioners should understand that it can be difficult to quiet the mind, and should not be discouraged by lack of immediate results.

- Once the external review is complete, imagine tensing and releasing internal muscles.

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Meditation, used for many years in Eastern cultures, is now widely accepted in this country as a relaxation technique. The goal of all meditative procedures, both religious and therapeutic, is to quiet the mind (essentially, to relax thought). With practice, meditation reduces stress hormone levels and elevates mood. The practiced meditator can achieve a reduction in heart rate, blood pressure, adrenaline levels, and skin temperature while meditating.

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New practitioners should understand that it can be difficult to quiet the mind, and should not be discouraged by lack of immediate results.

- Once the external review is complete, imagine tensing and releasing internal muscles.

Mindfulness Meditation. Mindfulness is a common practice that focuses on breathing. It employs the basic technique used in other forms of meditation.

- Sit upright with the spine straight, either cross-legged or sitting on a firm chair with both feet on the floor, uncrossed.
- With the eyes closed or gently looking a few feet ahead, observe the exhalation of the breath.
- As the mind wanders, one simply notes it as a fact and returns to the "out" breath. It may be helpful to imagine one's thoughts as clouds dissipating away.

Transcendental Meditation (TM). TM uses a mantra (a word that has a specific chanting sound but no meaning). The meditator repeats the word silently letting thoughts come and go. In one study, TM was as effective as exercise in elevating mood.

Mini-Meditation. The method involves heightening awareness of the immediate surrounding environment. Choose a routine activity when alone. For example:

- While washing dishes concentrate on the feel of the water and dishes.
- Allow the mind to wander to any immediate sensory experience (sounds outside the window, smells from the stove, colors in
A number of techniques are available. A few are discussed here.

<table>
<thead>
<tr>
<th></th>
<th>the room).</th>
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<tbody>
<tr>
<td></td>
<td>• If the mind begins to think about the past or future, abstractions or worries, redirect it gently back.</td>
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<tr>
<td></td>
<td>• This redirection of brain activity from your thoughts and worries to your senses disrupts the stress response and prompts relaxation. It also helps promote an emotional and sensual appreciation of simple pleasures already present in a person's life.</td>
</tr>
</tbody>
</table>

**Guided Imagery**: Guided imagery can be a good way to de-stress. It involves imagining yourself in a relaxing situation, and trying to fully experience this situation, as though you were really there. Guided imagery helps by tying up all of your senses at once in a relaxing state that is not compatible with stress or anxiety.

<table>
<thead>
<tr>
<th></th>
<th>• Choose a relaxing setting (e.g., lying on the beach).</th>
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<tr>
<td></td>
<td>• Close your eyes, and imagine yourself in this setting. Make this image as vivid as possible; ask yourself what you see, hear, smell, taste, and feel. What is it like to be here?</td>
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<td></td>
<td>• Take the time to focus on each sensation.</td>
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**Massage Therapy**

| | Massages can also help induce relaxation. |
WHERE ELSE CAN INFORMATION ABOUT STRESS BE OBTAINED?

National Institute of Mental Health, 6001 Executive Boulevard, Rm. 8184, MSC 9663
Bethesda, MD 20892-9663 USA

Call (301-443-4513) or (http://www.nimh.nih.gov/).

MEDITATION SITES

Transcendental Meditation

888-LEARN TM (532-7686) or (http://www.tm.org/)

Mindfulness Meditation

Centers teaching both Shambhala (secular) meditation and Buddhist traditions across the US are listed (http://www.shambhala.org)

Meditation Instruction

Simple instruction and information about a variety of meditation techniques (http://www.meditationcenter.com)
Homework: Stress Management

1. Stress management technique I tried: _____________________________
   When I tried it _____________________________________________
   Problems I encountered_____________________________________
   _________________________________________________________
   How it worked ____________________________________________
   _________________________________________________________

2. Stress management technique I tried: _____________________________
   When I tried it _____________________________________________
   Problems I encountered_____________________________________
   _________________________________________________________
   How it worked ____________________________________________
   _________________________________________________________

3. Stress management technique I tried: _____________________________
   When I tried it _____________________________________________
   Problems I encountered_____________________________________
   _________________________________________________________
   How it worked ____________________________________________
   _________________________________________________________
Session 4:
Homework: Worksheet

Review Homework (5 min): Go around the room and ask each parent to report on their use of relaxation techniques: which ones did they try? How did they work? What did they like/not like about them? Did they encounter any obstacles?

Listening/Assertiveness Skills: “The first topic we are going to cover today is skills for listening and assertive communication. We are aware that some of you may already be familiar with this information. We do not assume that you do or do not know these skills already, but believe that it is helpful to review the skills, even if you are already familiar with them. Why do you think we believe these skills are important?” Solicit answers (e.g., it can be difficult to listen when you are frustrated or angry, sometimes people forget to use good communication skills during stressful times, etc.).

“First, let’s talk about what makes somebody a good listener. What are some characteristics that a good listener has? How can you tell if someone is listening to you?”

- Eye contact
- Body language—open posture, facing you, leaning forward, nodding, etc.
- Smiling or other facial expressions
- Asking questions or commenting where appropriate
- Validating feelings
- Being fully engaged with the speaker (i.e., not watching television, doing dishes, etc…). Giving the speaker your full attention.

Now solicit examples of “bad” listening behaviors. “What behaviors indicate to you that a person is not listening or not engaged in the conversation?”

- No eye contact
- Body faces away from you
- Looking around the room
- Moving around, doing other things
- Silence during pauses
- A blank facial expression
- Frequently checking the time
- Yawning
- Changing the subject or asking irrelevant questions
Giving unsolicited advice

“In addition to using good listening skills, the use of “active” listening can help reduce miscommunication. Active listening involves reflecting back to the speaker your understanding of what he or she is saying. This may involve paraphrasing what the speaker is saying (e.g., “it sounds like you’re having difficulty with that,” or “what I hear you saying is that you’d like to spend more time with our son.”) or commenting on their non-verbal cues (e.g., “it looks like that makes you sad…”). Making such comments gives the speaker the opportunity to see that you understand them, or correct any differences between what you heard and what they meant to convey.

“Being a good listener is only half of the equation for effective communication. Expressing yourself in an assertive manner helps to make your point clearer. Many people have difficulty expressing themselves assertively. There are four main communication styles that people use:

1) Passive
2) Aggressive
3) Passive-aggressive (indirect aggression)
4) Assertive

“When people are passive, they do not make their position known. Rather, they allow other people to make decisions for them, whether they agree or not. This could be thought of as the “I lose, you win” style. Being passive can lead to a lot of resentment and loss of rights and opportunities.

“Aggressive communication is the opposite of passive. People who communicate aggressively insist on getting their way, regardless of the rights or desires of others. This could be thought of as the “I win, you lose” style. “Aggressive behavior commonly results in a put-down of the receiver. Rights denied, the receiver feels hurt, defensive. And humiliated.”

“Passive-aggressive communication is generally an indirect style of communicating one’s wishes. It involves passively giving in to what is asked, even if it is against one’s own wishes, but then trying to express this dissatisfaction in an indirectly aggressive manner. It may involve making sarcastic comments, slamming doors on the way to do something that was requested, doing a poor job on purpose, showing up late, etc. It can be considered the “I lose, you lose” style. In other words, if I have to lose by doing what you want, you have to lose by putting up with my behavior. It also involves making “empty promises” (i.e., promising to do something and not following through on the promise).

“Assertive communication is the most effective style. It is the “I win, you win” style. It involves asserting one’s own rights—the right to an opinion, the right to say no, the right to be heard, the right to make a request—as well as respecting the rights of others.

“Assertiveness is a tool for making your relationship more equal – for avoiding the one-down feeling that often comes when you fail to express what you really want.”

Because
there are two sets of opinions, it also often involves compromise. People who communicate assertively use a firm, steady tone of voice—they do not whisper or shout. They state their requests in a clear manner. They do not apologize unnecessarily. They use “I” statements. They listen to the other person’s response, and respond appropriately.

“‘Aggression and assertion are commonly confused, but assertive behavior does not push others around, deny their rights, or run roughshod over people. Assertiveness reflects genuine concern for everybody’s rights.’”

“In general, it is not a good idea to confront someone in front of others.

“Let’s look at some examples:

Example 1: The Heavyweight

“Dominic and Gina, married nine years, have been having marital problems recently because he insists that she is overweight and needs to reduce. He brings the subject up continually, pointing out that she is no longer the woman he married (she was 25 pounds lighter then). He keeps telling her that such overweight is bad for her health, that she is a bad example for the children, and so on. Dominic teases Gina about being ‘chunky,’ looks longingly at thin women, while commenting how attractive they look, and makes reference to her figure in front of their friends. Dominic has been acting this way for the past three months and Gina is highly upset. She has been attempting to lose weight for those three months, but with little success. Following Dominic’s most recent rash of criticism, Gina is:

Have the group generate examples of each type of response before reading each of the following responses. Do this for each example provided below.

Nonassertive: She apologizes for her overweight, makes feeble excuses, or simply doesn’t reply to some of Dominic’s comments. Internally, she feels both hostile toward her husband for his nagging, and guilty about being overweight. Her feelings of anxiety make it even more difficult for her to lose weight and the battle continues.

Aggressive: Gina goes into a long tirade about how her husband isn’t any bargain anymore either. She brings up the fact that at night he falls asleep on the couch half the time, is a lousy sex partner, and doesn’t pay enough attention to her. She complains that he humiliates her in front of the children and their close friends, and that he acts like a ‘lecherous old man’ by the way he eyes other women. In her anger, she succeeds only in wounding Dominic and driving a wedge between them by her counterattack.

Assertive: Approaching her husband when they are alone and will not be interrupted. Gina says that she feels that Dominic is right about her need to lose weight, but she does not like the way he keeps after her about the problem. She points out that she is doing her best and is having a difficult time losing the weight and maintaining the loss. He admits that his harping is ineffective, and together they work out a plan in which he will systematically reinforce her for her efforts to lose weight.”
Example 2: The Neighbor

“Edmond and Virginia have a two-year-old boy and a baby girl. Over the last several nights, their neighbor’s son, 17, has been sitting in his car, in his own driveway, with his car stereo blaring loudly. He begins just about the time their two young children go to bed on the side of the house closest to the music. They’ve found it virtually impossible to get the children to sleep until the music stops. Edmond and Virginia are both disturbed and decide to be:

Nonassertive: They move the children into their own bedroom on the other side of the house, wait until the noise stops (around midnight), then transfer the children back to their own rooms. Then they go to bed much past their own usual bedtime. They quietly curse the teenager, and soon become alienated from their neighbors.

Aggressive: They call the police and protest that “one of those wild teenagers next door is creating a disturbance.” They demand that the police put a stop to the noise at once. The police do talk with the boy and his parents, who get very angry as a result of their embarrassment about the police visit. They denounce Edmond and Virginia for reporting to the police without speaking to them first, and resolve to have nothing further to do with them.

Assertive: Edmond goes over to the boy’s house early one evening and tells him that his stereo is keeping the children awake at night. Edmond suggests they try to work out an arrangement which allows the boy his music, but does not disturb the children’s sleep. The boy reluctantly agrees to set a lower volume during the late hours, but he appreciates Edmond’s cooperative attitude. Both parties feel good about the outcome, and agree to follow up a week later to be sure it is working as agreed.”

“Think of some situations in which you responded in a passive, aggressive, or passive-aggressive manner. What were the circumstances?” Discuss examples as a group, and discuss how these situations could have been handled assertively. You might want to role play assertive communication related to asking for a change in the visitation schedule or telling the other parent about some behavior they are engaging in with the child that makes you uncomfortable. Note: “If you are not used to communicating assertively, it can feel uncomfortable and be difficult at first. With practice it will become more natural. Expect setbacks, but keep trying. The benefits to communication and your relationships with others will be worth the effort. It will also set a healthy example for your children. It is important to remember that assertiveness does not always work, but by being assertive, you improve your chances of success.

“Now that we’ve discussed listening and communication skills, we’re ready to tackle problem-solving and negotiation skills. You will find that the listening and assertiveness skills we just covered will be helpful here.”

Problem-Solving Skills Education (handout): “In the next few sessions we are going to talk about problem-solving and negotiation skills. Many of you have probably disagreed with the other parent about how to do things concerning your children.”
Starting today, and for the next two sessions we will focus on how to resolve conflicts regarding the children. Today we will begin talking about problem-solving. Again, we are aware that some of you may already be familiar with this information. We do not assume that you do or do not know these skills already, but believe that it is helpful to review the skills, even if you are already familiar with them. There are six steps in problem-solving. First we’ll go over each one and explain it, and then we will come up with examples as a group.

“These skills are most useful when you are trying to solve a specific problem and when you and the other parent have a similar end result in mind, but have different ideas about how to get there.”

1) Go over and define each step:

1. Define the problem: Make the definition as specific as possible.
2. Identify objectives: What is your end goal?
3. Generate alternatives/Brainstorm: List all possible solutions to the problem that will meet your goal. At this point, do not evaluate the solutions. List even those solutions that may not be practical or feasible.
4. Rate/Evaluate the alternatives: Now eliminate solutions that are not practical or feasible. Consider the possible consequences for each alternative generated.
5. Compute the optimal decision (this may include re-evaluating or choosing another option if the first one did not work): Choose the solution that seems best and ENACT it (emphasize this point) Choose a future date to re-evaluate the solution and decide if it is working. If you decide this solution did not work, return to step 4.

2) Go through an example. First, solicit relevant examples from the group and review an example of an individual problem (e.g., how to communicate a change in schedule to the other parent), then go over an example of a mutual problem (e.g., getting the child to do their homework). See below for use of problem solving with these examples.

“Let’s go over some examples using these steps. What are some examples of situations where problem solving may be helpful?” Select an example, and proceed. Note to therapist: Pick a relatively non-controversial problem first.

1) Define the problem: 1) Your work schedule changed and you will not be able to pick your child up on time for visitation. 2) Your child is not completing his or her homework assignments.

2) Identify your objectives - What is your end goal? 1) To communicate this change to the other parent and still get to see your child. 2) To agree on a way to get your child to complete his or her homework.
3) Generate alternatives/Brainstorm—Do not evaluate alternatives at this point. Encourage generation of silly or ridiculous choices to emphasize this. 1) Ask the other parent if you could pick the child up late, extend the visitation, move visitations to another day (generate more as a group), cancel visitations, have other parent drop child off at your workplace at designated time 2) Make the child complete assignments at a specific time in both households (e.g., right after school, after dinner, etc.), sit with child while they complete assignments, check assignments after they have been completed, ground child on days they did not turn in homework, etc.

4) Rate/Evaluate alternatives—Now you can cross off the silly alternatives. As a group, have them evaluate the examples provided above.

5) Compute the optimal decision

6) Try solution

7) If your solution worked, congratulate yourself. If not, return to previous steps and try another alternative.

Answer any questions in the group regarding these steps. Try another example. Attempt to allow the group to do most of the work this time, providing only gentle guidance.

Homework: Individual Plan worksheet. Hand out the worksheet and discuss the types of answers that would be appropriate for each section. “Sometimes people can resolve problems, either because they both have the same goal in mind, or because they can find a mutually agreed upon compromise. Other problems might be more difficult to resolve, but their impact can be lessened. For example, you may not be able to prevent all disagreements with the other parent, but you can work to improve communication. When completing this worksheet, think about those problems you think you and the other parent may be able to come to an agreement on, and put those in the top section. In the bottom section, put those problems that you don’t think you and the other parent will be able to see eye-to-eye on, but that you would like to take steps yourself to improve.”
TIPS FOR COMMUNICATING WITH THE OTHER PARENT

1. Keep the children as your focus in communications.

2. Make it a rule to discuss parenting issues away from the presence or hearing of the children (not at transitions).

3. Consider arranging regular meetings to discuss parenting issues. By making a commitment to meeting regularly (e.g., monthly meeting, weekly phone call after children are in bed) you get to talk when things are going well and this will help reduce tension – when you only talk when something is wrong, tension grows and conflict is more likely.

4. Have any meetings in a public place – this will help keep things from getting too heated.

5. Sometimes face-to-face or phone communication is not always the best method. Instead, you may choose to use e-mail or fax, which can be less threatening or intrusive.

6. A communication book that you keep in your child’s schoolbag can be a useful tool for regular communication between households. Notes can be made in this, thereby avoiding the need for constant phone calls, but still allowing you to communicate directly with the other parent so that your child does not have to remember to deliver messages. This way you know what message the other parent is actually getting.
## NEGATIVE COMMUNICATION BEHAVIORS

<table>
<thead>
<tr>
<th>Problem Communication Habits</th>
<th>Alternatives</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Accusing, blaming, name-calling</td>
<td>Make “I” statements (“I feel _____ when _____ happens”)</td>
</tr>
<tr>
<td>2. Put downs, zapping, shaming, criticizing</td>
<td>Accepting responsibility: “I” statements v. “you” statements</td>
</tr>
<tr>
<td>3. Interrupting</td>
<td>Listen quietly and patiently</td>
</tr>
<tr>
<td>4. Lecturing, preaching, moralizing</td>
<td>Make brief, explicit problem statements.</td>
</tr>
<tr>
<td>5. Talking in a sarcastic voice</td>
<td>Using a neutral voice</td>
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<tr>
<td>6. Mind reading (telling others what they think and feel)</td>
<td>Asking the person what they think and feel</td>
</tr>
<tr>
<td>7. Getting off topic</td>
<td>Catching self and returning to the problem</td>
</tr>
<tr>
<td>8. Dwelling on the past</td>
<td>Sticking to the present and future (suggesting changes to correct past problems).</td>
</tr>
<tr>
<td>9. Monopolizing the conversation</td>
<td>Taking turn making brief statements</td>
</tr>
<tr>
<td>10. Threatening</td>
<td>Suggesting alternative solutions</td>
</tr>
<tr>
<td>11. Claming up; not responding</td>
<td>Reflecting, validating, expressing negative or positive feelings.</td>
</tr>
</tbody>
</table>
STEPS FOR EFFECTIVE PROBLEM SOLVING

1) Define the problem

2) Identify objectives

3) Generate alternatives/ Brainstorm—Do not evaluate alternatives at this point. Encourage generation of silly or ridiculous choices to emphasize this.

4) Rate/Evaluate alternatives—Now you can cross off the silly alternatives

5) Compute the optimal decision

6) Try solution

7) If your solution worked, congratulate yourself. If not, return to previous steps and try another alternative.
PROBLEM SOLVING WORKSHEET

Very quickly list some problems you are currently worried about.

1. 
2. 
3. 
4. 
5. 
6. 
7. 
8. 
9. 
10.

List the same problem according to priority. Start with those problems needing your immediate attention.

1. 
2. 
3. 
4. 
5. 
6. 
7. 
8. 
9. 
10.

Complete the following questions:

1. The problem is _________________________________.
   Does the problem belong to me exclusively? YES  NO
2. Am I currently ready and able to approach the problem? YES  NO
3. Do I have all the information I need regarding the problem? YES  NO
4. Do I need or can I use advice from others? YES  NO
5. Examine all the alternatives and consequences of each.
   1. 
   2.
6. When ready, make a choice. My Choice is ________________________________ 
_____________________________________________________________________

7. Identify any obstacles to implementing your solution and ways to address these obstacles: ______________________________________________________________
_____________________________________________________________________

7. Evaluate the outcome of your decision.
## INDIVIDUAL PLAN

Name___________________  
Date____/_____/_____

<table>
<thead>
<tr>
<th>Names of Children</th>
<th>Ages of Children</th>
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</thead>
<tbody>
<tr>
<td>1.________________________</td>
<td>1.___________________________</td>
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<td>2.________________________</td>
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With regards to my children, I would like to **resolve/agree** upon the following issues with my spouse / former spouse:

1. ______________________________________________________________ 
   ______________________________________________________________
2. ______________________________________________________________ 
   ______________________________________________________________
3. ______________________________________________________________ 
   ______________________________________________________________
4. ______________________________________________________________ 
   ______________________________________________________________
5. ______________________________________________________________ 
   ______________________________________________________________

With regards to my children I would like to **improve** upon the following issues with my spouse / former spouse.

1. ______________________________________________________________
2. ______________________________________________________________
3. ______________________________________________________________
4. ______________________________________________________________
5. ______________________________________________________________
Session 5: Review worksheet. Steps for negotiation. Discuss areas frequently in need of negotiation. Group practice/role play on examples. Homework: 1) Choose 1 problem from each section of last week’s worksheet (top and bottom) to use problem solving steps on. 2) Remember to demonstrate and practice problem solving with your children. Do this at least 2 times this week. Make a note of each one and how it went, and any obstacles you encountered to completing the assignment. We will discuss your progress next session.

Review homework (5 min): Go around the group and ask each parent to give examples from their worksheet. Discuss any difficulties with completing the assignment.

Inform parents that their children will be learning about problem solving skills today. Note any developmental differences in steps they should be aware of (see below). Encourage parents to demonstrate problem-solving skills with their children in everyday life. For example, they may demonstrate use of problem solving skills in deciding what to make for dinner. Solicit examples from the group of other opportunities for demonstrating problem solving with their children.

Following are the steps the children’s group will be learning:
1) Identify the problem
2) State the goal
3) Generate solutions
4) Think of consequences
5) Try best solution
6) Pat yourself on the back or try again

Note: “When practicing with your children, keep it simple, and try to use the words they are being taught in their group. We will provide you a cheat-sheet of the steps they are learning. You may find it helpful to keep it posted in a visible area, such as the refrigerator, as a reminder, until your children get the hang of it.”

Negotiation Skills Education (Handout): “Problem solving skills work best when you and the other parent want the same result. However, sometimes you and the other parent will want different things. Being able to negotiate the best, most fair compromise is an important and necessary skill that will benefit your children. There are 8 steps to consider when negotiating:

1) Understand the issue under dispute
2) Define or frame the issue in the appropriate manner
3) Construct a line of argument to support what one wants out of a negotiation
4) Persuasively organize and present this line of argument
5) Listen effectively to the other side and ask questions to gain information and assure better understanding
6) Analyze the shared information as to understand and identify the areas of agreement and disagreement
7) Creatively brainstorm and invent options to bridge the areas of disagreement
8) Articulate and record the final agreement

Discuss each of these steps.

1) **Understand the issue under dispute**

   “In this group, we will focus on issues that involve the children, not issues that do not apply to the children. Define what it is you are negotiating, such as how you will attend a child’s school activities. Focus on the issue—**stay on topic**. It can be very easy to get off-topic when discussing topics that you are emotionally invested in. Be careful not to let your emotions guide you and not to focus on the other parent’s past misdeeds, but to rationally and calmly address the issue at hand.”

2) **Define or frame the issue in the appropriate manner**

   “Define the context in which you are negotiating. In some cases, you may need to reframe the issue so that it is likely to lead to a better outcome. For example, if they are negotiating a system for attending school activities so that they can both support their child and their child can benefit from the support of both parents, the issue is not one parent’s new “friend” or one parent trying to “infringe” on the other parent’s time with the child. If one parent’s work schedule conflicts with the visitation schedule, the issue is finding a way for the child to spend time with their parent, not the parent’s “not caring” about the child or being a “bad parent.””

3) **Construct a line of argument to support what you want out of the negotiation**

   “Each parent should consider what it is they want to achieve in the negotiation. It may help to make a list of the things you would like to say about the issue. Being organized and remaining calm will help facilitate the discussion, help you stay on topic, and reduce stress.”

4) **Persuasively organize and present this line of argument**

   “You and the other parent should each have a turn to present your position or ideas without interruption. You should speak in “I” statements, and not make accusations or disparaging remarks about the other parent. Doing so will likely escalate into an argument, which is counterproductive to your cause.”

5) **Listen effectively to the other side and ask questions to gain information and assure better understanding**
“You and the other parent will need to listen carefully to one another, possibly even taking notes. You should agree not to respond to one another negatively while they are speaking (e.g., rolling your eyes, sighing, groaning, shaking your head, etc.). After you have each presented your case, you should take time to make sure you understand one another. Note that this is time to clarify the issue, not to argue the other parent’s points. Be willing to acknowledge when the other parent makes a good point and let go of the need to engage in stubborn refusal to acknowledge this.”

6) **Analyze the shared information as to understand and identify the areas of agreement and disagreement**

“You and the other parent should make note of points you agree on. Discussion should focus on attempting to resolve points of disagreement.”

7) **Creatively brainstorm and invent options to bridge the areas of disagreement**

“Now it should be clear what you need to address, and you can work on creating solutions. You should brainstorm without censor; do not evaluate or dismiss ideas until you have finished brainstorming. Make sure to stay on topic. You and the other parent are both likely to have strong feelings that can interfere with staying on topic. If this is a new approach to you, it may take practice, but try to keep at it for your children’s sake. Remember, you and the other parent probably both have your children’s best interest at heart. You should congratulate yourselves on your attempts and successes, and not get too discouraged by any difficulties you encounter.”

8) **Articulate and record the final agreement**

“Once you have decided on a course of action, you should clearly state and confirm your agreement. Congratulate yourselves for your efforts, and remember that your successes should serve as a model for future interactions and problems. You can record your agreement verbally, but it may be beneficial to have it in writing so there is no confusion or future argument on the matter.”

Remind parents that there is often no perfect solution, and there will be times that they are unhappy or upset with a decision. Help them reframe this as a challenge to overcome. Remind them that they need to keep their focus on the goal, which is to make their children happy, not necessarily to make themselves happy. Also try to defuse any comments by participants that the other parent would never be willing to engage in this process.

Go over examples as a group. Solicit examples from the group. Remember, the problem should be one in which the parents have different goals.

Example: Dad wants to attend son’s soccer games when they’re not on his visitation day.

1) **Understand the issue under dispute**
a. In this case, dad wants to go to the games on off-days, mom does not want dad to attend

2) Define or frame the issue in the appropriate manner
   a. If mom does not like dad’s girlfriend, who he cheated on her with and who always attends events with him, the issue is still whether dad can attend the games—not the girlfriend.

3) Construct a line of argument to support what one wants out of a negotiation
   a. Dad may say he believes it is important for son to feel loved and supported by both parents. Perhaps son has asked dad to attend games. Maybe dad taught son to play soccer or encouraged him to get involved and wants to continue sharing this activity with him.

4) Persuasively organize and present this line of argument
   a. Dad might say, “I know son’s soccer games are often on days when I don’t have visitation, but I would like to be able to go to them. I understand that you would rather I didn’t go, but I would like to try to find a resolution we can both live with so that son does not suffer because we don’t get along. Son and I have always enjoyed soccer together, and I hope to continue that bond. We watch soccer on t.v., and I coached his first soccer team. He has asked me to come to his games, and I would like to be able to do so. I believe it is important for him to feel loved and supported by both of us, and that he can count on both of us to be there for him regardless of the visitation schedule. Do you have any suggestions?”

5) Listen effectively to the other side and ask questions to gain information and assure better understanding
   a. Mom might say she wants to minimize contact with dad, and doesn’t want his new girlfriend rubbed in her face all the time. She might say she thinks this is best accomplished by sticking to the visitation schedule. She might say she doesn’t want to confuse son. She does believe son should feel loved by both, but doesn’t think dad needs to go to soccer games to accomplish this. Dad and son can share their love of soccer on his visitation days. She may say she doesn’t infringe on dad’s time.

6) Analyze the shared information as to understand and identify the areas of agreement and disagreement
   a. Agreement: son should feel loved by both parents. Dad and son share a bond over soccer.
   b. Disagreements: Dad’s attendance at events on non-visititation days. Dad’s girlfriend (not relevant).

7) Creatively brainstorm and invent options to bridge the areas of disagreement
   a. Dad could attend games only on visitation days
   b. Mom and dad could take turns attending games
   c. Dad could attend on days mom cannot attend
   d. Dad could stand on the other side of the field from mom
   e. Dad could agree not to bring his girlfriend to games
   f. Dad could agree not to speak to mom at games
   g. Dad and mom could each attend half a game

8) Articulate and record the final agreement
a. Mom and dad agree that dad can attend games if he does not have a girlfriend, he stands on the other side of the field from mom, and he does not attempt to talk to mom.
b. If this does not turn out to be a satisfactory solution, they can revisit the issue and attempt another solution in the future.

Group facilitators should emphasize the importance of flexibility in negotiation…both sides fighting for what they want and not compromising is not going to lead to an effective solution and will only promote the exacerbation of conflict. Also, circumstances might change which require modifications or reevaluation of the original agreement. One or both parents might also discover that the solution did not work as well as they thought it would. This should be viewed as a natural part of the process and not as an indication of failure or of the other parent not cooperating. A general rule is to expect a solution generated with this method to work about 80% of the time.

**Homework:** Choose 1 problem with the other parent from each section of last week’s worksheet (top and bottom) to use negotiation steps on. Write out the steps and bring with you to next session to discuss. 2) Remember to demonstrate and practice problem solving with your children. Do this at least 2 times this week. Make a note of each one and how it went, and any obstacles you encountered to completing the assignment. We will discuss your progress next session.
STEPS FOR EFFECTIVE NEGOTIATING

1) Understand the issue under dispute
2) Define or frame the issue in the appropriate manner
3) Construct a line of argument to support what one wants out of a negotiation
4) Persuasively organize and present this line of argument
5) Listen effectively to the other side and ask questions to gain information and assure better understanding
6) Analyze the shared information as to understand and identify the areas of agreement and disagreement
7) Creatively brainstorm and invent options to bridge the areas of disagreement
8) Articulate and record the final agreement
SESSION 5 HOMEWORK

Choose 1 problem from the “With regards to my children, I would like to resolve/agree upon the following issues with my spouse / former spouse” section of last week’s worksheet to use negotiation steps on.

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Understand the issue under dispute

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Define or frame the issue in the appropriate manner

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Construct a line of argument to support what you want out of the negotiation

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Persuasively organize and present this line of argument

________________________________________________________________________

________________________________________________________________________
Listen effectively to the other side and ask questions to gain information and assure better understanding

______________________________________________________

______________________________________________________

______________________________________________________

______________________________________________________

Analyze the shared information as to understand and identify the areas of agreement and disagreement

______________________________________________________

______________________________________________________

______________________________________________________

______________________________________________________

Creatively brainstorm and invent options to bridge the areas of disagreement

______________________________________________________

______________________________________________________

______________________________________________________

______________________________________________________

Articulate and record the final agreement

______________________________________________________

______________________________________________________

______________________________________________________

______________________________________________________

Section II

(Choose one from the “With regards to my children I would like to improve upon the following issues with my spouse / former spouse.” Section in last week’s homework).

Define the problem

______________________________________________________

______________________________________________________

______________________________________________________

______________________________________________________
Identify objectives

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Generate alternatives—Do not evaluate alternatives at this point. Encourage generation of silly or ridiculous choices to emphasize this.

1. _______________________________________________________________________

2. _______________________________________________________________________

3. _______________________________________________________________________

4. _______________________________________________________________________

5. _______________________________________________________________________

6. _______________________________________________________________________

7. _______________________________________________________________________

Rate/Evaluate alternatives—Now you can cross off the silly alternatives

Compute the optimal decision:

________________________________________________________________________

________________________________________________________________________

________________________________________________________________________

Try solution

If your solution worked, congratulate yourself. If not, return to previous steps and try another alternative.

*Remember that there is often no perfect solution, and there will be times that you are unhappy or upset with a decision. Try to reframe this as a challenge to overcome. Remember to keep your focus on the goal, which is to make your children are happy. You may have struggled with difficulties in solving problems with the other parent even when your relationship was at its best. It will be harder to solve problems now, but the stakes (i.e., for the children) are much larger.
Homework: PROBLEM SOLVING AT HOME

Remember to demonstrate and practice problem solving with your children. Do this at least 2 times this week. Make a note of each one and how it went, and any obstacles you encountered to completing the assignment. We will discuss your progress next session.

Problem Solving Practice #1
What problem needed to be resolved?

Briefly describe the steps you took to resolve the problem.

Did you encounter any obstacles to finding a resolution? If so, what were they?

Problem Solving Practice #2
What problem needed to be resolved?

Briefly describe the steps you took to resolve the problem.

Did you encounter any obstacles to finding a resolution? If so, what were they?
Session 6:

Review homework (5 min each assignment): Go around the group and ask each parent to tell you the problem they picked from their worksheet and to review the problem solving steps for that problem. Discuss their experiences with the process and any obstacles they encountered. Go around a second time and discuss times they used problem solving with their children. Discuss any difficulties with completing the assignments.

“Today we are going to use skills we learned in the last two sessions to discuss solutions to common areas of conflict between divorced parents. Keep these skills in mind as we go through examples.” Review skills briefly.

Solicit examples from the group about things they argue with the other parent about, or think they may argue about in the future. For each problem generated, determine whether problem-solving or negotiation skills would be most appropriate. “Remember to keep the focus on reducing the conflict your child is exposed to, not complaining about the other parent.”

Below are some examples that may be useful in facilitating conversation:

- Pick-up/drop-off (fighting at the door, being early or late)
- Late/absent child support payments
- Different rules at different houses
- Presence of a new partner at the other parent’s house
- Problems at school/discussing/notifying the other parent of these problems
- Parent-teacher meetings
- Extracurricular activities
- Disciplinary issues
- Behavior problems
- Child’s refusal of visitation
- Communicating schedule changes
- Who pays for what
- Access to extended family
- Access to mental health services
- Religious education
- Child’s friends
- Disagreements regarding need for medical care for the child
Discuss how to handle possible obstacles in the negotiation process—“What if the other parent gets off-topic, tries to argue with you, yells, or calls you names?” Role play how to handle this situation, first with the group leader playing the calm parent and a group member playing the parent who creates an obstacle, then have pairs of parents take turns role playing for the group. (Note to therapist: This is critical to address and practice with participants.)

Ways of handling obstacles:
- Remain calm. If necessary, pause and take a deep breath.
- Redirect the conversation to the topic at hand—do not answer unrelated accusations.
- Ask the other parent to please talk to you calmly.
- If these behaviors take place in front of the child, tell him or her calmly that you do not think this interaction should take place in front of the child. If necessary, remove the child from the situation.
- If the other parent will not calm down or stay on topic, request to discontinue the conversation and continue it at a future date. Make sure to revisit the topic when you are both calm. DO NOT JUST AVOID THE TOPIC.
- If it becomes apparent that compromise is not an option, problem solve individual solutions for dealing with the problem. For example, if you and the other parent cannot agree on a set of rules and routines to use in both households, you can make the rules in your house clear, and explain that the rules are different at your house and the other parent’s home.

Parenting

“Feelings of stress or being overwhelmed may lead parents to parent inconsistently. In moments of stress a parent may be stricter or more lenient with a child than they usually are. This can be confusing for children and lead to increased negative behavior. Also, parenting is often a stressful job even in the absence of other stressors in life. A few weeks ago we taught you skills for reducing and managing your stress. We hope that you have had a chance to practice these skills, and that you will find them useful when practicing the parenting skills we will cover.

“Lack of consistency means our children feel unsafe, are unsure of our expectations, and have poor cause and effect thinking. If they were hungry and cried, and one time they were given food, and one time they were yelled at, and one time they were closed in a closet, their brains would be unable to clearly understand that certain behaviors and actions have certain reliable consequences. They will have trouble relating their own behaviors and choices to corresponding consequences. Children need structure and predictability in their lives to function effectively.”

ARE YOU AN INCONSISTENT PARENT?
”It may be something that you never thought about. Do you make rules, but after an infraction you let the kids slide without consequences? Do you say “no” to a request, but
then back down and relent to a “yes” if your children persist and whine? Do you and the other parent disagree on the rules for the children? Does one parent say “yes” and the other say “no” to the same request from your children? Do you make threats to your children, but you never really intend to follow through? If you answered “yes” to any of these questions, there’s probably room for improvement in the consistency department. With a firm tweak here and there in your parenting practices, you’ll notice a positive change in the behavior of your children. However, if you have been inconsistent in many ways for a long time, it will take patience and time as your children test your newly defined boundaries. Hang in there!”

TYPES OF CONSISTENT PARENTING

--Consistency of Rules
"Explain your rules carefully and clearly to your children. Make sure they understand. Then explain the consequences for each rule. Most importantly, enforce the rules and consequences CONSISTENTLY. Yes, that means each time no matter what! It may help to have a list of rules somewhere accessible to the children (e.g., the refrigerator, their bedroom).”

--Consistency between Parents
"This is one of the most important ingredients to effective co-parenting. Present a united front to your children. Spouses need to communicate with each other about rules and consequences for the children. Children always look for a kink in the armor between the parents, so make sure you agree on the rules. Children learn how to play one parent against the other, so parents should confer and agree on rules, requests, and discipline before sharing their decision with the children. When parents are divorced and children transition from one household to another, this can be especially difficult, especially if there are stepparents involved in caretaking. Sometimes you and the other parent might not be able to agree on a parenting technique or rule. In this case, it is important to explain to your children that they may have different rules at different houses, but that they need to follow the rules in each home when they are there. Empathize with the children that this might be difficult and confusing, but assure them that it will become easier with time. It might help to explain this with an example of how there are different rules at home and at school or between two other places where the child might be used to following different rules. It is also important to realize that parents often fall into patterns where one parent is perceived as the “tough guy,” so the other parent feels that they have to fall into the role of the “softy” to balance the other parent. While it is natural for parents to want to complement each other reciprocally, this pattern can result in inconsistent and ineffective parenting practices. Instead, parents should maintain a balance of both roles and be consistent!”

--Consistent Routines
"Many family events require routines: bedtime, chores, meals, bath time, and school mornings. Children love routines (predictable events). For example, a child’s bedtime may involve getting into pajamas, brushing teeth, using the toilet, story time, prayers and a bedtime song. Bedtime should be at the same time each evening. When routines are consistent, children respond better.”

--Divorced or Separated Parents
"Continuity is important to children, especially during and after a divorce. When children alternate between two residences after a divorce or separation, the transition is made easier when similar routines are maintained. It’s extremely important for divorced parents to agree on a child’s bedtime, rules and discipline, nutrition and family routines (as mentioned above). The more things that are consistent in the two homes, the better for the child. No matter how contentious the relationship of the parents, the focus and needs of the children need to receive top priority. The book, TEEN TIPS by Tom McMahon, has a complete chapter on divorce and step-parenting, including strategies and tips to help children and teens cope."

DISCIPLINE IN 3 EASY STEPS (modified from an excerpt from KID TIPS, by Tom McMahon)

1. EXPLAIN YOUR RULES CLEARLY AND CALMLY BEFORE A PROBLEM ARISES
"Children feel safe and secure when there are firm boundaries and clear rules. It may be a good idea to have your child repeat the rules, so you can be sure they understand them. Keep in mind that younger children may not fully understand the meaning of all rules and limits. Children will respond better to rules if you explain the importance and reason for the rule. Try to remember how you felt when your parent gave you the old "Because I told you so” explanation. It is vitally important that you discuss rules with your children when you and your children are calm and before a problem occurs.”

2. EXPLAIN THE CONSEQUENCES
"When your child decides not to follow a rule, explain what the consequences will be. As in Step 1, it is important that the consequences for breaking rules are explained to your child before there is a problem. For example, if he or she refuses to clean their room, you may simply tell them that if they don’t they will not be allowed to play with their friends the next day. This allows your child to choose to either follow the rules, or face the consequences. It is crucial that you follow through with discipline in a matter of fact tone using “you choose” language. It also reduces the need for arguing and fighting.”

3. BE CONSISTENT
"If your child refuses to follow a rule, make sure you follow through on the consequence you had discussed. If your child does not clean their room, make sure they are not allowed to play with their friends. Children learn at a very young age that a rule must be enforced regularly to be considered a rule. Children will only take a rule seriously if they believe there will be negative consequences for not following it.”

Homework: 1) Identify areas of inconsistency in your parenting. 2) Enact at least 1 solution from last week’s assignment.
DO YOU PRACTICE CONSISTENT PARENTING?

Do you ever make rules but then not enforce them? Have you ever created a schedule but then failed to stick to it? Perhaps you’ve told your child “no” but then caved in and told them “yes” after they continued to ask. These are examples of inconsistent parenting. These kinds of inconsistencies may confuse your child, make it difficult for them to understand or follow rules, and generally make your job as a parent more difficult. Examine some of the ways a parent may be inconsistent. How many of these have you done recently? Over the course of the next week, note any these inconsistent behaviors you engage in. Be prepared to discuss the inconsistencies you noticed next week.

Inconsistency of Routine

1. Does your child wake up at different times every morning?
2. Does your child go to bed at different times each night?
3. Does your child eat meals at a regularly scheduled time?
4. Are there designated times for play, homework and chores?
5. If your child is on a visitation schedule, is that schedule predictable and followed closely?
6. Is there a set routine regarding waking up in the morning and going to bed at night (brushing teeth, eating breakfast, reading a bedtime story etc)?

Inconsistency of Rules

1. Do you tell your child “no” only to say “yes” later or vice versa?
2. Do you make a rule and then not enforce a punishment when that rule is broken?
3. Do you sometimes enforce the rule and other times not?
4. Is the punishment for breaking a particular rule the same each time or does the punishment vary based on your mood, the day of the week etc.?
5. Does your child understand why rules may change (on the weekend, when guests are present etc?)

Inconsistency Among Parents

1. Does one parent say “yes” after another spouse has already said “no”?
2. Does one parent say “yes” to things the other parent would usually say “no” to?
3. Is the routine at one parent’s home the same as the routine in the other parent’s home?
4. Are the rules the same at one home as they are in the other home?
5. Are the punishments the same at one home as they are in the other?
6. Do you communicate with the other parent regarding your child’s behavior, the rules and punishment?
7. If the rules and routines are different, does the child understand the rules and routines in each home and that they are to follow the appropriate rules and routines for the home they’re in at the time?
8. Are consequences imposed on in one household and followed through with in the other household?
Homework: Enact 1 Solution

The solution I chose to enact is

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

The steps I took toward enacting this solution are

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

I encountered the following difficulties in enacting this solution

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

How well did this solution work?

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Homework: Parenting Inconsistencies

I noted the following areas of inconsistency in my parenting

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________
Session 7:

Review homework. Continue parenting skills: praise/positive attention, behavioral management techniques. How to foster children’s self-esteem, help them manage their anger, and handle conversations with child about the other parent. Role play conversations about the other parent.

Homework: Discuss child’s anger-management plan with them. Problem-solve ways you can help them with their plan. Praise homework.

Review Homework (5 min each assignment): 1) Go around and have each parent report on their attempts at enacting their chosen solution. Discuss any difficulties they encountered. 2) Go around again and ask each parent to report on areas of inconsistency they observed in their parenting. Discuss options for improving consistency in identified areas.

Praise/Positive Attention (3 handouts—Guidelines for praise and positive attention, praising, examples of good and bad praising): “Just as it is important to be consistent in your parenting, it is also important to give your children attention for positive behavior. Parents often forget to pay attention to their children when they are behaving in acceptable or desirable ways. This is especially the case when the parent is busy or stressed, or when they frequently need to reprimand the child for negative behavior. Some parents even begin to fear that if they give their child attention for behaving well, the child will begin to misbehave. Under these circumstances, many children learn that the way to get their parent’s attention is by misbehaving. However, the best way to get your child to behave properly is to pay attention to positive behavior, and ignore non-dangerous (but irritating) negative behaviors.

“We will begin today by discussing the best ways to praise your child and give them positive attention. Many parents inadvertently spoil praise, and then begin to believe that using praise is ineffective with their child. We will discuss the most effective ways to use praise, including when to use it, and how not to spoil it.”

“What are the benefits of using praise rather than punishment?” Have group generate ideas.

- Praise creates a positive relationship with your child. With frequent punishment the parent/child relationship becomes based on negatives.
- Praise teaches your child what to do (proper behavior). Punishment may stop a negative behavior in the short term, but does not provide the child with a positive alternative. Thus, children may revert to their negative behavior in the future.
- Praise increases positive behavior, rather than simply eliminating negative behavior.
- In the long-run, praise helps reduce negative behaviors by increasing positive ones.
- Praise makes your child feel good about themselves and their behaviors. Punishment makes your child feel bad or guilty.
- Using praise more often than punishment makes punishment more effective when it must be used. Frequent punishment makes punishment less effective.
• You should ideally administer praise and punishment in a 10 to 1 ratio respectively.

Go over handouts as a group. Answer any questions the parents have before proceeding to the next section. “Remember, praise and consistency work hand-in-hand. Praise is most effective when it is used consistently. Inconsistent praise is less likely to increase positive behavior.”

Behavior Management Techniques (6 handouts—5 below plus follow-up and maintenance handout):

For each of the following topics, review the handouts in detail with the group. Answer any questions before proceeding. Notify the parents that there are extra sections on parenting in the workbook (not discussed in session) to assist them with child management issues.

Ignoring (1 handout)

Requests (1 handout)

Withdrawing Rewards and Privileges (1 handout)

Time-out (2 handouts)

Helping Children Manage Anger: “Many children respond to their family transition with increased anger. Why might your child feel angry about this transition? Today in the children’s group, your child will be making a plan for how to manage his or her anger. What does your child do when he or she becomes angry? How do you currently handle their anger? During the next week, discuss your child’s anger management plan with them and problem-solve ways that you can help them with their plan. Reinforce any efforts your child makes in following the plan, even if they make mistakes. Next session, we’ll discuss your plan and how it worked during the week.”

Talking About the Other Parent: “In many households affected by divorce, the topic of the other parent becomes taboo, or off-limits. As we mentioned before, this sends the message to the child that there is something wrong with or bad about the other parent. In other households, that message is sent more explicitly, through negative statements about the other parent. Today we are going to role-play ways to handle conversations with your child about the other parent in a positive manner.” Role-play the following situations. (If time, have the group generate more situations to role-play.)

• Your child comes to you and asks why you are getting a divorce.
• Your child doesn’t want to go for their weekend visitation.
• Your child returns from a visit with gifts from the other parent.
• Your child asks you if they can go on a trip out of town with the other parent.
• Your child tells you about the time they spent with the other parent and his or her new boyfriend or girlfriend.
• Your child asks you why you haven’t paid your child support.
• Your child says that they are angry with the other parent or do not like the other parent.
• Your child says that they have more fun with the other parent and want to spend more time with him/her.

Homework: 1) Discuss child’s anger-management plan with them. Problem-solve ways you can help them with their plan. Be prepared to discuss next session. 2) Praise homework: praise your child 3 times per day. Make note of these times and be prepared to share with the group next week.
GUIDELINES FOR PRAISING AND POSITIVE ATTENTION

How to Praise
1. Turn toward your child; establish eye contact; deliver the verbal or physical praise.
2. Provide the praise during or immediately after the desired behavior.
3. Be specific about what the praise is for. With a statement of exactly what your child did that you liked, the child will know what you consider desirable behavior.
4. Be sincere and enthusiastic.
5. Vary your praises from occasion to occasion.
6. Make sure the praises are something your child likes. Some children are embarrassed by physical praise, but enjoy the verbal praise.

What to praise
1. A child doing what the parent asks.
2. A child attempting to do what the parent asks. Break down a task into small steps and praise each little step along the way.
3. Age-appropriate play and task performance.
4. Appropriate play with brothers, sisters, and friends.
5. Positive verbal interactions.
6. Positive responses to others which have not been prompted by the parent.
7. Obvious absence of negative, undesirable habits and behaviors.
8. Any other positive behavior which you would like to see again.

You may have found that in the past, praise did not work. Praise must be done according to these guidelines in order to work. Let’s look at examples of appropriate praise:

1. Verbal Praise
   “Your room looks very clean and tidy.”
   “When you play friendly with Tomas, it makes me very happy.”
   “I liked the way you cleaned your plate.”
   “Thank you for putting away your toys when asked.”

2. Physical Praise
   These could be hugs, kisses, pats, etc.

3. Spoiled Praise
   “Why can’t your room look like this all the time?”
   “I hope you can be ready on time like this all the time.”
   “You put away your toys when I told you, but I shouldn’t have to ask.”

REMEMBER
1. If the verbal or physical rewards you do use do not feel good to the child, it is not praise.
2. Children prefer positive attention, but will seek negative attention above no attention at all.
PRAISING

Remember we discussed how important positive attention and praising were. Now we are going to discuss the importance of offering the child positive attention when he or she is complying with a request. We will discuss how to give good requests in just a bit. For now, we are going to look at rewarding compliance.

Remember, whatever is praised consistently will be repeated. If you want your child to comply with your requests, it is important to consistently praise his or her attempts to comply.

When you give a request, it is necessary that the child receive immediate feedback or praise for initiating compliance. Do not just walk away from your child when he or she is doing something as directed. Take the time to notice and comment on the child’s behavior. Then spend a few moments letting the child know you appreciate the compliance.

Here are some guidelines for praising compliance:

Guidelines

1. As soon as you have given a request and your child begins to comply, provide the child with feedback, as in the following statements:
   “I like it when you do what I asked.”
   “It’s nice that you do what I say.”
   “Thanks for doing what I asked.”
   “Good girl/boy for ________ as I asked you to.”

2. You can use the same methods during play, or any time the child is behaving appropriately and you would like to see the behavior continue. When your child is behaving, simply watch, describe the behavior to the child, and provide periodic feedback for the behavior. Some examples are:
   “It’s nice when you play with your sister so nicely.”
   “Thank you for playing your radio quietly.”
   “I like it when you play carefully with your toys.”

Remember the “sleeping dog gets petted” philosophy. Do not be afraid to disturb the quiet by praising the quiet play.

3. Once you have given the child positive attention, you may leave for a few moments. Be sure to return to the child when he or she is still complying or behaving appropriately to periodically reward the continued behavior. Use statements like these as feedback:
   “You sure are a big boy/girl for doing that without anyone’s help.”
   “I really like it when you do as I asked without me reminding you. Thanks.”
4. If you find that your child has done a chore or followed a household rule without having to be told to do so, that is the time to praise and pay attention to the child. This will help your child to internalize the household rules and want to obey and remember them.

Remember, catch your child being good, and reward him or her for it with praise!
EXAMPLES OF GOOD AND BAD PRASING

GOOD EXAMPLES:
1. “Your room looks very clean and tidy.”
2. “Playing friendly with Tommy makes mother very happy.”
3. “I like the way you cleaned your plate.”
4. “You have such a pretty smile.”
5. “It is so helpful when you have everything ready for school on time.”
6. “You have made a lot of improvement in keeping your clothes picked up.”
7. “Great job on the dishes.”
8. “Thank you for putting away your toys when I asked.”
9. “You made a super good effort at ignoring Sally’s teasing.”

Bad Examples:
1. “Why can’t your room look like this all the time.”
2. “That sure beats how you usually treat your little brother Tommy.”
3. “You ate everything on your plate, but why did it take you twenty minutes?”
4. “Is that a smile or a smirk?”
5. “I hope you can be ready on time like this all the time.”
6. “Your pants are picked up, but I think I see one of your socks over there.”
7. “You put away your toys when I told you, but I shouldn’t even have to ask.”
8. “Great job on the dishes, now how about taking out the garbage like I asked.”
9. “You ignored Sally’s teasing right now. I just hope you don’t get back at her when you are with the babysitter tonight.”
Ignoring

This is a major way to decrease your child’s inappropriate behavior, but you must use it **every** time a particular behavior occurs. Otherwise, the behavior will become worse instead of better. It is important not to ignore behaviors that are dangerous to the child or others. We will learn techniques for the next week. The types of behaviors to ignore are behaviors such as whining, nagging, tattling, and pouting. It is important to note that during the initial stages of this procedure you are likely to see an escalation in the problem behavior before you see extinction of the behavior. For example, it is likely that when you ignore your child’s attempts to interrupt you when you are talking to someone else, your child will increase their efforts to get your attention by increasing their requests, the volume of requests, and other attention-seeking behaviors (e.g., pulling on your arm or clothes). Eventually, if you follow through with the technique and use it consistently, your child will learn that such behavior is not effective and does not result in the desired outcome, so they will stop the behavior.

There are two parts to ignoring: your behavior and your emotions. If you are upset by your child’s behavior it will be difficult for you to ignore it unless you use both parts of ignoring.

When you have decided to use ignoring, let your child know in advance that when he or she does something you do not like, you will ignore the child until he ore she acts appropriately. For example, if your child is whining, you might say, “I will ignore you until you talk to me in a nice voice.” Then, ignore the child until he or she talks without whining. When the child begins to talk appropriately offer positive attention, perhaps complimenting on how nice he or she sounds or how pleasant it is to talk to the child when his or her voice is nice.

How to ignore

1. Identify a previously defined ignorable action.

2. Take a deep breath and tell yourself to “relax.”

3. Depending on the child’s behavior, either act totally as if it had not occurred or turn away from the child. There is to be no eye contact or nonverbal cues (e.g., a frown or a glance) toward the child. You may have to leave the room if you are unable to do this or turn 90-180 degrees from the child. Make sure there is no physical contact.

4. If you have difficulty ignoring, focus on yourself and on relaxing. Breathe slowly and continue telling yourself to relax. Count backwards to yourself or have statements that you have designated to say to yourself during this time (e.g. “I can ignore this behavior. I will ignore this behavior. It is best for me to ignore this behavior.”).

5. As soon as the undesirable behavior stops or when a desirable behavior starts, (even if prompted) offer some meaningful positive attention. (Do not say, “I’m glad you
stopped hitting your sister.” Instead say, “I’m glad you are brushing your doll’s
hair.”)

6. Sometimes you will find that you should have tried something else other than
ignoring. A punishment may be necessary such as the withdrawal of privileges or
rewards. This will be discussed in just a minute.

7. Ignoring and praise work best when used together. The child will almost always
change his or her behavior to do whatever predictably results in meaningful positive
attention. If at all possible, do not confuse your child by responding to behavior you
are trying to ignore.

8. Always praise yourself for successfully ignoring an upsetting behavior.

9. Ignoring is tough and requires much control and consistency. It is not “doing
nothing.” It is hard work to ignore.

10. Ignoring teaches your children which behaviors will not get their attention.

11. Ignoring an annoying behavior discourages your child from doing it again.

12. Sometimes the behavior may get worse before it gets better, but be patient.
Behavior Requests

Giving Good Behavior Requests

1. Be specific and direct. Say exactly what you mean. Do not expect children to guess what you want them to do.

2. Make eye contact and keep your child’s attention.

3. Use a firm voice, not an angry voice; use a slightly louder than usual voice.

4. Give only one request at a time.

5. Do not give requests in the form of questions.

6. Tell the child what you want him or her to do, not what you want him/her to stop doing. This is a “do” request versus a “stop” request.

7. Allow the child 5 seconds or so to begin to comply and warn them of the consequences of noncompliance.

8. Immediately praise the child for compliance or for beginning to comply.

9. Be serious about the requests you give. Do not make many insignificant requests.

Examples of less effective behavior requests

1. Chain Requests: These are a series of requests strung together. Break these types of requests into one request at a time and praise the child after compliance with each step.
   Ex: Rosie, pick up your clothes, take out the trash, and comb your sister’s hair.

2. Vague Requests: These are requests that do not specify behaviors to be performed by the child. These create an ambiguous situation for the child. The child does not know what specifically he is supposed to do.
   Ex. Be a good boy/girl.

3. Question Requests: These are requests that allow the child to say no, and may not appear to the child as requests. The child thinks he/she has an option.
   Ex. Can you pick up your toys?

4. “Let’s” Requests: These are requests that appear to include the parent. This is only appropriate if the parent is really going to help the child. If the parent does not help the child, the child may feel tricked; and may not listen to these kinds of requests in the future.
5. Requests followed by rationale or other statements: These are requests that are followed by an explanation. The explanation or rationale may confuse the child and cause him or her to forget that you made a request. If you are going to explain a request, do so BEFORE you give the request. The child loses the request amongst the explanations.

   Ex. Clean up your room, Laura. Company is coming for dinner and I want the house to be neat. Your room is a mess.

Another trap parents fall into is answering the child after a request. The parent gives a request and the child asks “Why, mommy?” Do not respond until after the child complies with the request.

It is often helpful to give a child a “do” request after a “stop” request. That is, tell the child what you would like him/her to do, after you tell the child “no” or “stop”.

   Ex. Stop playing with the bubble bath. Go brush your doll’s hair.
TIME OUT

1. Time Out is time away from something reinforcing or rewarding.
2. This skill is effective if used exactly as directed.

Using Time Out for Child Noncompliance or Misbehavior

It is important that you never give a request that you are not willing to back up with consequences. Doing so only teaches your child that you do not mean what you say. When your child complies, he or she should be praised and attended to for it. Similarly, when the child does not comply, he or she should be disciplined immediately.

1. Do not repeat your request more than once before providing consequences for noncompliance.
2. Always give your first request to a child in a firm but pleasant voice. Do not yell it at the child, but also do not ask it as a favor.
3. Look at the child and make sure you have the child’s attention. Make it a simple, direct statement providing specific instruction as to what you expect. Do not give complex two-or three-part requests if your child is younger than 8 years of age. (Remember what we said about using good requests.)
4. After you have given the request, count to 5 so the child can hear you.
5. If the child has not made a move to comply within these 5 seconds, you should ask yourself if you have given a “good” request (i.e. clear, short, specific, etc.). If the request was not good, you should restate the request clearly one time. If you initially delivered a clear demand, you should next issue a warning that continued non-compliance will lead to Time Out (e.g. “If you don’t pick up the toys then you will have to go to Time Out”). The warning should be given in a matter-of-fact tone of voice. Do not yell, beg, or physically threaten the child.
6. Having given this warning count silently to 5 again.
7. If the child complies, give praise or attend to the child.
8. If the child fails to initiate compliance within 5 seconds after the warning, then Time Out carried out.

   Say: “Since you did not ________________, you will have to spend ___ minutes in Time Out.” You should take the child firmly by the hand and place him/her in Time Out. Your statement should be stated in a matter-of-fact voice that indicates you are not pleased with your child’s behavior. You should not provide a rationale or argue with the child while taking the child to Time Out or while the child is in Time Out. You should completely ignore tantrums, shouting, protesting, or promising to behave by the child on the way to Time Out or during Time Out.
If you have placed a child in Time Out for failure to perform a task, do not complete the task for the child while in Time Out. As soon as the Time Out period is over, ask him or her again to perform the task. This is essential to the success of the Time Out procedure. If he or she refuses, immediately return the child to Time Out. Repeat this procedure until the task is complete.

The Time Out area should be an uninteresting, dull place; and one which the child does not like, since the Time Out is punishment. Some suggestions for the Time Out area are: the laundry room, the dining room, the hall, etc. You may also have the child sit in a chair facing a corner of a room.

The child should remain in Time Out for at least 5 minutes. Calculate the time for Time Out by assigning 1 minute per each year of age of your child. Release from Time Out is contingent on 1 minute of quiet and still activity in Time Out at the end of the period. You should avoid all verbal interactions during Time Out. This includes answering, arguing, scolding, pleading, etc. When the child has been quiet for the 1 minute period, the child is released from the Time Out area and returned to the situation that elicited the noncompliance. You then repeat your original request.

If your child refuses to go to Time Out or leaves the Time Out area, double the amount of time spent in Time Out for each infraction. If the child talks back on the way to Time Out or during Time Out, you may also increase time spent in Time Out. Sometimes it may be necessary to hold the child in the chair if increasing the Time Out does not work. However, you need to be careful about not engaging in ridiculous power struggles with your child.

If the child makes a mess while in Time Out, the child must serve another Time Out period after cleaning up the area.

**Helpful Hints**

1. Do not answer the child during Time Out.
2. Use Time Out in combination with Ignoring.
3. Praise the child for the first desirable behavior he or she does after Time out, but not too quickly.
4. Make sure the children go back and comply with whatever they refused to comply with the cause the Time Out in the first place. You should be somewhat aloof when the child comes out of Time Out (i.e., not critical/angry or overly attentive/loving).
5. Use a timer like on the stove, if available.
6. Do not release the child from Time Out to eat a meal.
7. Keep attention during Time Out to a **minimum**. You need to “subtly oversee” the Time Out.
TIME OUT PROCEDURES

PRELIMINARIES FOR TIME OUT:

1. Involve your child, rehearse the procedure in a calm manner without the use of threats.

2. Select a suitable place in the home for TIME OUT. Use a chair in the hall or corner. The space should be well lighted, not too closed off, but without “fun potential.” Make sure there are no dangerous materials (glass, medicine etc.).

3. Determine a specific time period for TIME OUT. Five minutes is usually effective. If the child continues unwanted behavior, add one minute to TIME OUT and advise the child of this step.
   a. Always use a timer: Show it to the child to indicate the exact beginning and end of the TIME OUT period.

4. At every phase of TIME OUT, parents must continue to use their skills of positive attention and ignoring. The parents’ ability to ignore diversions is crucial!

5. Make sure that the child is in TIME OUT until they are quiet for at least one minute.

WHEN TO USE TIME OUT:

1. Once the intolerable behavior is observed, the parent should clearly state a verbal directive that the child should immediately STOP the behavior.

2. If the child stops---PRAISE.

3. Otherwise, present a warning signal with:
   a. A clear statement of the intolerable behavior.
   b. The consequences of non-compliance with the request to terminate the behavior (TIME OUT).

Example:
   “I’ve asked you to stop hitting your sister. If you do it one more time, you’ll have to go to TIME OUT.”
   “This is a warming. If you use the words … or … again, you will earn five minutes in TIME OUT .”

4. When the child earns a TIME OUT, he/she must serve it every time. When the child moves toward the TIME OUT room, the parent should acknowledge the compliance with a simple “Thank You.”

5. Parent must show displeasure and firmness without excessive emotional response, in a matter of fact way, keeping physical distance, which means the parent should avoid using physical force to have the child enter the TIME OUT room.
   a. The success of TIME OUT is when the child has learned to stay out rather than to get out.
6. Parents often have difficulty after the TIME OUT period. The best procedure: do not respond to the child until he or she engages in some appropriate activity.

7. TIME OUT is often necessary outside of the home. It is preferable to handle the situation on the spot rather than telling the child TIME OUT will be enforced after returning home. If possible select an out of the way spot (a wall, tree, bench) and instruct the child that they must remain there for the specified TIME OUT period. If not feasible for children under 8, mark for TIME OUT using a non-toxic marker on the child’s hand.

8. One of the keys to TIME OUT is to use it sparingly. It is not a substitute for ignoring or other discipline techniques. You should focus on good behavior more than problem behaviors and use lots of praise to encourage the good behavior.
When to Use Time Out or Withdrawing Rewards and Privileges
Versus Ignoring

What to do for behaviors that are dangerous to the children, others, or just absolutely intolerable.

1. Praise and ignoring are preferred parenting behaviors, but sometimes when misbehavior is serious enough, you need to teach the child what they must not do.

2. Withdrawal of rewards and privileges is better than spanking.

Rules to follow when using withdrawal of rewards and privileges

1. Withdraw rewards and privileges immediately after the behavior or during the behavior that you want to stop.
   Ex. The child is acting out at the grocery store. Tell the child he will not be allowed to watch TV that evening if he does not stop acting out. (Be sure, however, to follow through with the withdrawal.)

2. Remove rewards and privileges that match the degree of behavior.
   Ex. If a child hits his/her sibling, tell him/her that he/she is grounded (e.g., cannot go outside the house except for school, cannot do some other activity, etc…) for 3 days. If a child yells at his/her sibling, tell him/her that he/she is grounded for 1 day. Make sure that you define what “grounding” means.

3. Keep removal of the privilege short. The child will learn to live without that privilege if given enough time to adjust. Therefore, remove privileges for short period of time.

4. Vary which privileges you withdraw. Again, the child will get used to life without the privilege if you remove the same privilege over and over again. Select things that are important and meaningful to you child (television, dessert, video games).

5. Follow through when you say you are going to remove a reward or privilege.
   Consistency is essential.

Do not overuse this skill; vary it with ignoring and other techniques.
FOLLOW-UP AND MAINTENANCE HANDOUT

HOW TO KEEP GOOD THINGS GOING: WHAT YOU DO IS WHAT YOU GET.

1. Remember to PRAISE, PRAISE, PRAISE.
   a. Catch your child being good.
   b. Praise is a gift, if it doesn’t work you haven’t found what is meaningful to your child.
   c. Remember: try to find some good in everything. Praise any approximation to your goal.
   d. Don’t spoil praise with criticism or expectancies.

2. When you want to get things STARTED:
   a. Give a specific prompt – state briefly what the goal is.
   b. Praise any approximations to goal attainment.
   c. Think of what your child wants from you: Empathize - know what your child wants and needs. Model – act as you wish your child to act.

3. When you want to see less of a behavior.
   a. First, try to ignore the behavior.
   b. Use emotional and behavioral ignoring. Emotional ignoring means remaining calm and not reacting to your child’s behavior with anger or frustration. Behavioral ignoring involves physically ignoring your child—avert eye-contact and turn your body away from them until the behavior discontinues. Once the undesired behavior stops, immediately return your attention.
   c. If more progress is needed, a family meeting can help.

4. If a behavior is intolerable:
   a. Use specific requests to terminate.
   b. Praise compliance or repeat request.
   c. Use TIME OUT procedure or remove a privilege.
   d. Use simple, brief penalties and other natural consequences, but avoid physical contact if possible.

5. Extra goodies on Ignoring: How to ignore when you think you can’t.
   a. Identify your feeling – anger, anxiety, frustration.
   b. Use identification as a signal to STOP, take a deep breath, relax, and consider the best course of action.
   c. Remember, it’s OK to be angry, but don’t let your anger control your actions.
LISTENING

Listening is a skill that you can use to help a child feel heard, understood, and valued. Listening to a child does not necessarily mean that you approve of what the child is saying, but it does demonstrate that you care, that are sensitive to the child, and that you are interested in what the child is saying. Effective listening skills can help a child feel less afraid of negative feelings, can help foster warmth between you and the child, and can help a child feel good about herself/himself.

Effective Listening
You can help a child to feel respected, understood, and affirmed by doing the following:

1. **Use simple, noncommittal responses** ("I see." "Wow!" "How about that." "Interesting"). These responses come in handy with imaginative children who say they have superhuman powers.

2. **Use nonverbal responses** (smiles, nods, eye contact – facilitated by getting on the child’s level).

3. **Use verbal responses that encourage the child to express his/her feelings and ideas** ("Tell me about it." "I'd like to hear more about it." "Let's hear what you have to say." "I'm listening." "This seems like something important to you").

4. **Reflect what the child is saying** ("So Suzy shared her lunch with you today." "Billy hit you." "You like to draw happy pictures").

5. **Reflecting the feelings that the child is expressing** ("That really made you angry." "You sound really hurt." "I can see you are really excited!").

Ineffective Listening
Several kinds of remarks/responses that many adults make that are **NOT** listening responses include:

1. **Threatening** (telling the child what will happen if the child behaves in a certain way).

2. **Moralizing, preaching** (telling the child what the child **should** do).

3. **Lecturing, arguing** (trying to convince the child to see the adult's point of view).

4. **Judging, criticizing, blaming** (making a negative evaluation of the child).
5. **Shaming ridiculing, name-calling** (making the child feel foolish, humiliated or ashamed).

6. **Interpreting, diagnosing** (telling the child what the child is thinking or feeling).

7. **Questioning, interrogating** (trying to get more information from the child).

8. **Withdrawing** (withdrawing attention or affection from the child).

9. **Interrupting**

While many of these responses are not always "bad" responses, they are **NOT** listening responses. At times, some of these responses can make a child feel inferior, defensive, embarrassed, not trusted, or angry.

**COMFORTING**

**COMFORTING**
A child often turns to you for comfort when s/he is experiencing feelings of frustration, fear, sadness, or uncertainty. When you offer comfort to the child, s/he is helped to feel secure, attended to, and loved.

**Effective comforting:**

1. **Take time to stop, look, and listen to what the child is saying** (establish eye contact with the child, touch his/her arm, sit the child on your lap, bend down to their level, etc).

2. **Use listening skills. Reflect (restate) feelings that the child is expressing.** This is a particularly effective way of helping the child feel accepted, secure, and comforted.

3. **Use a soothing voice in affirming what the child is saying, provide assurance, and reassure the child that he/she is loved.** (Children benefit from being told: "You are the most special seven year-old I know." "I think you are such a nice kid to be around" “I like you!”).

4. **Comfort the child with gentle strokes, pats, or hugs.** (Be aware of the child’s comfort level with physical affection).

5. **Take extra time, if needed, to allow the child to calm down, be comforted, and reassured** (Do not rush the child through the process).

6. **Use of distractions can sometimes be helpful.** (For example, after the child has been listened to, soothed and assured, you may point out an interesting flower, begin to read a book to the child, get a snack for him/her, or take the child outside to see what kind of animals can be seen in the clouds. These responses should not
be used as bribes for getting the child not to be upset, but should rather be used as a means of redirecting his/her attention.)

7. **Use a special object, such as a favorite blanket, a stuffed animal, a special pillow, etc. to help comfort the child if the child is in the habit of using such objects.**

**Ineffective comforting:**

1. **Do not tell the child to stop crying** (this is rarely successful, and more often has the effect of increasing their crying).

2. **Don’t tell the child that he shouldn’t feel the way he feels** (feelings are valid no matter how irrational).
Homework

1. Discuss your child’s anger management plan. Problem-solve ways you can help them with this plan.

When/where I discussed plan with my child

___________________________________________________

___________________________________________________

___________________________________________________

The way we decided I can help is

___________________________________________________

___________________________________________________

___________________________________________________

Praising

1. Behavior I praised:

___________________________________________________

What I said:

___________________________________________________

___________________________________________________

2. Behavior I praised:

___________________________________________________

What I said:

___________________________________________________

___________________________________________________

3. Behavior I praised:

___________________________________________________

What I said:

___________________________________________________

___________________________________________________
Session 8:

Review progress. Reducing risk for future problems. Discuss areas of concern for the future (e.g., setbacks, beginning to date). Discuss support resources that can assist in the process without litigation (e.g., friends, family, church, etc.). Have them generate a list of phone numbers they can refer to. Termination.

Review homework (5 min each assignment): Go around and discuss 1) Ways they identified to help their child with anger management. Did this plan work? 2) Examples of times they praised their child, what they said, and how the child responded.

Review Progress: “For the last two months we have been meeting and discussing ways to help your child through your family transition. We have discussed the effects of family transitions on children, how to communicate with the other parent, ways of reducing stress, parenting skills, and how to talk to your child about your family transition. What topics have you found the most helpful? Have you noticed any changes in yourself, your child, or your relationships with others as a result of this program?” (Solicit examples.) Ask if anyone spoke to their child about the other parent during the last week. If so, ask them to relate how it went.

Areas of Concern: “We have covered a lot of information in this program, and much of what we covered will require practice to be useful. You may find that some of the information is helpful right away, while other information takes significant work to be of any use. These skills, like any new skills, will become easier and feel more natural the more you use them. And, like any new skill, you may find that sometimes you slip back into old, more familiar habits. If this happens, don’t worry! This is normal. It’s even expected. When you catch yourself reverting to old behaviors, don’t beat yourself up about it. Simply remind yourself that everyone makes mistakes, and begin using the new skills again. You may find that you have several “setbacks” along the way. The best way to change old patterns, however, is to simply catch yourself in a setback, remind yourself to use the new skills, and move forward. If you worry about the setback, you will only stress yourself out and make yourself feel bad, which will make it more difficult to change.”

“Are there any situations you can foresee in the future that might create difficulty with your child or the other parent?” (Solicit examples and problem-solve potential solutions. If they do not generate any ideas, start them off with the example of their beginning to date).

Resources: “As we mentioned in the stress-reduction session, social support can help reduce stress. For some of you, this group may have served as a form of support, or at least a place to turn to for answers to difficult situations you encounter during your family’s transition. Now that group is ending, it may be helpful to remind yourself of the other sources of support you can turn to.” (Have them turn to blank list in workbook). “On this sheet, write down the names and phone numbers of people or places you can turn to when you need support or advice. You may want to include friends, family members, and organizations you belong to (e.g., a church group). Keep
this list in a convenient place and use it (that means actually contacting somebody) when you need to. Remember, you don’t have to go through this alone! If you feel like you need more help than your current support network can provide, please contact a mental health professional from the list of referrals we have provided.

“If you find it difficult to resolve problems with the other parent with the skills you have learned in this program, it might be tempting to attempt further litigation. Before returning to court, remember that continued litigation can be harmful for your family and your child’s transition. Returning to court promotes adversarial views, and fighting for opposing goals. Such opposition, especially when it revolves around the children, makes the children’s transition much more difficult. Cooperation and peaceful resolution are optimal for your child’s adjustment. Before returning to the court system, consider the other available options, such as counseling (including co-parenting training), parenting coordinators, and mediation. Sometimes a mutually agreed upon friend or family member can informally help mediate a problem.”

Looking to the Future: Dating and remarriage.

“For some of you, it may be difficult to imagine getting into another relationship at this point, but as we mentioned in the first session, the majority of parents will marry again within 5 years. How do you think that your dating or remarriage may affect your children?”

“When you do begin to date again, you may be tempted to include your new partner in all of your activities with your children. How do you think this might impact your children? What could you do to avoid any potentially negative reactions on the part of your children?” “One thing that will be important for your children is for them to get time alone with you, without your new partner around. Why do you think this is important?” “Some of you may think, “I never spent time alone with my child when I was married before, isn’t spending time with me and my new partner the same as spending time with me and their other parent?” The answer to this question is a resounding “No!” Even though your new partner may have the same role in your life as your old partner did, he or she will not have the same role in your children’s lives. Expecting them to take the place of your child’s other parent will surely lead to disappointment. Even if your child likes your new partner and they get along well, this person is still not your child’s other parent, and your child may feel resentful of your new partner if they feel that this new person is getting all of your attention. It is important for your child to know that they hold a special place with you, and this can best be done by spending time in activities alone with your child sometimes.”

“How long do you think it will take your children to adjust to a new family (remarriage)?” “What difficulties do you think you might face during this transition?” “What do you think you could do to minimize these difficulties?” Therapists—see below for answers.

“When you remarry, you may find that the transition is more difficult than you expected. You, your new spouse, and your children will have yet another family transition to adjust to, and this takes time. Just like divorce, it often takes children about 2 years to adjust to
their parents' remarriage. The stress of this transition means that you are less likely to have a “honeymoon” period with your new spouse. You should also be prepared for your children to have more negative interactions and conflicts with your new spouse than with you or their other parent. It may be difficult for your child to accept your new spouse in the role of parent, especially at first. Encourage your new spouse to show interest in your child’s life without attempting to discipline them. Even if your new spouse has great parenting skills, your child will need time (at least a year, possibly two) to get used to the idea of this new person in the parent role, so it is best not to force your child to accept them. Give your child time to adjust, and ask your new spouse not to act in a parenting role (e.g., making and enforcing rules) until your child seems ready. Remember, a stepfamily is different from a nuclear family...you will face different stresses and challenges than a nuclear family does. If you expect to remarry and live as though the new marriage is your original marriage and your first marriage never happened, you will be disappointed, and are more likely to divorce again (Based on the research of James Bray, Ph.D.).”
### My Phone List

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Ten Tips for the Holidays
From http://emeryondivorce.com/ten_tips_for_the_holidays.php

1. **Remember the holidays are not all about you.**
   Your children deserve their celebrations even if you feel cheated out of yours. Encourage them to have a blast with their other parent, even if you can’t stand the prospect of being alone.

2. **Get into the spirit of the season.**
   This is a time of giving, forgiving, and fresh starts. Turn Scrooge's emotional lessons about holidays past, present, and yet to come into New Year's resolutions about letting go of anger and treasuring all you have -- despite all you have lost.

3. **Another lesson from Scrooge: Love means far more than money.**
   Your time, attention, and emotional presence are much more important to your children than lavish gifts. You may be short on money but you can be long on love. Find fun things to do, not just nice things to buy/give.

4. **The holidays are not a competition with your ex or for your children.**
   Teach your children the true meaning of the holidays, not the meaninglessness of materialism.

5. **Communicate and coordinate with your children's other parent.**
   A brief email, telephone message, or conversation can insure that you don’t duplicate presents or plan back-to-back feasts for stuffed and confused children. Ten minutes now can save days (or weeks) of fuming later. (If communicating with your ex takes more than 10 minutes, you probably are getting into issues better left for another time.)

6. **Do the details.**
   Work out exactly where your children will be during what times, and when, where, and how exchanges will take place. Your children will feel more secure, and all of you will avoid frustration and disappointment.

7. **Celebrate with your children's other parent.**
   Consider celebrating part of the holidays together with your children’s other parent, especially if your separation is fairly recent. Some people are shocked when divorced families celebrate holidays or birthdays together. Go ahead and shock them!

8. **Set up a plan for next year now.**
   If you went through the agony of 11th hour negotiations this year, set up a plan for next year now (or after New Year’s). Everyone will be happier knowing what is coming, and avoiding conflict on the eve of the holidays.

9. **Plan in advance with your extended family.**
   Work things out in advance with your own extended family too, whether that
means that you say "no," spend the holidays a little differently than usual, or ask for your family’s understanding and help.

10. **Establish traditions with your children.**
Establish traditions with your children, even new ones that may be off time or different from past rituals. Your kids may not remember the details of 2004, but year-in, year-out traditions will stay with them for a lifetime.
Parent Resources

www.divorcemagazine.com: Online magazine that provides area specific resources.

www.divorceasfriends.com: Bill Ferguson guides you through healing your hurt, resolving personal issues and ending conflict with your ex-spouse.

www.ourfamilywizard.com: Interactive and secure means for separated or divorced parents to communicate and share information between households.

www.divorce-online.com: Provides articles and information on a wide range of topics related to divorce.

www.divorceandfamilies.com: Offers help to families in transition (by Stephen Loughhead)

www.divorceandchildren.com: Offers helpful information and advice for parents on divorce related issues (by Christina McGhee)


www.proudtoparent.org/professionalscorner.cfm: This website is sponsored by the Freedom 22 Foundation and is for parents who have never been married to each other.

www.uptoparents.com: This website is sponsored by the Freedom 22 Foundation and is for divorcing and divorced parents.

Books For Adults:

Mom's House, Dad's House, making two homes for your child. Isolina Ricci, Ph.D. A complete guide for parents who are separated, divorced, or remarried.

We're Still Family, what grown children have to say about their parents' divorce. Constance Ahrons, Ph.D. By listening to the voices of these grown children, divorcing parents will learn what they can do to maintain family bonds. Also by Dr. Ahrons, The Good Divorce.


Joint Custody with a Jerk. Julie Ross and Judy Corcoran. A funny title dealing with a serious subject. How to co-parent with an uncooperative ex.

Because Life Goes On - Helping Children and Youth Live with Separation and Divorce. This is a thorough and useful guide for parents and others trying to help children.


Stepfamilies. Dr. James Bray and John Kelly. Answers important questions of stepfamily life.

How to Win as a Stepfamily. Emily Visher, Ph.D. and John Visher, M.D. Written by the founders of the Stepfamily Association of America.

Books for Children:


What Children Need to Know When Parents Get Divorced. William L. Coleman.

It's Not Your Fault, Koko Bear. Vicki Lansky.

I Don't Want to Talk About It. Jeanie Franz Ransom and Kathryn Kunz Finney.

Let's Talk About It: Divorce. Fred Rogers.

Mom and Dad Don't Live Together Anymore. Kathy Stinson and Nancy Lou Reynolds.

At Daddy's on Saturdays. Linda Walvoord Girard and Judith Friedman.

Two Homes. Claire Masurel and Kady MacDonald Denton.

Are We Divorced Too Daddy? Vickie Gunnells-Hodge.

Missing Rabbit. Roni Schotter (ages 3-6)

My Stick Family. Natalie Reilly and Brandi Pavaese.


When Mom and Dad Divorce. S. Nickman.

The Kansas Legal Services Children's Advocacy Resource Center is pleased to present this training opportunity at no cost to you.

Continuing Legal Education credit is pending.

Registrations for this training should be faxed, mailed, emailed or phoned at least one week prior to the scheduled training date to:

Marilyn Rohrer
Kansas Legal Services
712 S. Kansas Avenue, Suite 200
Topeka KS 66603
Ph: 785-233-2068
Fax: 785-354-8311
Email: rohrerm@klsinc.org
Cross Examination of a Guardian Ad Litem

1. You are a licensed lawyer?
2. You do not have a degree in social work?
3. In fact you do not have any social work experience?
4. You do not have a degree in psychology?
5. You do not have any experience as a psychologist?
6. You have not had any training to serve as a GAL?
7. You have not taken any special courses to serve as a GAL?
8. You filed your report three weeks ago?
9. Please review your report carefully and let me know if this is the report you filed in this case.
10. The report is accurate?
11. You included everything that was important in your report?
12. You included all material facts in the report?
13. You did not leave out any information you relied upon to reach your conclusions and/or recommendations?
14. Your report is complete?
15. There are no errors that you need to correct in this report?
16. There are no omissions that you need to include in the report?
17. Is there anything that you need to add or delete from the report?

18. Are there any amendments to the report?

19. Prior to filing the report with the Court you spoke to the Mother about your findings?

20. You did not speak to the Father?

21. You threatened the Father with a negative report if he did not settle at mediation?

22. Let me show you your billing records. Are these the complete billing records?

23. They are accurate?

24. You spent six hours meeting with the Mother?

25. You spent two hours meeting with the Father?

26. You spent more time meeting with the Mother than the Father?

27. The father provided you a list of 10 witnesses?

28. The mother provided you a list of 8 witnesses?

29. Even though the Father provided you with more witnesses, you spent more time speaking with the Mother’s witnesses?

30. You did not speak to all of the witnesses provided by the Father?
31. The father made allegations that the Mother took the child to school late?

32. The Father listed the teacher as one of the witnesses?

33. You did not go to school?

34. You did not speak to the teachers?

35. You did not investigate all of the allegations raised in his case?

36. You did not investigate all of the allegations raised by the Father?

37. The Mother alleged that the Father never met the child’s medical needs?

38. You did not meet with the child’s pediatrician?

39. You did not obtain the child’s medical records?

40. Even though you did not independently verify the Mother’s allegations you included them in your report?

41. Additionally, you never discussed these allegations with the Father?

42. You failed to allow him to respond and provide you with his version of the allegations?

43. Do you believe that it is necessary for a GAL to fully review all the pleadings filed in a case?
44. As a GAL you do not think it is possible to fully investigate the best interest of the child without knowing all the allegations, do you?

45. You did not review the Court file?

46. You only reviewed the pleadings and documents provided to you?

47. You never reviewed the child’s school records?

48. You never met with the child’s teachers?

49. You served as a GAL before?

50. You served as a GAL in 5 cases before?

51. In all 4 of the prior cases, you recommended that the court award the Mother custody?

52. You believe children should be in the primary care of their mother?

53. You met with the child on four different occasions?

54. The child in this case is 15?

55. He is in Honors English and Mathematics?

56. He is on two varsity teams at school?

57. The child is mature for his age?
58. In fact in your report you state that the child acts mature beyond his years?

59. You agree that the child is capable of knowing and expressing his opinion?

60. The child expressed a preference with respect to the custodial arrangement?

61. You did not consider the child’s preference in reaching your recommendations?

62. You did not include the child’s preference in your report?

63. The Father told you that the Mother has told the child about the case?

64. In fact you saw a diary journal by the child where he writes that his mother told him?

65. The father told you that the mother tells the child that the father is evil?

66. In fact, one of the witnesses told you that he heard themother say things to the child?

67. You agree with me that if true the mother’s actions are improper?

68. You did not include in your report anything about the mother telling the child about the case?
Children’s Advocacy Resource Center

GUARDIAN AD LITEM TRAINING

Salina Holiday Inn
September 30, 2005

AGENDA

8:15 – 8:45 am  Registration

8:45 – 9:35  UNDERSTANDING CHILDREN’S MENTAL HEALTH ISSUES  Jane Adams, Executive Director
Keys for Networking
Bethany Roberts, JD
Kansas Legal Services

9:35 – 9:45  Break

9:45 – 10:35  ADVOCACY AND DISABILITY  Kirk Lowry, Executive Director
Kansas Independent Living
Resource Center

10:35 – 10:45  Break

10:45 – 11:35  THE CRIMINALIZATION OF DISABILITY  Kirk Lowry, Executive Director
Kansas Independent Living
Resource Center

11:35 – 1:00  Lunch (on your own)

1:00 – 1:50  ROLES AND RESPONSIBILITIES  Honorable Timothy H. Henderson
Wichita, KS

1:50 – 2:00  Break

2:00 – 2:50  REASONABLE EFFORTS  Honorable Timothy H. Henderson
Wichita, KS

2:50 – 3:00  Break

3:00 – 3:50  FOSTER CARE’S IMPACT ON YOUTH  Deanne Dinkel, LBSW, and the
Kansas Youth Advisory Council
Please complete this evaluation form in order to assist us in evaluating this training. Thank you for your input.

1. Were the learning objectives of the training clearly expressed to you?

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6. Was this training worth your time in attendance?

7. How could the training be improved?

8. Please make suggestions for other programs/topics you would like to see offered in the future.

(2 evaluations were turned in from 12 participants.)
Please complete this evaluation form in order to assist us in evaluating this training. Thank you for your input.

1. Were the learning objectives of the training clearly expressed to you?

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6. Was this training worth your time in attendance?
Yes.
Yes.
Yes, the judge was very interesting.
Somewhat.
Yes.
Yes.
Yes.
Yes.
This was the best GAL training of the 2-3 I've attended.
Yes. Judge Henderson was great.
Yes.
Yes.
Most of it.
Yes.
Yes.
Yes.
Yes.
Most definitely. Only CLE that gave info I can use at work.
Yes.
Yes.
Yes. Ethics pitfalls to learn and avoid are always helpful.
Yes.
Yes.
Yes.
Yes, because of Judge Henderson's presentations.
Yes.
Yes.

7. How could the training be improved?
   Too much debate on Schiavo/Cruzan issues -- focus of section totally lost - learned nothing.
The Criminalization of Disability was really not gone into much and that was the part of the agenda I thought was the most important.
Go over the material in another CLE.
Leave Mr. Lowry home -- awful.
Keep it concrete, not fuzzy.
Skills-based. "How to" activity on printed material.
Bigger room, possibly a panel discussion with parents' attorney, GAL, court or district attorneys, a judge.
Difficulty hearing youth speak. Microphone would improve.
Not debate dead issues.
The mental health speaker only balked about the negative aspects of treatment In foster care, but offered little suggestions on more practical solutions to teach us how to work with in the system.
Overhead of graphs.
More info regarding Stantes/case law

8. Please make suggestions for other programs/topics you would like to see offered in the future.
The new role of the independent contractor (i.e. The Farm).
Advantages or disadvantages on opting for release of case at age 18.
Juvenile cases.
Representing children in juvenile offender cases.
How can GALs get all the agencies, i.e. SRS/subcontractors, work together for help with kids. All though we all agree on goals, it often seems we are at odds and just can't get things done, even when court ordered. How can we "all get along" but also get things done?
A discussion of the Ross case and situations which come up in court relative to Ross.
Case law updates, trial advocacy Info.
More description of independent living resources.

(30 evaluations were turned in from 51 participants.)
Please complete this evaluation form in order to assist us in evaluating this training. Thank you for your input.

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5. Please evaluate the effectiveness of the trainers in regard to delivery/content.

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<tr>
<td>Jane Adams</td>
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<tr>
<td>Kirk Lowry</td>
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<tr>
<td>Tim Henderson</td>
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<td>Deanne Dinkel</td>
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6. Was this training worth your time in attendance?
Yes.
Yes.
Yes.
Yes.
Yes.
Yes.
Yes.
Yes.
Yes.
Yes.
Yes.
Yes.
Yes.
Yes.
Great.
Yes.
Yes.
Yes.
Yes.
Yes.
Yes.
Yes.
Yes.
Yes.
Yes.
Yes.
Absolutely -- wonderful that these youths came to share information with us.
Absolutely.
Yes -- thank you for making it available to me. Judge Henderson's presentation was
most helpful.
Yes.

7. How could the training be improved?
Already good.
N/A.
Keep alphabet soup terminology to the minimum.
Please do not bring in presenters who are going to preach their agenda.
Lose Lowry. I really enjoyed the youth -- maybe more of the "other side" or the "real
story" of foster care.
Disability of parent in CINC.
Longer question & answer period.
Although Mr. Lowry had good information and handout packet, I found some of his
comments inappropriate and insulting. This took away the focus of the
presentation and was also disruptive.

8. Please make suggestions for other programs/topics you would like to see offered in the
future.
Mr. Lowry lost credibility based on some of his statements. Should acknowledge the
legitimacy of other viewpoints.
I suggest getting a parent's attorney's perspective in your training.
Lower standards for term of parental rights in CINCs.
Mentally disabled parents rights in CINC cases.
Judge Henderson is very informative and does a fantastic job.
More speakers like Judge Henderson.
Annie Casey curriculum for foster parents
SRS/contractor expectations for foster parents.

(30 evaluations were turned in from 91 participants.)
Please complete this evaluation form in order to assist us in evaluating this training. Thank you for your input.

1. Were the learning objectives of the training clearly expressed to you?

<table>
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<tr>
<td>Understanding Children's Mental Health Issues</td>
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<td>Foster Care’s Impact on Youth</td>
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2. Were the learning objectives of the training achieved?

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3. What was your level of understanding before the training?

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4. What was your level of understanding after the training?

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5. Please evaluate the effectiveness of the trainers in regard to delivery/content.

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6. Was this training worth your time in attendance?
   Yes
   Yes. Great idea bringing in the kids at the end!
   Yes.
   Absolutely.
   Yes.
   Yes.
   Yes.
   Yes. Excellent!
   Yes.
   Yes.
   Yes.
   Yes.
   Yes.
   Overall. The foster children were amazing!

7. How could the training be improved?
   Fewer long, dramatic pauses by the first 2 speakers.
   Microphone would have helped on a couple of speakers.
   Provide a list of authors and titles on various subjects.
   No room for improvements.
   More from kids.
   Would have liked more basic process too.

8. Please make suggestions for other programs/topics you would like to see offered in the future.
   GALs in domestic cases/custody issues.

(19 evaluations were turned in from 34 participants.)
PSB maintains a list of over 250 lawyers who have agreed to accept appointment as a Guardian Ad Litem (GAL). When a judge has determined that a case before him or her merits the appointment of a GAL, that judge can call PSB at the above-listed telephone number and obtain the name and address of a GAL willing to serve. The judge will be provided with an Order of Appointment to be signed and sent to the Guardian Ad Litem and PSB. The Guardian Ad Litem will then return to the Court an Oath of Acceptance of Appointment and proceed to represent the child's interest. PSB will open a case file for each appointment and monitor the case until the Guardian Ad Litem is discharged by court order.

While Guardian Ad Litems have agreed to serve pro bono, all Guardian Ad Litems will file a Motion for Fees prior to any Motion for Discharge. If fees are awarded, they will be rebated to PSB.

The Guardian Ad Litem will attend all hearings relating to the child's interests, unless excused by the court. The Guardian Ad Litem will submit a written or oral report to the court and perform any and all duties necessary to represent the best interests of the child.
PROCEDURAL GUIDELINES FOR GUARDIAN AD LITEM

1. Appointment
   a. Put Something Back will receive a call from a judicial assistant asking for the name of the next available attorney. Put Something Back provides the name of an attorney willing to accept a case.
   b. Attorney/Guardian Ad Litem receives Order of Appointment from the Court.
   c. Attorney/Guardian Ad Litem sends Oath of Acceptance of Appointment to the Court and PSB.

2. Information Gathering
   a. The Guardian Ad Litem will contact the Attorney of record for the parties and request all pleadings and necessary information, including any home study and mediation reports.
   b. The GAL will gather any and all necessary records and information.
   c. The GAL will interview the child (if necessary) and all interested parties.
   d. The GAL will conduct a home study if appropriate or review the home study of social services agencies.
   e. The GAL will have the parents sign releases if necessary to obtain additional information.

3. Court Appearances
   a. Attend all court appearances unless excused by the Judge.
   b. Issue subpoenas if necessary for witnesses (contact PSB if costs for subpoenas are required).
   c. Prepare written or oral report for the Court and submit same to all parties prior to the final hearing.
   d. Keep time records and file a Motion for Fees prior to the date of the final hearing and provide all parties with copies of the same. This is a "pro bono" project, and all fees collected shall be rebated to PSB.

   NOTE: It is expected that in most cases, fees may not be awarded.
e. File a Motion for Discharge upon completion of representation.

f. Copies of: Order of Appointment  
   Acceptance of Appointment  
   Motion for Fees  
   Order for Discharge  

   shall be sent to PSB.

g. All requests for updates from PSB to GALs will be timely returned.

4. Costs

a. The costs memorandum you will receive from Put Something Back sets out how to bill for costs.

b. PSB does not reimburse for costs such as couriers, copies, postage, secretaries, paralegals, and long distance calls.

c. PSB will cover costs up to $150.00 per case without pre-approval. PSB has a list of vendors who will provide their services free of charge or on a low-fee basis. If the GAL needs a private process server, court reporter, investigator, mediator, or translator, please call PSB for information on vendors.
WHAT IS THE AUTHORITY FOR APPOINTMENT OF A GUARDIAN AD LITEM IN FLORIDA?

Currently, under Chapter 61 of Florida Statutes (amended in 1994), the court may appoint a Guardian ad litem (GAL) in an action for dissolution of marriage, modification, parental responsibility, custody, or visitation. The Court's primary motivation for such an appointment should be to enhance the soundest possible decision-making by the court when it is determined that the child's interest will not otherwise be fully protected or made known to the court. When allegations of child abuse or neglect are well-founded, the court must appoint a GAL.

THE GAL'S RESPONSIBILITIES

The appointed GAL acts as a party to any judicial proceeding until discharged. The GAL may investigate allegations of the pleadings affecting the child and may interview the child, witnesses, or any person having information concerning the child's welfare. The GAL will make recommendations such as parental responsibility, residence, visitation, and psychological evaluations of the parents or child. In custody cases, the GAL should consider such things as the love, affection, and other emotional ties between the parents and the child; the moral fitness of the parents; the parents' capacity to best provide such necessities as food, clothing, and medical care; the mental and physical health of the parents; the child's community record; and if appropriate, the preference of the child. Also, the GAL should consider the length of time the child has lived and may continue to live in an adequate and stable environment.

Chapter 61 requires a GAL to be represented by counsel when his or her participation in a case goes beyond the duties of investigation and making written and oral recommendations to the court. Only through counsel may a GAL petition the court for an order directed to a specified person, agency, or organization. Sections 61.403 (2), (3) and (6) expressly require that a GAL in Chapter 61 proceedings have legal representation to petition the court for an
order directing inspecting and copying of records; to request expert examinations; to file pleadings, motions or petitions; to request and provide discovery; to be present and participate in depositions, hearings and other proceedings; or to compel the attendance of witnesses.

In 1994, Florida added provisions which clarify that a GAL not act in any legal capacity but only impartially, as "next friend of the child, investigator or evaluator." Most significantly, this provision disallows the GAL from representing the child as legal counsel, which may be appointed only separately. The requirement of separate legal counsel likely serves to insure that the GAL appear credible and completely objective. Such credibility and objectivity is critical where litigation is hotly contested. Because custody cases frequently involve bitter disputes, the GAL must freely and effectively focus on the child's best interests without the distractions and demands of acting as an attorney.

SYNOPSIS OF GAL'S POWERS AND AUTHORITY

The GAL has the following powers and authority under 61.403 (Ch. 94-204, sec. 3) current Florida law:

1) The GAL may investigate the allegations of the pleadings affecting the child, and, after proper notice to interested parties to the litigation and subject to conditions set by the court, may interview the child, witnesses, or any other person having information concerning the welfare of the child.

2) The GAL, through counsel, may petition the court for an order directed to a specified person, agency, or organization, including but not limited to, hospitals, medical doctors, dentists, psychologists, and psychiatrists, which order directs that the GAL be allowed to inspect and copy any records and documents which relate to the minor child or to the child's parents or other custodial persons or household members with whom the child resides. Such order shall be obtained only after notice to all parties and hearing thereon.

3) The GAL, through counsel, may request the court order expert examinations of the child, the child's parents, or other interested parties in the action, by medical doctors, dentists, and other providers of health care including psychiatrists, psychologists, or other mental health professionals.
4) The GAL may assist the court in obtaining impartial expert examinations.

5) The GAL may address the court and make written or oral recommendations to the court. The GAL shall file a written report which may include recommendations and a statement of the wishes of the child. The report must be filed and served on all parties at least 20 days prior to the hearing at which it will be presented unless the court waives such time limit. The GAL must be provided with copies of all pleadings, notices, and other documents filed in the action and is entitled to reasonable notice before any action affecting the child is taken by either of the parties, their counsel or the court.

6) A GAL, acting through counsel, may file such pleadings, motions, or petitions for relief as the GAL deems appropriate or necessary in the furtherance of the guardian's function. The GAL, through counsel, is entitled to be present and to participate in all depositions, hearings, and other proceedings in the action, and, through counsel, may compel the attendance of witnesses.

7) The duties and rights of nonattorney guardians do not include the right to practice law.

8) The GAL shall submit his recommendations to the court regarding any stipulation or agreement, whether incidental, temporary, or permanent, which affects the interest or welfare of the minor child, within 10 days after the date such stipulation or agreement is served upon the guardian ad litem.
WHEN WILL THE COURT APPOINT A GUARDIAN AD LITEM?

1. Criteria for Appointment
   a) Allegations of physical or sexual abuse
   b) Handicapped children if adversity between the interests of parents and child exists.
   c) Previous involvement by parents with HRS foster care or dependency.
   d) Neither parent desires custody.
   e) Primary residence or non-residential parent contact is contested.

2. The fact that one or all custody claimants oppose or favor the appointment of guardian ad litem should not necessarily be conclusive.

3. Questions to ask:
   1. Are child's interests adequately protected?
   2. Are the parents unwilling or unable to provide for or represent the child's best interest?
   3. Have the parties been to mediation and could they resolve custody issues there?
   4. Are the child's interests clearly adverse to the parent's interests?

4. Criteria to decline appointment:
   a) Appointment would be duplicitous of functions performed by others already on case.
b) Appointment would cause a delay in proceeding that would be hazardous to child.

c) The custody dispute can be resolved through Mediation.

WHAT MINIMAL STANDARDS MUST THE GUARDIAN AD LITEM MEET?

1. Licensed attorney with Florida Bar.

2. Agreed to accept cases pro bono.

3. Attended orientation and training.
IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO.:

__________________________________/

Petitioner

vs.

__________________________________/

Respondent

ACCEPTANCE OF APPOINTMENT

Pursuant to Order of this Court dated _________________, wherein
_________________ was appointed to represent _________________________________, a child,
and a party to this case, be it known that:

I, ___________________________________________, do hereby accept appointment as
guardian ad litem of the above-named child in these proceedings.

DATED at Miami, Florida, Dade County, this _____ day of _______________, 20__.

_________________________________
GUARDIAN AD LITEM

Copies to:

Put Something Back
123 N.W. 1st Avenue
Miami, Florida 33128
IN THE CIRCUIT COURT OF THE 11TH JUDICIAL CIRCUIT, IN AND FOR DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO.: 

__________________________________/

Petitioner

vs.

__________________________________/

Respondent

ORDER APPOINTING GUARDIAN AD LITEM

Pursuant to Florida Statutes and by authority of this Court, as the within proceedings are of a kind where appointment of a guardian ad litem is desirable, it is therefore

ORDERED THAT:

1. ____________________________________, is hereby appointed to act as guardian ad litem for ____________________________________, a child.

2. That upon presentation of this Order to any agency, hospital, organization, school, person of office, including the Clerk of this Court, the Department of Health and Rehabilitative Services, human service and/or child-caring agency, public and private health facilities, medical and mental health professionals, including doctors, nurses, pediatricians, psychologists, psychiatrists, counselors and staff, and law enforcement agencies, the individual designated by this Order is hereby authorized to inspect and copy any records relating to the above-named child without the consent of said child or the parents of said child.

3. The guardian ad litem shall maintain any information received from any such source as confidential and will not disclose the same except in reports to the Court and other parties to this
cause.

4. The guardian ad litem shall appear at all hearings or proceedings scheduled in this cause and assure proper representation of the child at said hearings.

5. The guardian ad litem shall be notified of any hearings, investigations, depositions or other proceedings concerning the child and shall be notified prior to any action taken on behalf of the child by any party.

6. The guardian ad litem assigned to this cause shall be party to any agreement or plan entered into on behalf of this child.

DONE AND ORDERED at Miami, Florida, Dade County, this ________ day of ________________________, 20__.  

_________________________________  CIRCUIT JUDGE  

Copies to:  

Put Something Back  
123 N.W. 1st Avenue  
Miami, Florida 33128
MOTION FOR DISCHARGE
ASSESSMENT OF COSTS AND FEES

COMES NOW, _______________________________________________________,
atorney/guardian ad litem for ________________________________________, a Child, and
moves for discharge as attorney/guardian ad litem, and shows in support thereof:

1. That he/she is the appointed attorney/guardian ad litem for the Child by Order of this
   Court dated ___________________________________________.

2. That he/she has completed his/her service as attorney/guardian ad litem on behalf of this
   child.

3. That he/she has performed the following tasks as attorney/guardian ad litem:
4. That he/she expanded approximately ________ hours in discharge of his/her duties, and $________ in costs, including __________________________________________, and is entitled to reasonable fees and costs under Florida Statutes 61.16, 415.508(2), 744.108, and 744.424(3).

5. That an affidavit setting forth said costs and an affidavit of reasonable attorney's fees is attached hereto and incorporated by reference herein, in haec verba.

WHEREFORE, counsel prays that Orders issue permitting (a) his/her discharge as attorney/guardian ad litem, and (b) awarding him/her reasonable attorney's fees and costs.

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was mailed this _____ day of ____________________________, 20____, to

ATTORNEY/GUARDIAN AD
LITEM
IN THE CIRCUIT COURT OF THE 11TH
JUDICIAL CIRCUIT, IN AND FOR
DADE COUNTY, FLORIDA

FAMILY DIVISION

CASE NO.:

__________________________________/

Petitioner

vs.

__________________________________/

Respondent

ACCEPTANCE OF APPOINTMENT

Pursuant to Order of this Court dated ________________, wherein this attorney
was appointed to represent _________________________________, a child, and a party to this
case, be it known that:

I, ___________________________________________, an attorney licensed to practice law
in the State of Florida, Florida Bar Number ________________, do hereby accept appointment as
attorney/guardian ad litem of the above-named child in these proceedings.

DATED at Miami, Florida, Dade County, this _____ day of _______________, 20___.

_________________________________

ATTORNEY/GUARDIAN AD
LITEM

Copies to:

Put Something Back
123 N.W. 1st Avenue
Miami, Florida  33128
ORDER APPOINTING ATTORNEY/GUARDIAN AD LITEM

Pursuant to Florida Statutes and by authority of this Court, as the within proceedings are of a kind where appointment of an attorney/guardian ad litem is desirable, it is therefore ORDERED THAT:

1. ________________________________, an attorney licensed to practice law in the State of Florida, is hereby appointed to act as attorney/guardian ad litem for ________________________________, a child.

2. That upon presentation of this Order to any agency, hospital, organization, school, person of office, including the Clerk of this Court, the Department of Health and Rehabilitative Services, human service and/or child-caring agency, public and private health facilities, medical and mental health professionals, including doctors, nurses, pediatricians, psychologists, psychiatrists, counselors and staff, and law enforcement agencies, the individual designated by this Order is hereby authorized to inspect and copy any records relating to the above-named child without the consent of said child or the parents of said child.

3. The attorney/guardian ad litem shall maintain any information received from any such
source as confidential and will not disclose the same except in reports to the Court and other parties to this cause.

4. The attorney/guardian ad litem shall appear at all hearings or proceedings scheduled in this cause and assure proper representation of the child at said hearings.

5. The attorney/guardian at litem shall be notified of any hearings, investigations, depositions or other proceedings concerning the child and shall be notified prior to any action taken on behalf of the child by any party.

6. The attorney/guardian ad litem assigned to this cause shall be party to any agreement or plan entered into on behalf of this child.

DONE AND ORDERED at Miami, Florida, Dade County, this ________ day of ______________________, 199__.

_________________________________
CIRCUIT JUDGE

Copies to:

Put Something Back
123 N.W. 1st Avenue
Miami, Florida  33128
**Put Something Back**
A Joint Pro Bono Project of the Eleventh Judicial Circuit and Dade County Bar Association

and the

**11th Judicial Circuit Guardian Ad Litem Program**

Present

**A CHILD'S GUARDIAN AD LITEM IN CRIMINAL COURT**

The purpose of this seminar is to train attorneys to protect the rights of children who are victims of or witnesses to a crime. No criminal experience is necessary. Topics include: The Role of the GAL in Criminal Court, Dynamics of Physical & Sexual Abuse, Impact of Criminal Legal Process on Children and Case Law Update.

**FACULTY**

HONORABLE ELLEN L. LEESFIELD
HONORABLE VICTORIA PLATZER
JONI GOODMAN, MSW
ROBERT KELLEY, LCSW
CINDY LERNER, ESQUIRE
FRAN FEINBERG, ESQUIRE

~

**When:** Thursday, June 12, 1997

**Where:** Richard E. Gerstein Justice Building

Courtroom 4-1

1351 N.W. 12th Street

Miami, Florida

**Time:**

Registration 12:30 - 1:00 p.m.

1:00 p.m. - 4:30 p.m.

**Cost:**

Free to attorneys who accept a pro bono Criminal Guardian Ad Litem appointment from Put Something Back. If you cannot accept a case, the cost is $80.00.

**CLE:**

3.5 credits, including .5 ethics, applied for.

-----------------------------------------------------------Cut-Along-Dotted-Line-------------------------------------------------------------------------

Name __________________________ Bar Number __________________________
Address ________________________ City _______ State ____ Zip
Firm ____________________________ Telephone ________________

I will attend the "Child's GAL in Criminal Court" Seminar and accept at least one pro bono case from PSB.

I will attend. Enclosed is my check for $__________ made payable to DCBA Volunteer Lawyers.

Return to: Kim Donica, Esq. c/o Put Something Back, 123 N.W. First Ave., Miami, Florida 33128 or fax to (305) 372-7693
This seminar will train attorneys to act as the Guardian Ad Litem of a child/ren in contested custody cases. It is designed to teach attorneys how to investigate and make determination(s) as to what is in the best interest(s) of the child/ren caught in the crossfire of custody disputes. No prior family law experience is necessary.

AGENDA

I. Welcome & Remarks
   12:00 - 12:15 p.m.
   Keith Olin, Esq., Morgan Lewis & Bockius, LLP

II. Overview of Put Something Back Pro Bono Project
    12:15 - 12:20 p.m.
    A. How to Accept a Case through Put Something Back
    B. Eligibility Guidelines

III. View from the Bench
     12:20 - 12:30 p.m.
     Honorable Eugene J. Fierro

IV. Overview of Guardian Ad Litem Program in Family Court
    12:30 - 1:15 p.m.
    Sharon L. Langer, Esq., Director
    Legal Aid Society
    A. Ethical Obligations of the Guardian Ad Litem
    B. Responsibilities of the Guardian Ad Litem
    C. Acceptance of Guardian Ad Litem Appointment
    D. Forms

V. GAL Appointments from the Pro Bono Attorney's Perspective
   1:15 - 1:30 p.m.
   Keith Olin, Esq.
   Morgan Lewis & Bockius, LLP
   A. Power and Authority of the Guardian Ad Litem
   B. Case Law & Statutes

VI. Questions & Answers
ABOUT USING THIS MANUAL

⇒ This manual is designed for use by attorneys. It was written primarily for the use of pro bono attorneys working with Legal Services for Children. The primary text focuses on forms and procedures in the San Francisco Superior Court. All statutory references in this manual are to the California Codes. Procedures will differ slightly from county to county. Therefore, attorneys are advised to consult the local rules of their county.

⇒ If you are not an attorney and you are looking for a guide to seeking legal guardianship in San Francisco County you may wish to consult the manual on the Court’s website at http://www.courtinfo.ca.gov/selfhelp/lowcost/guardianship_booklet_INDEX.htm

⇒ If you are looking for blank guardianship forms you can find them at your local courthouse or online at http://www.courtinfo.ca.gov/cgi-bin/forms.cgi.

⇒ LSC represents only persons under the age of eighteen. Therefore, the manual is written with the presumption that the minor is the petitioner and this is reflected in our examples. In many guardianship proceedings, the proposed guardian is the petitioner. Thus, minor adaptations to our examples are necessary for adult petitioners. The appendix includes both a sample Petition for Appointment of Guardian for a minor petitioner and for an adult petitioner.

All information in this manual is current as of November 2005.
ACKNOWLEDGMENTS

This manual has truly been a joint effort of the entire staff of Legal Services for Children, including many legal and social work student interns. The cumulative experience of the many guardianships LSC has completed over the years made this manual possible.

We would also like to thank the many pro bono attorneys on our Guardianship Panel who have donated their time and expertise in representing people in guardianship cases who would otherwise have been unable to afford an attorney and whom LSC’s small staff could not represent. These pro bono attorneys have also been a valuable source of feedback, helping us to improve this manual. Further information on our pro bono panel is available on our website at www.lsc-sf.org.
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Legal Services for Children, Inc. (LSC) in San Francisco was created as a non-profit agency in 1975, the nation's first free and comprehensive law firm just for minors. One of the services provided by LSC is the representation of minors in legal guardianship proceedings.

In a guardianship, a non-parent is given most of the parental rights and responsibilities over a minor, while the parents' rights are suspended. A legal guardianship can be a fairly simple and non-stigmatizing legal solution to a minor's need for good care and stability in his or her living arrangement. On the other hand, it can also cause problems if the parents oppose the arrangement, or if the minor and guardian cannot maintain a healthy relationship. Sometimes other solutions are more appropriate.

This manual was originally written as a basic in-house guide to legal guardianships for LSC staff, and has been shared with local legal services offices and other attorneys. The purpose of this manual is to explain the effect of a guardianship, to place guardianship into context with other proceedings affecting child custody, and to describe in detail the process by which a guardianship is obtained.

LSC is pleased to share this manual with any attorney or other person interested in helping children to obtain legal guardianships. However, all readers are advised that this is a basic guide only, and that they must do their own research and review to be sure that they are acting on currently applicable law and procedure.
I. INTRODUCTION: PROCEEDINGS AFFECTING CUSTODY

Although this manual discusses legal guardianship, it is important to be aware of other proceedings in which custody of minors is affected. Legal custody of a minor means the right and responsibility to make almost all decisions affecting the care and supervision of that minor. This includes the right to determine the minor's domicile, the right to provide consent for the minor's medical care, the right to guide the minor's educational and religious development, and the right to make any reasonable order to control the minor's conduct.

A. LEGAL GUARDIANSHIP

Legal guardianship of the person of the minor suspends the parents' right to custody of their child and places that custody with another adult. It does not permanently terminate parental rights. Technically, parents remain financially responsible for the minor. Guardianship of minors may be for their persons, their estates, or both. Guardianship of the person transfers legal custody of the minor. A guardianship of the estate of a minor is usually for the purpose of managing property and/or substantial assets that are in the minor's name. The Probate Court appoints the legal guardian. (Legal guardians can also be appointed by Juvenile Court, see section F, but this manual describes the process for obtaining a guardianship in Probate Court.)

B. DISSOLUTION

Legal custody is initially vested equally in the minor's natural parents (Family Code §3010) whether they are married or not. Several ways exist to change legal custody. If the parents are or were married, custody is usually determined in a dissolution action. The court can consider the child's preference and the reasons for it, if the child is sufficiently mature. Any custody order can be modified based upon a change of circumstances.

The Family Court in San Francisco (and in most counties in California) seeks the assistance of Family Court Services (FCS) when there is a dispute over custody issues between parents. FCS is an office of the court which employs professional counselors. These professionals first attempt to mediate a custody or visitation dispute between parents. If the child has legal counsel, their counsel's input will be included. If mediation fails, FCS will conduct an independent evaluation and provide a written report to the court.

C. UNMARRIED PARENTS

If the parents have never been married to each other, the issue of child custody is usually adjudicated through a paternity action, pursuant to Family Code §7600 – §7750. Once the legal father of the child is established, the issue of custody is resolved as in a dissolution action, as described above.
**D. DOMESTIC VIOLENCE PREVENTION ACT**

In situations involving domestic violence, custody of minors can be temporarily determined under the Domestic Violence Prevention Act (Family Code §6200 et seq.). A temporary restraining order may award custody of a minor child to one parent, subject to visitation rights of the other upon determination of the court. The abusive party may also be required to make child support payments during the period of custody. One parent may obtain temporary care and control of his or her minor child through a restraining order when the parties have not been married, or when no petition for separation, nullity of marriage, or dissolution of marriage has been filed.

**E. ADOPTION**

An adoption is a complete substitution of one parent or set of parents for another (Family Code §8500-§9340). In an adoption, the natural parent(s) (and the parents' other relatives) lose all their rights and obligations regarding their children, including visitation and support. The new adoptive parent(s) are placed in the same legal position vis-a-vis the minor as a natural parent, including custody, support, and inheritance rights. In a stepparent adoption, only one parent is substituted for another. If the parent to be substituted is living, an adoption requires that the natural parent's rights be terminated, either voluntarily (Family Code §8604 – §8605) or involuntarily (Family Code §8606).

An adoption is different from a guardianship in that guardianship temporarily suspends the parents' right to custody (not their right to visitation or obligation to support), while adoption permanently substitutes one parent, or set of parents, for another.

**F. JUVENILE COURT**

Custody may also be changed through the three Juvenile Court jurisdictional sections: Welfare and Institutions Code §300 (dependency), §601 (status offense), and §602 (delinquency). If the minor falls within the descriptions of §300, §601, or §602, the Juvenile Court may remove custody of the minor from the parent or other legal custodian by declaring the minor a dependent child (§300) or a "ward" (§601 or §602) of the court. The court may place that custody with relatives or friends of the minor with the addition of ongoing supervision by the Probation Department or Department of Human Services (DHS). The court may also transfer placement to DHS or the Probation Department, which generally results in placement of the minor in a group or foster home. In some cases, the child will remain in the physical custody of the parents, under the supervision of the Department of Human Services (§300) or of the Probation Department (§601, §602).

The Juvenile Court can also appoint a legal guardian in both dependency and delinquency proceedings. Please note that this manual relates only to Probate Court guardianships, rather than Juvenile Court guardianships. IMPORTANT NOTE: If a guardianship was originally established in Juvenile Court any changes must be made in Juvenile Court. You cannot change a guardian by using the Probate Court guardianship process if the original guardianship was established in Juvenile Court.

In San Francisco Juvenile Court dependency or wardship actions, the court maintains control over the minor through DHS or Juvenile Probation. DHS is represented by the City Attorney, and
Juvenile Probation is represented by the District Attorney. The recommendations of DHS and Juvenile Probation carry substantial weight with the court, and the court has wide discretion in making dispositional orders.

G. CONSERVATORSHIP

Custody of a minor can also be placed with a conservator. A conservatorship allows the involuntary placement of a minor found to be gravely disabled in a treatment facility. The procedures for conserving a minor for mental health treatment may be found at Welfare & Institutions Code § 5350 et seq.

H. EMANCIPATION

A minor can become his or her own legal custodian before attaining majority (i.e. turning 18) if s/he is declared emancipated (Family Code §7000 – §7135). Emancipation is possible in three situations: if the minor

- joins the United States Armed Services with parental consent;
- gets married – requiring consent of one parent and court order (Family Code §302); or
- obtains a Declaration of Emancipation from the court.

In order to obtain a Declaration of Emancipation, the minor must:
- be fourteen years of age or older;
- live on his/her own with the consent or acquiescence of his/her parents;
- legally support him/herself; and
- the court must find emancipation to be in the minor's best interests.

Emancipation allows a minor to make most of his/her own decisions, and it terminates the parents' obligation to support.

For more information, see LSC's Emancipation Manual.
II. GUARDIANSHIP: AN OVERVIEW

The Probate Court can appoint a guardian whenever such action is "necessary or convenient" (Probate Code §1514). If the parents do not consent, the court must find (1) that custody with parent(s) would be detrimental to the minor (if a parent contests), and (2) that it would be in the best interests of the minor to live with the proposed guardian (Family Code §3040). In guardianship proceedings, unlike Juvenile Court dependency proceedings (Welfare and Institutions Code §300), the court does not have to find the parents unfit.

A. GUARDIANSHIP OF THE PERSON

a. "Necessary or Convenient" and "Detrimental" standards

The Probate Court may grant a guardianship whenever it appears "necessary or convenient" to do so (Probate Code §1514). Guardianship proceedings are commenced when a Petition for Appointment of Guardian of Minor is filed in the Probate Court. The petition may be filed by the proposed guardian, the proposed ward (if s/he is twelve years or older), or any relative or person on behalf of the minor (Probate Code §1510). In a guardianship, the minor is called the ward. The Probate Code use of the term "ward" is not related to the Juvenile Court use of the term in Welfare and Institutions Code §601 et seq. and §602 et seq. When filling out a Petition for Appointment of Guardian, always check the first box in item 13, and provide the "necessary and convenient" reasons in Attachment 13. If there is any chance a parent will contest the guardianship, also check the box in item 13 preceding the statement "[p]arental custody of the minor would be detrimental for the reasons stated in Attachment 13" and include the attachment. If a parent does object to a guardianship, the guardianship can only be granted if it is determined that return of the minor to the parent would be detrimental (Probate Code §1514(b); Family Code §3041.) For more information, see the section on contested guardianship hearings.

b. Notice

Notice requirements are strict and jurisdictional (Probate Code §§1511, 1516, and 1542). For example, parents or legal custodians must receive personal service unless the court dispenses with notice or prescribes another manner of notice. Certain other relatives (grandparents and siblings) and agencies may be served by mail. For details about providing notice, see Chapter V.

If the minor is an "Indian Child" under the Indian Child Welfare Act (ICWA), 25 U.S.C. 1901 et seq. (generally a minor who is a member or a biological child of a member of a Native American Tribe), the Tribe needs to be given notice of the proceedings.

c. Appropriate Reasons For A Guardianship

Guardianship of the person of a minor is usually advisable when: (1) the minor wants a particular adult to be his/her custodian; (2) that adult is both willing and appropriate to be the minor's guardian; and (3) the minor and proposed guardian have a relationship established over time. In San Francisco and many California counties, if either parent is likely to oppose guardianship, the court may refer the case for mediation.
In the experience of LSC, the desires of minors, especially those twelve years or older, carry significant weight with the court, particularly where an emotional bond between the minor and the proposed guardian can be shown. In addition, an older child's adamant refusal to live with his/her parents is usually an important factor in the judge's decision. Additional factors that usually weigh heavily are indications of violence or abuse, alcohol or drug problems, or signs of neglect. It is best, if possible, to avoid making specific written allegations against the parents in order to prevent the further deterioration of the parent-child relationship. However, if a judge is reluctant to grant the guardianship because it is actively contested by either or both parents, such information may be important in persuading the judge to grant the guardianship. If the judge refuses to grant the guardianship, it is possible as a last resort to contact DHS to investigate abuse or neglect cases.

d. Rights and Responsibilities

In advising the minor and proposed guardian, be certain each understands the significance of a guardianship and their respective rights and responsibilities. The guardian has the duty and responsibility for the care, custody, control, and education of the ward (Probate Code §2351). The guardian may determine the residence of the ward (Probate Code §2352), and has the right to give consent for the ward’s medical treatment (Probate Code §2353). Once appointed, the guardian must inform the court of any change of address and must obtain court approval before moving the minor to another state (Probate Code §2352). Although the parents remain legally responsible for the minor’s support, guardians often voluntarily accept this responsibility.

A non-relative guardian may receive CALWORKS and public medical benefits from DHS for the child regardless of the guardian's own income. Similarly, a relative guardian may receive benefits, including TANF, regardless of the guardian's income. (In fact, qualified relatives can receive benefits even if they do not yet have legal guardianship.) If the guardian receives any type of public benefits for the minor, the District Attorney will attempt to collect reimbursement from the minor's parent(s). If a minor is an undocumented immigrant, a guardian is not eligible to receive benefits. Since Timmons v. McMahon (1991) 235 Cal. App. 3d 512, temporary guardians are eligible to receive public benefits.

In certain cases, a guardian may also be statutorily liable for the tortious acts of the ward. A guardian, for example, is liable for civil damages resulting from a minor's willful misconduct (Civil Code §1714.1) or use of firearms (Civil Code §1714.3). However, with a few statutory exceptions, guardianship does not impose on the guardian liability for the acts of the ward.

e. Investigation

When the minor and guardian are not related, the local DHS will perform an investigation known as a "home study," and will provide the court with a written recommendation (Probate Code §1543). DHS will contact the proposed guardian and minor to arrange an appointment.

Sometimes DHS is unable to complete the reports in a timely fashion. When that occurs, the court usually continues the guardianship hearing to give DHS time to complete their written report and recommendations.
If the attorney visits the home prior to the DHS home study and has concerns about the appropriateness of the guardianship, please call LSC to discuss your concerns. Furthermore, the child might be made a dependent of the Juvenile Court once DHS becomes aware of his/her circumstances. Accordingly, the attorney and client should carefully evaluate whether to proceed with the guardianship in questionable cases.

In a guardianship between relatives, the Probate Court in San Francisco will request the probate investigator to prepare a report to the court. A home study is also performed in relative guardianships by the probate investigator.

In both relative and non-relative guardianships, DHS will conduct a background check on the proposed guardian and all adults in their household regarding criminal history and any referrals made to Child Protective Services (CPS) for abuse or neglect. The attorney should discuss this process with the proposed guardian and encourage the proposed guardian to reveal any relevant information prior to the filing of the guardianship. This will assist the attorney in assessing the appropriateness of the guardianship and in addressing early any issues that arise.

f. LSC Procedures

LSC often files guardianships for clients twelve years of age or older, since the minor at this age can be the petitioner (Probate Code §1510). LSC does not represent both the guardian and the minor, because a conflict of interest may arise in later proceedings affecting the custody of the minor and because LSC does not represent adults. The Pro Bono panel attorney may represent either the minor (12 or over) or the proposed guardian (in cases where the minor is under 12.) The attorney must be clear with the proposed guardian who s/he represents. For instance, if the attorney is representing the minor, s/he needs to explain this to the proposed guardian and the minor and inform them that s/he will proceed according the minor’s interest should a future conflict arise.

g. Termination

A guardian, parent, or ward may terminate the guardianship whenever the guardianship is no longer necessary, or when it is in the minor's best interest to terminate (Probate Code §§1601, 2650, 2652, 2660). The guardianship automatically terminates upon the majority, death, adoption, or emancipation of the ward (Probate Code §1600). See Chapter VI for more information on termination.

B. GUARDIANSHIP OF THE ESTATE

A guardianship can be of the person, the estate or both. A guardianship of the estate will not be necessary if the minor has no money or property or if any money they have can be placed in a blocked account that will not be used until the minor reaches majority. However, a guardianship of the estate will be necessary if there is a large amount of money or property or the guardian will need to use any of the money to support the minor during the guardianship. A guardianship of the estate can be filed at the same time as a guardianship of the person using the same petition. This manual pertains to guardianship of their person only. If a guardianship of the estate is necessary a probate attorney should be consulted.
C. PROCEDURE FOR OBTAINING GUARDIANSHIP

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- Notice I: Obtaining Information Page 22
- Preparing the Papers Page 24
- Home Visit Page 37
- Filing the Papers Page 37
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- The Guardianship Hearing Page 42
- Follow-Up Page 44
FLOWCHART OF PAPER PROCEDURES

STEP ONE: Writing the Petition

COMPLETE THE FOLLOWING FORMS:

1. Application For Waiver of Court Fees And Costs.
2. Order On Application For Waiver of Court Fees & Costs
4. Petition For Appointment of Guardian of Minor (and necessary attachments).
5. Declaration Under Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) - this form is part of the petition.
6. Consent of Proposed Guardian/Nomination of Guardian/Waiver of Notice and Consent - this form is usually part of the petition.
7. Declaration Of Proposed Guardian (SF only).
8. Duties of Guardian
9. Confidential Screening form

STEP 2: Signing the Petition

HAVE PETITIONER OR APPROPRIATE PEOPLE READ AND SIGN FORMS:

1. Application For Waiver of Court Fees And Costs. (Petitioner).
3. Declaration Under Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) - (Petitioner).
5. Declaration Of Proposed Guardian (SF only, Guardian).
6. Duties of Guardian.

STEP 3: Filing the Petition

FILE PETITION AND SUPPORTING DOCUMENTS WITH THE PROBATE CLERK AND GET A HEARING DATE.

1. File Application for Waiver of Court Fees and Costs - this allows a waiver of the $267.50 filing fee.
2. Get a hearing date put on the front page of the Notice of Hearing of Guardianship, if in S.F. don't file this form - you will file this at STEP 5.
3. File the Petition with the attachment(s), the Consent of proposed guardian [and the Nomination of Guardian and Waiver of Notice and Consent if the parent(s) already have signed], the Declaration Under Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA), Duties of Guardian, Confidential Screening form and Declaration of Proposed Guardian (SF only).

THE PAPERS THAT ARE FILED: GIVE ORIGINAL AND ONE COPY TO THE CLERK AND KEEP A FILED ENDORSED COPY FOR YOUR OWN RECORDS AND FOR SERVICE OF NOTICE.
MAKE SURE THE DECLARATION OF PROPOSED GUARDIAN (SF ONLY) IS PUT IN A SEPARATE CONFIDENTIAL FOLDER.

STEP 4: Serving the Petition

SENDING OUT THE NOTICE OF HEARING AND THE PETITION:

1. Sign and date the proof of service by mail on the back of the Notice of Hearing.
2. Mail copies to all entitled to notice of:
   - Notice of Hearing.
   - Petition for Appointment of Guardian (and attachment(s)).
   - Consent of Proposed Guardian.
   - Declaration Under Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA).
   - Application For Waiver of Court Fees And Costs form, Duties of Guardian, Confidential Screening form and the Declaration of Proposed Guardian (SF only) should NOT BE SENT WITH THE NOTICE.

   To the parents add a cover letter and the Forms: Notice and Acknowledgement of Receipt and the Consent of Proposed Guardian/Nomination of Guardian/Waiver of Notice and Consent.
   To DHS add a cover letter with information for background check.

   THE NOTICE NEEDS TO BE MAILED AT LEAST 20 DAYS BEFORE THE HEARING TO PEOPLE WITHIN THE USA, 30 DAYS IF OUTSIDE THE USA.

STEP 6: The guardianship hearing

AT THE GUARDIANSHIP HEARING:

Have these forms ready:

Order Appointing Guardian of Minor
Letters of Guardianship

You present case – Judge might ask some questions of the Guardian or Ward or of the attorney regarding the parents etc. Order Appointing Guardian of Minor should be handed to the Judge for review and signature.

Take signed Order to Clerk and file with the signed Letters of Guardianship. Get Letters certified by the clerk.

STEP 5: Preparing for the hearing

THINGS TO DO BEFORE THE HEARING DATE:

- File the Notice of Hearing (with the completed proof of service by mail and proof of personal service sections attached).
- File the Notice and Acknowledgment of Receipt (if you get them) or Proof of Personal Service to parents.
- File the Consent of Proposed Guardian/Nomination of Guardian and Waiver of Notice and Consent if the parent(s) have returned them.
- Check with the Department of Human Services or the Probate Investigator to see if the report on suitability of the proposed guardian is complete and/or favorable.
- If parents have not returned the Notice and Acknowledgment or the Consent form they need to be personally served at least 15 days prior to the hearing.
- Prepare Order of Guardianship and Letters of Guardianship forms.
- Remind clients when/when to be at court hearing.
III. GUARDIANSHIP: INITIAL STAGES

The guardianship process is straightforward, but many steps are involved. The first steps in arranging a guardianship are the determination of whether a guardianship is appropriate and the collection of information that will be needed for the preparation of the guardianship papers and the provision of notice.

A. INITIAL INTERVIEW

The Guardianship Panel attorney should arrange an initial interview to meet the child and the prospective guardian. This initial interview can be in the guardian's home, the attorney's office, or any other mutually convenient place. Insofar as possible, the attorney should try to talk and establish a relationship with both guardian and child.

In arranging the initial interview, the attorney should inform the prospective guardian and the minor of the kind of information s/he will need to collect so that the guardian and minor may make relevant materials available for the meeting.

The Guardianship Questionnaire provides a format for collecting all the necessary information for the guardianship papers required in San Francisco County. A blank copy can be found on the following pages.

When interviewing the minor, proposed guardian and other interested persons, the attorney should try to obtain as complete a picture of the minor's life as possible, including:

- whether the minor was/is in therapy
- whether the minor receives Supplemental Security Income (SSI) or other benefits
- whether there are other important adults or family members in her/his life
- how the parents feel about the situation
- when the minor last saw the parents
- whether the minor has hopes of reuniting with the parents
- living situation in guardian's home (number of bedrooms; name, age, and sex of all residents in home; where minor will sleep)
- the reasons that the guardianship is needed: why the parents are unable to care for the minor
- whether the minor has any special emotional, physical, psychological, or educational needs and the plans of the guardian to provide for those needs

At the initial interview, the attorney should remind the proposed guardian when s/he is the attorney for the minor, that s/he will continue to represent the minor, not the guardian, should their interests diverge.
LEGAL SERVICES FOR CHILDREN GUARDIANSHIP
QUESTIONNAIRE

I. Petitioner's (Minor's) Information

<table>
<thead>
<tr>
<th>Last Name</th>
<th>First Name</th>
<th>M.I.</th>
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</thead>
<tbody>
<tr>
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<table>
<thead>
<tr>
<th>Social Security No.</th>
<th>Age</th>
<th>D.O.B.</th>
<th>Phone No.</th>
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</table>

<table>
<thead>
<tr>
<th>Current Street Address</th>
<th>City</th>
<th>Zip Code</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
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<table>
<thead>
<tr>
<th>Street Address where minor lived for the past 5 years if different from above</th>
</tr>
</thead>
<tbody>
<tr>
<td>How long at this residence? ____________________________________________________</td>
</tr>
</tbody>
</table>

<table>
<thead>
<tr>
<th>Name of person(s) with whom the minor was then living: ________________________</th>
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<table>
<thead>
<tr>
<th>Relationship to the minor: ____________________________________________________</th>
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<table>
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<tr>
<th>Minor's Doctor: ________________________________ Phone No.: ____________________</th>
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</table>

<table>
<thead>
<tr>
<th>Doctor's Street Address</th>
<th>City</th>
<th>Zip Code</th>
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<table>
<thead>
<tr>
<th>School Minor is currently attending</th>
<th>Grade Level</th>
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</tbody>
</table>

Please check YES or NO for each of the following questions.

1. Is legal guardianship necessary to give medical consent for the minor? [ ] YES [ ] NO
2. Does the minor have any Native American ancestry? [ ] YES [ ] NO
3. Does the minor have an estate? [ ] YES [ ] NO
4. Is the minor entitled to veteran's benefits? [ ] YES [ ] NO
5. Is the minor receiving public benefits? [ ] YES [ ] NO
6. Are their other court proceedings affecting the minor? [ ] YES [ ] NO
7. Has the minor had any involvement with the Police or CPS? [ ] YES [ ] NO
8. Did the minor have any previous drug or alcohol involvement? [ ] YES [ ] NO
9. Does the minor have any physical disabilities? [ ] YES [ ] NO
10. Does the minor have any special education needs? [ ] YES [ ] NO
11. Does the minor have any money, trust, CD, etc.? [ ] YES [ ] NO
12. Does the minor have an estate?  
13. Has the minor ever been in foster care?  

If YES was checked in any of the above Questions #1-13, please provide a brief explanation in the space provided.

B. MINOR’S FAMILY CONTACTS

<table>
<thead>
<tr>
<th>Mother’s Name</th>
<th>Phone No.</th>
</tr>
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<tbody>
<tr>
<td>Address</td>
<td>City</td>
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<table>
<thead>
<tr>
<th>Father’s Name</th>
<th>Phone No.</th>
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<tbody>
<tr>
<td>Address</td>
<td>City</td>
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<table>
<thead>
<tr>
<th>Maternal Grandmother’s Name</th>
<th>Phone No.</th>
</tr>
</thead>
<tbody>
<tr>
<td>Address</td>
<td>City</td>
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<table>
<thead>
<tr>
<th>Maternal Grandfather’s Name</th>
<th>Phone No.</th>
</tr>
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<tbody>
<tr>
<td>Address</td>
<td>City</td>
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<table>
<thead>
<tr>
<th>Paternal Grandmother’s Name</th>
<th>Phone No.</th>
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<tbody>
<tr>
<td>Address</td>
<td>City</td>
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<table>
<thead>
<tr>
<th>Paternal Grandfather’s Name</th>
<th>Phone No.</th>
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<tbody>
<tr>
<td>Address</td>
<td>City</td>
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</table>
II. Proposed Guardian’s Information

<table>
<thead>
<tr>
<th>Last Name</th>
<th>First Name</th>
<th>Relationship</th>
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|--------|---------------------|-----------------------------|

<table>
<thead>
<tr>
<th>Current Street Address</th>
<th>City</th>
<th>Zip Code</th>
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<table>
<thead>
<tr>
<th>Home Phone No.</th>
<th>Work Phone No.</th>
<th>Other Phone No.</th>
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</table>

Ht.: _____ Wt.: _____ Hair: ______ Eye: ______ Ethnicity: ______

Employment (most recent): __________________________ Income: _____________________

Name and address of where the highest level of education was attained (High school, college):

______________________________

Health Status of proposed guardian: ________________________________

What the minor calls the proposed guardian: ________________________

Who has legal Custody of the minor? _______________________________

Size of guardian’s home: _______ # of bedroom(s)

Where does the minor sleep? ________________________________

Where would the minor attend school? ____________________________
Who would the minor’s doctor be? 

What would the day-care arrangements be for the minor?

What kind of financial support do you have to care for the minor?

Are there other minors in the guardian’s home? (List below.)

<table>
<thead>
<tr>
<th>Name(s)</th>
<th>D.O.B.</th>
<th>Ethnicity</th>
<th>Income/ Source Spec. Ed.?</th>
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<td>1)</td>
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<td>3)</td>
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</table>

Are there other adults in the home? (List below.)

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<thead>
<tr>
<th>1) Name</th>
<th>D.O.B.</th>
<th>Income/ Source</th>
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<tr>
<th>Ht.: ___ Wt.: ___</th>
<th>Hair: ___ Eye: ___ Ethnicity: ___</th>
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<th>Relationship to minor:</th>
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<tr>
<th>2) Name</th>
<th>D.O.B.</th>
<th>Income/ Source</th>
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<tr>
<th>Ht.: ___ Wt.: ___</th>
<th>Hair: ___ Eye: ___ Ethnicity: ___</th>
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<table>
<thead>
<tr>
<th>Relationship to minor:</th>
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Please check YES or NO for each of the following questions.

1. Have you had any involvement with the Police or CPS?    YES NO

2. Have you ever been charged with, arrested for, or convicted of any crime? (If yes, list the offense, when it occurred and the outcome below.)    YES NO

3. Have you had any previous drug or alcohol involvement? YES NO

4. Have you habitually used drugs or alcohol? (If yes, list when, what treatment(s) was received, any meetings attended and how you got clean below.)    YES NO

5. Have you ever been charged with or arrested for a crime involving drugs or alcohol? (If yes, list when below.)    YES NO
6. Are you a registered sex offender?
7. Have you been charged with, arrested, or convicted of child abuse,
neglect, or molestation?
8. Any reports or allegations of child abuse against you by any agency?
9. Do you have a social worker, parole or probation officer?
   (If yes, list name and address below.)
10. Have you ever filed or had filed against you a restraining order in the past 10 years?
11. Do you suffer from mental illness?
12. Are you currently seeing a mental health professional?
13. Do you have any physical disabilities?
14. Have you ever filed for bankruptcy in the past 10 years?
15. Are you a licensed foster care provider?
16. Are you presently serving as a guardian in SF or any other county?
17. Have you ever been appointed guardian, conservator, executor, or fiduciary in another proceeding?
18. Have you ever been removed as guardian, conservator, etc?
19. Do you have an adverse interest?

The following questions are for person(s) living in the proposed guardian’s home, excluding the proposed guardian.
20. Does anyone in the home have a social worker, parole officer, or probation officer? (If yes, list name and address below.)
21. Has anyone in the home ever been charged with, arrested, or convicted of child abuse, neglect, or molestation?
22. Has anyone in the home had any reports against them for child abuse, neglect, molestation to CPS, the police, or any other agency?
23. Has anyone in the home ever habitually used drugs or alcohol?
   (If yes, list when and what treatment(s) received below.)
24. Has anyone in the home ever been charged with or arrested for a crime involving drugs or alcohol? (If yes, list when below.)
25. Does anyone in the home suffer from mental illness?

If YES was checked in any of the above Questions #1-25, please provide a brief explanation in the space provided.
B. NOTICE I: OBTAINING INFORMATION

The law requires that the proposed ward, the proposed guardian, all relatives within the second degree of the minor (parents, grandparents, and siblings), and "any person having legal custody of the ward or serving as the guardian of the estate" be given Notice of Hearing of Guardianship and a copy of the Petition for Appointment of Guardian at least fifteen days in advance of the hearing -- add five days if notice is given by mail (Probate Code §1511, Civil Procedure §1013). The minor should bring as many of these addresses as possible to the initial interview. Afterwards, the attorney and the petitioner will have to work together to try to obtain the addresses.

a. Parents

Actual notice of guardianship proceedings must be given to parents (Probate Code §1511). The law requires that parents must either:

- sign the Waiver of Notice and Consent OR
- sign the Notice and Acknowledgment of Receipt.

If they fail to do either of these, parents must be personally served with the Notice of Hearing of Guardianship and the Petition for Appointment of Guardian. The court may, however, dispense with the notice requirement if the petitioner can show that a parent's address is unknown and undiscovered through due diligence or that notice would be contrary to the interests of justice [Probate Code §1511(g)].

b. Diligent Efforts/Interests of Justice

If a parent's address is unknown, the petitioner must exercise reasonable diligence to find an address for the parent (Probate Code §1511). Since guardianship suspends the parental rights of custody and control over the minor, the reasonable diligence required is more extensive than that required to locate other relatives. A parent who is denied due process in notice may ask the court to vacate the order granting guardianship.

In making reasonably diligent efforts, the attorney must be guided by common sense. In the initial interview of the minor and proposed guardian, the attorney should obtain information about the parents, including: date of birth, last known address, place of employment, social security number, and the names of other persons who may know where the parent is and whether the parent is or was being served by DHS, has Social Security, is on probation, etc. Other avenues of inquiry include searching the telephone directory or conducting a search on the Internet. The attorney should also try to determine the amount of contact there has been between the parent and the minor (e.g. when they last saw each other, when they last lived together, etc.).

Once this information is obtained, the attorney can decide how best to search for the parent. In general, due diligence is shown by whether, in light of the available information and the amount of contact between the parent and the minor, there exists an avenue of inquiry which has a reasonable probability of leading to the discovery of the parent's whereabouts.
This search must be documented as it is made, so that the attorney can include details of the search in a declaration to the court. A declaration by the attorney can be included in Attachment 15 to the Petition for Appointment of Guardian of Minor (see the instructions for the Petition in the following chapter). If the search is made after the petition has been filed, then the details should be set forth in a "Declaration of Due Diligence" and filed separately. Every effort to find the parents should be made.

The results of the search should be included in Attachment 15 to the petition, which asks the court to dispense with notice to a parent or relative. The most important part of this attachment is the relationship between the parent/relative and the child. If neither the child nor anyone in the child's life knows where the parent is, and the attorney has made reasonable efforts to locate the parent, the judge will probably dispense with notice.

c. Relatives

For relatives whose addresses are unknown, the attorney should make a search much like the one for parents described above. The amount of contact between the minor and the relative is an important factor in measuring reasonable diligence. As with parents, notice can be dispensed with if the relative's address cannot with reasonable diligence be ascertained or if notice is contrary to the interests of justice (Probate Code §1511(g)). Facts supporting these grounds must be alleged in Attachment 15 to the Petition.

Notice is not required to be given to any child under the age of 12 years if notice is properly given to, or the petition is brought by, a parent, guardian, or other person having legal custody of the minor with whom the minor resides. (Probate Code §1460.1).
IV. GUARDIANSHIP: PREPARING THE PAPERS

Once you’ve met the client and the proposed guardian, and you’ve gathered the information you need, the technical work begins: filling out the paperwork. Copies of all the forms needed are available in the San Francisco Superior Court Clerk’s office and online at www.courtinfo.ca.gov/cgi-bin/forms.cgi. Additionally, guardianship forms are included in the Judicial Council Forms program; we have noted the directory in which you may find each form in the text below. The papers are not difficult, but questions may arise. Guardianship Panel attorneys are welcome to call the attorney of the day at LSC for assistance.

A. OVERVIEW

The goal of legal guardianship proceedings is to obtain LETTERS OF GUARDIANSHIP, the document that vests legal custody of a minor in a guardian.

The letters are issued by the County Clerk after the Probate Court Judge signs an ORDER APPOINTING GUARDIAN. The order is made at a hearing in Probate Court. The hearing is obtained by filing a PETITION FOR APPOINTMENT OF GUARDIAN OF MINOR, a DECLARATION UNDER THE UNIFORM CHILD CUSTODY JURISDICTION ENFORCEMENT ACT (UCCJEA), a CONSENT OF PROPOSED GUARDIAN, CONFIDENTIAL GUARDIANSHIP SCREENING FORM, DUTIES OF GUARDIAN and a confidential DECLARATION OF PROPOSED GUARDIAN (S.F.) with the Probate Clerk. A NOTICE OF HEARING OF GUARDIANSHIP, together with a copy of the PETITION FOR APPOINTMENT OF GUARDIAN OF MINOR, must be sent or personally served to those persons entitled to receive notice.

Proof that the NOTICE OF HEARING OF GUARDIANSHIP and the PETITION FOR APPOINTMENT OF GUARDIAN OF MINOR were properly served must be made by completing the PROOF OF SERVICE section on the back of the NOTICE OF HEARING OF GUARDIANSHIP and a separate PROOF OF PERSONAL SERVICE for each person who is entitled to personal service of the NOTICE OF HEARING OF GUARDIANSHIP and PETITION FOR APPOINTMENT OF GUARDIAN OF MINOR, unless such person signs an ACKNOWLEDGMENT OF RECEIPT or waives notice on the CONSENT OF PROPOSED GUARDIAN/NOMINATION OF GUARDIAN/WAIVER OF NOTICE AND CONSENT form.

When the PETITION FOR APPOINTMENT OF GUARDIAN OF MINOR is filed, it must be accompanied by a filing fee, or by an APPLICATION FOR WAIVER OF COURT FEES and ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS. Most LSC clients are eligible for a fee waiver. In San Francisco, the filing fee is $267.50, as of October 2004. In other counties, the Superior Court clerk can tell you what the filing fee is.
B. DOCUMENT CHECKLIST

1) Application for Waiver of Court Fees and Costs AND Order On Application For Waiver of Court Fees and Costs OR
   - Check for $267.50 (in SF) made out to "Clerk, Superior Court."

2) Notice of Hearing/Attachment to Notice of Hearing

3) Petition for Appointment of Guardian

4) Declaration Under Uniform Child Custody Jurisdiction Enforcement Act

5) Consent of Guardian/Nomination of Guardian/Waiver of Notice and Consent
   - Mother (may be filed with petition)
   - Father (may be filed with petition)
   - Proposed Guardian (file with petition)

6) Declaration of Proposed Guardian (in San Francisco)

7) Confidential Guardianship Screening Form

8) Duties of Guardian

9) Notice and Acknowledgment of Receipt (to be sent to parents with Notice if no consent)

10) Proof of Personal Service of Notice of Hearing

11) Order Appointing Guardian

12) Letters of Guardianship

C. CAPTIONING THE DOCUMENTS

The top section of each paper is called the "caption." It is identical in most documents.

(1) In the upper left hand corner of the caption, the name, address, and phone and fax number of the attorney for the petitioner are typed in capital letters.

   • If the petitioner is the minor, type in the attorney's name and the name of the Panel Attorney's law firm. After "Attorney for," type in the minor's name in capital letters.

   • If the petitioner is the guardian type the guardians' name after "Attorney for".

(2) Type in the name of the court in the county in which the papers will be filed and the address of the Superior Court.
In San Francisco, the address is:
400 McAllister Street
San Francisco, CA 94102

For other counties you can look on the Court website to find the address.

(3) On the forms which have blocks for plaintiff and defendant, enter: "In the Matter of the Guardianship of [First Name, Last Name], a Minor." Check the appropriate boxes ( [ ]Minor, [ ]Minors, [ ] Guardianship, [ ] Conservatorship), on the forms which have boxes.

(4) Leave the two large right-hand rectangles empty on the initial filing. The case number will be assigned by the clerk at the time of filing. For subsequent filings, include the case number that the clerk assigned at the initial filing.

D. APPLICATION FOR WAIVER OF COURT FEES AND COSTS
(Judicial Council Forms: General Litigation Forms, In Forma Pauperis, 982(a)(17))

To file a petition for guardianship, a filing fee must be paid, or the fee must be waived. The fee for a guardianship petition in San Francisco in October 2004 is $267.50. The fee can be waived if the petitioner:
• receives public benefits (Supplemental Security Income, Aid for Families with Dependent Children/Temporary Aid to Needy Families, Food Stamps, County Relief, General Relief or General Assistance);
• has a gross monthly income that is less than the amount shown on the Information Sheet available at the County Clerk's office; or
• receives insufficient income to pay for the common necessaries of life.

If seeking a fee waiver, the petitioner should complete an Application for Waiver of Court Fees and Costs and an Order on Application for Waiver of Court Fees and Costs and submit them at the time of the initial filing in place of a check. In San Francisco, this application is filed along with the other papers at the County Clerk's office. However, after filing all of your papers you need to take a copy of the fee waiver application and order up to the probate office in room 202. They probate court judge will sign the order and return it to you. Having a signed fee waiver order can be particularly important if you need to use the sheriff for service of process since they will provide this service for free if you have a fee waiver order. No papers can be filed without either an Application for Waiver and Order on Application for Waiver or a check. This procedure varies by county, so check the local Clerk's office.

Items 1, 2: Type in the petitioner's name, address.

Item 3: Type in the petitioner's occupation and the name and address of his/her employer. If the petitioner is a student, indicate that and provide the name and address of the school.

Item 4: If the petitioner receives financial assistance through any of the listed programs, check the appropriate boxes and proceed to Item 5. If the petitioner does not receive financial assistance through the programs, proceed to Item 6.
Item 5: If you checked the box in Item 4, either provide the petitioner's Social Security Number or attach the verification documents specified on the Information Sheet. This form is now complete. Proceed to the Signature section.

Item 6: If the petitioner is not receiving financial assistance and his/her income is less than the amount shown on the Information Sheet, check this box. Then sign and date the form at the bottom of this side and fill out Items 8 and 9 on the back of the form. The form is then complete.

This is the most frequently used basis for a fee waiver when the minor is the petitioner, as the minor's income is almost always less than the ceiling level.

Item 7: Check this box only if Items 4 or 6 cannot be checked. If this box is checked, all information requested on the other side of the form, Items 8-13, must also be provided. Remember to sign and date the application.

Items 8-13: These items are self-explanatory. Generally, the minor's total monthly income is 0 and the number of people supported is 1. To clarify, put “minor petitioner” next to item 9f.

Please note that fee waivers for guardianships with minor petitioners are routinely granted in San Francisco county. However, in Alameda and other outlying counties, fee waiver forms filed by children are scrutinized more closely. In Alameda or Contra Costa counties, you may wish to include a brief attachment to the form, explaining that the minor has the right to file a probate guardianship petition under the Probate Code, but cannot do so without a fee waiver. Be sure to note any particular facts which support the granting of the requested waiver, such as the minor’s lack of income.

E. ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS
(Judicial Council Forms: General Litigation Forms, In Forma Pauperis, 982(a)(18))

Only the front of the form is of concern to the applicant. Complete the caption as on other documents.

Item 1: Enter the date of the initial filing.

Item 2: Enter the name of the petitioner.

Item 3: Check the initial box, the box preceding "in whole," and box "a."

F. NOTICE OF HEARING OF GUARDIANSHIP
(Judicial Council Forms: Guardianship and Conservatorship Directory, GC-020)

This is the document of which copies will be mailed or personally delivered, together with a copy of the Petition for Appointment of Guardian, to people entitled to notice of the guardianship hearing. The Notice of Hearing of Guardianship informs the person that a guardianship petition has been filed and that a hearing will occur at a specified time and place.
This document is filled out partially before the initial filing of guardianship papers and completed once the Petition for Appointment of Guardian is filed and a guardianship hearing date has been set. Before filing guardianship papers, complete the following:

Complete the top caption. The case number will be assigned and stamped in at the time of filing.

**Item 1:** Type in the petitioner's name and the words "PETITION FOR APPOINTMENT OF GUARDIAN OF MINOR."

**Item 3:** Check this box only if Item 1-e on the Petition for Appointment of Guardian is checked and you are requesting the independent exercise of powers under Probate Code §2590. If you check this box, include an Attachment 3 detailing the powers sought. This is only for guardianships of the estate.

**Item 4:** (a) Type in the time (if known), department name or number, room number in the courthouse, and in (b) the courthouse address. The date will be stamped in at the time of filing the petition.

In San Francisco, all guardianship hearings are on Tuesdays at 1:00pm in the Probate Department, Room 204.

On the back of the Notice, fill out the top caption box. The Proof of Service by Mail should be completed once you have filed the Petition for Appointment of Guardian (see Proof of Notice section). Each person who is noticed should be listed, along with their address, in one of the boxes on the form. In almost all cases, you will have more than four names to include. Check the box labeled "Continued on Attachment" and continue your listing on form GC-020(MA) Attachment to Notice of Hearing Proof of Service by Mail. This attachment is stapled directly to the back of the Notice of Hearing form. Note that if you are able to use form GC-020(P) Proof of Personal Service of Notice of Hearing- Guardianship or Conservatorship (form L, discussed in further detail below), it should also be stapled to the back of the Notice of Hearing form before filing.

**G. PETITION FOR APPOINTMENT OF GUARDIAN**
(Judicial Council Forms: Guardianship and Conservatorship Directory, GC-210)

This is the document in which the petitioner alleges under penalty of perjury all the information necessary for the court to consider a guardianship.

**Item 1a/b:** Fill in the name of the petitioner and the name, address, and telephone number of the proposed guardian. Letter a is for guardianship of the person; b is for a guardianship of the estate.

**Item 1c:** Check this box only if the petition is for multiple siblings. If you check this box, set forth for each additional sibling the information requested in Items 2 through 11 on a
Item 1d: For guardianships of the person only, do not check this box (Probate Code §2322).

In guardianships of the estate, see Probate Code §2320 for bond requirements. If a bond is required, check the second box and fill in the appropriate amount (usually the amount equal to the value of the estate and the probable annual rents).

If money has been or will be deposited into a bank account [most often a blocked account, pursuant to Probate Code §3413(a)], check the third box and fill in the total amount.

Item 1e/f: If an order is necessary to tailor the general power of the guardian of the minor's estate (Item 1c) or person (Item 1f), check the appropriate box and list the desired powers and reasons on a separate page under the heading of "Attachment 14" (for estate) or "Attachment 1f" (for person).

Item 1g: If notice to persons is not possible (e.g., address cannot be found) or is not in the interests of justice (e.g. minor has never met grandparents), check this box. Set forth the details of the relationship between the relative and the minor and/or a summary of the search for the relative, in Attachment 15.

NOTE: This will be a frequently used item, since often at least one person entitled to notice cannot be located.

Item 1h: Check this box if you seek any other orders not covered above, then specify the orders and the reasons on a separate page headed "Attachment 1h."

Items 2, 3: Type in the name, current address, phone number, and check appropriate box for the marital status of the minor, then enter the minor's birth date.

Item 4: Check all appropriate boxes, and indicate the relation of the petitioner to the minor (e.g. grandparent, cousin, family friend, etc.). If the minor is the petitioner, check box b.

Item 5: Check all appropriate boxes and indicate the relationship of the proposed guardian to the minor.

Item 6-a: Check this box and indicate the name and address of the current legal custodian of the minor.

Item 6-b: Mark this box when the legal custodian is not the caretaker of the minor. The person having the care of the minor is often the proposed guardian. Fill in the current caretaker's name and address if this box is checked.

Item 7: Check the appropriate boxes. Although the minor will rarely be an institutional patient or entitled to V.A. benefits, these possibilities should be addressed in the initial
For example, if the minor is entitled to V.A. benefits, the V.A. must receive notice of these proceedings.

Letter c asks whether the minor has Native American ancestry. If a child is of Native American descent there are special notice regulations under I.C.W.A. It is critical to determine whether any children who would be impacted by the guardianship have any actual or possible Native American heritage. If you are working on a guardianship involving such a child, please see the sample attachment 7c in the appendix, and be sure to read "Guardianship of Children with Native American or Indian Heritage" in the "Guardianship Variations" section of this manual.

Items 8-9: Check the appropriate boxes. If the minor receives public assistance benefits and/or is affected by a Juvenile Court or a custody proceeding, explain on a separate page headed "Attachment 8." If the minor's family receives CALWORKS, but the minor is not in the home, then the minor is not receiving benefits. The court proceedings mentioned only include pending proceedings [Probate Code §1510(±)].

Item 10: Check this box if petitioner intends to adopt the minor.

Item 11: Check this box if someone other than the proposed guardian has been nominated to be the minor's guardian. Enter that nominee's name and address and attach the nomination separately as Attachment 11. This person is entitled to personal service of the Notice of Hearing. If s/he cannot be located, s/he should be included in Attachment 15.

Item 12: For guardianships of the estate, list the character and value of minor's estate. If this is a guardianship of the person only, leave this item blank.

Item 13: Check the appropriate box or boxes. You will always check the box for "necessary and convenient." Check "detrimental" if there is any chance that a parent will contest. Be sure to include Attachment 13.

Item 14: If Item 1c (tailoring the general powers of the guardian) is checked, check this box. Be sure to include "Attachment 14." If this is a guardianship of the person only, leave this box blank.

Item 15: If Item 1g (stating persons who cannot be located) is checked, check the appropriate boxes here as well. Be sure to include an Attachment 15 for each person who could not be located. Refer to Chapter II for standards and instructions for the declaration.

Item 16: If the proposed guardian of the person is not a relative of the minor and has not been nominated by a parent, complete this section.

If the petitioner is not the proposed guardian (e.g., the minor is the petitioner), then the second box should be checked and Attachment 16a should be completed as follows: "I, [NAME], the proposed guardian, will promptly furnish upon request all information requested by any agency referred to in §1543 of the Probate Code." This should be signed and dated by the proposed guardian and filed with the petition.
Item 17: Check the appropriate boxes if the listed documents are filed with the petition. A Consent of Proposed Guardian and a Declaration Under Uniform Child Custody Jurisdiction Enforcement Act (UCCJEA) must be filed in all cases.

Item 18: All relatives in the second degree should be listed with home addresses. If an address is unknown or a relative is deceased, provide that information. If there are more names than fit on the form, continue the list on a separate page under the heading "Attachment 18" and check the box to so indicate.

Item 19: Indicate the number of pages attached.

The petition must be dated and the attorney and all petitioners must sign the petition. The name(s) of the petitioner(s) should be typed next to the signature lines.

H. DECLARATION UNDER UNIFORM CHILD CUSTODY JURISDICTION AND ENFORCEMENT ACT (UCCJEA)
(Judicial Council Forms: General Litigation Forms, Miscellaneous Forms, MC-150)

This form is filed with all guardianships of the person or of the person and estate (not for guardianships of the estate only). This form is fairly self-explanatory, requiring previous addresses for the minor for the previous five years and information about court hearings involving the child's custody.

The declarant should usually be the proposed guardian, but could be a parent or the petitioner. Be sure that the declarant signs and dates this form in the spaces provided at the bottom of page two.

The parents are considered to be parties to the proceeding for the purposes of Item 6. Therefore, if the minor is living with the proposed guardian but the parents have full legal custody, if there are no others who claim custody or visitation rights the question should be answered "no."

I. CONSENT OF PROPOSED GUARDIAN/NOMINATION OF GUARDIAN/ WAIVER OF NOTICE AND CONSENT
(Judicial Council Forms: Guardianship and Conservatorship Directory, GC-211)

This form is really three documents on the same page, and can be used for the signatures of different people.

The caption should be completed as it appears on the Petition for Appointment of Guardian, including the case number if it has been assigned. The appropriate boxes in the title of the document should be checked to correspond with the sections of the page being used.

Usually, the proposed guardian and each parent sign separate forms, unless they are all present to sign the form at once. All information should be typed before giving or sending it to the
respective parties to sign. Also, it helps to make a red "x" at each line where the person should sign or date the form. This will facilitate accuracy in the completion of the forms.

The proposed guardian should fill in the top section of the form (Item 1), the Consent of Proposed Guardian. The Consent of Proposed Guardian form must be signed and filed with the Petition in all cases.

If the parents consent to the guardianship, each parent should sign and date both the second and the third sections (Items 2-4), the Nomination of Guardian and the Consent and Waiver of Notice.

This form is usually mailed along with an explanatory letter to each parent. A self-addressed stamped envelope should be enclosed.

J. DECLARATION OF PROPOSED GUARDIAN

San Francisco County requires this declaration in a guardianship proceeding. San Francisco Probate Manual Section §12.2(d) describes in detail the requirements for this declaration (see below). LSC almost always marks this declaration as confidential and thus it is filed separately in a folder marked "Confidential" by the Court Clerk. This declaration is never mailed to DHS or family if you decide to keep it confidential.

This declaration is not required for Alameda County guardianships.

San Francisco Probate Manual §12.2(d) reads:

d. Information to Be Supplied.

(1) Required Declaration. The Court requires that a declaration in support of the petition for the guardianship of the person be filed with the petition by the proposed guardian. The declaration will become part of the Court file which is a public record. The declaration shall include the following:

(a) The need for the guardianship including the specific reasons why the parents are unable to care for the proposed ward, and whether they consent to the guardianship.
(b) The proposed guardian's complete legal name, date of birth, education, employment, and state of health.
(c) Information if the proposed guardian is presently serving as a guardian in San Francisco County or any other county and, if so, the names of the wards.
(d) The complete legal name, date of birth and relationship of all persons residing in the proposed guardian's household.
(e) A statement concerning the development of the minor, indicating with whom minor has resided since birth, and any special emotional, psychological, educational or physical needs of the minor and the guardian's ability to provide for such needs.
(f) The proposed day-care for the minor, if applicable, and the name, address and telephone number of the minor's school, if any.
(g) The housing arrangements of the guardian, indication whether the minor will have his or her own room or will be sharing a room with another member of the guardian's household, and, if so, with whom.
(h) The anticipated amount and source of any financial support of the minor. Counsel is reminded that the appointment of a guardian does not relieve the minor's parents of their primary obligation of support.

(i) A photocopy of the visa of a minor in the United States on a student visa.

(j) Any arrest record of the guardian and each person who will reside in the guardian's home, including the nature of the offense, date, place, and disposition.

(k) Any pending or prior proceedings in Juvenile Court (dependency or delinquency), Family Court, or any other Court involving the minor. Any pending proceedings in Juvenile Court (dependency or delinquency) involving any other persons who will be residing in the guardian's home should also be stated. Information required in this section should include the date, place, case numbers, and disposition of the matters.

(l) Any prior contact by the minor, the guardian, and any persons who will reside in the guardian's home with Child Protective Services or the Department of Social Services.

(m) The name and telephone number of the physician or medical clinic where the child receives his/her medical care.

Information which should be revealed to the Court but which petitioner desires to have remain confidential, shall be addressed to the Court Investigator and labeled, "For Confidential Use Only." A Confidential File may be established by the Clerk of Court to contain confidential information filed with the petition for guardianship.

K. NOTICE AND ACKNOWLEDGMENT OF RECEIPT
(Judicial Council Forms: General Litigation Forms, Litigation Forms, 982a4)

Probate Code §1511(b) requires personal service of the Notice of Hearing and the Petition on the following persons: the proposed ward (if age twelve or over), the person having legal custody of the proposed ward, the parents of the proposed ward, and any person nominated as guardian for the proposed ward.

This form is used as a substitute for personal service of the Notice of Hearing and the Petition. It is not needed for parties who are personally served (usually the minor and the proposed guardian), if the parents have already signed the Waiver of Notice and Consent form (see above), or if the parents cannot be located.

The Notice of Hearing, a copy of the Petition, and two copies of the Notice and Acknowledgment of Receipt should be mailed to each person (usually the parents) along with a cover letter requesting the person to sign and date the Acknowledgment, and to fill in the date on which the Notice was received. The person should also be requested to mail the Acknowledgment back to the attorney. A self-addressed stamped envelope should be provided for that purpose.

In the unlikely event that our client, the proposed ward, will not attend the hearing, an Acknowledgment of Receipt or Proof of Service should be filed before the hearing.

(1) Type in the name and address of the person who mails the Notice.

(2) Type in the name of the court and enter the case name and number.

(3) Type in the case number once it has been assigned.

(4) Type in the name of the person to whom the Notice will be sent.
(5) Type in the date on which the Notice is sent. The person sending it should sign it.

(6) Place an "X" in the box next to the word "Other," and type in the words "Petition for Appointment of Guardian of Minor" and "Notice of Hearing (Guardianship)."

(7) Leave the bottom lines blank. It is usually helpful to place a red "x" by the lines for the person's signature, name, and the dates.

I. PROOF OF PERSONAL SERVICE OF NOTICE OF HEARING-GUARDIANSHIP AND CONSERVATORSHIP
(Judicial Council Forms, Guardianship and Conservatorship Directory, GC-020(P))

When a person who is entitled to personal service of the Petition and Notice of Hearing is personally served, a Proof of Personal Service must be completed and signed by the person who made the service. Form GC-020 (P), adopted by the Judicial Council in July 2005, is the form used to document personal service.

Items 3 and 4: LSC generally checks both box 3 and box 4. In box 4, list the forms served along with the Notice of Hearing. This should generally include at least the Petition for Appointment of Guardians of Minor, Declaration under UCCJEA, and Consent of Guardian forms.

Before filing this form, make sure that it has been completed by the person who performed service. Completion of the form means that one or more boxes in Item 5 are checked; the server's name, address, and telephone number are listed in Item 6; the full name of each person served and the address of each service is noted in the numbered boxes; the date and time of each service is noted; and that the form is both dated and signed at the bottom.

This form is intended to be filed in conjunction with the Notice of Hearing form. Once you have completed all required notice and service, staple the Notice of Hearing GC-020, Attachment to Notice of Hearing GC-020(MA), and Proof of Personal Service GC-020(P) forms together and file at the court.

Note that if you use a sheriff's office or a private process server to serve parties, they will often insist on using their own proof of service forms rather than the Judicial Council form. This is generally acceptable to the court, as long as the proof of service contains a sworn declaration, under penalty of perjury, that the service occurred.

M. DUTIES OF GUARDIAN
(Judicial Council Forms, Guardianship and Conservatorship Directory, GC-248)

This form must be read and signed by the proposed guardian. Caption the document and make sure to put the minor’s name on the top of each page. Print the guardian’s name on the last page, under “Acknowledgement of Receipt” and put the date. Be sure to review these duties with the guardian before having her sign the form.

N. CONFIDENTIAL GUARDIANSHIP SCREENING FORM
Item 1: Fill in appropriate information for proposed guardian.

Items 2 through 16: Check appropriate boxes. If the answer is yes to any of the questions an attachment will need to be prepared. The attachment should explain why, even though the guardian answered yes to a question, that should not be an impediment to them being an appropriate guardian. For example, if the guardian has an arrest in the past for drug sales the attachment should explain that the arrest was long in the past and explain what changes the guardian has made since that time. (For example, participation in a substance abuse treatment program.) It may be appropriate to submit an additional declaration from the guardian on this topic.

O. ORDER APPOINTING GUARDIAN OF MINOR
(Judicial Council Forms: Guardianship and Conservatorship Directory, GC-240)

This form, as well as the Letters of Guardianship, need not be completed at the time of the initial filing. Both must be brought to the hearing. The Order is the document signed by the judge appointing a person guardian of a minor, and directs the clerk to issue Letters of Guardianship. Local rules in some counties mandate that a proposed Order be submitted to the court before the hearing.

The caption should be completed as it was on the Petition, including the case number that was assigned at the time of filing.

Item 1a: Type in the judge's name. This item may be left blank until the hearing.

Item 1b: Type in the hearing date, time, and department. In San Francisco, guardianships are heard at 1pm in the Probate Department, Room 204.

Items 1c,d: Type in the petitioner's name and the petitioner's lawyer's name, if any.

Item 1e: Type in the minor's lawyer's name (usually LSC or Panel attorney), address, and phone number.

Item 2a: Mark the first box if addresses for all required persons have been obtained and a Notice of Hearing and Petition has been mailed (personally served or the equivalent on some) to all of them.

Item 2b: Mark the second box if any Attachment 15s to the Petition have been completed. The box "should be dispensed with" should be marked, and the names of those relatives whose addresses could not be found should be entered here.

Item 3: Mark the appropriate box: guardianship of person and/or estate.

Item 4: Mark this box only in those rare cases in which a guardian of the estate is being appointed and the powers of that guardian will be tailored.

Item 5: Mark this box only if the attorney has been appointed by the court.
Item 6: Mark this box and supply the requested information if appropriate. This will usually be someone in Family Court Services if a guardianship petition is contested.

Item 7a: Fill in the name, address, and phone number of the proposed guardian of the **person** of the minor, and the name of the minor.

Item 7b: Fill in the name, address, and phone number of the proposed guardian of the **estate** of the minor, if any, and the name of the minor.

Item 8: If the last box of Item 2b is marked (indicating unlocated relatives), then this box should also be marked.

Item 9: Always mark at least one of these boxes. Usually it will be the first box (bond not required for guardianships of the person).

Item 10: LSC does not charge fees, so do not mark this box.

Item 11: Mark this box only for guardianships of the estate, and then only if Item 4 is also marked. If you mark this box, attach Attachment 11, specifying the requested powers.

Item 12: Mark this box only if the Petition (Item 1f) requested a tailoring of powers of the guardian of the person of the minor. If so, attach Attachment 12, specifying the requested powers.

Item 13/14/15: They are generally used only if special orders or conditions are requested.

Item 16: Type in the number of boxes marked in Items 8-15.

Item 17: Type in the number of pages attached to the **Order** (usually zero).

Finally, type in the date of the hearing. Leave the space for the judge's signature blank.

**P. LETTERS OF GUARDIANSHIP**
(Judicial Council Forms: Guardianship and Conservatorship Directory, GC-250)

This is the document which, when completed and stamped by the clerk, gives the guardian custody of the minor. It is issued by the clerk of the court once the **Order** is signed and any bond is posted.

The caption should be completed as it appears on the Petition and **Notice of Hearing**.

**Left Side**

**Item 1:** Type in the name of the guardian, mark the appropriate box(es), and type in the name of the minor.

**Items 2,3:** These boxes should not be marked unless the powers of the guardian have been specially tailored.
Item 4: Type in the number of pages attached (usually zero, unless Items 2 or 3 have been marked).

Type in the date on which the letters will be issued (usually the same day as the hearing). Leave the rest of the left side of the document blank.

Right Side
Affirmation
Type the date and city in which the guardian signs this affirmation.

Certification
Leave this item blank. When the clerk issues the letters after the judge signs the Order, ask the clerk for at least two certified copies, one for the guardian and one for the ward. If fees have not been waived, in San Francisco there will be a charge of $7.00 for each certified copy (as of July, 2000).

Make sure the guardian signs the Letters of Guardianship after the hearing.
V. GUARDIANSHIP: FILING, NOTICE, HEARING, CONCLUSION

After the papers are prepared, you’re on your way. This section discusses final preparation of the papers for filing, the process of filing, the details of providing notice of the guardianship hearing to those entitled by law to notice, the guardianship hearing, and the final wrap-up of the guardianship process. All along the way, Panel attorneys are encouraged to call the attorney of the day at LSC if our office may provide any assistance.

A. HOME VISIT

After the papers are completed they must be signed by the petitioner and the proposed guardian. This is often a good opportunity to make a home visit to ensure that everything is going well and that the home is as you described it in the declaration.

In LSC’s experience, as the filing date approaches, the proposed ward often have many questions. Building in some time for discussion when you meet to sign the papers is often a good idea.

B. FILING THE PAPERS

a. Copies

Normally, the only copies necessary in San Francisco are the original for the court file, a copy for the probate investigator and one (1) copy for the client's file. So you should go to Court to file with the original and two copies of all documents. After you return from filing the papers you can make copies of the endorsed-filed papers to use to send out Notice packets. (Copies of the Petition and the Notice of Hearing go to all persons entitled to notice.)

NOTE: ALL ORIGINALS ARE FILED WITH THE COURT.

b. Filing

In San Francisco and Alameda Counties, the Notice of Hearing/Proof of Service form will not be left with the clerk at this time, so no copy is needed. In other counties, clerks often accept the Notice of Hearing at the time of the initial filing, though the Notice has not yet been mailed, so in such areas, copies of the Notice should be brought to the initial filing.

When the documents are ready for filing, take the originals and copies to the probate window in the Superior Court Clerk's office on the first floor of 400 McAllister Street in San Francisco. Give the originals and one copy to the clerk, in the following order:
1. Application for Waiver of Court Fees and Costs and the Order on Application for Waiver of Court Fees and Costs or a check for $224.50.
2. Notice of Hearing
3. Petition for Appointment of Guardian
4. Consent of Guardian
5. Duties of Guardian
6. Guardianship Screening Form
7. Declaration under the UCCJEA
8. Declaration of Proposed Guardian
9. Other documents when necessary (for temporary guardianship procedures, see the next chapter)

The clerk will examine the documents to ensure they are in proper form. The clerk will assign a case number and stamp this number on all the originals. Next, the clerk stamps "Original-Filed" in the upper right corner of the original forms, and stamps "Endorsed-Filed" on each of the other copies. Although the clerks may not provide legal advice, they are generally helpful and competent, and will assist in making sure the filing is done properly. Papers designated as confidential, such as the Declaration of Proposed Guardian, are kept separated within or separately from the public court file folder and are not available to the general public. The clerk keeps the originals and one copy (of Petition, UCCEJA, Screening form, Duties, Declaration & Consent) for the court investigator.

The clerk will stamp the hearing date on the original Notice of Hearing, and will return the original. The original Notice of Hearing will not be filed until after all notices have been mailed and the Proof of Service on the back of the Notice has been signed (see below).

C. NOTICE II: SENDING OUT NOTICE

Probate Code §1511 requires service of the Notice of Hearing of Guardianship, with a copy of the Petition for Appointment of Guardian, on the following persons:

- The proposed ward, if age twelve or over
- The proposed guardian
- The person having legal custody of the proposed ward
- Relatives of the proposed ward within the second degree (grandparents, parents, siblings). Minors who are under 12 do not need to receive separate notice if they adult they live with receives notice.
- Any person nominated as guardian for the proposed ward
- The local agency designated to investigate guardianships (in San Francisco, the local DHS)
- For non-relative guardianships, the State Department of Social Services

Also, notice must be provided to any Native American or Indian tribes with which the child may be affiliated. For more information, see “Guardianship of Children with Native American or Indian Heritage” in the “Guardianship Variations” section of this manual.

a. Notice of Hearing
Once you have filed the Petition with the court and received a hearing date, make sure that the hearing date, time, and location are entered on the front of the Notice of Hearing. Once the Petition has been filed and the Notice of Hearing is drafted, it is time to send out notice by mail.

b. Preparing and Sending the Notice Packages

Make copies of the Notice and Petition with all attachments (Consent of Guardian and the Declaration under UCCJEA are considered attachments to the Petition) for all the parties entitled to notice. Address and stamp an envelope for each person entitled to notice. A separate envelope must be sent to each recipient, even if his/her address is the same as that of another recipient (i.e. grandparents living in the same home receive separate notice).

1. Parents

If you have not sent the Nomination of Guardian/Waiver of Notice form to each parent previously, it should be sent to each parent at this time, along with an explanatory letter. Remember to include a self-addressed stamped envelope for each parent.

Each parent should be sent a copy of the Petition, with attachments, and the Notice of Hearing. Remember to include a self-addressed stamped envelope and two copies of the Notice and Acknowledgment of Receipt for each parent. A cover letter should also be sent, explaining the procedure and requesting them to mail back the Acknowledgment form. A sample letter is located in the appendix to this manual.

Legally, if a parent signs the Waiver of Notice and Consent, and that form is filed along with the Petition, the parent need not be given notice. However, in all cases LSC sends the Notice of Hearing and a copy of the Petition for Appointment of Guardian to the parents, if possible.

2. Other Relatives

Each relative within the second degree (grandparents and siblings) must be sent the Notice of Hearing and Petition (with attachments) unless the Petition requests waiver of notice for due diligence or in the interests of justice. Only these documents need be sent to relatives other than parents; the Notice and Acknowledgment of Receipt is unnecessary. Siblings over 12 years old should be sent these items themselves. If the sibling is under 12, then notice should be sent to the sibling’s caretaker.

3. Offices

You must send Notice of Hearing and a copy of the Petition (including the Declaration of the Proposed Guardian) to the local DHS/DSS office in all cases (Probate Code §1516). DHS is required to do a background check on all proposed guardians and other adults living in the same household to identify any child abuse allegations or criminal records. For this reason, the complete name, date of birth, driver’s license number, social security number, hair color, weight, height and ethnicity of the proposed guardian and any other adults in the home should be included in a cover
letter to the local DHS, when sending the Notice of Hearing and Petition for Appointment of Guardian. This is done as a courtesy in order to expedite the local DHS's background police and children protective service check. A sample letter to DHS is located in the appendix.

The address for San Francisco DHS is as follows (as of September 2005):
Larry Unruh, J354
Family and Children's Services
Department of Human Services
P.O. Box 7988
San Francisco, CA 94120-7988

If the proposed guardian is a non-relative, a Notice of Hearing must also be sent to the State DSS (Probate Code § 1542). As of July 2000, the address for the state is:
State Department of Social Services
Adoptions-Operations Bureau, MS-1931
744 P Street
Sacramento, CA 95814

b. Proof of Service by Mail

Once you have mailed the notice packets to all parties, it is time to complete the Proof of Service by Mail, located on page 2 of the Notice of Hearing.

Item 2: Enter the address of the person mailing the notice. The address must be in the county where the mailing takes place. If the petition is filed in another county, the person mailing the notices will normally do so after returning to San Francisco after filing the petition.

Item 3: Check the appropriate box.

Item 4: Type in the date and place where the mailing occurred. A separate Proof of Service should be completed if some notices are sent on a different date or by a different person.

Item 5: Check this box.

Fill in the date and the person's name who is completing the mailing. That person should sign it, and underneath that type in the name and address (exactly as it appears on the envelope) of each person to whom a Notice of Hearing was sent. In almost all cases, it will be necessary to include the Attachment to Notice of Hearing form, GC-020(MA).

Once you have sent all the required notice and completed this form, the Notice must be submitted to the court. Take the original Notice of Hearing, along with one copy, and file the original with the Probate Clerk. Endorse-file the copy for the attorney's file. You may also submit the signed Notice of Hearing and Proof of Service by mail to the clerk with a copy and a self-addressed, stamped envelope. The clerk's office will keep the original and return the copy, stamped "Endorsed Filed."
Note that the Proof of Personal Service of Notice of Hearing form, GC-020 (P), is intended to be filed along with the Notice of Hearing form. See the above discussion of this form (Letter L in “Preparing the Papers”) for further instruction on completion of this form.
D. SENDING IN THE RAINBOW PACKET (ALAMEDA COUNTY ONLY)

Alameda County requires that proposed guardians fill out a multi-form packet, referred to as the “Rainbow Packet” because of it was formally on pink and yellow colored paper. It is no longer necessary to use different color paper. The packet requires very detailed information about the ward and the proposed guardian for the use of Alameda County Child Protective Services and the Court Investigator’s Office.

The Rainbow Packet is available in Alameda County Superior Court/Probate Clerk’s offices. The packet is not filed when the Petition for Guardianship is filed; instead, it is sent, with a copy of the Petition, after the initial filing.

The first pages of the packet are sent to Child Protective Services. The other pages are sent to the Court Investigator’s Office if the proposed guardian and ward are related; they are sent to the Child Protective Services if the proposed guardian and ward are not related.

When mailing the Rainbow Packet, make sure to include a copy of the Notice of Hearing and Petition for Appointment of Guardian in the packet to Child Protective Services. A copy of the Petition must also be sent to the Court Investigator’s Office.

The Court Investigator’s Office/CPS will use the information provided in their assessment of the suitability of the guardianship. The forms must be sent as soon as possible after the hearing date is set, as each agency requires 45 days to complete its investigation. In LSC’s experience, the Alameda County courts do not waive the reports by these agencies; instead, if the hearing date arrives before the investigation is complete, the parties must come to court to request a continuance.

This manual includes a sample Rainbow Packet, which includes the appropriate addresses.

E. NOTICE III: PERSONAL SERVICE

If a person on whom personal service is required does not send back the Notice and Acknowledgment of Receipt, the attorney must have that person personally served. Service must take place 15 days prior to the hearing. It is preferable if someone other than the attorney serves notice. The person serving must execute a Proof of Personal Service. The cost of this personal service can theoretically be charged to the person if the Acknowledgment is sent and not returned. As a practical matter, however, the chance of actual reimbursement usually is not worth the effort.

In July 2005 the Judicial Council adopted a new form, GC-020(P), Proof of Personal Service of Notice of Hearing—Guardianship or Conservatorship. For further discussion on this form and instructions for its completion, see Letter L in “Preparing the Papers,” above.

F. THE GUARDIANSHIP HEARING

a. San Francisco
All guardianship and conservatorship matters in San Francisco are heard before the Probate Judge (Judge John Dearman) or the Probate Commissioner (Dorothy McMath) on Tuesday mornings at 1:00pm. in Room 204, 400 McAllister Street. The attorney should call the minor and proposed guardian a day or two in advance to remind them about the hearing. The presence of the proposed guardian and ward is usually required. The calendar is usually posted outside the courtroom, and is published on the day before and on the day of the hearing in The Recorder and The Daily Journal, San Francisco's legal newspapers. At 9:00 a.m. the commissioner will briefly ask for any cases needing to be continued and then instruct all people appearing on case to watch a 20 minute video tape on conservatorships and guardianships produced by the court. The cases are then called in order. If a case is not ready when called, the judge or commissioner will usually pass the matter, and call it again at the end of the calendar.

When the case is called, all persons interested in the matter should advance to the front of the courtroom. The attorney, the minor, and the proposed guardian should go up to the counsel table. The attorney should identify all persons present, except persons represented by other counsel or representing themselves in opposing the Petition for Appointment of Guardian. The judge may ask questions about any deficiencies or omissions in the papers, including notice. S/he will usually ask some questions about the parents, examine the DHS report, and otherwise assure him or herself of the necessity of guardianship. The judge will also want to be sure that the minor and the proposed guardian understand the nature of the proceeding and are in agreement with the proposed guardianship.

When the judge indicates a willingness to grant the Petition, the attorney should pass the prepared Order to the clerk or bailiff, who will hand it to the judge. The judge will examine the Order, sign it, and hand it back. Examine the Order to see that it was signed and properly completed by the judge. After thanking the judge, everyone should leave the courtroom.

After the judge signs the papers, the parties may leave the courtroom. Once outside the courtroom, the guardian should sign the Letters of Guardianship. The group should then proceed to the clerk's office.

File the Order and endorse-file the copies. Then file the Letters and endorse-file the copies. At least two copies of the Letters should also be certified: one for the guardian, one for the minor. There is a $7.00 certification fee, unless fees have been waived.

Give a copy of the Order and a certified copy of the Letters to the minor and to the guardian. Also save an additional set for the attorney's file.

b. Alameda County

The procedure in Alameda County is basically similar to that in San Francisco. Attorneys at LSC have found it helpful to call the investigating office a few days before the hearing is scheduled to find out if the report has been completed within the initial time period; if it has not been, the attorneys here have found that bringing the client to court for the continuance hearing is unnecessary.
Alameda County also provides tentative rulings; the attorney may call the court the day before the hearing for a tentative ruling. While it isn’t a foolproof safeguard, this system has proved convenient for LSC attorneys to check to ensure that their court files are complete.

**G. THE CONTESTED GUARDIANSHIP HEARING AND MEDIATION**

A parent or relative may appear at the guardianship hearing and contest the appointment of a guardian for the child. Usually, if a relative appears to contest, the Court will allow the relative to address the court and state any concerns.

When a parent is contesting the guardianship, the Court is required to make a finding that parental custody of the child would be detrimental and that granting custody to a nonparent would be in the best interest of the child (Probate Code §1514, Family Code §3041). Further, California case law requires the Court to find that a “clear and convincing” showing has been made that it would be detrimental to the child to be in parental custody and that the award to a nonparent is in the child’s best interest. See Guardianship of Jenna G., 63 Cal. App. 4th 387, 74 Cal. Rptr. 2d 47 (1998), Guardianship of Stephen G., 40 Cal. App. 4th 1418, 47 Cal. Rptr. 2d 409 (1995).

In making a determination of best interest and detriment, the Court will look at a variety of circumstances including the stated interest of the child, the age of the child, and the nature of the parent-child relationship. Furthermore, the Court should look at the psychological and emotional well-being of the child, including the child’s need for continuity and stability of care and of relationships. See Guardianship of Kaylee J., 55 Cal. App. 4th 1425, 64 Cal. Rptr. 2d 662 (1997).

a. **San Francisco**

In San Francisco Probate Court, when the guardianship case is called all parties are asked to state their positions and make any further arguments as necessary. If the case is contested, the judge or commissioner will have all parties attempt to mediate the issues. The purpose of the mediation is to provide a forum to work out conflicts in guardianship cases, including visitation disputes. Mediation may happen during the court calendar of the guardianship hearing with the probate court investigator. The parties will then report back to the court at the end of the calendar. The Probate Court also has a mediation program where a group of volunteer attorneys have been trained as mediators. The Court makes a decision to refer a case to the mediation program when appropriate. The parties and any attorneys meet with the mediator to attempt to come to an agreement regarding the issues in dispute. If the parties come to an agreement, that agreement is signed by all parties and presented to the Probate Judge for approval. The attorney for the minor is responsible for setting up the mediation, after receiving information from the Court. The attorney for the minor is also responsible for ensuring that the consent forms and mediation agreement are completed at the mediation.

If an agreement cannot be reached, the Court may take one of the following actions. The Court may make a decision to grant or deny the guardianship based on the petition, supporting or contesting declarations, and arguments made in court. The Court may grant or extend a temporary guardianship to allow for further investigation and/or mediation. Finally, the Court may grant or extend a temporary guardianship pending an evidentiary hearing.

b. **Alameda County**
In Alameda County, when a guardianship case is contested the case is referred to Family Court Services. All parties appear at an initial hearing in Probate Court and state their positions. Extensive arguments are not heard at this time. The judge refers the parties to Family Court Services for mediation and the matter is set to be heard in Family Court. All parties, excluding their attorneys, meet with the Family Court Services mediator prior to the next hearing to discuss their positions. If there are significant concerns about the child participating in mediation, the minor’s attorney can request that the minor met with the mediator alone, apart from the proposed guardian and contesting party. If the parties fail to come to an agreement, the mediator makes a recommendation to Family Court as to the pending guardianship petition. At the Family Court hearing, all parties must be prepared to provide any additional evidence and/or witnesses that would be relevant to the guardianship matter. The judge will hear from the parties and in his/her discretion allow for further evidence. At that hearing, the judge may take any of the actions as described above for San Francisco county.

H. FOLLOW-UP

The attorney may wish to contact the minor by phone periodically, to make sure that the guardianship is going well and that no further legal assistance is needed.

In San Francisco and Alameda, the court often sets at the guardianship hearing a status report hearing for twelve months after guardianship is granted. The court has developed a simple form which should be filed with the court at least one week in advance of the hearing. The Court mails this form to the guardian approximately at least one month before it is due. If difficulties exist, the commissioner may wish the attorney, guardian and ward to appear in a hearing to review the guardianship. Otherwise, no appearances are necessary at the status report hearing. If, as a volunteer panel attorney, you feel you can not commit to continue with the case, you should withdraw as attorney of record at the guardianship hearing. Future status reports can be submitted by the guardian.

When Guardianship Panel attorneys conclude a case assigned through LSC, it is imperative that LSC be informed of the case’s completion and outcome. The case closing form given to Guardianship Panel attorneys at the time they accept a case should be completed and returned to the office at this time. Learning of the resolution of guardianship cases is essential to LSC’s record keeping and statistical compilation, as well as for reference in the event of future contact between LSC and the client. Please contact LSC if you did not receive a case closing memo at the time that you accepted a pro bono case or if the form has been misplaced over time.
VI. GUARDIANSHIP VARIATIONS: TEMPORARIES, DEPENDENCIES, AND TERMINATIONS

Sometimes minors have special needs. They may be in immediate danger, or they may already be in the dependency system, or they may have an existing guardianship that requires termination. This chapter covers some variations on the straightforward guardianship.

A. TEMPORARY GUARDIANSHIPS

The time between filing a guardianship petition and the appointment of a guardian is typically five to eight weeks. Occasionally the minor needs someone to exercise legal custody during this time. In certain cases, a temporary guardianship can be quickly obtained, but there must be some kind of urgency for a temporary guardianship to be granted. Temporary guardianship, like permanent guardianship, may be for the person or the estate, or both. However, the temporary guardian has only those powers necessary to provide for the temporary care, maintenance, and support of the minor (Probate Code §2252).

In San Francisco, temporary guardianships are normally done on a quasi ex parte basis. The Petition for Appointment of Temporary Guardian can only be heard after the filing of a general Petition for Appointment of Guardian (Probate Code §2250). After filing the permanent Petition, take the temporary guardianship papers, along with a copy of the Petition and Notice of Hearing to the commissioner's office (Room 202). Temporary guardianships can be heard every weekday from during the ex parte calendar. If the minor is the petitioner, the minor should be present if possible. The Probate Court staff attorney reviews the petition with the parties and then brings it to the commissioner. The San Francisco Probate Court is now requiring appointments for temporary hearings be made five days in advance by calling 551-3650. They are willing to be flexible about the five days when the situation is urgent.

In Alameda County the Probate Department does not hold hearings for Temporary Guardianships. The papers need to be submitted to the probate department. They are then reviewed by the judge and an order is usually available that afternoon or the next day. If you are aware that the temporary guardianship will be contested, local rules require that that petition be brought before the Family Law Department.

The minor (age twelve or older) and parents must receive notice of the hearing at least five days in advance of the appointment, unless the court for good cause waives notice (Probate Code §2250). In San Francisco, the local rules also require verbal notice (by telephone) of the proceeding to everyone else entitled to notice of the guardianship. (i.e. Grandparents, siblings, etc.) 24 hours in advance, unless such notice would endanger or create severe hardship for the minor. San Francisco local also require that a declaration be filed with the Petition that the required notice has been given. (Please note that the local rules changed in January, 2000 to require five day notice to parents. 24
hour phone notice no longer suffices for parents.) If notice to the parents or relatives would create a dangerous situation for the minor and the petitioner wishes to waive notice you must allege the reasons for waiving notice.

Probate Code §2257 provides that the temporary guardianship shall terminate automatically after 30 days, unless a permanent guardian is appointed earlier or the court extends the time of termination based upon a showing of good cause. The Petition for Appointment of Temporary Guardian should request that the termination date be the date of hearing on the petition for permanent guardianship.

If the parent objects to temporary guardianship, the commissioner may conduct a short hearing to determine if the temporary guardianship is necessary. If problems are anticipated, the attorney should prepare the minor to speak, and if possible bring witnesses or declarations from witnesses to speak on the minor’s behalf. If the matter is contested, the commissioner may refer the matter for mediation in order to help her make a decision.

Once the temporary Order is signed, take it to the Probate window on the first floor to file it. Before it is filed, conform the copies to the original, if needed. Make sure to endorse-file three copies. Give one copy of the Order to the minor and one to the guardian. The other copy is for the attorney’s file. Submit the Letters for filing, and endorse-file three copies. Two of those copies should also be certified, one for the guardian and one for the minor. The other copy is for the attorney’s file.

A court case ruled that temporary guardians can receive public benefits, i.e., CALWORKS and Medi-Cal for their wards. Timmons v. McMahon, (1991) 235 Cal. App. 3d 512. In San Francisco, the court expects a compelling reason in order to grant a temporary guardianship. Payment of cash benefits alone is not usually considered a sufficient basis for appointment of a temporary guardian.

1. **PETITION FOR APPOINTMENT OF TEMPORARY GUARDIAN**
   (Judicial Council Forms: Guardianship and Conservatorship Directory, GC-110)

This is prepared much like the Petition for Appointment of Guardian.

**Item 1a/b:** Enter the petitioner’s name. Fill in the name and address of the proposed guardian in the appropriate section. Section a is for guardianships of the **person**; section b for guardianships of the **estate**.

**Item 1c:** If this is a guardianship of the person, leave this section blank. No bonds are required for guardianships of the person only.

**Item 1d:** If special powers are requested, specify them in “Attachment 1d” and check this box. This is very unusual.

**Item 1e:** Because LSC represents children only, we would never request a guardianship without notice to the ward. Thus, the box preceding "minor" should never be checked. If you are requesting that notice to a parent be waived, check the appropriate box(es) and submit “Attachment 1e.”
LSC uses the following language for this attachment when the petitioner is the minor:
“Petitioner [name] requests that an order be granted dispensing with notice of the
Petition for Appointment of a Temporary Guardian to his/her mother/father, [name],
for good cause pursuant to Probate Code §2250(c) and the attached declaration of the
Petitioner.” The declaration should explain clearly why notice should be waived for
his/her safety.

Item 1f: If any other orders are requested, check this box and submit "Attachment 1f."

Item 2: Enter the proposed ward’s name, present address, and phone number.

Item 3: This is the most important section, in which the petitioner must state facts sufficient to
establish good cause for the appointment of a temporary guardian. No formula exists
for what constitutes good cause; use common sense and state the reasons succinctly. A
description of the facts and reasons are usually put into an Attachment 3.

Item 4: Request that the guardianship be granted pending the hearing (box a).

Item 5: Fill in only for guardianships of the estate.

Item 6: Relates only to conservatorships, not guardianships. Leave this section blank.

Item 7: Indicate whether the ward will be present at the hearing.

Item 8: Total up the number of attachments and enter it here.

Enter the date in both places required, and have both the attorney and the petitioner(s)
sign the petition.

2. DECLARATION OF NOTICE (San Francisco Only)

San Francisco Probate Manual Rule 1.19(e) requires that the temporary Petition include a
declaration setting forth the names of the persons to which notice was given, indicating a
notification of the time and place of the ex parte hearing, the nature of the hearing and relief sought,
and a statement that the notice requirement has been complied with or an explanation of the reasons
why notice was not provided. The declaration should also include what response, if any, was
received.

3. ORDER APPOINTING TEMPORARY GUARDIAN
(Judicial Council Forms: Guardianship and Conservatorship Directory, GC-140)

Item 1a/b: In San Francisco, the court usually hears the temporary guardianships, in Room 202 of
the Probate Department at 400 McAllister St.

Item 1c/d: These boxes are completed with the names of those present for the hearing. When the
minor is the petitioner, the entries in c and d are the same.
Item 2a: If notice was given to the ward and the parents, mark this box.

Item 2b: If the Petition requested waiver of notice to one or both parents, check this box and the box marked “should be dispensed with.”

Item 3: Mark the first box. Mark the box for guardian, mark the box for providing for temporary care, maintenance, and support, and also the box for pending the permanent hearing.

Item 4/5/6: These items do not apply to guardianships. Leave them blank.

Item 7a: Enter the name, address, and phone number of the temporary guardian of the person, then the name of the minor.

Item 7b: Enter name, address, phone of the temporary guardian of the estate, if any.

Item 8: If you have requested any waiver of notice, check this box.

Item 9: If this is a guardianship of the person only, check box a. If this is a guardianship of the estate, conform boxes b and c to Item 1c (2,3) on the Petition for Appointment of Temporary Guardian.

Items 10/11/12/13: These items do not apply to guardianships. Leave them blank.

Item 14: If you have requested any additional orders, prepare them as Attachment 14.

Item 15: Check this box. The court will enter the hearing date.

Items 16, 17: Remember to complete these items and enter the date below. The judge will sign the order at the hearing.

4. LETTERS OF TEMPORARY GUARDIANSHIP
(Judicial Council Forms: Guardianship and Conservatorship Directory, GC-150)

Prepare Item 1 (and Items 2, 4 and 5 if necessary). The clerk will complete Item 3 and the Certification at the time of filing. In the Affirmation section, check the guardian box, fill in the date and place in which the affirmation will be executed. The proposed guardian can sign the Affirmation at any time before filing.

B. JOINT GUARDIANSHIPS WITH TERMINALLY ILL PARENTS

If a custodial parent has been diagnosed as having a terminal condition, as evidenced by a declaration executed by a licensed physician, the court, in its discretion, may appoint the custodial parent and a person nominated by the custodial parent as joint guardians of the person of the minor. However, this appointment shall not be made over the objection of a noncustodial parent without a finding that the noncustodial parent’s custody would be detrimental to the minor (as provided in §3041 of the Family Code). This provision was adopted with the intent that a parent with a terminal condition would be able to make arrangements for the joint care, custody, and control of his or her
minor children so as to minimize the emotional stress of, and disruption for, the minor children whenever the parent is incapacitated or upon the parent’s death, and to avoid the need to provide a temporary guardian or place the minor children in foster care, pending appointment of a guardian, as might otherwise be required. (Probate Code §2105(f)).

C. GUARDIANSHIP OF CHILDREN WITH NATIVE AMERICAN OR INDIAN HERITAGE

Under the Indian Child Welfare Act (ICWA), notice must be given to all Indian tribes to which a child may belong, of any pending “involuntary child custody proceedings.” 25 U.S.C. § 1912. This category includes not only foster care placements, termination of parental rights, pre-adoptive or adoptive placements, but also probate guardianships. Thus, in probate guardianships, prospective guardians and minors must be asked if the subject child may have any Indian heritage. In the event that there may be some type of Native American ancestry, the tribe must be notified of the pending proceeding, and proof of such notice, including copies of notices and sent and all return receipts and responses received, must be filed with the court.

This notice must be sent, along with a copy of the petition or other document initiating the proceeding, by registered or certified mail with return receipt requested, to any and all tribes of which the child may be a member or may be eligible for membership. Additional notice by first class mail is recommended. The notice should be sent to the tribal chairperson, unless the tribe has designated another agent for service. An updated list of federally recognized tribes and designated agents for ICWA purposes can be found on the California Department of Social Services website: www.childsworld.ca.gov, under the ICWA section, entitled “Tribe Listing.” This list is updated more often than the annual list of tribes published by the Bureau of Indian Affairs. The website also has helpful information under Frequently Asked Questions. If the identity or location of the tribe cannot be determined, notice must be sent to the Bureau of Indian Affairs, which is part of the federal Department of the Interior. The BIA then has fifteen days to provide notice as required to the appropriate tribe.

As an example, if a child’s parent or guardian suggests that he or she may have Apache heritage, but they do not have any information about a specific tribe, notice should be sent to all eight federally-recognized Apache tribes listed at the CDSS website. If a child’s parent or guardian suggests that he or she may have Native American heritage, but they are unaware of any specific tribal affiliation, notice should be sent to the Bureau of Indian Affairs. The notice requirements arise even where the family is not certain whether or not the child has Indian heritage.

Notice should be sent whenever there is reason to believe that a child may have Indian heritage, and for every hearing thereafter unless and until it is determined that ICWA does not apply to the particular case. If, after a reasonable time following the sending of notice, but in no event less than sixty (60) days, no determinative response to the notice is received, the court may determine that the act does not apply to the case unless further evidence on the applicability of the act is later received. In any event, child custody proceedings (including legal guardianships) cannot proceed to hearing until at least ten (10) days after receipt of the notice by the tribe. If a tribe responds to the notice within the ten days and requests a continuance, a twenty (20) day continuance must be granted.
A sample ICWA notice letter to an Indian tribe for notification of a pending probate guardianship involving an Indian child is included in the appendix to this manual. Proper notice should be written in clear and understandable language and include the following information:

1. Child's name, birth date and birthplace
2. Name of the Indian tribe or tribes in which the child is a member or may be eligible for membership
3. Names, if known, and current and former addresses of the child's mother, father, maternal and paternal grandparents and great grandparents or Indian custodians, including maiden, married or former names or aliases
4. Birthdates and places of birth and death of the above family members listed in (3)
5. Tribal enrollment number of the above family members listed in (3)
6. Copy of the petition, complaint, or other document initiating the proceeding
7. Statement of the right of the parents, Indian custodian, and tribe to intervene in the proceeding
8. Statement that counsel will be appointed for parents or Indian custodians who cannot afford one
9. Statement of the right of the parents, Indian custodian and tribe to receive, on request, an additional twenty days to prepare for the proceedings
10. Location, mailing address and telephone number of the court
11. Statement of the right of the parents, Indian custodian, and tribe to petition the court to transfer the proceeding to tribal court
12. The potential legal consequences of the proceedings on the future custodial and parental rights of the parents or Indian custodian
13. Statement that all parties noticed should keep confidential the information in the notice.

D. GUARDIANSHIP OF DEPENDENT CHILDREN

Occasionally, minors who have been made dependents of the Juvenile Court under Welfare and Institutions Code §300 want their foster parents or relatives to become their guardians. Guardianship can add long-term stability to the child's life, as a formal commitment is made between the minor and the guardian. It also removes from the DHS caseload those cases that do not require supervision. This procedure usually takes place as part of the Permanent Plan for the dependent minor.

In San Francisco, this type of guardianship is done in the Juvenile Division of the Superior Court, not the Probate Division. It is important that an attorney who is handling a matter relating to an existing guardianship obtain a copy of the order. This will show in which division the guardianship matter needs to be handled. All future matters relating to a guardianship that has been handled in the Juvenile Division must be brought in that Division (see Welfare and Institutions Code Sections 304 and 366.4). If an attorney discovers that the existing guardianship was handled as part of a dependency in the Juvenile Division, they should contact LSC immediately to discuss the process. This manual only covers the guardianship process in Probate Court.

The process in the Juvenile Division is different from that in the Probate Division. Generally, the City Attorney will file the Petition in Juvenile Court on behalf of the proposed guardian or the judge can order appointment of a guardian at the end of the permanency planning process (at the
".26" hearing) pursuant to Welfare and Institutions Code §366.26. When the guardianship is granted, the judge will usually simultaneously dismiss the dependency.

E. TERMINATION OF GUARDIANSHIP

A guardianship, whether for the person, estate, or both, automatically terminates upon the ward's attainment of majority at age 18, the ward's death, the ward's adoption, or the ward's emancipation (Probate Code §1600).

The court can, upon petition of the guardian, parent, or ward, terminate the guardianship if it is no longer necessary or it is no longer in the minor's best interest (Probate Code §1601). The ward or any other interested party may petition for the removal of the guardian (Probate Code §2650, §2651). Some causes for removal include: continued failure to perform duties or incapacity to perform duties suitably, conviction of a felony, and gross immorality (Probate Code §2650). The guardian may also petition to resign (Probate Code §2660). A sample petition to terminate guardianship and order to terminate guardianship is included in the following pages.

If a successor guardian is desired, to take the original guardian's place, do not file a termination petition, but instead follow the procedures outlined in the next section.

F. SUCCESSOR GUARDIANSHIPS

Sometimes, when a guardian becomes unable to care for a minor, it is necessary to petition for a successor guardian to take the place of that guardian. When a successor is required, a new Petition for Appointment of Guardian must be filed. The petition, order and letters should be altered to read "successor guardian." There is currently no form for this so the modification needs to be made by hand. The remaining process is identical to when an initial guardianship is established. Use the existing case number. Once the successor guardianship is granted, the original guardian is relieved of their duties guardian.

G. ADDING A CO-GUARDIAN TO AN EXISITING GUARDIANSHIP

Sometimes, especially with older guardians, a family may want to add a co-guardian to an existing guardianship. In this case, all forms for a guardianship must be submitted as if you were filing the original petition for two co-guardians. However, you also need to file a “Amendment to Guardianship” so that the Court will know you are actually amending an existing guardianship. Use the existing case number.
VII. PERTINENT SECTIONS OF THE CALIFORNIA PROBATE CODE

• Appeals (Probate Code §1300- §1312)
  §1300: Grounds for Appeal; all proceedings governed by this code
  §1301: Guardianships, Conservatorships, and other protective proceedings; grounds for appeal
  §1310: Stay of judgment or order; acts of fiduciaries directed by court; guardianship proceedings; undertaking required by court
  §1311: Appointment of fiduciary; reversal of error; validity of fiduciary acts; liability

• Nomination of Guardian (Probate Code §1500 - §1502)
  §1500: Nomination of guardian of person or estate
  §1501: Nomination of guardian to particular property
  §1502: Manner of nomination; time effective; subsequent legal incapacity or death of nominator

• Appointment of Guardian Generally (Probate Code §1510 - §1517)
  §1510: Petition for appointment; contents
  §1511: Notice of hearing
  §1512: Amendment of petition to disclose newly discovered proceedings affecting custody
  §1513: Investigation; report and recommendation to court concerning proposed guardianship; contents; confidentiality
  §1513.1: Assessments for costs of investigation
  §1513.2: Status Reports
  §1514: Appointment of guardian: standards, consideration of older minor's wishes
  §1515: No guardianship of the person for a married minor
  §1516: Mailing of notice of hearing and copy of petition of guardianship of the person to local social services agency; screening of guardians
  §1517: Guardianships resulting from permanency planning (W&I 366.25/366.36)

• Nonrelative Guardianships (Probate Code §1540 - §1543)
  §1540: Application of article (not to guardianships of estate only, relative guardianships, W&I 366.25 guardianships, or public officials appointed guardian)
  §1541: Additional contents for petition for guardianship
  §1542: Notice of hearing and copy of petition to local investigative agency and State Department of Social Services
  §1543: Report on suitability of proposed guardian by local agency; confidentiality of report.
• **Termination of Guardianships** (Probate Code §1600 - §1601)
  §1600: Termination on majority, death, adoption, or emancipation of ward
  §1601: Court order; notice

• **General Provisions of Guardianship** (Probate Code §2100 - §2112)
  §2100: Law governing
  §2101: Fiduciary relationship; trust law
  §2102: Control by court
  §2103: Final judgment or order
  §2104: Nonprofit charitable corporation; appointment
  §2105: Joint guardians; appointment
  §2105.5: Multiple guardians; liability for breach of another guardian
  §2106: One guardian for several wards; appointment
  §2107: Person of nonresident; guardian; powers and duties
  §2108: Powers granted guardian nominated by will
  §2109: Guardian for particular property; powers and duties
  §2110: Personal liability
  §2111: Transaction
  §2111.5 Person related by blood or marriage
  §2112: Application of federal Indian law

• **Jurisdiction and Venue** (Probate Code §2200 - §2203)
  §2200: Superior court; jurisdiction
  §2201: Residents; venue
  §2202: Nonresidents; venue
  §2203: Priority of court; proceedings instituted in several counties

• **Change of Venue** (Probate Code §2210 - §2216)
  §2210: Definitions
  §2211: Transfer of proceedings
  §2212: Petition for transfer; persons authorized to file
  §2213: Petition for transfer; contents
  §2214: Notice of hearing
  §2215: Hearing and order
  §2216: Transfer of proceedings; fees

• **Temporary Guardians** (Probate Code §2250 - §2258)
  §2250: Petition for appointment
  §2251: Issuance of letters
  §2252: Powers and duties
  §2255: Inventory and appraisement of estate
  §2256: Settlement and allowance of accounts
  §2257: Termination of powers; time
  §2258: Suspension, removal, resignation, discharge

• **Requirement of Oath and Bond** (Probate Code §2300)
  §2300: Oath and bond; necessity before appointment
• **Letters** (Probate Code §2310 - §2313)
  §2310: Issuance; evidence of appointment; warning
  §2311: Form

• **Powers and Duties of Guardian of the Person** (Probate Code §2350 - §2359)
  §2350: Definitions
  §2351: Care, custody, control, and education
  §2352: Residence of ward
  §2353: Medical treatment of ward
  §2356: Limitations on application of chapter
  §2357: Court ordered medical treatment
  §2358: Additional conditions in order of appointment
  §2359: Instructions from or confirmation by court

• **Removal of Guardian** (Probate Code §2650 - §2655)
  §2650: Causes for removal
  §2651: Petition for removal
  §2652: Notice of hearing
  §2653: Hearing and judgment
  §2654: Suspension of powers and surrender of estate pending hearing
  §2655: Contempt; disobeying order of court

• **Resignation of Guardian** (Probate Code §2660 - §2662)
  §2660: Resignation of guardian

• **Appointment of Successor Guardian** (Probate Code §2670)
  §2670: Vacancy; appointment of successor

• **Requests for Special Notice** (Probate Code §2700 - §2702)
  §2700: Written request; persons authorized
  §2701: Modification or withdrawal or request; new request
  §2702: Petitioner required to give special notice

• **Transfer of Personal Property Out of State** (Probate Code §2800 - §2808)
VIII. APPENDIX: ADDITIONAL INFORMATION AND FORMS

A. Alameda County Rainbow Packet
B. Information Sheet on Waiver of Court Fees and Costs
C. Sample Application for Waiver of Court Fees and Costs
D. Sample Order on Application for Waiver of Court Fees and Costs
E. Sample Notice of Hearing of Guardianship, Attachment to Notice of Hearing of Guardianship, and Proof of Personal Service of Notice of Hearing of Guardianship
F. Sample Petition for Appointment of Guardian, with Attachments
G. Sample Declaration Under UCCJEA
H. Sample Consent of Proposed Guardian
I. Sample Nomination of Guardian/Waiver of Notice and Consent
J. Sample Declaration of Proposed Guardian
K. Sample Notice and Acknowledgement of Receipt
L. Sample Duties of Guardian
M. Sample Confidential Guardianship Screening Form
N. Sample Order Appointing Guardian of Minor
O. Sample Letters of Guardianship
P. Sample Letters to Parents
Q. Sample Letters to SFDHS
R. Sample Notice Letter under Indian Child Welfare Act
S. San Francisco Guardianship Status Report Form
T. Sample Petition for Appointment of Temporary Guardian, with Attachments
U. Sample Declaration in Support of Waiver of Notice of Ex Parte Hearing
V. Sample Declaration of Notice of Ex Parte Hearing
W. Sample Order Appointing Temporary Guardian
X. Sample Letters of Temporary Guardianship
Y. Sample Petition for Termination of Guardianship
Z. Sample Order Terminating Guardianship
AA. Amendment to Guardianship
BB. Fact Sheet on Guardianship (can be copied and given to clients)
CC. “Are You Ready to Be A Guardian?” (can be copied and given to potential guardians)
PROBATE GUARDIANSHIPS - PROBATE CODE DIVISION IV
IMPORTANT INFORMATION REGARDING YOUR FILING - PLEASE READ

The Court Investigator conducts investigations and prepares reports on all petitions for appointment of a guardian except if the proposed guardian of the person is a non-relative. In that case Alameda County Social Services conducts the investigation and prepares the report. The Court Investigator is automatically notified by the Clerk of the Court when a petition is filed. You do not need to send copies of the papers you file to the Court Investigator. You need to complete and mail a copy of the “Proposed Guardian Information Sheet” that is included in this packet. If you are not related to the child you will still need to send copies of the papers you filed with the court and the “Proposed Guardian Information Sheet” to Alameda County Social Services.

When filing a petition for a guardianship of the person or of the person and estate, two necessary steps must be completed with the Child Protective Services Department.

1. Copy of the petition and notice of hearing must be mailed to the Child Protective Services Department.

2. The form titled “Guardianship Screening Pursuant to Probate 1516” must be completed and returned to the Child Protective Services Department. (The petition, notice of hearing, and pink screening sheet should be mailed directly to:

Child Protective Services, C 430
P.O. Box 1769
Oakland, CA 94604-1769

If the above forms are not received in a timely fashion, to allow time for the required investigation, there can be a delay in the Court hearing.

Pursuant to Probate Code Section 1542, when filing a petition to establish a guardianship of the person when the proposed guardian is a non-relative, a copy of the petition and notice of hearing must also be mailed to:

Director of Social Services
744 P Street, M.S. 19-31
Sacramento, CA 95814
PROPOSED GUARDIANS INFORMATION SHEET

INSTRUCTIONS

Please read these instructions carefully. They contain important information that will assist you in completing this form and about your guardianship.

When completing this form please keep in mind that the term “proposed guardian” refers to the person who wants to become the guardian. The term “proposed wards” or “ward” refers to the child you are asking to become the guardian for. The term “petitioner” refers to the person who signed the petition asking the court to appoint a guardian.

All proposed guardians are required to complete this questionnaire and return it to the Court Investigator’s Office or Child Protective Services - Guardianship Unit. This information will be used for preparation of the report to the Court on your petition for guardianship.

Please fully complete the information requested. The proposed guardian is expected to answer all questions honestly. On the last page you will be required to sign the form and declare, under penalty of perjury, that all the information you have provided is true and correct.

This form should be completed by the proposed guardian. If someone else assists the guardian or types the form for the proposed guardian please indicate this on the last page of the form.

If you are asking to be appointed as guardian of the person a home visit will be required. All persons who live in the home must be present during the home visit. A court investigator or social worker will contact you to make an appointment shortly after this form is returned. If the form is not returned promptly a delay in your court hearing will be necessary.

There is a fee for the Court Investigation. It is currently $450.00 and can be paid from the estate of the ward, if there is one. The law allows the fee to be collected from the proposed guardian or parent. The fee is waived under certain circumstances based on financial inability to pay. You must obtain a waiver of court fees and costs under the “in forma pauperis” procedure available through the Clerk of the Court. In some cases you may be allowed to make arrangements for monthly payments. This is handled by Alameda County Central Collections.

1. FOR GUARDIANSHIP OF THE ESTATE ONLY: COMPLETE SECTION I, III, & VI. Also complete SECTION IV if you are not the parent of the child you are seeking to be appointed as guardian of the estate for.
2. FOR GUARDIANSHIP OF THE PERSON OR PERSON AND ESTATE, COMPLETE THIS ENTIRE FORM.
3. IF THE PROPOSED GUARDIAN IS A RELATIVE, SEND THIS FORM TO THE COURT INVESTIGATOR’S OFFICE. IF THE PROPOSED GUARDIAN IS A NON-RELATIVE SEND IT TO CHILD PROTECTIVE SERVICES.
4. IF YOU HAVE ANY QUESTIONS ABOUT FILLING OUT THIS FORM PLEASE CALL THE COURT INVESTIGATOR’S OFFICE AT (510) 272-6010.

Upon completion of this form mail it to:

COURT INVESTIGATOR’S OFFICE
125-12th STREET, ROOM 390
OAKLAND, CA 94607

CHILD PROTECTIVE SERVICES, K-292
P.O. BOX 1769
OAKLAND, CA 94604-1769
GUARDIANSHIP OF THE PERSON ________ ESTATE ________
PROBATE NO. _____________________________
HEARING DATE: _______________________

NAME OF PROPOSED WARD(S): ____________________________
DATE OF BIRTH(S): ________________________________

1. Is/has proposed ward been a dependent child of the Juvenile Court?  □ YES  □ NO

2. Is the child subject to any existing legal custody orders?  □ YES  □ NO
   If yes, circle the type of order: guardianship, dissolution, paternity, juvenile court, adoption proceedings. Provide the date of the order, case number and the county and state where the proceeding took place: ________________________________

3. Does someone object to this petition?  □ YES  □ NO
   If so, who? ____________________________

4. Are you related to the child?  □ YES  □ NO
   If yes, are you related to the child’s:  □ Mother  □ Father
   Related by:  □ Blood  □ Marriage
   How are you related, (for example mother’s sister)  ____________________________
   If No, how do you know the child? ____________________________

5. Explain why the guardianship is needed? ____________________________

6. When did the child(ren) come to live with you? Explain the circumstances that led to the child(ren) coming to live with you? ____________________________

SECTION I

SOCIAL HISTORY OF PROPOSED GUARDIAN (Probate Code 1513(a)(1)): (This information is about the person(s) who wants to be the guardian. Please provide complete information for each proposed guardian.)

Name(s)  Guardian #1  Guardian #2
Telephone No. Work: ____________________________
Telephone No. Home: ____________________________
Address: ______________________________________

If you have lived at this address for less than five years, please list your previous addresses:

Guardian #1

______________________________________________

______________________________________________

Guardian #2

______________________________________________

______________________________________________

Date of Birth: ____________________________
Date of Birth: ____________________________

Place of Birth: ____________________________
Place of Birth: ____________________________

Social Security No.: ____________________________
Social Security No.: ____________________________

Driver's License No.: ____________________________
Driver's License No.: ____________________________

**MARITAL HISTORY:**

Married  Common Law  Live In  Widowed
Single  Separated  Divorced

Guardian #1

Guardian #2

Present Spouse's Name: ____________________________

Were you previously married?  □ YES  □ NO  □ YES  □ NO

If yes, provide name(s) of previous spouse(s) and date of divorce or death that ended the marriage.

Guardian #1

Guardian #2

___________________________

List your children (even if they are adults and not living with you. Also provide their date of birth, address, and whether they have ever been convicted of a crime)

1) ____________________________
2) ____________________________
3) ____________________________
4) ____________________________
5) ____________________________
Are there any circumstances which may affect your ability to act as a guardian? (For example, do you suffer from any health problems or mental illness, does your job require frequent travel?)

☐ NO  ☐ YES (Describe) ____________________________________________

**HEALTH CONDITION:** Please describe any health or mental problems.

Guardian #1                                                                 Guardian #2
____________________________________________________________________

Are you under a doctor’s care? Guardian #1 _____ Guardian #2 _____

Have you ever been in counseling? Guardian #1 _____ Guardian #2 _____

Reason for counseling: Drugs Alcohol Grief Domestic Violence Other

Guardian #1                                                                 Guardian #2
____________________________________________________________________

Explain:                                                                                                          
____________________________________________________________________

**EDUCATIONAL HISTORY:**

Guardian #1                                                                 Guardian #2

Last grade completed:                                                                                             
____________________________________________________________________

Where:                                                                                                             
____________________________________________________________________

College & Degree:                                                                                                   
____________________________________________________________________

Other courses taken:                                                                                               
____________________________________________________________________

**MILITARY HISTORY:**

Guardian #1                                                                 Guardian #2

Date Entered:                                                                                                      
____________________________________________________________________

Date Discharged:                                                                                                   
____________________________________________________________________

**EMPLOYMENT:**

Guardian #1                                                                 Guardian #2

Are you employed?                                                                                                  
____________________________________________________________________

Are you retired?                                                                                                   
____________________________________________________________________
Current employer: ________________ ________________

Length of employment: ________________ ________________

Title, Job responsibilities/duties: ________________ ________________

If you are retired or have been at your current employment for less than five years please list your previous employer including the dates of your employment:

Guardian #1 Guardian #2

______________________________ ____________________________

______________________________ ____________________________

Current Interests: Guardian #1 Guardian #2

______________________________ ____________________________

**************************************************

SECTION II

APPROPRIATENESS OF THE HOME ENVIRONMENT:

Describe your home and accommodations for the proposed ward(s). Number of bedrooms, baths. Will proposed ward(s) have own room or bed, shared, with whom? ________________________________

______________________________ ____________________________

Do you own any guns or other weapons? Guardian #1 ___________ Guardian #2 ___________

If yes, please describe how they are stored ________________________________

______________________________ ____________________________

OTHER CHILDREN IN THE HOME: (under 18 years of age)

(Give names, dates of birth, school attending, relationship to proposed ward and proposed guardian)

1) ________________________________

2) ________________________________

3) ________________________________
OTHER ADULTS IN THE HOME: (18 and over)
(Give names, dates of birth, social security number, employer or school attending, relationship to proposed ward and proposed guardian)

1) ____________________________________________________________
2) ____________________________________________________________
3) ____________________________________________________________

Does any adult in the home have any problem that could affect the minor, for example, criminal background, violent behavior, alcohol or drug problem? □ NO □ YES
Explain, ______________________________________________________

How do family members feel about having proposed ward(s) in the home? Does anyone in the home object to the guardianship? ______________________________________________________

REFERENCES:
Please list three references who have known you at least five years and are not relatives. - Give complete names, complete address including zip codes and daytime phone numbers. We will be sending letters or contacting them so please notify them.

1. ____________________________________________________________
2. ____________________________________________________________
3. ____________________________________________________________

SECTION III

PROPOSED GUARDIAN'S FINANCIAL INFORMATION:

<table>
<thead>
<tr>
<th>Income:</th>
<th>Guardian #1</th>
<th>Guardian #2</th>
</tr>
</thead>
<tbody>
<tr>
<td>Gross monthly pay</td>
<td></td>
<td></td>
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<tr>
<td>(wages/retirement)</td>
<td></td>
<td></td>
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<tr>
<td>Net monthly pay</td>
<td></td>
<td></td>
</tr>
<tr>
<td>(wages/retirement)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Other monthly income:</td>
<td>Amount</td>
<td>Amount</td>
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<tr>
<td>Welfare</td>
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<tr>
<td>SSI</td>
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<tr>
<td>Unemployment</td>
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<tr>
<td>Spousal/Child Support</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Investments</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>
Unemployment
Spousal/Child Support
Investments

Financial Resources
- Checking Accounts: □ YES □ NO Balance
- Savings Accounts: □ YES □ NO Balance
- Other Investments: □ YES □ NO Value

Expenses:
Name(s) of person(s) you support

Rent _________/month Mortgage _________/month

Large Debts/Car Payment

Total monthly expenses

Are you able to financially support the proposed ward? □ YES □ NO
If no, what assistance will you receive?

Have you applied or are you receiving assistance for this child?
- Welfare: □ YES □ NO Amount
- Social Security: □ YES □ NO Amount
- Medi-Cal: □ YES □ NO Amount
- Child Support: □ YES □ NO Amount

Is someone else, such as a parent, receiving the above benefits for the child(ren)?
- UNKNOWN □ YES □ NO
If yes, please explain:

SECTION IV

INFORMATION ABOUT THE NATURAL PARENTS OF PROPOSED WARD(S):
The Court Investigator may need to contact the parents so current information is needed.

Father's Name: ________________________________
Date of Birth: ____________________________ Date of Death: ____________________________
Address: ____________________________________________________________
Phone Number: ____________________________
Employed at: 

SSN: ___________________________ Approximate Income: ___________________________

Is father paying child support? □ NO □ YES Amount ___________________________

Does proposed ward(s) see natural father? □ YES □ NO

Explain: __________________________________________________________

Is the father in agreement with this proceeding? □ YES □ NO

Mother's Name: ___________________________

Date of Birth: ___________________________ Date of Death: ___________________________

Address: __________________________________________________________

Phone Number: ___________________________

Employed at: 

SSN: ___________________________ Approximate Income: ___________________________

Is mother paying child support? □ NO □ YES Amount ___________________________

Does proposed ward(s) see natural mother? □ YES □ NO

Explain: __________________________________________________________

Is the mother in agreement with this proceeding? □ YES □ NO

To petitioner's knowledge are natural parents:

Involved in drugs? YES/NO Which parent ___________________________

In jail? YES/NO Which parent ___________________________

Is either parent in the military or working in another state or country? □ YES □ NO

*********************************************************************

SECTION V

SOCIAL HISTORY OF THE PROPOSED WARD(S):

<table>
<thead>
<tr>
<th>NAME</th>
<th>DATE OF BIRTH</th>
<th>SEX</th>
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</table>

Social Security Number

1. ___________________________ 2. ___________________________

3. ___________________________

Place of Birth

1. ___________________________ 2. ___________________________

3. ___________________________
Please provide the following information about where the child has lived for the past five years:

<table>
<thead>
<tr>
<th>Period of residence (month/year)</th>
<th>Address</th>
<th>Name/Relationship of person child lived with</th>
</tr>
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</table>

Please describe the child's adjustment to your home?

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Does proposed ward(s) have brothers and sisters?  □ YES  □ NO

If yes, provide names, ages and with whom do they live?

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Does the proposed ward visit his/her siblings?  □ YES  □ NO

Are there any specific religious or cultural heritage, such as Native American ancestry, that would be a factor in future plans?

________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

Has the child(ren) been subjected to abuse, neglect, or abandonment?
□ UNKNOWN  □ YES  □ NO

Explain:
________________________________________________________________________
________________________________________________________________________
________________________________________________________________________

SCHOOL AND/OR DAY CARE:
(Please contact school or daycare and let them know that an investigator from this office will be contacting them)

Name ________________________________________________

Address ________________________________________________

Phone Number ___________________________ Fax Number: ________________

Teacher's Name ________________________________

Grade level ___________________________ Is Daycare Licensed? ______

Current academic status - Describe how the child is doing in school. Attach recent report card if available: ________________________________________________
Describe any problems with peers, teachers or social adjustment in school ______________________

In school activities ___________________________________________________________________

Outside school activities __________________________________________________________________

Any special educational needs of proposed ward(s) known to petitioner? □ YES □ NO
Describe ________________________________________________________________

Is child receiving Special Education/Resource Services? □ YES □ NO
Describe ________________________________________________________________

Is the child receiving services through the Regional Center? □ YES □ NO
If yes, please provide the name of the social worker/case manager ______________

If there are special needs, please describe your plans to provide for those needs: ____________

MEDICAL/HEALTH CARE:
(Please contact doctor/counselor. Let them know we will be contacting them.)

Doctor's Name: _____________________________________________________________
Address: __________________________________________________________________

Phone Number: __________________ Fax Number: _____________________________

Medical Insurance: __________________ Medical Number: ______________________

Date of last examination _____________________________

Are you aware of any serious illnesses, hospitalizations, physical or developmental disabilities, etc.? □ YES □ NO
If yes, explain your plan to meet the child's needs: ____________________________

Are you aware of any behavior, emotional or psychological problems? □ YES □ NO
Describe ________________________________________________________________

Has the proposed ward(s) received counseling in the past? □ YES □ NO
If yes explain any details: __________________________________________________

Is proposed ward(s) still receiving counseling? □ YES □ NO
How often? __________________________________________________________________

Name of counselor: __________________________________________________________
Address: __________________________________________________________________

Phone Number: __________________ Fax Number: _____________________________
If developmental, emotional or psychological needs are known to the proposed guardian, please describe your plan to meet the child’s needs: __________________________________________

******************************************************************************************************************************************

SECTION VI

GUARDIANSHIP OF THE ESTATE:
If you are asking to be appointed guardian of the estate, please provide the following information about the minor(s) estate.

Please indicate the source of the money or property:

- Inheritance - Attach a copy of will or provide the name and case number of the deceased person’s estate and state and county where the estate is being administered _______________________

- Gift - Please identify who the gift is from __________________________________________

- Personal Injury Settlement - Please provide the case number, the county and state where the case was settled ___________________________

- Other, describe __________________________________________

Please describe the minor’s estate and the value of the estate:

- Real Property - Address __________________________________________
  Value of minor’s interest $ _____________________

- Cash, $ ________________ Location __________________________________________

- Stock/Bonds $ ____________ Location __________________________________________

- Other, describe __________________________________________

Please describe your plans for managing the estate, for example, blocked account, investments, rental of real property __________________________________________

Does the minor have money in his/her own account or held jointly? □ YES □ NO
If yes, indicate source of money, balance and names on joint accounts: __________________________________________

Do you expect to request to use the minor’s estate for any purpose (taxes, tax preparation, bond premiums, Court costs/fees and other expenses)? □ YES □ NO
If yes, describe what you will request the court to approve __________________________________________
Please provide the name, address and phone number of one person who will always know how to get in contact with you.

Name of Attorney or Person assisting with completion of this form

Address

Phone Number ____________________    Fax Number ____________________

I/We declare under the penalty of perjury that the foregoing is true and correct. Executed in ______________ California on __________________________.

Signatures

revised 1/02
GUARDIANSHIP SCREENING PURSUANT TO PROBATE CODE 1516

ATTORNEY OF RECORD – IMPORTANT:

GUARDIANSHIP OF: PERSON [ ] PERSON and ESTATE [ ] ESTATE [ ]

IN ORDER TO PREVENT ANY DELAY IN YOUR HEARING, ATTORNEY OF RECORD MUST COMPLETE PAGE ONE OF THIS FORM IN ITS ENTIRETY AND FORWARD WITHIN FIVE DAYS TO:

CHILD PROTECTIVE SERVICES, C 430
P. O. Box 1769
Oakland, CA 94604-1769
(510) 266-2838

A COPY OF THE WARD’S BIRTH CERTIFICATE MUST BE ATTACHED TO THIS FORM.

*IT IS ESSENTIAL THAT THE RELATIONSHIP AND DATE OF BIRTH OF THE PROPOSED GUARDIAN(S) BE PROVIDED.

Probate Number: ______________________________ Hearing Date: ______________________________

Name(s) of Proposed Ward(s): ______________________________

Date(s) of Birth: ______________________________

Address: ______________________________ Phone Number: ______________________________

Is this child a ward of the Court or on probation? YES/NO

Name of proposed guardian(s): ______________________________

Date(s) of Birth: ______________________________

Address: ______________________________ Phone Number: ______________________________

*How are you related to the minor child(ren)? ______________________________

*Are you related to the mother or father of the minor child(ren)? ______________________________. Is this relationship by blood or marriage? ______________________________

Natural Parents: ______________________________

Date(s) of Birth: ______________________________

Address: ______________________________

Do you know of anyone who will object to this guardianship? If so, who: ______________________________

Atorney of Record: ______________________________

Address: ______________________________ Phone Number: ______________________________

**ATTORNEY: This document will be forwarded directly to the Court from Child Protective Services.**

DEPARTMENT OF SOCIAL SERVICES USE ONLY

[ ] NO INFORMATION AVAILABLE [ ] INFORMATION AVAILABLE (GP3)
Title 1516
FOR SOCIAL SERVICE DEPARTMENT USE ONLY

_____________________________________________________________________________________
GUARDIANSHIP OF: ___________________________________________________________________

PROBATE NUMBER: ___________________________________________________________________

HEARING DATE: _____________________________________________________________________

SUMMARY OF INFORMATION
If you have been sued or if you wish to sue someone, and if you cannot afford to pay court fees and costs, you may not have to pay them if:

1. You are receiving financial assistance under one or more of the following programs:
   - SSI and SSP (Supplemental Security Income and State Supplemental Payments Programs)
   - CalWORKs (California Work Opportunity and Responsibility to Kids Act, implementing TANF, Temporary Assistance for Needy Families, formerly AFDC, Aid to Families with Dependent Children Program)
   - The Food Stamp Program
   - County Relief, General Relief (G.R.), or General Assistance (G.A.)

If you are claiming eligibility for a waiver of court fees and costs because you receive financial assistance under one or more of these programs, and you did not provide your Medi-Cal number or your social security number and birthdate, you must produce documentation confirming benefits from a public assistance agency or one of the following documents, unless you are a defendant in an unlawful detainer action:

<table>
<thead>
<tr>
<th>PROGRAM</th>
<th>VERIFICATION</th>
</tr>
</thead>
<tbody>
<tr>
<td>SSI/SSP</td>
<td>Medi-Cal Card or Notice of Planned Action or SSI Computer-Generated Printout or Bank Statement Showing SSI Deposit or &quot;Passport to Services&quot;</td>
</tr>
<tr>
<td>CalWORKs/TANF (formerly known as AFDC)</td>
<td>Medi-Cal Card or Notice of Action or Income and Eligibility Verification Form or Monthly Reporting Form or Electronic Benefit Transfer Card or &quot;Passport to Services&quot;</td>
</tr>
<tr>
<td>Food Stamp Program</td>
<td>Notice of Action or Food Stamp ID Card or &quot;Passport to Services&quot;</td>
</tr>
<tr>
<td>General Relief/General Assistance</td>
<td>Notice of Action or Copy of Check Stub or County Voucher</td>
</tr>
</tbody>
</table>

- OR -

2. Your total gross monthly household income is less than the following amounts:

<table>
<thead>
<tr>
<th>NUMBER IN FAMILY</th>
<th>FAMILY INCOME</th>
</tr>
</thead>
<tbody>
<tr>
<td>1</td>
<td>$922.92</td>
</tr>
<tr>
<td>2</td>
<td>$1,243.75</td>
</tr>
<tr>
<td>3</td>
<td>$1,564.58</td>
</tr>
<tr>
<td>4</td>
<td>$1,885.42</td>
</tr>
<tr>
<td>5</td>
<td>$2,206.25</td>
</tr>
</tbody>
</table>

- OR -

3. Your income is not enough to pay for the common necessaries of life for yourself and the people you support and also pay court fees and costs.

To apply, fill out the Application for Waiver of Court Fees and Costs (Form 982(a)(17)) available from the clerk's office. If you claim no income, you may be required to file a declaration under penalty of perjury. Prison and jail inmates may be required to pay up to the full amount of the filing fee.

If you have any questions and cannot afford an attorney, you may wish to consult the legal aid office, legal services office, or lawyer referral service in your county (listed in the Yellow Pages under "Attorneys").

If you are asking for review of the decision of an administrative body under Code of Civil Procedure section 1094 5 (administrative mandate), you may ask for a transcript of the administrative proceedings at the expense of the administrative body.
APPLICATION FOR WAIVER OF COURT FEES AND COSTS

I request a court order so that I do not have to pay court fees and costs.

1. a. [X] I am not able to pay any of the court fees and costs.
   b. [ ] I am able to pay only the following court fees and costs (specify):

2. My current street or mailing address is (if applicable, include city or town, apartment no., if any, and zip code):
   123 Third Street, San Francisco, 94124

3. a. My occupation, employer, and employer's address are (specify): High School Student
   b. My spouse's occupation, employer, and employer's address are (specify):

4. [ ] I am receiving financial assistance under one or more of the following programs:
   a. SSI and SSP: Supplemental Security income and State Supplemental Payments Programs
   b. CalWORKS: California Work Opportunity and Responsibility to Kids Act, implementing TANF, Temporary Assistance for Needy Families (formerly AFDC)
   c. Food Stamps: The Food Stamp Program
   d. County Relief, General Relief (G.R.), or General Assistance (G.A.)

5. If you checked box 4, you must check and complete one of the three boxes below, unless you are a defendant in an unlawful detainer action. Do not check more than one box:
   a. [ ] (Optional) My Medi-Cal number is (specify):
   b. [ ] (Optional) My social security number is (specify):
      and my date of birth is (specify):
      [Federal law does not require that you give your social security number. However, if you don't give your social security number, you must check box c and attach documents to verify the benefits checked in Item 4.]
   c. [ ] I am attaching documents to verify receipt of the benefits checked in item 4, if requested by the court.
      [See Form 982(a)(17)(A) Information Sheet on Waiver of Court Fees and Costs, available from the clerk's office, for a list of acceptable documents.]

   [If you checked box 4 above, skip items 6 and 7, and sign at the bottom of this side.]

6. [ ] My total gross monthly household income is less than the amount shown on the Information Sheet on Waiver of Court Fees and Costs available from the clerk's office.

   [If you checked box 6 above, skip item 7, complete items 8, 9a, 9d, 9f and 9g on the back of this form, and sign at the bottom of this side.]

7. [X] My income is not enough to pay for the common necessaries of life for me and the people in my family whom I support and also pay court fees and costs. [If you check this box, you must complete the back of this form.]

WARNING: You must immediately tell the court if you become able to pay court fees or costs during this action. You may be ordered to appear in court and answer questions about your ability to pay court fees or costs.

I declare under penalty of perjury under the laws of the State of California that the information on both sides of this form and all attachments are true and correct.

Date: 5/11/99

Kevin Kid

(SIGNATURE)
APPLICATION FOR WAIVER OF COURT FEES AND COSTS
(In Forma Pauperis)  Kevin Kid

WARNING: You must immediately tell the court if you become able to pay court fees or costs during this action. You may be ordered to appear in court and answer questions about your ability to pay court fees or costs.

PLAINTIFF/PETITIONER: In the matter of guardianship of Kevin Kid.
DEFENDANT/RESPONDENT: a minor

CASE NUMBER: 123456 (from clerk)

FINANCIAL INFORMATION

8. □ My pay changes considerably from month to month. [If you check this box, each of the amounts reported in item 9 should be your average for the past 12 months.]

9. MY MONTHLY INCOME
   a. My gross monthly pay is: $ 0.00
   b. My payroll deductions are (specify purpose and amount):
      (1) $
      (2) $
      (3) $
      (4) $
   c. My monthly take-home pay is:
      (a minus b): $ 0.00
   d. Other money I get each month is (specify source and amount): include spousal support, child support, parental support, support from outside the home, scholarships, retirement or pensions, social security, disability, unemployment, military basic allowance for quarters (BAQ), veterans payments, dividends, interest or royalty, trust income, annuities, net business income, net rental income, reimbursement of job-related expenses, and net gambling or lottery winnings:
      (1) $
      (2) $
      (3) $
      (4) $
   e. MY TOTAL MONTHLY INCOME IS
      (c. plus d.): $ 0.00
   f. Number of persons living in my home: 1
   g. Below list all the persons living in your home, including your spouse, who depend in whole or in part on you for support, or on whom you depend in whole or in part for support:
      Gross Monthly Income
         (1) $
         (2) $
         (3) $
         (4) $
         (5) $
   h. The TOTAL amount of other money is: $ 0.00

10. I own or have an interest in the following property:
   a. Cash $ 0.00
   b. Checking, savings and credit union accounts (list banks):
      (1) $
      (2) $
      (3) $
      (4) $

11. My monthly expenses not already listed in item 9b above are the following:
   a. Rent or house payment & maintenance $
   b. Food and household supplies $
   c. Utilities and telephone $
   d. Clothing $
   e. Laundry and cleaning $
   f. Medical and dental payments $
   g. Insurance (life, health, accident, etc.) $
   h. School, child care $
   i. Child, spousal support (prior marriage) $
   j. Transportation and auto expenses $ (insurance, gas, repair)
   k. Installment payments (specify purpose and amount):
      (1) $
      (2) $
      (3) $
      The TOTAL amount of monthly installment payments is: $ 0.00

12. Other expenses (specify):
   a. $
   b. $
   c. $
   d. $
   e. $
   f. $
   g. $
   h. $
   i. $
   j. $

13. Other facts which support this application are describe unusual medical needs, expenses for recent family emergen-
cies, or other unusual circumstances or expenses to help the court understand your budget; if more space is needed, attach page labeled Attachment 12:

14. I have enclosed a copy of my most recent paycheck and W-4 form with this application.

15. My pay changes considerably from month to month. [If you check this box, each of the amounts reported in item 9 should be your average for the past 12 months.]

16. My total monthly income is $ 0.00. My total monthly expenses are $ 0.00. I do not have a job and am not seeking employment.

17. I certify that the above information is true to the best of my knowledge.

18. I have not previously filed for or obtained an order of the court waiving court fees or costs in this or any other case.

19. I agree to fully cooperate with the court in the conduct of this case.

20. I understand that I am responsible for paying all court fees and costs in the event the court determines that I am not eligible for a waiver.

21. I understand that I may be sanctioned for violating any order of the court.

22. I understand that if my income or expenses change, I must inform the court immediately and may be sanctioned for violating any order of the court.

23. I understand that if I become able to pay court fees or costs during this action, I may be ordered to appear in court and answer questions about my ability to pay court fees or costs.

24. I understand that if I become able to pay court fees or costs during this action, I may be ordered to pay court fees or costs.

25. I understand that if I become able to pay court fees or costs during this action, I may be ordered to pay court fees or costs.

26. I understand that if I become able to pay court fees or costs during this action, I may be ordered to pay court fees or costs.
ATTACHMENT TO APPLICATION FOR WAIVER OF COURT FEES AND COSTS

(not necessary in San Francisco, but possibly helpful in Alameda and other counties.)

I, Kevin Kid, declare:

1. I am fourteen years old.

2. I am asking the Probate Court to make my aunt Greta my legal guardian. Under California law, I am allowed to file the guardianship petition if I am a minor over 12 years of age.

3. I need to file my guardianship petition. I don’t have any money to pay for the filing fees, however.

4. I am a high school student at O’Connell High School. I do not have a job right now. I don’t have any source of income.

5. I am asking for a guardianship because I can’t live with my parents right now. I am not in their house and they will not pay for the filing fees.

6. I live with my aunt Greta, but she is not legally or financially responsible for me in any way. That is why I am asking for the guardianship. Until the Court makes her my guardian, she can’t be held responsible for any filing fees I need to pay.

7. For these reasons, I ask the Court to grant my Application for Waiver of Court Fees and Costs.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on 5/11/99 at San Francisco, California.

Kevin Kid
ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS

1. The application was filed on (date): 5/11/99
   □ A previous order was issued on (date):

2. The application was filed by (name): Kevin Kid

3. □ IT IS ORDERED that the application is granted □ in whole □ in part (complete item 4 below).
   a. □ No payments. Payment of all the fees and costs listed in California Rules of Court, rule 985(i), is waived.
   b. □ The applicant shall pay all the fees and costs listed in California Rules of Court, rule 985(i), EXCEPT the following:
      (1) □ Filing papers.
      (2) □ Certification and copying.
      (3) □ Issuing process and certification.
      (4) □ Transmittal of papers.
      (5) □ Court-appointed interpreter.

   *Reporters' fees are per diem pursuant to Code Civ. Proc., §§ 269, 274c, and Gov. Code, §§ 69947, 69948, and 72195.
   c. Method of payment: The applicant shall pay all the fees and costs when charged, EXCEPT as follows:
      (1) □ Pay (specify): percent. (2) □ Pay: $ per month or more until the balance is paid.

   d. The clerk of the court, county financial officer, or appropriate county officer is authorized to require the applicant to appear before and be examined by the court no sooner than four months from the date of this order, and not more than once in any four-month period. □ The applicant is ordered to appear in this court as follows for review of his or her financial status:

   Date: Time: Dept.: Div.: Room:

   e. □ The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.

   f. All unpaid fees and costs shall be deemed to be taxable costs if the applicant is entitled to costs and shall be a lien on any judgment recovered by the applicant and shall be paid directly to the clerk by the judgment debtor upon such recovery.

4. □ IT IS ORDERED that the application is denied □ in whole □ in part for the following reasons (see Cal. Rules of Court, rule 985):
   a. □ Monthly household income exceeds guidelines (Gov. Code, § 68511.3(a)(6)(B); form 982(a)(17)(A)).
   b. □ Other (Complete line 4b on page 2).

   c. The applicant shall pay any fees and costs due in this action within 10 days from the date of service of this order or any paper filed by the applicant with the clerk will be of no effect.

   d. The clerk is directed to mail a copy of this order to all parties who have appeared in this action.

5. □ IT IS ORDERED that a hearing be held.
   a. The substantial evidentiary conflict to be resolved by the hearing is(specify): 
   b. The applicant should appear in this court at the following hearing to help resolve the conflict:

   Date: Time: Dept.: Div.: Room:

   c. The address of the court is (specify):
      □ Same as above

   d. The clerk is directed to mail a copy of this order only to the applicant's attorney or to the applicant if not represented.

NOTICE: If item 3d or item 5b is filled in and the applicant does not attend the hearing, the court may revoke or change the order or deny the application without considering information the applicant wants the court to consider.

WARNING: The applicant must immediately tell the court if he or she becomes able to pay court fees or costs during this action. The applicant may be ordered to appear in court and answer questions about his or her ability to pay fees or costs.

Date: □ Clerk, by □ Deputy

JUDICIAL OFFICER

Page 1 of 2

Form Adopted for Mandatory Use
Judicial Council of California
982(a)(18) [Rev. January 1, 2003]
Martin Dean's Essential Forms ™

ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS (In Forma Pauperis)

Kevin Kid
Application is denied in whole or in part (specify reasons): 

CLERK'S CERTIFICATE OF MAILING

I certify that I am not a party to this cause and that a true copy of the foregoing was mailed first class, postage prepaid, in a sealed envelope addressed as shown below, and that the mailing of the foregoing and execution of this certificate occurred at (place): , California, on (date): 

Clerk, by _____________________________, Deputy

[SEAL]

CLERK'S CERTIFICATE

I certify that the foregoing is a true and correct copy of the original on file in my office.

Date: 

Clerk, by _____________________________, Deputy

ORDER ON APPLICATION FOR WAIVER OF COURT FEES AND COSTS (In Forma Pauperis)

Kevin Kid
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, State Bar number, and address):

Ann Attorney  123456
Law Offices of Pro and Bono
1234 Fifth Street
San Francisco, CA 94102

TELEPHONE NO.: 415/123-4569  FAX NO. (Optional): 
E-MAIL ADDRESS (Optional): 

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister
MAILING ADDRESS: 400 McAllister
CITY AND ZIP CODE: San Francisco, CA 94102
BRANCH NAME: Probate

GUARDIANSHIP  □ CONSERVATORSHIP  OF THE  □ PERSON  □ ESTATE
or (Name): Kevin Kid

MINOR  □ (PROPOSED) CONSERVATEE

NOTICE OF HEARING - GUARDIANSHIP OR CONSERVATORSHIP

This notice is required by law.
This notice does not require you to appear in court, but you may attend the hearing if you wish.

1. NOTICE is given that (name): Kevin Kid
   (representative capacity, if any): petitioner
   has filed (specify):
   Petition for Appointment of Guardian of Minor

2. You may refer to documents on file in this proceeding for more information. (Some documents filed with the court are confidential. Under some circumstances you or your attorney may be able to see or receive copies of confidential documents if you file papers in the proceeding or apply to the court.)

3. □ The petition includes an application for the independent exercise of powers by a guardian or conservator under
   □ Probate Code section 2108  □ Probate Code section 2590.
   Powers requested are □ specified below  □ specified in Attachment 3.

4. A HEARING on the matter will be held as follows:

   a. Date:  
      Time: 1:00 PM  □ Dept.: Probate  □ Room: 204

   b. Address of court  □ same as noted above  □ is (specify):  

Assistive listening systems, computer-assisted real-time captioning, or sign language interpreter services are available upon request if at least 5 days notice is provided. Contact the clerk’s office for Request for Accommodations by Persons with Disabilities and Order (form MC-410). (Civil Code section 54.8.)
A copy of this Notice of Hearing-Guardianship or Conservatorship ("Notice") must be "served" on-delivered to each person who has a right under the law to be notified of the date, time, place and purpose of a court hearing in a guardianship or conservatorship. Copies of this Notice may be served by mail in most situations. In a guardianship, however, copies of this Notice must sometimes be personally served on certain persons; and copies of this Notice may be personally served instead of served by mail in both guardianships and conservatorships. The petitioner (the person who requested the court hearing) may not personally perform either service by mail or personal service, but must show the court that copies of this Notice have been served in a way the law allows. The petitioner does this by arranging for someone else to perform the service and complete and sign a proof of service, which the petitioner then files with the original Notice.

This page contains a proof of service that may be used only to show service by mail. To show personal service, each person who performs the service must complete and sign a proof of personal service, and each signed copy of that proof of service must be attached to this Notice when it is filed with the court. You may use form GC-020(P) to show personal service of this Notice.

* (This Note replaces the clerk's certificate of posting on prior versions of this form. If notice by posting is desired, attach a copy of form GC-020(C), Clerk's Certificate of Posting Notice of Hearing-Guardianship or Conservatorship. (See Prob. Code, § 2543(c).)

### PROOF OF SERVICE BY MAIL

1. I am over the age of 18 and not a party to this cause. I am a resident of or employed in the county where the mailing occurred.  
2. My residence or business address is (specify):  
   1234 Fifth St., San Francisco, CA 94102  
3. I served the foregoing Notice of Hearing-Guardianship or Conservatorship on each person named below by enclosing a copy in an envelope addressed as shown below AND  
   a. [ ] depositing the sealed envelope with the United States Postal Service on the date and at the place shown in item 4 with the postage fully prepaid.  
   b. [ ] placing the envelope for collection and mailing on the date and at the place shown in item 4 following our ordinary business practices. I am readily familiar with this business's practice for collecting and processing correspondence for mailing. On the same day that correspondence is placed for collection and mailing, it is deposited in the ordinary course of business with the United States Postal Service in a sealed envelope with postage fully prepaid.  
4. a. Date mailed: 5/20/99  
   b. Place mailed (city, state): San Francisco, CA  
5. [ ] I served with the Notice of Hearing-Guardianship or Conservatorship a copy of the petition or other document referred to in the Notice.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.  

Date: 5/20/99  

Ann Attorney  
(TYPE OR PRINT NAME OF PERSON COMPLETING THIS FORM)  

(SIGNATURE OF PERSON COMPLETING THIS FORM)

<table>
<thead>
<tr>
<th>Name of person served</th>
<th>Address (number, street, city, state, and zip code)</th>
</tr>
</thead>
</table>
| Kevin Kid             | 12 Third St.  
                        | San Francisco, CA 94111                           |
| Greta Guardian        | 12 Third St.  
                        | San Francisco, CA 94111                           |
| Dad O. Kid            | 45 Sixth St.  
                        | San Francisco, CA 94113                           |
| Mom O. Kid            | 123 Fourth St.  
                        | San Francisco, CA 94111                           |

[ ] Continued on an attachment. (You may use form DE-120(MA)/GC-020(MA) to show additional persons served.)  

NOTICE OF HEARING-GUARDIANSHIP OR CONSERVATORSHIP  
(Probate-Guardianships and Conservatorships)  

Kevin Kid
ATTACHMENT TO NOTICE OF HEARING PROOF OF SERVICE BY MAIL

(This Attachment is for use with forms DE-120 and GC-020.)

NAME AND ADDRESS OF EACH PERSON TO WHOM NOTICE WAS MAILED

<table>
<thead>
<tr>
<th>No.</th>
<th>Name of person served</th>
<th>Address (number, street, city, state, and zip code)</th>
</tr>
</thead>
<tbody>
<tr>
<td>5</td>
<td>Peter Kid</td>
<td>123 Fourth St. San Francisco, CA 94111</td>
</tr>
<tr>
<td>6</td>
<td>Grand Ma</td>
<td>1 Main St. Chicago, IL 60622</td>
</tr>
<tr>
<td>7</td>
<td>Larry Unruh</td>
<td>J354 Human Services Agency, PO Box 7988, San Francisco, CA 94120-7988</td>
</tr>
<tr>
<td>8</td>
<td>State Dept. of Social Services,</td>
<td>MS-1931, 744 P Street, Sacramento, CA 95814</td>
</tr>
<tr>
<td></td>
<td>Adoptions- Operations Bureau</td>
<td></td>
</tr>
<tr>
<td></td>
<td>(NOTICE ONLY IN NON-RELATIVE</td>
<td></td>
</tr>
<tr>
<td></td>
<td>GUARDIANSHIPS)</td>
<td></td>
</tr>
</tbody>
</table>
**GUARDIANSHIP OF**

**CONSERVATORSHIP OF THE PERSON ESTATE**  

**MINOR (PROPOSED) CONSERVATEE**  

**CASE NUMBER:** 123456  

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**PROOF OF PERSONAL SERVICE OF NOTICE OF HEARING - GUARDIANSHIP OR CONSERVATORSHIP**

(Attach a separate completed and signed copy of this form or other proof of personal service to Notice of Hearing - Guardianship or Conservatorship for each person who personally served a copy of the Notice.)

1. I am over the age of 18 and not a party to this cause.
2. I served the attached Notice of Hearing - Guardianship or Conservatorship by personally delivering a copy to each person listed below at the address and on the date and time indicated below.
3. I served with the attached Notice of Hearing - Guardianship or Conservatorship a copy of the petition or other document referred to in the Notice.
4. I served with the attached Notice of Hearing - Guardianship or Conservatorship copies of the following documents (specify):
   - Petition for Appointment of Guardian of Minor
   - Declaration Under UCCJEA
   - Consent of Guardian

   □ Continued on Attachment 4.

5. I am (check all that apply):
   - [ ] not a registered California process server.
   - [ ] a California sheriff or marshal.
   - [ ] a registered California process server.
   - [ ] an employee or independent contractor of a registered California process server.
   - [ ] exempt from registration (Bus. & Prof. Code, § 22350(b)).

6. My name, address, telephone number, and, if applicable, county of registration and number, are (specify):
   - Family Friend
   - 3500 Mission St.
   - San Francisco, CA 94110

---

**NAME OF EACH PERSON PERSONALLY SERVED, ADDRESS WHERE SERVED, AND DATE AND TIME SERVICE WAS MADE**

<table>
<thead>
<tr>
<th>Name</th>
<th>Address where served (number, street, city, and state)</th>
<th>Date and time service made</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. Dad O. Kid</td>
<td>45 Sixth St. San Francisco, CA 94111</td>
<td>Date: 5/30/99 Time: 11:15 AM</td>
</tr>
<tr>
<td>2. Mom O. Kid</td>
<td>Corner of Sixth and Mission Streets, San Francisco, CA</td>
<td>Date: 5/28/99 Time: 4:30 PM</td>
</tr>
<tr>
<td>3.</td>
<td></td>
<td>Date:</td>
</tr>
<tr>
<td>4.</td>
<td></td>
<td>Date:</td>
</tr>
</tbody>
</table>

List of names and addresses of persons personally served by the undersigned continued on an attachment.

(You may use Attachment to Notice of Hearing Proof of Personal Service, form DE-120(PA)/GC-020(PA), for this purpose.)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 5/31/99

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(For California sheriff or marshal use only)

I certify that the foregoing is true and correct.

Date:
**PETITION FOR APPOINTMENT OF GUARDIAN OF MINOR**

<table>
<thead>
<tr>
<th><strong>MINOR</strong></th>
<th><strong>Case Number:</strong> 123456 (from clerk)</th>
</tr>
</thead>
</table>

1. **Petitioner (name):** Kevin Kid  
   - **(Telephone):** (415) 123-4567
   - **(Telephone):**
   - **requests that**

2. **The minor is (name):** Kevin Kid  
   - **(Present address and telephone):** 12 Third Street, San Francisco, CA 94124  
   - **[ ]** married  
   - **[ ]** unmarried

3. **Date of minor's birth:** 7/21/85

4. **Petitioner is**  
   - **[ ]** related to the minor as (specify):
   - **[ ]** a minor 12 years of age or older
   - **[ ]** other person on behalf of minor (specify):

5. **The proposed guardian is**  
   - **[ ]** nominee (affix nomination as Attachment 5).
   - **[ ]** related to minor as (specify):
   - **[ ]** other (specify):

6. **The person having legal custody of the minor is (name and address):**  
   - **[ ]** The person having legal custody of the minor is (name and address):  
     - **Mom O. Kid**  
     - **123 Fourth Street**  
     - **San Francisco, CA 94124**

7. **The minor**  
   - **[ ]** is  
   - **[ ]** is not a patient in or on leave of absence from a state institution under the jurisdiction of the State Department of Mental Health or the State Department of Developmental Services (specify state institution):
   - **[ ]** is neither receiving nor entitled to receive  
   - **[ ]** is receiving or entitled to receive benefits from the Veterans Administration (estimate amount of monthly benefit payable): $
   - **[ ]** does  
   - **[ ]** does not have Native American ancestry. (Provide information required by Indian Child Welfare Act as Attachment 7c)

(Continued on reverse)
GUARDIANSHIP OF (Name):
Kevin Kid

MINOR CASE NUMBER: 123456 (from clerk)

8. Petitioner [X] has [ ] has no knowledge that the minor is receiving public assistance benefits (specify in Attachment 8).
9. Petitioner [ ] has [X] has no knowledge that there are any adoption, juvenile court, marriage dissolution, domestic relations, custody, or other similar proceedings affecting the minor (specify in Attachment 9).
10. [ ] Petitioner, with intent to adopt, has accepted or intends to accept physical care or custody of the minor.

11. Character and estimated value of property of the estate:
   - Personal property: $________
   - Real property: $________
   - Annual gross income from all sources, including real and personal property, wages, pensions, and public benefits: $________
   - Total: $________

12. Appointment of a guardian of the [X] person [ ] estate of the minor is necessary and convenient for the reasons stated in Attachment 13.
13. Parental custody of the minor would be detrimental for the reasons stated in Attachment 13.
14. Granting the proposed guardian of the estate powers to be exercised independently under Probate Code section 2590 would be to the advantage and benefit and in the best interest of the guardianship estate. Powers and reasons are specified in Attachment 14.

15. Notice to the persons named in Attachment 15 should be dispensed with under Probate Code section 1511 because [X] they cannot with reasonable diligence be given notice (specify names and efforts to locate in Attachment 15). [ ] the giving of notice would be contrary to the interest of justice (specify names and reasons in Attachment 15).

16. (Complete this section only for a petition, other than one for appointment of a guardian of the estate only, filed by a person who is not related to the minor.)
   a. [ ] Petitioner is the proposed guardian and will promptly furnish all information requested by any agency referred to in Probate Code section 1543.
   b. [ ] Petitioner is not the proposed guardian. A statement by the proposed guardian that he or she will promptly furnish all information requested by any agency referred to in Probate Code section 1543 is affixed as Attachment 16a.
   c. [ ] The proposed guardian has never filed any petition for adoption of the minor except as specified in Attachment 16c.

17. [X] Filed with this petition are the following (see Judicial Council forms GC-211, GC-110, and MC-150):
   - Consent of Proposed Guardian
   - Waiver of Notice and Consent
   - Nomination of Guardian
   - Petition for Appointment of Temporary Guardian
   - Declaration Under Uniform Child Custody Jurisdiction and Enforcement Act (UCCJEA)

18. The names, residence addresses, and relationships of the father, mother, spouse, brothers, sisters, grandparents, and children of the minor, so far as known to petitioner, are as follows:
   a. Father: Dad O. Kid
   b. Mother: Mom O. Kid
   c. Grandparents: Maternal Grandfather
      Grand Pa
   d. Brother: Peter Kid
   e. [X] List of names and addresses continued in Attachment 18.
19. Number of pages attached: 6

Date: 12/9/02

Petitioner declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 12/9/02

Kevin Kid

(TYPE OR PRINT NAME)

Ann Attorney

(SIGNATURE OF ATTORNEY)

Kevin Kid

(SIGNATURE OF PETITIONER)
The minor, Kevin Kid, is believed to have some Cherokee Indian heritage. The minor has reported that his deceased great-grandmother Helen Kid may have been $\frac{1}{4}$ Cherokee Indian. The minor and the proposed guardian believe that Ms. Kid was born in approximately 1918 and died in approximately 1984. The minor and the proposed guardian do not have any additional information on Ms. Kid’s specific tribal affiliation or involvement with Cherokee tribes.

Once the Petition for Appointment of Guardian is filed, the minor’s attorney will notice all federally-recognized Cherokee tribes of this probate guardianship proceeding.
ATTACHMENT 8

Greta Guardian, the proposed guardian of Kevin Kid, receives public benefits from San Francisco County through the Temporary Aid to Needy Families program in the amount of $______ to help her support Kevin Kid. She also receives Medi-Cal and food stamps for Kevin Kid.
Attachment 13

Guardianship of the minor, Kevin Kidd, is necessary because he has been neglected by both of his parents. Guardianship by his maternal grandmother, Greta Guardian, is necessary to provide him with a safe, stable living environment. Ms. Guardian has shown herself to be very capable of providing the minor with an appropriate home. The minor has resided with Ms. Guardian for over two years during which time they have gotten along very well. The minor's mother has consistently made threats of forcing the minor to return to her care. Guardianship with Ms. Guardian is necessary to provide the minor with a secure living arrangement.

Parental custody of the minor would be detrimental because the minor's parents have been consistently unable to provide him with an appropriate home, due to their substance abuse. The minor's father has had no regular contact with the minor. The minor's mother is currently living on the street and using drugs. When the minor lived in her home she was unable to provide a safe environment for him.
DECLARATION OF KEVIN KIDD

I, Kevin Kidd, declare as follows:

1. I am the minor subject-petitioner in these proceedings.

2. The name of my maternal grandfather is Grand Pa.

3. I cannot recall having any contact with my maternal grandfather in over four years and have no information concerning his current whereabouts. My mother told me she does not know where he is. I know of no other avenue of inquiry that would lead me to the discovery of the whereabouts of my maternal grandfather.

4. Therefore, the interests of justice require that notice of this proceeding to my maternal grandfather, Grand Pa, be waived.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this declaration is executed on 10/25/97 at San Francisco, California.

Kevin Kidd
ATTACHMENT 15

DECLARATION OF ANN ATTORNEY RE:
REASONABLE DILIGENCE IN LOCATING RELATIVE

I, Ann Attorney, declare as follows:

1. I am employed as an associate with The Law Offices of Pro and Bono. I represent the proposed ward herein.

2. I have tried unsuccessfully to ascertain the address of Grand Pa, Maternal Grandfather of Kevin Kid, the minor herein. I questioned the minor and proposed guardian seeking possible leads for the Maternal Grandfather's last known address, relatives and DSS information.

3. My efforts included the following:

(a) I searched the phone directories of San Francisco and Oakland, cities in which Grand Pa has lived in the past. I found two listings for a Grand Pa and called those listings. One was disconnected. The other listing was for a Grand Pa who stated that he was not related to minor herein.

(b) I called Directory Assistance for the above two cities, and found no listings for Grand Pa.

(c) I contacted Great Ann Aunt, Grand Pa's sister, who stated that Mr. Pa may have moved to Dallas, Texas. I called Dallas Directory Assistance which had no listing for Grand Pa nor any indication that any Pa listed might be the Maternal Grandfather of the minor herein.

(d) I contacted the Departments of Social Services of San Francisco and Oakland, neither of which had a current address for Grand Pa.

4. I know of no other avenue of inquiry that has a reasonable possibility of ascertaining the whereabouts of Grand
Therefore, the address of Grand Pa is unknown

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct and that this declaration is executed on 10/25/97 at San Francisco, California.

[Signature]

Ann Attorney, Esq.
The Law Offices of Pro and Bono
ATTACHMENT 16a

I, Greta Guardian, will promptly furnish upon request all information requested by any agency referred to in Section 1543 of the Probate Code.

Dated: 10/25/97

Greta Guardian


This attachment has been included as an example. If the proposed guardian is a non-relative who has not been nominated by a parent, make sure to answer all three parts of Item 16. Include this attachment when the proposed guardian is not the petitioner; if the guardian is the petitioner, check the first box instead.
ATTACHMENT 18

e. Paternal Grandfather: unknown

f. Paternal Grandmother: Grannie Kid, deceased

g. Maternal Grandmother: Grand Ma, 1 Main St.,
Chicago, IL 60622
I am a party to this proceeding to determine custody of a child.

☐ Declarant's present address is not disclosed. It is confidential under Family Code section 3429. The address of children presently residing with declarant is identified on this declaration as confidential.

(Number): 1 minor children are subject to this proceeding as follows:

Insert the information requested below. The residence information must be given for the last FIVE years.

<table>
<thead>
<tr>
<th>Child's name</th>
<th>Address</th>
<th>Person child lived with (name and present address)</th>
<th>Relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td>Kevin Kid</td>
<td>12 Third Street, SF, CA</td>
<td>Greta Guardian, same maternal address as minor</td>
<td>maternal aunt</td>
</tr>
<tr>
<td></td>
<td>3/1997 to 1/2002 123 Fourth Street, SF, CA</td>
<td>Mom O. Kid, 123 Fourth Street, SF, CA</td>
<td>mother</td>
</tr>
<tr>
<td></td>
<td></td>
<td></td>
<td></td>
</tr>
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</tr>
</tbody>
</table>

 Residence information is the same as given above for child a. (If NOT the same, provide the information below.)

<table>
<thead>
<tr>
<th>Period of residence</th>
<th>Address</th>
<th>Person child lived with (name and present address)</th>
<th>Relationship</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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</tr>
</tbody>
</table>

Additional children are listed on Attachment 3c (Provide requested information for additional children on an attachment.)
Guardianship of Kevin Kid

CASE NUMBER: 123456 (from clerk)

4. Have you participated as a party or a witness or in some other capacity in another litigation or custody proceeding, in California or elsewhere, concerning custody of a child subject to this proceeding?
   ☑ No ☐ Yes  (If yes, provide the following information)
   a. Name of each child:
   b. Capacity of declarant: ☐ party ☐ witness ☐ other (specify):
   c. Court (specify name, state, location):
   d. Court order or judgment (date):

5 Do you have information about a custody proceeding pending in a California court or any other court concerning a child subject to this proceeding, other than that stated in item 4?
   ☑ No ☐ Yes  (If yes, provide the following information)
   a. Name of each child:
   b. Nature of proceeding: ☐ dissolution or divorce ☐ guardianship ☐ adoption ☐ other (specify):
   c. Court (specify name, state, location):
   d. Status of proceeding:

6. Do you know of any person who is not a party to this proceeding who has physical custody or claims to have custody of or visitation rights with any child subject to this proceeding?
   ☑ No ☐ Yes  (If yes, provide the following information)
   a. Name and address of person
   b. Name and address of person
   c. Name and address of person

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.
Date: 12/9/02

Kevin Kid

(TYPE OR PRINT NAME)

(SIGNATURE OF DECLARANT)

7. ☐ Number of pages attached after this page:

NOTICE TO DECLARANT: You have a continuing duty to inform this court if you obtain any information about a custody proceeding in a California court or any other court concerning a child subject to this proceeding.
<table>
<thead>
<tr>
<th>CONSENT OF PROPOSED GUARDIAN</th>
<th>NOMINATION OF GUARDIAN</th>
<th>WAIVER OF NOTICE AND CONSENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>1. I consent to serve as guardian of the ☑ person ☐ estate of the minor.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date: 1/15/98 Greta Guardian (TYPE OR PRINT NAME)</td>
<td></td>
<td></td>
</tr>
<tr>
<td>NOMINATION OF GUARDIAN</td>
<td></td>
<td></td>
</tr>
<tr>
<td>2. I am ☐ a parent of the minor ☐ donor of a gift to the minor. I nominate (name and address):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>as guardian of the ☐ person ☐ estate of the minor.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>3. I am ☐ a parent of the minor ☐ donor of a gift to the minor. I nominate (name and address):</td>
<td></td>
<td></td>
</tr>
<tr>
<td>as guardian of the ☐ person ☐ estate of the minor.</td>
<td></td>
<td></td>
</tr>
<tr>
<td>Date:</td>
<td></td>
<td></td>
</tr>
<tr>
<td>CONSENT OF WAIVER AND NOTICE</td>
<td></td>
<td></td>
</tr>
<tr>
<td>4. I am entitled to notice in this proceeding, but I waive Notice of Hearing of the petition. I consent to appointment of the guardian as requested in the Petition for Appointment of Guardian of Minor filed on (date):</td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

**NOTICE:** The guardian of the person of a minor has full legal and physical custody. Parents and other interested parties cannot terminate guardianships without a court order. Courts will not order a guardianship terminated unless it is shown to be in the minor's best interest.
**Case Number:** 123456 [from clerk]

### Consent of Proposed Guardian
1. I consent to serve as guardian of the □ person □ estate of the minor.
   - **Date:**

### Nomination of Guardian
2. I am □ a parent of the minor □ donor of a gift to the minor. I nominate (name and address):
   - Greta Guardian
   - 12 Third Street, SF, CA 94111
   - as guardian of the □ person □ estate of the minor.
3. I am □ a parent of the minor □ donor of a gift to the minor. I nominate (name and address):
   - Date: 1/15/98
   - [Name]

### Consent of Waiver and Notice
4. I am entitled to notice in this proceeding, but I waive Notice of Hearing of the petition. I consent to appointment of the guardian as requested in the Petition for Appointment of Guardian of Minor filed on (date): 1/1/98

- 1/15/98
- [Name]

**Notice:** The guardian of the person of a minor has full legal and physical custody. Parents and other interested parties cannot terminate guardianships without a court order. Courts will not order a guardianship terminated unless it is shown to be in the minor's best interest.
In the Matter of the Guardianship of:

Kevin Kid

a Minor.

I, Greta Guardian, declare as follows:

(a) I believe that the guardianship of my great-grandson, Kevin Kid, is necessary because of Kevin's mother's substance abuse issues which make it impossible for her to provide a home for Kevin. Kevin's mother, Mom O. Kid, abandoned Kevin in early July 1996 and her whereabouts are currently unknown. Ms. Kid left Kevin in the care of Ms. Kid's cousin, told the cousin that she would be back for Kevin and did not return for him. The cousin contacted me and Kevin has resided in my home since that date.

Ms. Kid has telephoned my home to speak to Kevin infrequently since July. At first Ms. Kid indicated to Kevin that she was in a drug treatment program but refused to give Kevin or myself the name of the program. On a more recent call, Ms. Kid told Kevin that she was not in a program but in Redwood City. Ms. Kid has never provided Kevin or myself with an address, or other means of locating her.
Kevin has reported to me that when he was living with his mother, the police have come to his home to search for drugs. Kevin recently reported to me that when he was living with his mother, his mother's boyfriend, Mr. Bob Big Guy, hit Kevin on more than one occasion. I wish to become Kevin's guardian so that I can provide stability and security for Kevin. I believe that Kevin's mother will consent to the guardianship.

The minor has had very little contact with his father, Dad O Kid, over the years. Mr. Kid has had several other children since Kevin was born, but does not have custody of any of his children. I have had a few conversations with Kevin's father since he was recently released from jail. It is my belief that he will not oppose this guardianship.

(b) My legal name is Greta Guardian. My date of birth is November 18, 1928. I completed the eleventh grade and was employed by Federal Service for forty years. I am diabetic and have had heart problems in the past; I view myself to be in good health. I am seeing a doctor and feel my health is under control.

(c) I am not presently serving as a guardian in San Francisco County or any other county.

(d) Residing in my home are myself and the proposed ward.

(e) Kevin Kid was born in San Francisco and has grown up in the Bay area. His parents were never married. Mr. Kid's contact with Kevin has been extremely sporadic over the years; on one occasion he did not recognize him when they met on the street. Kevin resided with Ms. Kid and Mr. Bob Big Guy for the majority of his life in different apartments throughout Redwood City. Kevin has been in and out of my home for visits for most of his life. I am
Kevin's maternal great-grandmother and he calls me "Nanna".

Kevin's mother has had problems with chemical dependency and has been in and out of jail for substance abuse and prostitution. Mr. Bob Big Guy has also been in and out of jail and chemical dependency treatment programs for his drug use. For the year prior to Kevin's residing in my home, Kevin lived with her maternal grandfather and maternal step-grandmother.

Kevin's life has dramatically stabilized since he has moved into my home. Kevin is performing excellently in school and sings in the church choir. He shows no unusual physical or psychological needs. He does need routine medical check ups. When Kevin was sick on November 20, 1996, I had to take him to the emergency room because he has no medical insurance. I need to be Kevin's legal guardian to get him proper medical coverage and ensure him stability.

(f) Kevin attends the sixth grade at Aptos Middle School, 105 Aptos Avenue, San Francisco. The telephone is 469-4520.

(g) We live in a one-bedroom cottage. Kevin sleeps on the sofa in the dining room. The sofa is large, but I would like to make his living area more personal. Once the guardianship is approved, I will turn my office space into a room for Kevin.

(h) I receive retirement benefits ($1,734.00 month). I have been able to support Kevin on these benefits and expect to receive Aid to Families with Dependent Children Foster Care to help support the minor and pay for medical insurance.

(i) Not applicable.

(j) I have never been arrested and do not have any criminal record.
(k) No one in my home is involved in any pending or prior proceedings in Juvenile Court.

(l) I do not know if any reports were made to Child Protective Services or the Department of Social Services regarding Kevin. I do not believe that any reports have been made to Child Protective Services regarding me.

(m) Kevin does not presently have a pediatrician because he does not have any proper medical coverage. I took him to the emergency room to treat a recent cold. Once the guardianship is approved, I will seek a physician from San Francisco General Hospital in San Francisco.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on 5/12/99 at San Francisco, California.

[Signature]
Greta Guardian
To: Dad O. Kid

This summons and other document(s) indicated below are being served pursuant to Section 415.30 of the California Code of Civil Procedure. Your failure to complete this form and return it to me within 20 days may subject you (or the party on whose behalf you are being served) to liability for the payment of any expenses incurred in serving a summons on you in any other manner permitted by law.

If you are being served on behalf of a corporation, unincorporated association (including a partnership), or other entity, this form must be signed by you in the name of such entity or by a person authorized to receive service of process on behalf of such entity. In all other cases, this form must be signed by you personally or by a person authorized by you to acknowledge receipt of summons. Section 415.30 provides that this summons and other document(s) are deemed served on the date you sign the Acknowledgment of Receipt below, if you return this form to me.

Dated: 1/15/98

[Signature of sender]

ACKNOWLEDGMENT OF RECEIPT

This acknowledges receipt of: (To be completed by sender before mailing)
1. ☐ A copy of the summons and of the complaint.
2. ☐ A copy of the summons and of the Petition (Marriage) and:
   ☐ Blank Confidential Counseling Statement (Marriage)
   ☐ Order to Show Cause (Marriage)
   ☐ Blank Responsive Declaration
   ☐ Blank Financial Declaration
   ☒ Other: (Specify)

PETITION FOR APPOINTMENT OF GUARDIANSHIP OF MINOR
NOTICE OF HEARING (GUARDIANSHIP)

(To be completed by recipient)

Date of receipt:

Date this form is signed:

Signature of person acknowledging receipt, with note if acknowledgment is made on behalf of another person)

(Type or print your name and name of entity, if any, on whose behalf this form is signed)

Kid, Kevin
DUTIES OF GUARDIAN

When you are appointed by the court as a guardian of a minor, you become an officer of the court and assume certain duties and obligations. An attorney is best qualified to advise you about these matters. You should clearly understand the information on this form. You will find additional information in the Guardianship Pamphlet (for Guardianships of Children in the Probate Court) (Form GC-205), which is available from the court.

1. GUARDIANSHIP OF THE PERSON

If the probate court appoints you as a guardian of the person for a child, you will be required to assume important duties and obligations.

a. Fundamental responsibilities - The guardian of the person of a child has the care, custody, and control of the child. As guardian, you are responsible for providing for food, clothing, shelter, education, and all the medical and dental needs of the child. You must provide for the safety, protection, and physical and emotional growth of the child.

b. Custody - As guardian of the person of the child, you have full legal and physical custody of the child and are responsible for all decisions relating to the child. The child's parents can no longer make decisions for the child while there is a guardianship. The parents' rights are suspended—not terminated—as long as a guardian is appointed for a minor.

c. Education - As guardian of the person of the child, you are responsible for the child's education. You determine where the child should attend school. As the child's advocate within the school system, you should attend conferences and play an active role in the child's education. For younger children, you may want to consider enrolling the child in Head Start or other similar programs. For older children, you should consider their future educational needs such as college or a specialized school. You must assist the child in obtaining services if the child has special educational needs. You should help the child in setting and attaining his or her educational goals.

d. Residence - As guardian, you have the right to determine where the child lives. The child will normally live with you, but when it is necessary, you are allowed to make other arrangements if it is in the best interest of the child. You should obtain court approval before placing the child back with his or her parents.

As guardian, you do not have the right to change the child's residence to a place outside of California unless you first receive the court's permission. If the court grants permission, California law requires that you establish legal guardianship in the state where the child will be living. Individual states have different rules regarding guardianships. You should seek additional information about guardianships in the state where you want the child to live.
e. Medical treatment - As guardian, you are responsible for meeting the medical needs of the child. In most cases, you have the authority to consent to the child's medical treatment. However, if the child is 14 years or older, surgery may not be performed on the child unless either (1) both the child and the guardian consent or (2) a court order is obtained that specifically authorizes the surgery. This holds true except in emergencies. A guardian may not place a child involuntarily in a mental health treatment facility under a probate guardianship. A mental health conservatorship proceeding is required for such an involuntary commitment. However, the guardian may secure counseling and other necessary mental health services for the child. The law also allows older and more mature children to consent to their own treatment in certain situations such as outpatient mental health treatment, medical care related to pregnancy or sexually transmitted diseases, and drug and alcohol treatment.

f. Community resources - There are agencies in each county that may be helpful in meeting the specific needs of children who come from conflicted, troubled, or deprived environments. If the child has special needs, you must strive to meet those needs or secure appropriate services.

g. Financial support - Even when the child has a guardian, the parents are still obligated to financially support the child. The guardian may take action to obtain child support. The child may also be eligible for Temporary Aid for Needy Families, TANF (formerly known as AFDC), social security benefits, Veterans Administration benefits, Indian child welfare benefits, and other public or private funds.

h. Visitation - The court may require that you allow visitation or contact between the child and his or her parents. The child's needs often require that the parent-child relationship be maintained, within reason. However, the court may place restrictions on the visits, such as the requirement of supervision. The court may also impose other conditions in the child's best interest.

i. Driver's license - As guardian of the person, you have the authority to consent to the minor's application for a driver's license. If you consent, you will become liable for any civil damages that may result if the minor causes an accident. The law requires that anyone signing the DMV application obtain insurance to cover the minor.

j. Enlistment in the armed services - The guardian may consent to a minor's enlistment in the armed services. If the minor enters into active duty with the armed forces, the minor becomes emancipated under California law.

k. Marriage - For the minor to marry, the guardian and the court must give permission. If the minor enters a valid marriage, the minor becomes emancipated under California law.

l. Change of address - A guardian must notify the court in writing of any change in the address of either the child or the guardian. This includes any changes that result from the child's leaving the guardian's home or returning to the parent's home. You must always obtain court permission before you move the child to another state or country.

m. Court visitors and status reports - Some counties have a program in which "court visitors" track and review guardianships. If your county has such a program, you will be expected to cooperate with all requests of the court visitor. As guardian, you may also be required to fill out and file status reports. In all counties, you must cooperate with the court and court investigators.

n. Misconduct of the child - A guardian, like a parent, is liable for the harm and damages caused by the willful misconduct of a child. There are special rules concerning harm caused by the use of a firearm. If you are concerned about your possible liability, you should consult an attorney.

o. Additional responsibilities - The court may place other conditions on the guardianship or additional duties upon you, as guardian. For example, the court may require the guardian to complete counseling or parenting classes, to obtain specific services for the child, or to follow a scheduled visitation plan between the child and the child's parents or relatives. As guardian, you must follow all court orders.

(Continued on page three)
p. Termination of guardianship of the person - A guardianship of the person automatically ends when the child reaches the age of 18, is adopted, marries, is emancipated by court order, enters into active military duty, or dies. If none of these events has occurred, the child, a parent, or the guardian may petition the court for termination of guardianship. But it must be shown that the guardianship is no longer necessary or that termination of the guardianship is in the child's best interest.

2. GUARDIANSHIP OF THE ESTATE

If the court appoints you as guardian of the child's estate, you will have additional duties and obligations. The money and other assets of the child are called the child's "estate." Appointment as guardian of a child's estate is taken very seriously by the court. The guardian of the estate is required to manage the child's funds, collect and make an inventory of the assets, keep accurate financial records, and regularly file financial accountings with the court.

MANAGING THE ESTATE

a. Prudent investments - As guardian of the estate, you must manage the child's assets with the care of a prudent person dealing with someone else's property. This means that you must be cautious and may not make speculative or risky investments.

b. Keeping estate assets separate - As guardian of the estate, you must keep the money and property of the child's estate separate from everyone else's, including your own. When you open a bank account for the estate, the account name must indicate that it is a guardianship account and not your personal account. You should use the child's social security number when opening estate accounts. You should never deposit estate funds in your personal account or otherwise mix them with your own funds or anyone else's funds, even for brief periods. Securities in the estate must be held in a name that shows that they are estate property and not your personal property.

c. Interest-bearing accounts and other investments - Except for checking accounts intended for ordinary expenses, you should place estate funds in interest-bearing accounts. You may deposit estate funds in insured accounts in federally insured financial institutions, but you should not put more than $100,000 in any single institution. You should consult with an attorney before making other kinds of investments.

d. Blocked accounts - A blocked account is an account with a financial institution in which money is placed. No person may withdraw funds from a blocked account without the court's permission. Depending on the amount and character of the child's property, the guardian may elect or the court may require that estate assets be placed in a blocked account. As guardian of the estate, you must follow the directions of the court and the procedures required to deposit funds in this type of account. The use of a blocked account is a safeguard and may save the estate the cost of a bond.

e. Other restrictions - As guardian of the estate, you will have many other restrictions on your authority to deal with estate assets. Without prior court order, you may not pay fees to yourself or your attorney. You may not make a gift of estate assets to anyone. You may not borrow money from the estate. As guardian, you may not use estate funds to purchase real property without a prior court order. If you do not obtain the court's permission to spend estate funds, you may be compelled to reimburse the estate from your own personal funds and may be removed as guardian. You should consult with an attorney concerning the legal requirements relating to sales, leases, mortgages, and investment of estate property. If the child of whose estate you are the guardian has a living parent or if that child receives assets or is entitled to support from another source, you must obtain court approval before using guardianship assets for the child's support, maintenance, or education. You must file a petition or include a request for approval in the original petition, and set forth which exceptional circumstances justify any use of guardianship assets for the child's support. The court will ordinarily grant such a petition for only a limited period of time, usually not to exceed one year, and only for specific and limited purposes.

INVENTORY OF ESTATE PROPERTY

f. Locate the estate's property - As guardian of the estate, you must locate, take possession of, and protect the child's income and assets that will be administered in the estate. You must change the ownership of all assets into the guardianship estate's name. For real estate, you should record a copy of your Letters of Guardianship with the county recorder in each county where the child owns real property.

(Continued on reverse)
DUTIES OF GUARDIAN
(Probate)

Kevin Kid
GUARDIAN OF (Name): Kevin Kid
MINOR: 123456 (from clerk)

If you are not represented by an attorney, you may obtain answers to your questions by contacting community resources, private publications, or your local law library.

NOTICE: This statement of duties is a summary and is not a complete statement of the law. Your conduct as a probate guardian is governed by the law itself and not by this summary.

ACKNOWLEDGMENT OF RECEIPT

1. I have petitioned the court to be appointed as a guardian.

2. I acknowledge that I have received a copy of this statement of the duties of the position of guardian.

Date: 12/9/02

Greta Guardian
(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)

Date:

(TYPE OR PRINT NAME)
**CONFIDENTIAL GUARDIAN SCREENING FORM**

**Mandatory Use**

**Probate Guardianship**

---

**Each proposed guardian shall submit this screening form with the guardianship petition.**

**This form shall remain confidential.**

**How This Form Will Be Used**

This form is confidential and will not be a part of the public file in this case. You are required to complete and submit this form to the court under rule 7.1001 of the California Rules of Court. The information you provide will be used by the court and by persons and agencies designated by the court to assist the court in determining whether to appoint you as guardian. You must provide a response to each item.

1. **Proposed guardian (name):** Greta Guardian
   - **Date of birth:** 10/22/68
   - **Social security number:** 123-45-6789
   - **Driver’s license number:** N123456
   - **Telephone numbers:** Home: (415) 123-4567
2. **I am X I am not** required to register as a sex offender under California Penal Code section 290. (If you are, explain in Attachment 2)
3. **I have X I have not** been charged with, arrested for, or convicted of a crime deemed to be a felony or a misdemeanor. (If you have, explain in Attachment 3)
4. **I have X I have not** had a restraining order or protective order filed against me in the last 10 years. (If you have, explain in Attachment 4)
5. **I am X I am not** receiving services from a psychiatrist, psychologist, or therapist for a mental health-related issue. (If you are, explain in Attachment 5)
6. **Yes X No** (If yes, explain in Attachment 6 and provide the name and address of each social worker, parole officer, or probation officer)
7. **Yes X No** (If yes, explain in Attachment 7)
8. **Yes X No** (If yes, explain in Attachment 8 and provide the name and address of each agency)

---

**CONFIDENTIAL GUARDIAN SCREENING FORM**

(Probate Guardianship)

Kevin Kid
9. Have you or has any other person living in your home habitually used any illegal substances or abused alcohol?
   - Yes [ ]
   - No [X]
   (If yes, explain in Attachment 9)

10. Have you or has any other person living in your home been charged with, arrested for, or convicted of a crime involving illegal substances or alcohol?
    - Yes [X]
    - No [ ]
    (If yes, explain in Attachment 10)

11. Do you or does any other person living in your home suffer from mental illness?
    - Yes [X]
    - No [ ]
    (If yes, explain in Attachment 11)

12. Do you suffer from any physical disability that would impair your ability to perform the duties of guardian?
    - Yes [X]
    - No [ ]
    (If yes, explain in Attachment 12)

13. I have or may have [X] I do not have an adverse interest that the court may consider to be a risk to, or to have an effect on, my ability to faithfully perform the duties of guardian. (If you have or may have, explain in Attachment 13)

14. I have [X] I have not previously been appointed guardian, conservator, executor, or fiduciary in another proceeding. (If you have, explain in Attachment 14)

15. I have [ ] I have not been removed as guardian, conservator, executor, or fiduciary in any other case. (If you have, explain in Attachment 15)

16. I have [X] I have not filed for bankruptcy protection within the last 10 years. (If you have, explain in Attachment 16)

---

**MINORS' CONTACT INFORMATION**

17. Minor's name: Kevin Kid
   - Home tel: (415) 123-4567
18. Minor's name:
   - Home tel:
19. Minor's name:
   - Home tel:

---

**DECLARATION**

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: 12/9/02

Greta Guardian

(TYPE OR PRINT NAME)

(SIGNATURE OF PROPOSED GUARDIAN)

---

*Each proposed guardian must fill out and file a separate screening form.*
ATTACHMENT 3

In 1982, I was arrested for shoplifting at Macy’s. I pleaded guilty and was ordered to pay a fine and complete a court-ordered community service program. I successfully completed the program and paid the fine.

I have not had any other involvement with the criminal justice system.
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address): Ann Attorney
Law Offices of Pro & Bono
1234 Fifth Street
San Francisco, CA 94102

ATTORNEY FOR (Name): Kevin Kid

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco
STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS: 400 McAllister Street
CITY AND ZIP CODE: San Francisco, CA 94102

GUARDIANSHIP OF THE □ PERSON □ ESTATE OF (Name):
Kevin Kid

ORDER APPOINTING GUARDIAN OF □ MINOR □ MINORS

CASE NUMBER: 123456 [from clerk]

WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED.

The petition for appointment of guardian came on for hearing as follows (check boxes a, d, and e to indicate personal presence):

- Judge (name): Commissioner Dorothy McMath
- Hearing date: 7/16/98 Time: 9:00 am Dept: Probate Room: 204
- Petitioner (name): Kevin Kid
- Attorney for Petitioner (name): Ann Attorney
- Attorney for minor (name, address, and telephone): Ann Attorney, Law Offices of Pro & Bono
  1234 Fifth Street
  San Francisco, CA 94102
  415/123-4569

THE COURT FINDS

2. a □ All notices required by law have been given.
   b □ Notice of hearing to the following persons □ has been □ should be dispensed with (names):

   Grand Pa, maternal grandfather; paternal grandfather

3. □ Appointment of a guardian of the □ person □ estate of the minor is necessary and convenient.

4. □ Granting the guardian powers to be exercised independently under Probate Code section 2590 is to the advantage and benefit and is in the best interest of the guardianship estate.

   Attorney (name): has been appointed by the court as legal
counsel to represent the minor in these proceedings. The cost for representation is: $

   The appointed court investigator, probation officer, or domestic relations investigator is (name, title, address, and telephone):

THE COURT ORDERS

7. a (Name): Greta Guardian
   (Address): 12 Third Street
   San Francisco, CA 94111
   (Telephone): 415/987-6543

   is appointed guardian of the PERSON of (name): Kevin Kid and Letters shall issue upon qualification

(Continued on reverse)
GUARDIANSHIP OF (Name): Kevin Kid

CASE NUMBER: 123456 [from clerk]

MINOR

7. b. (Name):
   (Address):
   (Telephone):

   is appointed guardian of the ESTATE of (name):
   and Letters shall issue upon qualification.

   Notice of hearing to the persons named in item 2b is dispensed with.

   a. Bond is not required.
   b. Bond is fixed at: $ to be furnished by an authorized surety company or as otherwise
      provided by law
   c. Deposits of: $ are ordered to be placed in a blocked account at (specify institution and
      location):

      and receipts shall be filed. No withdrawals shall be made without a court order:
      Additional orders in Attachment 9c.
   d. The guardian is not authorized to take possession of money or any other property without a specific court order

10. a. For legal services rendered on behalf of the minor, parents of the minor minor's estate shall pay to
    (name):
    the sum of: $ for
    forthwith as follows (specify terms, including any combination of payors):

15. a. The guardian of the estate is granted authorization under Probate Code section 2590 to exercise independently the powers
     specified in Attachment 11 subject to the conditions provided.

12. Orders are granted relating to the powers and duties of the guardian of the person under Probate Code sections 2351-2358
    as specified in Attachment 12.

13. Orders are granted relating to the conditions imposed under Probate Code section 2402 upon the guardian of the estate as
    specified in Attachment 13.

14. Other orders as specified in Attachment 14 are granted.

15. The probate referee appointed is (name and address):

3. Number of boxes checked in items 8-15: 2

7. Number of pages attached: 0

Date: 1/15/98

JUDGE OF THE SUPERIOR COURT

SIGNATURE FOLLOWS LAST ATTACHMENT

ORDER APPOINTING GUARDIAN OF MINOR

Kid, Kevin
GUARDIANSHIP OF (Name): Kevin Kid

LETTERS OF GUARDIANSHIP

1. (Name): Greta Guardian is appointed guardian of the [ ] person [ ] estate of (name): Kevin Kid

2. [ ] Other powers have been granted and conditions have been imposed as follows:
   a. [ ] Powers to be exercised independently under Probate Code section 2500 as specified in Attachment 2a (specify powers, restrictions, conditions, and limitations).
   b. [ ] Conditions relating to the care and custody of the property under Probate Code section 2402 as specified in Attachment 2b.
   c. [ ] Conditions relating to the care, treatment, education, and welfare of the minor under Probate Code section 2358 as specified in Attachment 2c.
   d. [ ] Other (specify in Attachment 2d).

3. [ ] The guardian is not authorized to take possession of money or any other property without a specific court order.

4. Number of pages attached: 0

AFFIRMATION

I solemnly affirm that I will perform the duties of guardian according to law.

Executed on (date): January 15, 1998
at (place): San Francisco, CA

(SIGNATURE OF APPOINTEE)

CERTIFICATION

I certify that this document and any attachments is a correct copy of the original on file in my office, and that the Letters issued to the person appointed above have not been revoked, annulled, or set aside and are still in full force and effect.

WITNESS, clerk of the court, with seal of the court affixed.

Date: January 15, 1998
Clerk, by

(SEAL) (DEPUTY)

LETTERS OF GUARDIANSHIP

Kid, Kevin
August 26th, 1999

Mom O' Kid
123 Fourth Street
San Francisco, CA 94111

Dear Ms. Kidd,

Your son, Kevin Kidd, has asked our office for help in appointing as his legal guardian Greta Guardian.

A legal guardian is an adult, appointed by a Probate Court judge, who takes care of the minor child. A guardianship allows the child to live with the guardian outside of the parent’s home. It also allows the guardian to enroll the child in school, consent to medical care for the child, and do other things necessary for the child’s care. A guardianship does not end your own parental relationship with your child; it simply allows another person to be a substitute parent for as long as necessary. A guardianship can be ended by going back to the court, whenever it is no longer needed. Also, it ends automatically when the child turns eighteen.

If you agree that Greta Guardian should be your child’s legal guardian, please sign and date the enclosed form under the headings “Nomination of Guardianship,” and “Waiver of Notice and Consent,” in the places marked with a red “X.” Then, please send the signed form back to us in the enclosed stamped envelope. (Even if you sign these forms, we will send you a notice telling you where and when the court hearing is, and you are welcome to attend.)

If you do not agree that Greta Guardian should be your child’s legal guardian, you may appear in court and oppose the guardianship petition. You may want to talk to an attorney before the hearing. Even if you do not agree with the guardianship please sign and return to us the enclosed "NOTICE AND ACKNOWLEDGEMENT OF RECEIPT." This document lets the Court know that you received the guardianship papers. If you do not send back that form we will have to have you personally served and you may be liable for the cost of that service.

If you have any questions about the guardianship, please contact us at (415) 863-3762.

Sincerely,

Ann Attorney
Attorney for Kevin Kidd
October 25, 1997

Larry Unruh

San Francisco Department of Human Services
P.O. Box 7988
San Francisco, CA 94120-7988

RE: Guardianship of Kevin Kid
Case Number: 123456

Dear Mr. Unruh,

Enclosed please find a copy of the guardianship petition filed in the above-referenced case. Please note that the hearing is set for November 30, 1997.

The following information will hopefully facilitate your background check on Kevin Kid's proposed guardian, Greta Guardian:

Name: Greta Guardian
Relationship to child: maternal aunt
Drivers License Number: CA G09876543
Social Security Number: 123-45-6789
Date of Birth: 11/18/28
Physical Description:
Height: 5'2" Weight: 188 lbs.
Eyes: brown
Hair: gray
Ethnicity: African-American

Other adult in the home: 0
Please give me a call should you have any questions.

Sincerely,

Able Attorney
Attorney
Cherokee Nation of Oklahoma  
ICWA Representative  
PO Box 948  
Tahlequah, OK 74465

To Whom It May Concern:

Pursuant to the Indian Child Welfare Act, I am writing to notify you of a pending probate guardianship proceeding in San Francisco Superior Court which concerns a child of possible Cherokee heritage.

I have enclosed copies of the Notice of Hearing, Petition for Appointment of Guardian of Minor, Declaration under UCCJEA, and Consent of Guardian forms in this case.

An initial guardianship hearing is currently scheduled for September 20, 2005 at 1:30 PM in Department 204. This case is currently before the San Francisco Superior Court, Probate Division, 400 McAllister St., San Francisco, CA 94102. The Court may be reached at (415) 551-4000.

The child who is the subject of this guardianship matter is Maria Minor. The proposed guardian is Maria’s maternal aunt, Gina Guardian. Maria and Ms. Guardian believe that Maria’s maternal great-grandmother, Marietta Maternal, may have been ¼ Cherokee. Maria and Ms. Guardian have no information on Ms. Maternal’s specific tribal affiliations.

We have obtained the following information that may be of use to you in your investigation into this matter:

Child: Maria Angela Minor  
Date of Birth: 9/9/95  
Place of Birth: San Francisco, CA  
Currently residing in: San Francisco, CA

Mother: Melissa Joanne Mother  
Date of Birth: 4/12/71  
Place of Birth: San Jose, CA  
Currently residing in: San Francisco, CA

Father: Frederick Jacob Father  
Date of Birth: 5/12/69  
Place of Birth: San Francisco, CA  
Currently residing in: San Francisco, CA

Maternal Grandmother: Mary Anne Maternal  
Date of Birth: 1/16/50  
Place of Birth: Reno, Nevada  
Currently residing in: Las Vegas, Nevada
Maternal Grandfather: Michael Paul Maternal  
Date of Birth: 3/1/1953  
Place of Birth: New Orleans, LA  
Date of Death: 9/1/1999  
Place of Death: Las Vegas, Nevada

Paternal Grandmother: Priscilla Paternal  
Date of Birth: unknown  
Place of Birth: unknown  
Currently residing in: Los Angeles, CA

Paternal Grandfather: Peter Paternal  
Date of Birth: unknown  
Place of Birth: unknown  
Currently residing in: Los Angeles, CA

Maternal Great-Grandmother: Marietta Louise Maiden Maternal  
Possible Native American heritage: believed by family to be ¼ Cherokee  
Date of Birth: unknown, probably around 1923  
Date of Death: 1992  
Place of Death: Kansas City, Kansas

Unfortunately, this is all the ancestral information our office possesses concerning the Native American heritage of the minor.

If the minor is, in fact, affiliated with your tribe, you may have the right to formally intervene in this proceeding. Parents or Indian custodians who participate in this proceeding may have the right to be appointed counsel if they cannot afford to hire an attorney. Upon request, you may be granted a twenty day continuance by the Court in order to prepare for the proceedings. You may also have the right to petition to transfer this case to a Tribal Court.

This proceeding has potential legal consequences for the future custodial and parental rights of parents or Indian custodians of the subject child.

Finally, we ask you to remember that all information contained in this letter and in the enclosed documents should be kept confidential in order to protect the best interests of the child.

Thank you for your assistance, and please contact me at (415) 123-4567 if you have any questions.

Sincerely,

Ann Attorney  
Attorney for the Minor
UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

GUARDIANSHIP STATUS REPORT

I. Guardian(s) Name: 

1. Present Address: 

   City __________________ State/Zip _________ Tel No. (Home) __________________
   (Work) __________________

2. How long at address? ____________ Rent? ________ Own? ________

3. Do you or your spouse have any significant health problems? __________________

   *If you are guardian of estate, you must file regular accountings with the Probate Court.

II. Children Under Guardianship (use additional paper if necessary.)

1. Name: ____________________________

   (a) Age/birth date: __________________ Still in home? Yes ___ No ___
(b) If child is not living in the home, give complete name, relationship, address and telephone number of the person the child is living with. __________________________________________________________

Why was the child moved (be specific) and when? __________________________________________________________

(c) Name of school: ______________________________________________ (d) Grade: ______

(e) How is the child doing in school (grades, attendance, behavior problems, tutoring programs)? __________________________________________________________

(f) Does the child have any medical or dental problems and are they being treated? By whom? __________________________________________________________

Is child current on Immunizations? __________________________________________________________

(g) Has the child shown any emotional or behavioral problems that cause you concern? __________________________________________________________

(h) Has the child experienced any traumatic events, or major disruptions or changes (e.g., death of parent, abuse, major illness)? __________________________________________________________

Has any counseling or therapy been considered or pursued? Yes □ (With whom?) __________________________________________________________

No □ __________________________________________________________

(i) Is the child involved in any social activities/services (recreational, educational, church, social, occupational or cultural)? __________________________________________________________

Guardianship Status Form
Goals for child:

If you are the guardian for other children, please answer these same questions on a separate piece of paper.

III. Other Persons in the Home

<table>
<thead>
<tr>
<th>Name</th>
<th>Age</th>
<th>Relationship to Child or Guardian</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
<td></td>
<td></td>
</tr>
<tr>
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<tr>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

Have any of these people moved in since the guardianship was established?
Yes □ No □
Who?

IV. Natural Parents

1. Does either parent visit? Yes ____ No ____; Mother ____ Father ____
   
   Address/Telephone No. - Mother: __________________________
   _______________________________________________________
   Address/Telephone No. - Father: __________________________
   _______________________________________________________

2. How frequently? __________________________

3. Length of visit: __________________________
4. Visits supervised? Yes ___ No ___. If so, by whom? ___________________________

5. Overnight? ___ (provide address) ________________________________

6. Are there any problems regarding the visits? (Explain) ________________________________

7. Do the natural parents pay support or contribute? Yes ___ No ___; Amount $________

V. Minor’s Income (include all sources of income)

1. Sources
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________

2. What expenses are paid from these funds? __________________________________________
   __________________________________________________________

VI. Is the guardianship still necessary and why? Would it be helpful to have a successor
    guardian or a co-guardian in the future?
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________
   __________________________________________________________

Date __________________________ Name __________________________
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name, state bar number, and address):  Able Attorney  415/123-4569
Law Offices of Pro and Bono
1234 Fifth Street
San Francisco, CA 94102

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco

STREET ADDRESS: 400 McAllister
MAILING ADDRESS: 400 McAllister
CITY AND ZIP CODE: San Francisco, CA 94102

BRANCH NAME: Probate

TEMPORARY  X  GUARDIANSHIP  X  CONSERVATORSHIP OF (Name):
Kristin Kid

X  MINOR  X  CONSERVATEE

PETITION FOR APPOINTMENT OF TEMPORARY
X  GUARDIAN  X  CONSERVATOR
X  Person  X  Estate

CASE NUMBER: (filled in at filing)

1. Petitioner (name of each): Kristin Kid
   a. (Name and address): George Guardian
      4692 Van Ness
      San Francisco, CA 94102
      be appointed temporary  X  guardian  X  conservator of the PERSON of the
      X  minor  X  proposed conservatee and Letters issue upon qualification.
   b. (Name and address):
      be appointed temporary  X  guardian  X  conservator of the ESTATE of the
      X  minor  X  proposed conservatee and Letters issue upon qualification.
   c. (1)  X  bond not be required for the reasons stated in Attachment 1c.
      (2)  X  $  bond be fixed. It will be furnished by an admitted surety insurer or as otherwise provided by law.
      (Specify reasons in Attachment 1c if the amount is different from maximum required by Probate Code section 2320.)
      (3)  X  $  in deposits in a blocked account be allowed. Receipts will be filed. (Specify institution and location):
   d.  X  the powers specified in Attachment 1d be granted in addition to the powers provided by law.
   e.  X  an order be granted dispensing with notice to the  X  minor  X  proposed conservatee  X  minor's mother
      minor's father  X  other person having a visitation order for the reasons stated in Attachment 1e. (Identify each by name and relationship.)
   f.  X  other orders be granted (specify in Attachment 1f).

2. The  X  minor  X  proposed conservatee is (name): Kristin Kid
   Present address: 4692 Van Ness
   San Francisco, CA 94102
   Telephone: 415/123-4567

3. The  X  minor  X  proposed conservatee requires a temporary  X  guardian  X  conservator to  X  provide for
   temporary care, maintenance, and support  X  protect property from loss or injury because (facts are  X  specified
   below  X  specified in Attachment 3):

   (Continued on reverse)
**TEMPORARY GUARDIANSHIP**  
**CONSERVATORSHIP**

### (Name):

**Kristin Kid**

**MINOR**

**CONSERVATEE**

**CASE NUMBER:** [filled in at filing]

---

4. The temporary **X** guardianship **☐** conservatorship is required
   a. **X** pending the hearing on the petition for appointment of a general **X** guardian **☐** conservator.
   b. **☐** pending the appeal under Probate Code section 2750.
   c. **☐** during the suspension of powers of the **☐** guardian **☑** conservator.

5. Character and estimated value of the property of the estate:
   a. Personal property: $  
      - Annual gross income from all sources.  
      - Including real and personal property wages, pensions, and public benefits: $  
      - Total: $ 0.00

6. **☐** CHANGE OF RESIDENCE OF PROPOSED CONSERVATEE
   a. **☐** Petitioner requests that the residence of the proposed conservatee be changed to (address):
      
      The proposed conservatee will suffer irreparable harm if his or her residence is not changed as requested and no means less restrictive of the proposed conservatee's liberty will suffice to prevent the harm because (precise reasons are **☐** stated below **☐** stated in attachment 6a):

   b. **☐** The proposed conservatee must be removed from the State of California to permit the performance of the following non-psychiatric medical treatment essential to the proposed conservatee's physical survival. The proposed conservatee consents to this medical treatment (Facts and place of treatment are **☐** specified below **☐** specified in Attachment 6b)

   c. **(Change of residence only)** The proposed conservatee
      1. **☐** will attend the hearing.
      2. **☐** is able but unwilling to attend the hearing, does not wish to contest the establishment of a conservatorship, does not object to the proposed conservator, and does not prefer that another person act as conservator.
      3. **☐** is unable to attend the hearing because of medical inability. An affidavit or certificate of a licensed medical practitioner or an accredited religious practitioner is affixed as Attachment 6a.
      4. **☐** is not the petitioner, is out of state, and will not attend the hearing.

   d. **☐** (Change of residence only) Filed with this petition is a proposed Order Appointing Court Investigator (form GC-330).

7. Petitioner believes the **X** minor **☐** proposed conservatee **X** will **☐** will not attend the hearing.

8. Number of pages attached: **5**

---

Date: May 5, 1998  
(Signature of petitioner also required (Prob. Code § 10201))

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Date: May 5, 1998  
(Signature of petitioner)

**Kristin Kid**

(TYPE OR PRINT NAME)
ATTACHMENT 1c

Petitioner Kristin Kid requests that an order be granted dispensing with notice of the petition for appointment of a temporary guardianship to her mother, Ma Kid, for good cause pursuant to Probate Code Section 2250(c) and the attached declaration of the Petitioner.
In the Matter of the Guardianship of: KRISTIN KID

I, Kristin Kid, declare as follows:

1. I am sixteen years old. I live at 4692 Van Ness, San Francisco, CA 94102, in the home of my friend, George Guardian, who is the father of my best friend, Gillian Guardian.

2. I have lived with the Guardian family since January 9, 1997. I came to live with them when my mother bought me a bus ticket and I left home. My mother knows where I am living but has not contacted me since late January, 1997.

3. I do not feel safe with my mother. My mother has been physically abusive with me in the past and has been reported to Child Protective Services in San Francisco County for neglect. Because my mother abandoned me repeatedly, I was made a dependent of the Superior Court of San Francisco County; this dependency was later dismissed when I was placed with my grandparents.
4. My mother also has a history of erratic behavior, believing that people are out to get her. When I was living with my grandparents in 1995, she became convinced that my grandparents were trying to steal me and my Social Security survivor's benefit payments (issued to me because my father is deceased). She sent the police to my grandparents' house and they seized me, turning me over to her.

6. I am very worried about what my mother would do when she finds out that I want George Guardian to be my legal guardian. I am afraid that she might hurt me or the Guardian family. I also fear that she would send the police after me as she did when I lived with my grandparents. I am afraid that she would force me to leave the Guardian home before the guardianship hearing could be held. Therefore, I request that notice to my mother of the temporary guardianship proceeding be waived to protect my safety.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct and that this declaration is executed on May 4, 1997 at San Francisco, California.

Kristin Kid
ATTACHMENT 3

Kristin Kid is a sixteen (16) year old minor petitioner. She has lived in the home of the proposed guardian, George Guardian, since January 9, 1997, when she left home with a bus ticket purchased by her mother; she remained with the Guardian family when her mother failed to pick her up at the end of her stay.


Kristin's father, Pa Kid, is deceased.

Kristin's mother, Ma Kid, lives in San Francisco. Ms. Kid is aware of where her daughter is living and has made no attempt to contact her since late January, 1997.

Kristin's mother has abandoned and abused Kristin. Ms. Kid was reported to Child Protective Services in San Francisco County, in October of 1995 because she left Kristin with an acquaintance of hers for a month without paying for her care or returning for her. Because she was abandoned repeatedly, Kristin was a dependent of the Superior Court of San Francisco until February of 1996, when her paternal grandparents were granted legal guardianship of her.

Kristin returned to her mother in July of 1996 when her mother promised that she had changed and would care for her, and the guardianship was terminated. However, her mother returned to her prior behavior soon thereafter. Kristin was left alone again, and she was forced to work, despite being too young for a work permit, in order to buy food and clothing for herself and her sister and to pay the electricity bill. Assuming these responsibilities prevented
Kristin from attending school regularly, and she believes she will have to repeat her ninth grade year.

Kristin's mother also has a history of unpredictable and irrational behavior. She called the police on her parents when they were caring for Kristin with Ms. Kid's consent in 1995, believing that they were attempting to steal Kristin and the Social Security survivor's benefits Kristin receives as a result of her father's death. The police returned Kristin to her mother, who abandoned her with an acquaintance in San Francisco that same day.

Kristin is very concerned about what her mother's reaction to receiving a guardianship petition might be. She fears that her mother would harm her physically or that she would hurt the Guardian family. She also fears that her mother would force her to return home before the guardianship hearing could be conducted and that her mother would then abandon or neglect her again. Kristin needs a temporary guardianship to ensure that she may remain in a safe and stable living environment in the home of Mr. Guardian, pending the guardianship hearing.
I, Ann Attorney, declare as follows:

1. I notified the minor, Kevin Kid, and the proposed guardian, Greta Guardian, of the time and date of the ex parte hearing on the matter of the temporary guardianship by telephone on July 15th, 2000. Both responded that they will attend the hearing.

2. Twenty-four hour notice of the ex parte hearing was given to Kevin’s sister on August 1st, 2000. I telephoned Caroline Kid on August 1st and informed her of the date, time and place of the hearing.

3. Twenty-four hour notice of the ex parte hearing was given to Kevin’s grandmother on August 1st, 2000. I telephoned Grandma Kid on August 1st, 2000 and informed her of the date, time and place of the hearing.

4. Notice was not given to the minor’s father or paternal grandparents because their whereabouts are unknown, as explained in the Petition for Guardianship, Attachment 15.
5. Five-day notice of the ex parte hearing was not given to Ma Kid, the minor’s mother. The reasons for waiving notice of the temporary guardianship hearing are given in attachment 1e of the Temporary Guardianship Petition and are based on the minor’s welfare and safety.

I declare, under penalty of perjury, that the foregoing is true and correct and that this declaration is executed on August 2nd, 2000.

Ann Attorney
Attorney for Kevin Kid
ATTORNEY OR PARTY WITHOUT ATTORNEY (Name), state bar number, and address: Ann Attorney

Law Offices of Pro & Bono
1234 Fifth Street
San Francisco, CA 94102

ATTORNEY FOR (Name): Kristin Kid

SUPERIOR COURT OF CALIFORNIA, COUNTY OF San Francisco

STREET ADDRESS: 400 McAllister Street
MAILING ADDRESS: 400 McAllister Street
CITY AND ZIP CODE: San Francisco, CA 94102

TEMPORARY ☑ GUARDIANSHIP ☐ CONSERVATORSHIP OF THE
☑ PERSON ☐ ESTATE OF (Name): Kristin Kid
 ☐ MINOR ☐ CONSERVATEE

ORDER APPOINTING TEMPORARY ☑ GUARDIAN ☐ CONSERVATOR [filled in at filing]

WARNING: THIS APPOINTMENT IS NOT EFFECTIVE UNTIL LETTERS HAVE ISSUED.

1. The petition for appointment of temporary ☑ guardian ☐ conservator came on for hearing as follows (check boxes c and d to indicate personal presence):
   a. Judge (name): Commissioner McMath
   b. Hearing date: May 5, 1998
   c. ☑ Petitioner (name): Kristin Kid
   d. ☑ Minor ☐ Custodian (name): Kristin Kid

2. a. Notice of time and place of hearing has been given as required by law.
   b. ☑ Notice of time and place of hearing has been ☑ should be dispensed with for (names):
      Ma Kidd

3. ☑ It is necessary that a temporary ☑ guardian ☐ conservator be appointed to ☑ provide for temporary care, maintenance, and support ☐ protect property from loss or injury.
   coinsuring the hearing on the petition for appointment of a general ☑ guardian ☐ conservator.
   ☑ during the suspension of powers of the ☐ guardian ☐ conservator.

4. ☐ To prevent irreparable harm, the residence of the conservatee must be changed. No means less restrictive of the conservatee's liberty will prevent irreparable harm.

5. ☑ The conservatee must be removed from the State of California to permit the performance of nonpsychiatric medical treatment essential to the conservatee's physical survival. The conservatee consents to this medical treatment.

6. ☑ The conservatee need not attend the hearing on change of residence or removal from the State of California.

THE COURT ORDERS

7. a. (Name): George Guardian
   (Address): 4932 Van Ness
   San Francisco, CA 94102
   (Telephone): 415/123-4567

   is appointed temporary ☑ guardian ☐ conservator of the PERSON OF
   (name): Kristin Kid

   and Letters shall issue upon qualification

(Continued on reverse)
7. b (Name):

(Address):

(Telephone):

is appointed temporary ☐ guardian ☐ conservator of the ESTATE of (name):

and Letters shall issue upon qualification.

8. ☑ Notice of hearing to the persons named in item 2b is dispensed with.

9. a. ☑ Bond is not required.
   b. ☐ Bond is fixed at: $ provided by law.
   c. ☐ Deposits of: $ location):

   and receipts shall be filed. No withdrawals shall be made without a court order.  ☐ Additional orders in Attachment 9c.
   d. ☐ The temporary ☐ guardian ☐ conservator is not authorized to take possession of money or any other property without a specific court order.

10. ☐ The conservator is authorized to change the residence of the conservatee to(address):

11. ☐ The conservator is authorized to remove the conservatee from the State of California to the following address to permit the performance of nonpsychiatric medical treatment essential to the conservatee's physical survival(address):

12. ☐ The conservatee need not attend the hearing on change of residence or removal from the State of California.

13. ☐ In addition to the powers granted by law, the temporary conservator is granted other powers. These powers are specified ☐ in Attachment 13 ☐ below (specify):

14. ☐ Other orders as specified in Attachment 14 are granted.

15. ☑ Unless modified by further order of the court, this order expires on(date):

16. Number of boxes checked in items 8-15: 3

17 Number of pages attached: 0

Date:

JUDGE OF THE SUPERIOR COURT

☐ SIGNATURE FOLLOWS LAST ATTACHMENT

ORDER APPOINTING TEMPORARY GUARDIAN OR CONSERVATOR

Kid, Kristin
LETTERS OF TEMPORARY GUARDIANSHIP OR CONSERVATORSHIP

Kevin Kidd

1. (Name): George Guardian is appointed temporary guardian of the person Kevin Kidd

2. Other powers have been granted or restrictions imposed on the temporary guardian and conservator as specified below.

3. These Letters shall expire:
   a. on (date): March 19, 2003 or upon earlier issuance of Letters to a general guardian or conservator.
   b. other date (specify):

4. The temporary guardian conservator is not authorized to take possession of money or any other property without a specific court order.

5. Number of pages attached: ____________

WITNESS, clerk of the court, with seal of the court affixed.

(SIGNATURE OF APPOINTEE)

CERTIFICATION

I certify that this document and any attachments is a correct copy of the original on file in my office, and that the Letters issued to the person appointed above have not been revoked, annulled, or set aside and are still in full force and effect.

(SIGNATURE OF APPOINTEE)

WITNESS, clerk of the court, with seal of the court affixed.

(SIGNATURE OF APPOINTEE)

Date:

Clerk, by

(Deputy)
P ETITION FOR TERMINATION OF GUARDIANSHIP

1. Petitioner (name): Kevin Kid requests that the guardianship of the PERSON of (minor): Kevin Kid be terminated.
   a. ☐ the guardianship of the PERSON of (minor): Kevin Kid be terminated.
   b. ☐ the guardianship of the ESTATE of (minor):
      (1) ☐ The estate has been entirely exhausted through expenditures or disbursements (Probate Code, § 2626).
      (2) ☐ The estate falls within the provisions of Probate Code section 2628(b) (small estate), and no accounts have been required.
      (3) ☐ Other (specify):

2. Petitioner is the ☑ minor ☐ minor’s guardian ☐ minor’s parent.

3. ☑ (Name): Greta Guardian was appointed guardian of the PERSON on (date): 7/16/98

4. ☑ (Name):

5. It is no longer necessary that the minor have a guardian of the ☑ person ☐ estate and the best interests of the minor require termination of the guardianship for the reasons ☐ stated in Attachment 5 ☑ stated below (specify):
   The minor has recently left the home of the guardian and gone to live with his father. The minor wishes to remain with his father on a permanent basis. The guardian is no longer willing or able to care for the minor.

6. A request for special notice
   a. ☐ has not been filed
   b. ☐ has been filed and notice will be given to (names):

7. ☐ Notice to the persons identified in Attachment 7 should be dispensed with because
   a. ☐ they cannot with reasonable diligence be given notice (specify names and efforts to locate in Attachment 7).
   b. ☐ other good cause exists to dispense with notice (specify names and reasons in Attachment 7)

FORM APPROVED BY:
Judicial Council of California
GC-255 (Nov, 1998)

NOTICE: Guardianships terminate automatically at age 18. No petition or court order is necessary to terminate the guardianship. Nevertheless, if this is a guardianship of the estate, termination of the guardianship does not eliminate the requirement that a final report or account be filed. (See Probate Code, § 1600.)

PETITION FOR TERMINATION OF GUARDIANSHIP

Kid, Kevin
GUARDIANSHIP OF THE ESTATE OF (Name):

MINOR

CASE NUMBER: 123456 [from clerk]

The names and residence addresses of the guardian minor, and minor's parents, brothers, sisters, and grandparents are as follows:

a. Guardian:
   Greta Kidd
   123 Fourth Street
   San Francisco, CA 94111

b. Minor:
   Kevin Kidd
   45 Sixth Street
   San Francisco, CA 94113

c. Father:
   Dad Kidd
   45 Sixth Street
   San Francisco, CA 94113

d. Mother:
   Mom Kidd
   123 Fourth Street
   San Francisco, CA 94111

e. Brother or sister:
   Brother or sister
   45 Sixth Street
   San Francisco, CA 94113

f. Brother or sister:
   Brother or sister
   45 Sixth Street
   San Francisco, CA 94113

g. Maternal grandfather:
   Grand Ma
   1 Main Street
   Chicago, IL

h. Maternal grandmother:
   Grand Ma
   1 Main Street
   Chicago, IL

i. Paternal grandfather:
   Grand Pa
   1 Main Street
   Chicago, IL

j. Paternal grandmother:
   Grand Pa
   1 Main Street
   Chicago, IL

k. Additional names and addresses continued in Attachment B.

Date: 5/7/99

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

(SIGNATURE OF PETITIONER)

CONSENT TO TERMINATION AND WAIVER OF NOTICE

a. Minor over 12 years of age

b. Guardian

Date: 5/7/99

Kevin Kidd ...........................................

(JOIN DATE)

(TYPE OR PRINT NAME)

GUARDIAN OF THE ESTATE OF (NAME): KEVIN KID

CASE NUMBER: 123456 [from clerk]

Date: 5/7/99

Kevin Kidd ...........................................

(JOIN DATE)

(TYPE OR PRINT NAME)

9. Number of pages attached: 0

a. The names and residence addresses of the guardian minor, and minor's parents, brothers, sisters, and grandparents are as follows:

   a. Guardian:
      Greta Kidd
      123 Fourth Street
      San Francisco, CA 94111

   b. Minor:
      Kevin Kidd
      45 Sixth Street
      San Francisco, CA 94113

   c. Father:
      Dad Kidd
      45 Sixth Street
      San Francisco, CA 94113

   d. Mother:
      Mom Kidd
      123 Fourth Street
      San Francisco, CA 94111

   e. Brother or sister:
      Brother or sister
      45 Sixth Street
      San Francisco, CA 94113

   f. Brother or sister:
      Brother or sister
      45 Sixth Street
      San Francisco, CA 94113

   g. Maternal grandfather:
      Grand Pa
      1 Main Street
      Chicago, IL

   h. Maternal grandmother:
      Grand Ma
      1 Main Street
      Chicago, IL

   i. Paternal grandfather:
      Grand Pa
      1 Main Street
      Chicago, IL

   j. Paternal grandmother:
      Grand Ma
      1 Main Street
      Chicago, IL

   k. Additional names and addresses continued in Attachment B.

Date: 5/7/99

Kevin Kidd .................................

(TYPE OR PRINT NAME)

CONSENT TO TERMINATION AND WAIVER OF NOTICE

I consent to the termination of the guardianship of the person estate of the minor and waive notice of the hearing on this petition.

Date: 5/7/99

Kevin Kidd ...........................................

(JOIN DATE)

(TYPE OR PRINT NAME)

7. Additional signatures on attachment

8. Minor over 12 years of age

9. Number of pages attached: 0

a. The names and residence addresses of the guardian minor, and minor's parents, brothers, sisters, and grandparents are as follows:

   a. Guardian:
      Greta Kidd
      123 Fourth Street
      San Francisco, CA 94111

   b. Minor:
      Kevin Kidd
      45 Sixth Street
      San Francisco, CA 94113

   c. Father:
      Dad Kidd
      45 Sixth Street
      San Francisco, CA 94113

   d. Mother:
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      45 Sixth Street
      San Francisco, CA 94113

   f. Brother or sister:
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      1 Main Street
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   h. Maternal grandmother:
      Grand Ma
      1 Main Street
      Chicago, IL

   i. Paternal grandfather:
      Grand Pa
      1 Main Street
      Chicago, IL

   j. Paternal grandmother:
      Grand Ma
      1 Main Street
      Chicago, IL

   k. Additional names and addresses continued in Attachment B.

Date: 5/7/99

Kevin Kidd .................................

(TYPE OR PRINT NAME)
ORDER TERMINATING GUARDIANSHIP

1. The petition to terminate the guardianship came on for hearing as follows (check boxes c, d, and e to indicate personal presence):
   a. Judge (name): Dorothy McMath
   b. Hearing date: 6/3/99 Time: 9:00  X Dept: prob  X Div:  X Room: 204
   c. X Petitioner (name): Kevin Kid
   d. X Attorney for petitioner (name): Able Attorney
   e. X Attorney for minor (name): Able Attorney

THE COURT FINDS

2. a. All notices required by law have been given.
   b. X Notice of hearing to the following persons X has been X should be dispensed with (names):

   c. X The guardianship of the PERSON is no longer necessary.
   d. X The guardianship of the ESTATE is no longer necessary.
      (1) X The estate has been entirely exhausted through expenditures or disbursements (Probate Code, § 2628)
      (2) X The estate falls within the provisions of Probate Code section 2628(b) (small estate), and no accounts have been required.
      (3) X Other reasons (specify):

   e. Termination of the guardianship is in the best interests of the minor.

THE COURT ORDERS

3. X The guardianship of the PERSON of (minor): Kevin Kid is terminated.

4. ☐ The guardianship of the ESTATE of (minor): is terminated.

5. ☐ Notice of hearing to the persons named in item 2b is dispensed with.

6. ☐ Other (specify):

Date: ________________________________

JUDGE OF THE SUPERIOR COURT

Kid, Kevin
Ann Attorney
Law Offices of Pro and Bono
1224 Fifth Street
San Francisco, CA 94102

Attorney for the Minor

Superior Court of California
City and County of San Francisco

In the Matter of the Guardianship of Kevin Kid, A Minor

Case No.: 123456
PETITION TO AMMEND GUARDIANSHIP

Kevin Kid, by and through his attorney, hereby requests that the guardianship granted by this Court on September 29th, 1995, to Greta Guardian, be amended to include Greg Guardian as co-guardian.

This request is brought pursuant to the attached petition for guardianship and supporting documents.

Respectfully Submitted,

Ann Attorney
Attorney for Kevin Kid
• The Facts About Legal Guardianships •

What is a legal guardianship, and what does it mean?

A legal guardianship is a decision by a judge that a person other than your parent will have custody of you. Guardianship gives an adult you live with the authority to make decisions for you that a parent would normally make. The guardian has the right to raise you without your parents getting involved.

Who can be my guardian? What does a guardian do?

A person over 18 years old can be a legal guardian for a person under 18. Guardians are usually relatives or family friends—responsible people you know well. The guardian is responsible for your care: making sure that you are clothed and fed, that you are enrolled in and going to school, and that you see a doctor when you are sick. Your guardian must also be kind and loving toward you.

Why might I need a guardian? Can’t I live with a person other than my parents?

You can legally live with other adults without a guardianship if you have your parents’ permission. Sometimes that kind of arrangement is fine; but some young people can’t live with their parents because they are treated badly there and fear that their parents will force them to return home. Guardianships can also help young people when their parents don’t take care of them, because of lack of money, drug abuse, or being in jail.

Even if it’s fine with your parents for you to live with another adult, it’s hard for that adult to meet your needs without legal authority. Some health insurance companies will not insure a minor on an adult’s policy unless the adult is a parent or guardian. It’s difficult to get medical care without a parent or guardian’s signature. Also, government benefits (welfare) rules require you to live with a parent, close relative, or a guardian to receive aid.

Guardianships aren’t always necessary. If you’ll live away from a parent for only a short time or your parent wants you to be there, the adult you’re living with can sometimes take care of your needs with a Caregiver’s Authorization Affidavit, a form your parent can sign. Legal Services for Children can help you figure out if you need a guardianship or if the Affidavit will work for you.

If you think you need a guardianship, or if you need help because you can’t live with your parents, call Legal Services for Children at (415) 863-3762. An intake worker can talk with you about guardianships and other options. Legal Services for Children helps young people get guardianships and other legal and social services.

• Legal Services for Children • 1254 Market Street, 3rd Floor • San Francisco, CA 94102 •
What does a guardianship do to my relationship with my parents?

Your parents are still your parents—a guardianship doesn’t change that. Guardianship takes away your parents’ ability to make decisions about your life; the guardian raises you on his or her own. You can still see your parents, but you and your guardian will decide when and how often you will visit with them. A court can also determine when your parents see you by making a visitation order.

How do I get a legal guardianship?

Getting a guardianship is done through the Superior Court in your county. If you are under 12 years old, the person you want to be your guardian asks the court to make him or her your guardian. If you are 12 or over, you can ask the court to appoint your guardian.

To get a guardianship, you or the adult you live with fills out the court’s forms. You have to give copies of the forms to the court and to your parents, grandparents, brothers, and sisters. If the proposed guardian is not a close relative, the Department of Social Services will investigate to see if the guardianship is in your best interest. The court then holds a hearing. At the hearing, the judge will decide if the guardianship is in your best interests.

What will the hearing be like?

Guardianship hearings are all different, so there’s no way to know exactly what your hearing would be like. If your parents, grandparents, brothers and sisters agree to the guardianship, the hearings are usually simple. If someone objects to the guardianship, it will be more complicated.

The older you are, the more likely the judge is to consider what you want. The judge may ask you if you want the proposed guardian to be your guardian, and why. The judge may ask you other questions as he or she tries to figure out what is best for you.

How long does a guardianship last? What if it doesn’t work out?

A guardianship lasts until you turn 18, get married, are legally emancipated, or are adopted. A guardianship can also be ended by the court if you (if you’re over 12), the guardian, or someone else asks for it to be ended, and if the judge finds that the guardianship is no longer in your best interests. If your guardianship isn’t working out, call Legal Services for Children.

What is Legal Services for Children, and how can you help me?

Legal Services for Children provides free legal and social services to people under 18 in the San Francisco Bay Area. We represent minors in many cases: dependencies, guardianships, delinquencies, status offenses, restraining orders, emancipations, school discipline and special education disputes, immigration, and mental health issues.

If you need help, call (415) 863-3762 and ask for the intake worker.
Are you Ready to be a Guardian?

Guardianships offer a child and an adult the opportunity to build a strong, mutually rewarding relationship. Like a parent, a guardian can help a child develop the trust, security, and self-control needed to be a responsible, self-confident human being.

In addition to providing a safe, stable home environment, the ideal guardian is able to show that he or she is:

- able to provide basic needs such as food, clothing and shelter;
- sensitive to a child’s feelings and experience;
- unconditionally accepting of a child as a person;
- available to the child, both physically and emotionally;
- able to listen to the child;
- able to share with the child; and
- able to manage conflicts and solve problems appropriately.

What Helps Guardianships Work?
- Establishing a relationship of unconditional caring
- Clearly defining expectations
- Clear, consistent and appropriate rules and consequences
- A history of bonding with the child
- Support from outside sources

What Can Hinder a Guardianship?
- Treating the child with conditional caring
- Threatening the child with dissolving the guardianship
- Inconsistent and/or unclear rules and expectations
- Making the child feel like a burden.

What Children Might Feel in a Guardianship Situation
Children often feel a sense of loss and instability when their caretakers change. It is common for a child to try to regain a sense of control or to define the limits of a new relationship by acting out in negative ways. They might also view the loss of the connection between themselves and their former caretakers as a type of rejection. It is common for children to fear that their new caretaker might reject them, too, and their behaviors might reflect it.

(Over)
DOMESTIC VIOLENCE

Understanding what children say about living with domestic violence, parental substance misuse or parental health problems

This literature review draws together research findings about children's experiences of living with domestic violence, parental substance misuse (drugs and alcohol) and parental health problems (mental and physical). Many children will have parents who experience these issues; some children will be more vulnerable as a result. It is important to try to understand their experiences in order to provide appropriate help. This review, undertaken by Sarah Gorin at the NSPCC, revealed that, although children's experiences are all very different, there are many common themes that arise when they talk about their experiences, feelings, coping strategies and what would help make things better. The review found that:

- Children are often more aware of problems than parents realise, but they don't always understand what is happening and why.
- Children whose parents have experienced domestic violence, substance misuse and, to a lesser extent, mental health problems report witnessing or experiencing violence themselves, sometimes very extreme.
- Children worry about their parents more than may be recognised, particularly if they fear for their parents' safety.
- Some children, particularly boys, will not talk to anyone about their problems and many children report coping by avoiding problems (emotionally or physically) or by distracting themselves.
- Children mainly use informal support, and are most likely to talk to parents (more often mothers) or friends, siblings, extended family or pets.
- Children do not know where to go to get formal help and rarely seek the help of professionals initially.
- Experience of contact with professionals is mixed. Children's concerns include professionals not believing them, not talking directly to them and not acting to help them when asked.
- Children say they want someone to talk to, who they trust, who will listen to them and provide reassurance and confidentiality. They want help to think through problems, without necessarily taking full responsibility for decisions.
- Children's most persistent plea is for more age-appropriate information to help them understand what is going on in their family.

Background

The review focuses primarily on studies that have sought to hear the voice of children directly: research has shown that they often have different preoccupations to those of adults. Policy and services in the fields of domestic violence, parental substance misuse and health problems are traditionally focused on meeting the needs of the parent. They do not always recognize the possible impact on children and other family members and their need for support in their own right, alongside provision of support for parents.
Children's preoccupations

Children first and foremost want their parents to be well and happy and they want their family to be safe. Their accounts show that they are more aware of what is happening in their family than parents think. However, they do not necessarily understand problems:

"I didn't really understand what was going on, but I know my mam and dad were fighting every day. I understand more now." (Mullender A., Hague G., Umme I., Kelly L., Malos E. and Regan L. (2002), *Children's perspectives on domestic violence*)

Children who live in families where there is domestic violence, parental substance misuse and to a lesser extent, mental health problems report overhearing, witnessing or experiencing violence. They say that fear of violence is made worse by the unpredictability of parents' moods and behaviour and children can feel they are 'walking on eggshells'. Fear, unpredictability and confusion do not just exist when there is violence, but also when there is relationship conflict.

Children report worrying about their parents much more than may be recognised, particularly if they fear for their parents' safety due to violence, self-harm or difficulty in coping. One 13-year-old says:

"I usually, like, watch her [mum] a bit more when she's feeling depressed. Half the time I don't realise I'm doing it, but I do." (Aldridge, J. and Becker, S. (2003), *Children who care for parents with mental illness: the perspectives of young carers, parents and professionals*)

In families with chronic problems, children's accounts show that the lives of other family members can become centered around the adult having the problems. In the case of parental substance misuse, children and parents report sometimes being physically or emotionally unavailable to children:

Interviewer: "Did you feel that your parents were [there] for you that time? I mean that they were interested in you?"

Respondent: "No. I knew they loved me but they just didnae care that I was there and I needed stuff as well. And I need this and things and they were just away taking drugs and stuff." (Barnard, M.A. and Barlow, J. (2003), 'Discovering parental drug dependence: silence and disclosure', *Children and society*)

Relationships and dynamics within families are often complex and this is reflected in children's feelings. Children frequently describe close relationships with parents, and love and loyalty that are strong and enduring. They also often express a desire to help their parents overcome problems. Some children, however, may feel torn between love for parents and a dislike of parents' behaviour or restrictions placed on their own lives.
Sadness and isolation that children may experience can be perpetuated by the stigma and secrecy that surrounds domestic violence, parental substance misuse and ill health. Some children report feeling depressed, having problems making or maintaining friends, having a disrupted education or experiencing bullying. However, children's accounts in the field of domestic violence show that they have a remarkable resilience and ability to heal from previous bad experiences.

**Balancing children's needs and responsibilities**

Children's accounts of living in a family with a parent with physical or mental health problems are mixed. Some children talk about difficult aspects of providing care and support to parents and feel as if they are missing out on social or educational opportunities. However, many children view their help as contributing to reciprocal relationships within the family. The research reviewed shows that children are active social players and they may negotiate their roles and responsibilities within families. However, situations still occur (for example, in crises or if formal support is unavailable) in which some children have little choice but to provide either physical and/or emotional support:

"There are times up at the house when you just don't want to be there. You wanna go out but you cannae because things need (to be) done." (Strathclyde Centre for Disability Research and Centre for the Child and Society (1999) *The extent, nature and needs of young carers in Easterhouse*)

Children's roles and responsibilities in the home vary greatly and providing help to parents may be intermittent, particularly in the case of mental health problems.

Children living in situations where there is domestic violence, parental substance misuse or health problems may not necessarily undertake more practical tasks in the home than other children, but they may feel more responsible.

**Making children's lives better**

*Enabling children to understand problems at home*

Lack of communication is a major barrier to children and young people getting the help they need. There are problems of communication between parents and children and professionals. Within families this is often because of a shared desire to protect one another, secrecy and shame surrounding problems, parents finding it hard to know how to talk to children and feeling too upset themselves to talk about problems. Children in the studies on domestic violence, in particular, stressed wanting parents to talk to them more:

"Grown-ups think they should hide it and shouldn't tell us, but we want to know. We want to be involved and we want our mums to talk with us about what they are going to do - we could help make decisions." (Mullender et al., op. cit.)
Not talking to children may perpetuate their confusion and isolation and lead to misunderstandings.

**Enabling children to talk about problems and access help**

First and foremost, children use informal sources of support. They are most likely to turn to parents (usually mothers) and friends, then siblings, grandparents or pets. Support may come in the form of talking or spending time with someone and feeling safe. Children say that they want to talk to someone who they trust, who will listen to them and provide reassurance and confidentiality.

Some children will not talk to anyone about the problems at home. This may be because of fear of violence, fear of the consequences of talking about problems (for example, being separated from parents, hurting other people), fear of not being believed or because of distrust, not feeling anyone can help, and possible stigma surrounding problems. Boys in particular may find it hard to talk about problems and they are more likely to leave talking to someone until nearer crisis point than girls. Many children report using avoidance or distraction as a coping strategy when there are problems at home:

"Yeah, sometimes when I'm feeling a bit down and I think about it, it does make me cry, but otherwise it just doesn't because I just kind of try to blank it out really." (McGee, C. (2000), *Childhood experiences of domestic violence*)

Using this strategy is likely to make children even harder to identify and support. We do not really understand what would make boys more likely to talk about problems and seek support. Ensuring that children have a choice of a male or female helper and a helper of the same ethnicity may be advantageous.

We know that children rarely approach professionals initially and do not know where to go to get formal help. Unwanted intervention and stigma are the main reasons children and parents give for not approaching professionals. They may be more encouraged to do so, either through helplines or by having spaces provided in which they can feel safe. Having time to build up relationships of trust is likely to help children discuss problems at home:

"It's important that they [children] feel that they are there of their own will ... that if they want a break or somebody makes them upset they don't have to stay. Because if they're there and a subject really hurts them and they feel trapped ... the next time they won't go back ... in case they feel like trapped in that situation." (Templeton, L., Velleman, R., Taylor, A. and Toner, P. (2003), *Evaluation of The Pilot Family Alcohol Service: Final report*)
Respecting children, recognizing and valuing their experiences and acting on concerns

Children's accounts of receiving professional help vary, but many report negative experiences. Children say that professionals do not always talk to them in a language they can understand, they are often afraid that professionals will not believe them and they are not confident that any professional action will make things any better. In many circumstances children are worried that involvement with professionals will make things worse. Children's accounts of coming into contact with professionals about domestic violence suggest that, in some cases, professionals involved did not speak directly to children.

Children want to be respected and taken seriously by professionals. Where action is taken in their family, they want to be involved in decision-making, although this does not mean they want to take full responsibility for decisions. In the case of parental ill health, children feel frustrated at not being involved in decision-making about the care and support of parents:

"It felt like a constant battle. Right up until recently, the past two years is really when they'll actually start taking you seriously, you know, and listening to actually what I say and think that perhaps 'well, maybe she does know what she's talking about'. But for years, I mean I was told by consultants and people, you know, 'you're only a little girl, what do you know?' Sort of at the age of 15 I was told this. You know it is so frustrating when you're trying to say 'I live with my mother, I see it'." (Aldridge and Becker, op. cit.)

Children also say that being involved in finding solutions to problems helps them to cope.

Providing an appropriate range of support

Children mention a need for confidential support such as helplines, universal and specialist support. Although there are overlaps in the types of feelings and coping strategies children may use, there are many differences in individual experiences and there is a need for some specialist services that can work with children alongside those for parents. Children's most urgent request, however, is for age-appropriate information about the problems their parents are experiencing. The following personal account reflects this experience:

"People tend to protect children and young people. For me, this translated into ignoring my need to be informed and involved. My life was affected anyway and if I had guidance it might have made the experience more positive. I needed good, age-specific information about my mother's condition and its consequences. And I needed someone to talk to who would listen in confidence and help me to express and explore the complex feelings and situations I was dealing with." (Marlowe, J. (1996)
Children also talk about welcoming an opportunity to have a break away from home, have some fun and to get to know other children experiencing the same problems.
Violence in society is a major issue for families today. It's everywhere we look, it seems, and as a parent and child therapist, it disturbs me deeply. Part of the job of parenting is to protect our children from the ills, if not the evils, of the world, but what do you do when the ills come looking for you. The recent suicide-killings at schools and the continual global conflicts make talking to our children about violence a necessary responsibility.

It would be easy to wait until our children bring up the issue and instead of taking a lead role in discussing violence with them. Unfortunately, too many children take in the information, attempt to process it with their limited experience and understanding, and never say a word to an adult. Just because kids don't initiate, doesn't mean that parents shouldn't. For these children, talking about the violence may relieve feelings of anxiety and insecurity they were bottling up inside. Children get their sense of safety from the attitudes and behaviors of adults, primarily parents. How we act and talk will have a direct impact of the emotional well being of children.

The first step in talking to children about violence is to acknowledge their thoughts and feelings about the violence. The best way is the simplest: Ask them what they think or feel. This will give a parent a barometer about where the child is at and what concerns need to be addressed. Demonstrate that you are willing to hear it and give your child full attention without judgement. Too many parents are quick to jump on a child's comments and make them seem invalid. A parent might dismiss their child's fears as unnecessary: "You shouldn't feel that way" or "You don't need to worry about that." A parent might even reply that the child is being silly, stupid, or overreacting for what they are thinking and feeling. This is a sure method to get a child to shut down emotionally and not communicate with a parent, now and in the future.

Get on a child's level by sitting or kneeling down when talking to them. And get rid of any distractions (i.e., turn off the television or radio). Make the conversation about them.

The second step is to clarify and/or reflect back a child's comments. For example, a parent might say, "Tell me more about your fears of someone killing you" or "What do you mean you think the world is going to end?" This also communicates to a child that what they have to say is important and not trivial. It makes parents more aware of the underlying issues. If a child's comments are clear then repeat back to the child what you heard them say. Don't be a parrot; just summarize it, so that you and the child are on the same ground mentally.

The third step is to share your feelings and values about the violence. This means you must be aware of what they are before you ask your child to share. How do you feel about the violence? What is your value-system about killing, death, and violence? Is it a social, moral, or relational issue for you or does it encompass all three. Once you are aware of where you stand, you can communicate this with your child. Share in a direct,
simple, and honest manner. How you say something may be more important than what you say. But be sure to say it in a matter of fact manner.

What you say will vary depending on your values and the age of your child. Young children have difficulty separating reality from fantasy and it may be important to describe the difference. For example, a parent of a young child might state: "I know that the cartoons you watch sometimes have characters who shoot one another, but that is not real. In real life, when someone gets shot they get hurt and they might even die." Avoid in-depth explanations for younger children. They will lose attention and not be able to process long descriptions. One to two sentences are more than enough. Additionally, parents can use drawings and children's books about fighting, violence, etc. Always follow up with reassurances that you love them, will do your best to care and protect them, and that they are safe.

Older children may be able to verbalize their thoughts and feelings more distinctly but don't let that be an excuse not to talk about it. Use the same principles as with younger children but feel free to talk more deeply about the violence. Watch the news report together or read the newspaper article out loud, pausing to discussing thoughts and feelings. Ask them if they know of anyone who has been the victim of violence. The older they are the more likely they will know or have heard of someone. Talk about violence that has occurred toward them or in their daily life, such as at school.

Guide the older child toward your values without forcing them on them or telling them how they should believe. Look at ways to get involved in your community or through national relief efforts to help victims of violence. Being proactive will give a child a sense of power versus powerlessness.

What we say to children is important and we must say something. Sticking our heads in the sand will not improve the situation. Actually, ignoring or dismissing the topic of violence will increase a child's anxiety and fears. But even more importantly, how we talk about violence will have profound impact on our child's sense of self, their understanding of right from wrong, and their relationship with the parent.
Won't I scare my children unnecessarily by talking about sexual abuse?
Not if you realize that teaching your children about sexual abuse is as important as any other rule of health and safety, and approach it that way. You don't worry about scaring your children when cautioning them to be careful of cars, for example, but you do explain that cars can be dangerous, and that there are safety rules to protect children. You can bring the subject of sexual abuse into daily life and make it part of ongoing talks with your children about safety, rather than presenting it as a one-time-only lecture on an unnatural subject.

Okay, but how can I talk about sexual abuse?
By becoming acquainted with these basic facts yourself, you will be able to teach them to your children in your own way and in your own words.

Children need to know that:

• **Their bodies belong to them and no one has the right to touch them without permission.** Children have traditionally been taught to comply with adults' requests, but they need to know that, regarding touching, they have the right to say NO, even if the touch seems accidental or even if the person touching is a relative or trusted adult. Obviously, children need to know the names of parts of their bodies, whether the words are the correct words or euphemisms used among the family. One way to explain private parts is to say that they are the parts of the body covered by a swim suit.

• **There are different kinds of touching.** Talk about touch that feels good (hugs, comforting), touch that feels bad (hitting, pinching), and touch that makes children feel "funny" or uncomfortable or scared, or that gives them a feeling of "uh-oh." For example, discuss what reaction they might have if someone touched their private parts, made a request that seemed odd, or "accidentally" touched them.

• **They can trust their feelings about kinds of touching and always ask a trusted adult if they're not sure.** Most children, even young ones, can tell when another person's touch or request or behavior makes them feel scared or "funny" or uncomfortable. They need to be encouraged to trust those feelings so that they can recognize behavior that can lead to sexual abuse. It may be helpful to play a "what if" game with children to clarify their feelings and practice ways to deal with a situation. For example, you can say "What if someone put his hand on your bottom?" Children can think about what their reaction might be and can talk about what they could do about it (for example, say "I don't like that!" and run away and tell someone).

• **They can tell their parents or a trusted adult about anyone whose behavior makes them uncomfortable or who touches their private parts or who asks them to touch someone else's private parts; and that they will be listened to.** Children must be free to ask about adult behavior that confuses them, even when it is behavior not related to sexual abuse. For example, the child who is told not to ask
about Aunt Sue's whiskers learns also not to ask why Uncle Steve wants her to sit on his lap when he's alone with her.

- **Being asked to keep an unpleasant secret may mean danger of sexual abuse.** If there is one central clue to the possible or actual sexual abuse of your child it is the child's withdrawal into secrecy. No adult or older child has the right to ask or tell your child to keep an unpleasant secret. Explain to your child the difference between a good secret and a bad secret. A good secret is something pleasant and fun and exciting when it is later shared with others—for example, a surprise birthday party, or when Daddy secretly brought the puppy home. But a bad secret feels like a burden, it doesn't make a person feel good, and it is intended never to be shared with others. Your child can say, "No! My family doesn't allow bad secrets."
Talking About Divorce

When a couple decide to get a divorce, they usually have some weighty reasons for parting.

- A divorce will have huge personal and economic effects on a family and it is often the children who are affected the most; they will always experience grief when the parents divorce.

Can you do something that will make the divorce less painful for your children?

Whatever you decide to do to help your children, bear in mind their age and the level of understanding.

A lot of people 'forget' children during the process of divorce. They forget to tell the children about what is about to happen. It is very upsetting for them to be suddenly told that 'Mum and Dad are getting divorced now'.

It is better for the children if they are made aware their parents are talking about a divorce. They can be told for example that 'Mum and Dad have some problems. We don't know how it's all going to end, whether we're going to get a divorce or find another solution. We're working hard to solve the problems and we're getting help.'

Do not involve the children in the discussion; that is way too big a responsibility. They just need to know what is going on. If the children of a couple know at an early stage that their parents may break up, they will not lose trust when the divorce finally happens. A child also learns that openness is a good thing and that it is OK to talk about problems.

Above all, honesty is a must. When a child asks a question, answer truthfully, even when talking about divorce and what might happen next.

Be aware of what a child's reactions might be and talk about how they feel. A certain amount of self-discipline on the parents part is required. The divorce is likely to be very difficult to deal with, but sometimes the children must be put first and allowed to express their frustrations and feelings.

How will the divorce affect the children?

They will have two main concerns:

- being separated from one of their parents.
- grief because the original family does not exist anymore.

The children will feel lost. Their own natural place in the family is not the same anymore.
Most children have a 'secret mission' to reunite their parents. If they are asked, they will usually prefer the parents to stay together instead of getting a divorce. This is still the case when the marriage has been very difficult. Children are extremely loyal to their parents. They will often deny and hide their own feelings.

Many children feel guilty when their parents divorce. They think that if they had just behaved better or done better in school, it would not have happened. It is important to explain to a child that they did not cause the divorce. A child needs to know that the divorce is a result of the parents not being able to work things out.

Children often experience a conflict of loyalty. When they are with one parent, they feel guilty about not being with the other, and vice versa.

It is important, as a parent, to tell a child that it is OK to spend time with the other parent as well. Tell the child that you know they want to be with the ex-partner as well, and that is not a problem.

How will your children react?

Children will always react to a divorce. The question is how and how strongly.

A child who does not show any feelings or reactions needs help to express what is going on inside. Otherwise, they are very likely to suffer depression later.

A pre-school child may show regressive behaviour. This means that the child may return to an earlier stage of development and, for example, start to wet themselves again. A pre-school child may become confused, irritable or worried.

Children between six and nine are very vulnerable. At this age a child is still not mature enough to understand what is going on, but is old enough to understand that something very unpleasant is taking place. They still depend very much on the parents and will have a hard time talking about their emotions. They may react with anger, or by not concentrating or making progress at school or by having learning difficulties.

Children between 9 and 13 may have started having important relationships with other people besides their parents and family. When the parents divorce, it will often be good for a child to talk to someone outside the family about their problems and feelings. Parents should listen to a 12- or 13-year-old child who says they want to live with one parent rather than the other.

They may react to the divorce with anger, grief or depression

If a child does not get any better when things start getting back to normal, even when parents talk about what has happened and are very open, counseling can be considered.
counselor can give advice about how to talk to children. Family therapy can also be considered together with individual therapy for the children.

Trusted good friends can be involved in supporting the children. Group therapy, involving other people in the same situation, can also be a big help.

**How can parents make divorce less traumatic for their children?**

Talk to the children. Be open; listen to how they feel. They may be angry, frightened or worried. Everybody is entitled to their own feelings; that goes for children as well, though it may hurt a parent to hear how a decision to divorce has affected their children so deeply.

Even if parents and children talked a lot in the beginning, they can still talk about the divorce every once in a while.

Choose a time when both parents and children feel good. Find out if a child has any new questions. Having an open conversation means a lot to the child. If it is not possible to do this oneself, find someone who can, maybe a professional.

Children can express themselves in other ways than with words. Play is very important. Play with the child; let them act out their feelings. Children may need to work off tension through energetic games.

Drawing may help a child. Children often draw things that are important to them. Ask about the drawings; this can be a good way to start your child talking about what's going on inside. Parents should not tell their children off if they don't like what they hear.

Parents should never criticize an ex-partner in front of their child. It can be tempting, but is very unfair. Children know they are part of both parents and they may feel they are as 'bad' as the 'ex' is. When a parent criticizes an ex, the parent criticizes the child.

Children should not be messengers for parents after a divorce. If a parent needs to tell their ex-spouse something, they should do it themselves. If it is hard for the parents to talk face to face, they should write a letter. It is not fair to use a child as a buffer.

**What affects how children will react to a divorce?**

Even if parents deal with the problem and talk openly, other things may influence their children's reactions:

- the children's ages at the time of the divorce
- how smart they are
- how mature the children are emotionally
- the children's relationship with both parents
- how 'bad' the divorce was
• other people's reactions to the divorce
• if the children had problems before the divorce
• whether there are people outside the family who are willing to help.

What if there is a new step-family?

If the children have to deal with a step mother or step dad and new brothers and sisters right away, life will of course be even more complicated for them.

Expect difficulties. Children will not like these changes at first. They will need to fight for territory in the new family, both with the other children and with the stepparent.

It takes a lot of patience to make this work. A sense of humor helps! It takes time and then more time; it may well be a very long process.
PARENTS HAVE MUCH TO CONSIDER WHEN DECIDING HOW TO TALK TO CHILDREN ABOUT SANTA CLAUS

Is there a Santa Claus?

Should parents tell their children there is one when, clearly, they cannot prove reindeer fly?

Bronwyn Fees, associate professor of family studies and human services at Kansas State University, said what parents tell their children about the jolly man in red takes thoughtful consideration.

"It is fairly typical in this American culture to want to know 'the truth' -- to possess a definitive answer to problems or issues," Fees said. "In a complicated world, wouldn't it be nice to be able to have such an answer? But I do not have the answer for Santa."

Although Fees said parents have to decide for themselves how to handle the question of Santa, she provides some research findings and additional information for parents to consider when making the decision:

Fees said she knows of no studies proving children's outcomes are related to their belief in Santa.

"I do not know of any evidence that this story about a generous man has caused children to be more or less creative, physically fit, mentally strong or unstable, ready for school, or even, more or less suspicious of strangers," she said.

However, Fees said believing in Santa can almost be a relief from the rush of modern life.

"In a world of reality-based shows that confront us with murder, deceit, dishonesty and eating culturally inappropriate items, wouldn't it be nice to think that there really is someone who cares about us all, all of the time?" she said. "Someone omniscient, knowing when we are good or bad, holding us accountable and fair in handing out rewards and punishment?"

The story of Santa Claus is engaging because it is believable for young children, Fees said.

"The hallmark of a child's world is make-believe play, rich in opportunities to experiment, explore, test and resolve situations," she said. "And research is clear -- the more children engage in play and become familiar with their physical world, the better able they are to understand the people and materials around them.

"The child's limited experience with their environment perpetuates the belief in magical powers or supernatural beings for events they cannot yet explain," she said.

Children's literature is full of fairy tales. Some psychologists suggest that although fairy tales may not teach children the skills to function in a modern society, they do help children in their attempts to find meaning in the actions of others, to understand themselves and to
cope with the inconsistencies of life. Stories, including fairy tales, help children reason about moral behavior as well as help confront and resolve problems.

Although children enjoy the tale of Santa, Fees said they still may be cautious of him in person. She recommends parents never insist their child sit on Santa's lap; it's natural for children to be cautious of strangers, she said, so parents should be careful not to contradict these feelings.

As children grow older, they begin to notice the discrepancies believing in Santa brings: How does Santa bring presents to children in houses with no chimneys? Isn't going into someone else's home uninvited against the law? How does such a large man get down the chimney? How does Santa Claus circle the earth in one night? Can reindeer really fly? These questions show an appreciation of reality and the gradual development of deductive reasoning in children, Fees said.

This universal change in thinking leads most children between the ages of 6 and 8 years to discover that Santa is not a real person. Although children might express some disappointment in the discovery, research suggests it is short lived. The greatest sadness may be within the parents, Fees said, who no longer get to help perpetuate the magic of Santa.

Fees said as her children began to bring up questions about Santa Claus, she and her husband discussed each one as they emerged. "Gradually, as their logic grew more complex and they could mentally handle more information at one time, we also shared with them the legend of a real man who was very kind and generous to children and families," she said. Her children began to understand that people were so moved by his actions they carried forward these acts of giving and caring.

Encouraging a child to ask questions and explore possibilities gives the parent a "window" to see and understand how their child thinks and feels, Fees said.

All in all, Fees said families spending time together conversing can create stronger, more responsive relationships. She said the earlier and more frequently adults read stories to children, the stronger their reading skills become. Repetition and rhyme in stories literally stimulate the brain, encourage the imagination and enhance vocabulary development.

"The story of Santa Claus is a composite of many stories across cultures and across time retold by generations in multiple versions as people interpret what they hear based on their own experiences," she said. "Carefully select the version that best fits your values."
How to Talk to Children and Parents After a Disaster

From the American Academy of Child and Adolescent Psychiatry

- Any catastrophe, whether natural or man-made, is frightening to children and adults alike.
- It is important for adults to acknowledge the frightening aspects of it with children.
- Falsely minimizing the danger will not reassure, but a calm demeanor will provide a sense of safety.
- Parents can support their children by allowing them to express feelings about the recent disaster, and letting them know that it is normal to feel upset. Reassure them: tell them that you love them, and will take care of them.
- Be available and give them extra time and attention during the days following a disaster, not only for talks related to the disaster, but for other conversation, or just hanging out.
- Parents should know that a child’s age will affect how he or she responds to the disaster. For example, a four-year-old may show concern by wanting to sleep in the parents' bed, an eight-year-old by missing school (perhaps by feeling or becoming ill), and a teenager by arguing more with parents.
- Parents need to monitor their children's exposure to television and radio coverage of a disaster. Viewing or listening to graphic news may cause further trauma, and/or desensitize a young person to violent aspects and their consequences.
- It’s also important to help children and adolescents process whatever news they do receive of a disaster. Young people may believe that “nothing like that” would ever happen to them. Such ideas should be explored in a supportive way that also gently reminds a young person that certain kinds of disasters can touch any of us. Conversely, a young person may feel extremely vulnerable upon hearing about a disaster that has occurred far away. These children should be encouraged to express their fears, and then gently but firmly remind them that most people survive disasters of all kinds, and that they themselves are currently quite safe.
- Children's and parents' reactions to a disaster may continue for a long time after the event itself, and may be upsetting even years later. Obtaining counseling for a child or adolescent soon after a disaster may reduce long-term negative effects.
- Entire communities have reactions to disasters. It is important for parents to pay attention to their community's reaction, which may have a powerful impact on children and adults alike. Encourage those young people interested to participate in organized community responses (e.g., food distribution sites, ceremonies).
- Replaying the disaster with available toys may be one way younger children can develop a sense of mastery and minimize their anxiety about the traumatic event. This is similar to an adult retelling his/her experience.
Drugs and Alcohol

**Straight Talk** : A guide to discussing alcohol and drugs with your children

**Preschoolers**

It may seem premature to talk about alcohol and drugs with preschoolers, but the attitudes and habits that they form at this age have an important bearing on the decisions they will make when they're older. This is a good time to practice the decision-making and problem-solving skills that they will need to say "no" later on. Some ways to help preschool children make good decisions:

- Discuss why children need healthy food. Have your child name several favorite good foods and explain how these foods contribute to health and strength.
- Set aside regular times when you can give your child your full attention. You'll build strong bonds that will help your child avoid drugs in the years to come.
- Provide guidelines like playing fair, sharing toys and telling the truth so children know what kind of behavior you expect from them.
- When your child becomes frustrated at play, use the opportunity to strengthen problem-solving skills.
- Whenever possible, let your child choose what to wear. Even if the clothes don't quite match, you are reinforcing your child's ability to make decisions.
- Point out harmful substances commonly found in homes, such as bleach, kitchen cleanser and furniture polish.

**Kindergarten through third grade**

Now is the time to begin to talk about alcohol and drugs and the consequences of using them. Discuss how drugs interfere with the way our bodies work and can make a person very sick or even cause them to die. Explain the idea of addiction - that drug use can become a very bad habit that is hard to stop. Praise your children for taking good care of their bodies and avoiding things that might harm them. By the time your children are in third grade, they should understand:

- How foods, poisons, medicines and illegal drugs differ.
- How medicines prescribed by a doctor and administered by a responsible adult may help during illness but can be harmful if misused; so, children need to stay away from any unknown substance.
- Why adults may drink but children may not, even in small amounts because it's harmful to children's developing brains and bodies.
Grades four through six

At this age, children can handle more sophisticated discussion about why people are attracted to drugs. You can use traumatic events, such as a car accident or divorce, to discuss how drugs can cause these events. Children this age also love to learn facts, especially strange ones. This age group can be fascinated by how drugs affect a user's brain or body. Explain how anything taken in excess - whether it's cough medicine or aspirin - can be dangerous. It is essential that your child's anti-drug attitudes be strong before entering junior high. Before leaving elementary school, your children should know:

- The immediate effects of alcohol, tobacco and drug use on different parts of the body, including risks of coma or fatal overdose.
- How and why drugs can be addicting and make users lose control of their lives.
- The reasons why drugs are especially dangerous for growing bodies.
- The problems that alcohol and other illegal drugs cause not only to the user, but the user's family.

Rehearse scenarios in which friends offer drugs. Have your children practice delivering an emphatic "That stuff is really bad for you!" Give them permission to use you as an excuse: "My mom will kill me if I drink a beer!"

Teach your children to be aware of how drugs and alcohol are promoted. Discuss how advertising, songs, movies and TV shows bombard them with messages that using alcohol, tobacco and other drugs is glamorous. Make sure they are able to separate the myths of alcohol, tobacco and other drugs from the realities, and praise them for thinking for themselves.

Get to know your children's friends, where they hang out and what they like to do. Make friends with the parents of your children's friends so you can reinforce each others' efforts. You'll feel in closer touch with your child's daily life and be in a better position to recognize...
tough spots. Children this age appreciate this attention. In fact, two-thirds of fourth-graders polled said that they wish their parents would talk more with them about drugs.

**Grades seven through nine**

Although teen-agers often seem unceptive to their parents as they struggle to become independent, they need parental support, involvement and guidance more than ever. Young teens can experience rapid shifts in their bodies, emotional lives and relationships. Adolescence is often a confusing and stressful time, characterized by mood changes and insecurity, as teens struggle to figure out who they are and how to fit in. It's not surprising that this is the time when many young people try alcohol, tobacco and other drugs for the first time.

Parents may not realize that their young teens feel surrounded by drug use. Nearly nine out of 10 teens agree that "it seems like marijuana is everywhere these days." Teens are twice as likely to be using marijuana as parents believe they are, and teens are getting high in the places that parents think are safe havens, such as school, home and friends' houses.

Parents profoundly shape the choices teens make about drugs. Take advantage of how much young people care about social image and appearance to point out the immediate, distasteful consequences of tobacco and marijuana use - for example, that smoking causes bad breath and stained teeth and makes clothes and hair smell. At the same time, you should discuss drugs' long-term effects:

- The lack of crucial social and emotional skills ordinarily learned during adolescence.
- The risk of lung cancer and emphysema from smoking.
- Car accidents and liver damage from heavy drinking.
- Addiction, brain coma and death.

**Grades 10 through 12**

Older teens already have had to make decisions many times about whether to try drugs. Today's teens are savvy about drug use, making distinctions not only among different drugs and their effects, but also among trial, occasional use and addiction. To resist peer pressure, teens need more than a general message not to use drugs. Teens need to be warned of the potentially deadly effects of combining drugs. They need to hear a parent's assertion that anyone can become an addict and that even non-addicted use can have serious permanent consequences. Because most high school students are future oriented, they are more likely to listen to discussions of how drugs can ruin chances of getting into a good college, being accepted by the military or being hired for certain jobs. Teen-agers tend to be idealistic and enjoy hearing about ways they can help make the world a better place. Make sure teens understand the effect that drug use has on society. Appeal to your teen by pointing out how avoiding illegal drugs helps make your town a better place.

Your teen-ager may be aware of the debate over the legalization of marijuana and whether or not doctors should be able to prescribe it for medicinal purposes. The idea that there might be legitimate health advantages to an illegal drug is confusing. You may want to let your teen know that the ingredient in marijuana that has some medicinal value - delta-9-tetrahydrocannabinol - already can be prescribed by doctors in a pill form that doesn't
contain the cancer-causing substances of smoked marijuana. Other medical painkillers include codeine and morphine, both of which have been determined safe for prescription use after rigorous testing and review by scientific medical organizations.

It is important that parents praise and encourage teens for all the things they do well and for the positive choices they make. When you are proud of your son or daughter, tell him or her. Knowing they are seen and appreciated by the adults in their lives is highly motivating and can shore up their commitments to avoid drug use. Your teen also may be impressed by the importance of serving as a good role model for a younger brother or sister.

RESOURCES


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February 6, 2006

NAME & ADDRESS
OF MENTAL HEALTH PROFESSIONAL
HOLDING RECORDS

In re: Plaintiff, a Minor v. DCSB

Dear Dr. NAME OF MENTAL HEALTH PROFESSIONAL:

I will be issuing a subpoena for the records, both contemporaneous, and those covered by copyright, that will have been generated in the conduct of your IME exam.

I appreciate that the law has changed regarding the definition of “raw data” to now include any data [copyrighted materials AND notes] contained in a psychologist’s file.

I am cognizant of your obligations in this regard. I am aware that you are directed by Florida Supreme Court Rule 12.363, F.S. 490, F.A.C. 64B18, the Ethical Code of the American Psychological Association, and by the Specialty Guidelines for Forensic Psychologists to only release records and test results when the interpretation of the results will be performed by a professional person who is trained and competent in psychological testing and assessment and that the materials contained in your files will only be released to another psychologist.

---

1 (3) The psychologist’s notes pertaining to psychological services rendered may be considered raw data as provided by subsection 64B19-18.004(3), F.A.C., at the discretion of the psychologist and therefore can be released only (1) to a licensed psychologist or school psychologist licensed pursuant to Chapter 490, F.S., or Florida certified, or (2) when the release of the material is otherwise required by law.

2 See: F.A.C. Chapter 64B19-18.004 (Use of Test Instruments), Section (6), “Test instruments” are standardized procedures which purport to objectively measure personal characteristics such as intelligence, personality abilities….Examples of such tests include intelligence tests, multiple aptitude batteries, and personality tests.…"

3 See: F.A.C. Chapter 64B19-18.004 (Use of Test Instruments), Section (3), “A psychologist who uses test instruments may not release raw test data, such as test protocols, test questions, or written answer sheets, to any person other than another licensed psychologist or in response to a judge’s order". 
In turn, please recognize my obligation to request these records, and my obligation to best represent my client, and that to do so I must have access to these files. At the same time, it is my professional obligation to accord you the assurance that I will make every reasonable effort to see that these records are not misinterpreted and not misused.

Therefore, consistent with the legal and ethical requirements governing your professional behavior and recognizing that as a psychologist you are directed that no mental health records be produced in the absence of a signed authorization/release by the person[s] holding privilege to the requested records. I am enclosing a REQUEST FOR RECORDS & AUTHORIZATION to RELEASE RECORDS by Service User which has been signed by each of the parties for whom I am requesting records including releases for the records of the minor children.

I am also enclosing a LAWYER’S REQUEST FOR PSYCHOLOGICAL RECORDS which designates the psychologist to whom I request that the records be sent, and An AGREEMENT AS TO THE USE OF PSYCHOLOGICAL RECORDS which spells out how the released records will be protected.

I am willing to pay any usual and customary charges for the duplication and delivery of the requested materials.

Thank you for your anticipated cooperation in this matter.

Respectfully,

, Esq.
Florida Bar #

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4 SEE: F.S. 490, and also: F.A.C. 64B19-19.006 (4)

5 A PSYCHOLOGIST is defined as a person trained at the doctoral level in psychology and meeting the requirements of licensure in the State of Florida as evidenced by the issuance of a current and valid license to practice psychology in the State of Florida, or having a current and valid license from another state in which the requirements are essentially equal to those of Florida. See: F.A.C. 64B19-18.004 (3)

6 The wording of this AGREEMENT has been upheld in its entirety in a ruling issued by Judge Graham in the United States District Court, Southern District of Florida in Sheryl E. Robinson vs. United Automobile Underwriters, Inc., Case No:98-2261-CIV-Graham
REQUEST FOR RECORDS & AUTHORIZATION to RELEASE RECORDS by Service User

I, ______________, individually for myself or as guardian7 for ______________, hereby authorize and request that:

NAME OF PSYCHOLOGIST FROM WHOM RECORDS ARE BEING REQUESTED

ADDRESS

may release any and all confidential medical, psychological, psychiatric, educational, and/or other appropriate information8 acquired in the course of my evaluations and/or treatment (or those of my minor children for whom I am the legal guardian) by mail or personal delivery, but not by facsimile or other electronic means unless herein specified to the contrary to:

For “raw data” and/or material protected by copyright & for case notes and records not protected by copyright:

Name of Psychologist:  Jerome H. Poliacoff, Ph.D., P.A.
1501 Venera Avenue
Suite #225
Coral Gables, Florida 33146

I understand that I may revoke this consent at any time by informing the above parties in writing.

In consideration of this consent I hereby release the above parties from any legal liability for the release of this information.

_______________________________________   __________
(Signature: Client)     (Date)
Name:
and/or

______________________________________   ____________
(Signature: Parent or guardian)    (Date)

7 In the case of minors a signed release by the minor consistent with recent case law (i.e., In re: ATTORNEY AD LITEM FOR D.K., a minor, Petitioner v. THE PARENTS OF D.K., Respondent, 4th District Case No. 4D00-3634, 26 Fla. L. Weekly D783-786) may also be required

8 See: F.A.C. Chapter 64B19-18.004 (Use of Test Instruments), Section (3), “A psychologist who uses test instruments may not release raw test data, such as test protocols, test questions, or written answer sheets, to any person other than another licensed psychologist or in response to a judge’s order”.
LAWYER’S REQUEST FOR PSYCHOLOGICAL RECORDS

RE:
Case Number:

I am requesting the psychological records and underlying test data (a/k/a “raw data”) as defined by F.A.C. Chapter 64B19-18.004 (Use of Test Instruments), Section (6)9 of_____________________________.

Please find:
[1] a signed authorization for the release of her psychological records, and
[2] Pursuant to F.A.C. Chapter 64B19-18.004 (Use of Test Instruments), Section (3)10 I request that these records be released to psychologist11

Name: Jerome H. Poliacoff, Ph.D., P.A.
License Number: PY 3449
Address: 1501 VENERA AVENUE
Suite # 225
Coral Gables, Florida 33146-3230

I recognize your obligation to protect the raw data in your files and to that end I have enclosed a signed AGREEMENT AS TO THE USE OF PSYCHOLOGICAL RECORDS which should serve to protect your obligations under various Florida statutes and ethical codes of conduct.

Thank you for your anticipated cooperation in this matter.

Respectfully,

, Esq.

9 F.A.C. Chapter 64B19-18.004 (Use of Test Instruments), Section (6), “Test instruments” are standardized procedures which purport to objectively measure personal characteristics such as intelligence, personality abilities.....Examples of such tests include intelligence tests, multiple aptitude batteries, and personality tests...”.

10 F.A.C. Chapter 64B19-18.004 (Use of Test Instruments), Section (3), “A psychologist who uses test instruments may not release raw test data, such as test protocols, test questions, or written answer sheets, to any person other than another licensed psychologist or in response to a judge’s order”.

11 A PSYCHOLOGIST is defined as a person trained at the doctoral level in psychology and meeting the requirements of licensure in the State of Florida as evidenced by the issuance of a current and valid license to practice psychology in the State of Florida, or having a current and valid license from another state in which the requirements are essentially equal to those of Florida. See: F.A.C. 64B19-18.004 (3)
AGREEMENT AS TO THE USE OF PSYCHOLOGICAL RECORDS

I, ATTORNEY’S NAME, on behalf of my client, NAME OF CLIENT, agree to abide, to the best of my ability, by the following conditions concerning the records of __________________________ that have been released either to my care or to that of my designated expert psychologist:

(1) Copyrighted and/or test materials (a/k/a 'raw test data') will not be duplicated, and
(2) Copyrighted and/or test materials (a/k/a 'raw test data') will not be disclosed in any manner in any legal or other proceeding, and
(3) These materials will be returned or completely destroyed in a protective fashion by shredding or incineration when either a settlement or a conclusion of the litigation is reached.

I further agree, to the best of my ability, that in the event that the requested psychological test materials must be disclosed by an order of the court the following protective measures will be entirely and strictly adhered to:

(1) There will be no duplication of the protected material, and
(2) Only the fewest required number of persons, who shall be named in advance, will have access to this information, and
(3) The test materials will at all times be protected from accidental and incidental exposure to any and all other persons, but not limited to, visitors and all other professional staff, office staff, and building personnel in which the materials will be housed or into which they will be transported, and
(4) Prior to that portion of a trial in which confidentiality of the protected materials will be breached the courtroom will be cleared of all persons but those whose presence is absolutely required by the court, and
(5) The amount of protected psychological materials that will be disclosed will be kept to the absolute minimum necessary, and
(6) That portion of the trial in which the said materials will be disclosed will be sealed, and
(7) At the conclusion of the trial the said materials will be returned in their entirety or in the alternative be confidentially and completely destroyed by specified means (as above), and
(8) That a court order and procedures will be in place so that the court can and will certify that this has been accomplished in the specified manner.

I, ATTORNEY’S NAME, having read the foregoing attest that I fully understand the conditions under which the requested test materials (a/k/a raw data), will be released and in turn I further affirm that I, as the person requesting these records, will, to the best of my ability, fully and faithfully abide by all of the terms and conditions set forth above, or in the alternative of any non-compliance on my part will fully accept any and all legal consequences or actions taken by any party whose interests are compromised by my failure to adhere to the stated guidelines and conditions.

Signed__________________________  Date______________________

Name (Print)______________________

Witness__________________________ Date_______________________

Name (Print)______________________
The mission of the ABA Child Custody and Adoption Pro Bono Project (“The Project”) is to design and implement programs and policies that foster children’s well-being, development and safety during custody matters. The Project focuses on pro bono representation of children in divorce, guardianship, adoption, parentage and civil protective order cases.

The Child Custody and Adoption Pro Bono Project is jointly sponsored by the ABA Standing Committee on Pro Bono and Public Service and the ABA Family Law Section. The Project is administered by and housed at the ABA Center for Pro Bono. The Project was established in February 2001 through a grant from Bill and Melita Grunow, in memory of their niece, Ann Liechty, a dedicated child law advocate.

The focus of the Project’s 2005 grant year was to bring mental health and social services to child custody advocacy. Three areas of needs were targeted: (1) the need for more mental health and social service training, mentoring, partnering, consulting and cross-education of legal professionals with mental health or social services professionals; (2) ways for children’s attorneys to tap into free or low-cost mental health or social services for their clients; and (3) development of local mental health or social service resource materials for children’s attorneys with their clients.

Incorporating mental health and social services into child representation is critical to prevent lawyers from representing children in a vacuum. Moreover, holistic advocacy is very important in family and child-involved cases. Mental health and social services
are often what provide children with long-term benefits, well after the legal proceeding has ended. But, many lawyers are not trained or are unfamiliar with the need and/or availability of these services. In higher conflict cases, the child is at a greater risk for physical and emotional abuse. Furthermore, the anger and conflict between parents and other adults may prevent them from focusing on their awareness of their children’s needs. Attorneys working with children should be trained to identify their client’s emotional distress needs and be able to advocate for proper interventions.

This “Mental Health and Social Services Guide” describes the project information for the five programs that were awarded grant funding in 2005 from the ABA Child Custody and Adoption Pro Bono Project. Additionally, the Guide includes other ideas for incorporating mental health or social services into representing children in the legal system.

We hope that this Guide will prompt increased conversation and action to bring more mental health and social service awareness and services to children’s legal representation, as well as enhance networking among programs doing and wishing to do exactly that.

This Guide and all of the referenced supplemental materials are available on the ABA Child Custody and Adoption Pro Bono Project’s website, www.abachildcustodyproject.org.
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The 2005 ABA Child Custody and Adoption Pro Bono Project Grant Recipients:

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2. Montana Legal Services Association, Montana: pg 13
   • Created written materials and a video for attorneys who represent children in custody and parenting plan actions.

3. Community Justice Incorporated, Wisconsin: pg 22
   • Developed resource materials and conducted trainings for attorneys and mental health practitioners for cases where children disclose abuse during the divorce process and to children seeking civil protective relief.

4. Kansas Legal Services, Kansas: pg 30
   • Developed an interactive sourcebook for youth aged 6 to 14 to work through emotional and mental health issues that may arise from their experiences in custody court proceedings, and held training sessions for GAL attorneys and mediators on how to use the sourcebooks and help children access mental health and social services.

5. New Orleans Pro Bono Project, Louisiana: pg 36
   • Funded a social worker consultant to research and develop a referral tool and referral resources for mental health and social services for children in custody cases and to train volunteer attorneys to represent children in custody cases.

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   • Provides holistic client counseling and collaborates with various mental health and social service agencies to provide services to their clients.

2. The Children’s Law Center, Connecticut: pg 48
   • Hired a Marriage and Family Therapist to work in partnership with the staff attorneys to collect collateral information and to help child clients access services.

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The 2005 ABA Child Custody and Adoption Pro Bono Project Grant Recipients
CHILDREN’S LEGAL SERVICES, HOUSTON

PROGRAM DESCRIPTION

The mission and focus of Children’s Legal Services, (CLS), of Houston is to provide zealous and informed legal advocacy to children who are involved in the legal process. CLS is a not-for-profit 501(c)3 organization providing multidisciplinary training for lawyers and other professionals working with traumatized and maltreated children trapped in the legal system. In addition, CLS is appointed by the juvenile and family courts as pro bono attorneys representing children in dependency and domestic violence cases.

CLS seeks to provide resource information to lawyers and other child welfare organizations, provide legal assistance with legal research in areas of child welfare and offer training materials designed to increase knowledge, awareness and effective advocacy for children.

MENTAL HEALTH PROJECT DESCRIPTION

CLS partnered with the University of Houston Forensic Psychology Services, “UH FPS”, to provide mental health evaluations and services to children in custody cases for free or very minimal costs. They collaborated to set up legal and mental health referrals. UH FPS conducted research and developed protocols for parents with children. CLS also met with Family Courts to obtain referrals for legal and mental health services and discussed project goals. CLS had follow-up contact with the court and judges for referrals and created an Order Appointing Amicus and referral.
Initially, UH FPS and CLS met with local family court judges to discuss the program and how the project could provide assistance to the court and children with special mental health issues. In addition, protocols, including a manual for parents to help their children transition through the divorce, an appointment process, a referral/intake system and an “Order Appointing Amicus” were presented to the court. CLS also created various law student volunteer case management forms including initial case information sheets and needs assessment for referral purposes. Further, they created a law student volunteer case information/training information packet. CLS had roundtable discussions with a South Texas College of Law student volunteer group on pro bono opportunities through the pro bono honors project. They met with law student volunteers on case assignment, case strategy, conducting interviews, records and requests, drafting and requesting discovery, referral resources, and updating the resource lists from various advocacy organizations. CLS law student volunteers created a referral network as a uniform data base including twenty-two different local resources. In turn, CLS created a uniform training program for law students with the use of the training materials from the ABA Child Custody and Adoption Pro Bono Project. Finally, CLS participated in a seminar hosted by Phi Alpha Delta law fraternity at South Texas College of Law on children’s legal issues and community services. The target audience was youth from area Houston junior and senior high schools. Topics included domestic violence, health care, juvenile law, housing and consumer law and access to health care information.

CLS sponsored a training program in June 2005 in which thirty lawyers and law students participated. Topics at the training included: working with agencies, ethical
issues for mental health professionals and attorneys, respective duties and responsibilities, and zealous advocacy. The manual for the training included: questionnaires, release forms, sample pleadings and forms, case contact information, case notes, required statutes, the ABA Standards, sample letters and a resource referral list.

CLS also evaluated cases for referral to local community services groups for additional assistance including: food stamps, social security, TANF, GED classes, domestic violence counseling, conflict resolution, parenting classes and special education.

CLS uses the following referral resources for its cases: SAFE program; Office of the Attorney General, Victim Assistance Office; Bay Turning Point, Humble Area Assist Ministries, Houston Area Women’s Center, YMCA, Salvation Army, Children Cope, ESCAPE, DePelchin, Harris County CPS, Children’s Assessment Center, Aid to Victims of Domestic Abuse BIPP program, Houston Community College Workforce Development, Lone Star Legal Aid, Houston Volunteer Lawyers, Harris County Dispute Resolution, Texas Children’s Hospital, (ChiPs program), Southwest Defender Program—special education Equal Justice Works Program, Katy Christian Ministries, and Neighborhood Centers.

CHILDREN THE PROJECT SERVES

Nine children between the ages of three and sixteen have been served pursuant to the project so far. The children served in the cases have been involved in domestic violence, child physical and sexual abuse and the murder of one parent by the other. Attorneys have reviewed the children’s court files and filed appropriate pleadings,
conducted an assessment of the child’s needs and researched case law and CLE materials as necessary on a case by case basis. Furthermore, the attorneys interviewed children, parents, caregivers, relatives, school officials, friends, day care, law enforcement and child protective services workers regarding the child and the parents. They requested the medical and education records of the child. The attorneys also conducted initial and follow-up home visits, including contact before each court hearing. They conducted telephone and e-mail conferences with parents and other attorneys working on the case, they provided resource referral information to parents and caregivers and provided additional resource information for treatment, if available.

PROFESSIONALS INVOLVED IN THE PROJECT

In addition to the staff and attorneys working with the program, a group of seven law student intern volunteers, seven graduate student intern volunteers and various social service groups, legal providers and child advocacy organizations have committed to serve children on a pro bono basis through the funded project.

A PROJECT CASE

In one particular case in this program, the mental health services provided to the children were crucial in identifying the needs of the children. CLS found that the mother was not going to make efforts to change or improve her ability to parent. Therefore, instead of focusing on the parents in the case, CLS focused on developing skills for the children to use and appropriate therapy to address their emotional needs.
CHALLENGES FACED BY THE PROJECT

CLS had difficulty getting referrals from the court. They were not able to serve the children they had projected at the initiation of the project. CLS also had problems educating the court on the protocols and procedures for referral. Some of the issues that prevented referrals were: 1) the referrals received did not meet the protocol criteria, 2) the child was already receiving mental health services, 3) the parent/caregiver had insurance or additional resources for mental health assistance, or 4) the child was over the age criteria set forth in the protocols.

Furthermore, CLS had difficulty recruiting pro bono attorneys to take child cases. CLS reported that the Houston Bar Association has attempted to address this issue with little success. As a result, CLS was not able to recruit as many lawyers as they had hoped.

CLS had problems tracking the information for referral resources due to the large number of resources available. CLS provided the parents with a general resource list and followed with additional specific referrals. Also, CLS had difficulty updating the referral resource guide. They did not anticipate the voluminous nature of the project and have not been able to create a database that could be easily updated.

NEEDS ADDRESSED BY THE PROJECT

CLS had come to see a great need for more training, mentoring, partnering, consulting and education for pro bono attorneys or pro bono program staff attorneys. Additionally, CLS needed more avenues for attorneys to access free or low-cost mental
health or social services for child clients. Third, CLS saw a need for developing local mental health or social service resource materials.

ADVICE FOR PROGRAMS WHO WISH TO REPLICATE THE PROJECT

For programs who wish to replicate CLS’s project, they suggest that programs develop the project with the court or individual judge before launching this type of project. Also, CLS advises that programs set clear, written roles and protocols with all of the stakeholders signing off on a collaborative partnership, and establish a defined system for tracking referrals. Lastly, they recommend that programs set small key goals with qualitative and quantitative measures.

In order to make the project replicable by other local, state or national entities, the Houston Bar Association in conjunction with the Aid to Victims of Domestic Abuse is working on an Amicus Attorney Program. CLS is also looking at developing a clinical program at South Texas College of Law. Finally, the Mental Health Association of Houston is researching with other child advocacy groups the possibility of a mental health project.

BUDGET INFORMATION

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CONTACT INFORMATION

For further information regarding CLS’s project, contact the program director, Barbara Stalder 713-652-3814. Barbara can also be reached at bjstalder@yahoo.com or at Children’s Legal Services, 1415 Fannin, Suite 300, Houston, TX, 77056. The current status of the Houston project may have changed since the date this Guide was published. If you have any difficulty reaching Barbara, or have comments, questions, or concerns, please see the ABA Project’s website, www.abachildcustodyproject.org to locate current ABA contacts.

MATERIALS AVAILABLE

- Family Transition Solutions Child Manual
- Family Transition Solutions Parent Manual
PROGRAM DESCRIPTION

Montana Legal Services Association (MLSA) is a statewide agency providing access to justice for low income individuals in need of civil legal assistance. MLSA’s client services include attorney advice; representation through a pro bono attorney; support from a self-help clinic; pro se materials; referral to the MLSA family law mediation program; and access to an information website.

MLSA conducts an extensive family law practice in recognition of the vulnerability of Montana families to problems which require legal assistance for resolution. MLSA priorities include family law legal assistance in cases of marriage dissolution, parenting plans and orders of protection. MLSA manages or provides referrals for most of the local pro bono programs in Montana. Accordingly, MLSA prioritizes support for attorneys who provide pro bono service in the area of family law. MLSA locates and assigns pro bono attorneys for children in custody cases when requested by the court, including divorce, parenting plan and civil protective order cases.

MENTAL HEALTH PROJECT DESCRIPTION

MLSA developed the Montana Child Custody Pro Bono Project attorney training packet to address the need for mental health consideration in legal representation of children in custody and parenting plan actions. The emphasis of the project is to increase attorney understanding and knowledge of how family transitions impact children, and how to recognize a child clients mental health issues. The result of the project is a training packet for Montana attorneys who volunteer to represent children in custody and
MLSA collaborated with attorneys, judges, a physician and mental health professionals to create written materials and a video for attorneys who represent children in both custody and parenting plan actions.

Chapter I of the materials includes basic legal information that pertains to representing a child client and a Child Warning Signs Guide. The project director conducted individual and collaborative meetings to produce a Child Warning Signs Guide for Montana attorneys. A.W.A.R.E., a statewide children’s mental health provider in Montana, partnered with MLSA on the project by providing children’s mental health resources and professional consulting. The Child Warning Signs Guide describes particular indicators, differentiated by a child’s age, which may suggest that a child client is at risk for mental health difficulties. In addition, the materials include a statewide resource list of children’s mental health agencies in Montana.

Chapter II of the Montana Child Custody Pro Bono Project emphasizes skills specific to working effectively with a child client. The chapter focuses on specific communication skills and advocates for a child-centered residential schedule for each child. The First Judicial District of Montana provided a Power-Point presentation entitled “Children First” to include in the training materials, which helps parents understand their child’s needs throughout the divorce.

The training materials include an appendix which includes relevant Montana statutes, Montana Model Rules of Conduct, two relevant Montana cases, the ABA Standards of Practice for Lawyers Representing Children in Custody Cases and the 2006 draft of the Uniform Representation of Children in Abuse and Neglect and Custody
Proceedings Act. In addition, there is a bibliography of both legal and mental health sources for the *Montana Child Custody Pro Bono Project* research.

Finally, a 35 minute DVD accompanies the written materials. MLSA worked with Vid-Tek Productions in Helena Montana to develop the DVD which is narrated by Brian Morris, a Montana Supreme Court Justice. The DVD follows the same two chapters as the written materials. The participation of a Supreme Court Justice encourages Montana attorneys to seriously consider the training. Vid-Tek strongly emphasizes the importance of portraying the human interest inherent in training lawyers to represent children. Therefore, the video includes two child actors in scenes with attorneys and several playground scenes. Furthermore, the video contains interviews with three district judges, an attorney experienced in child custody representation and Dr. Ira Lourie, child psychiatrist and medical director of A.W.A.R.E. MLSA anticipates the Montana State Bar to approve three continuing legal education credits for the training.

**CHILDREN THE PROJECT SERVES**

The goal of the Montana Child Custody Pro Bono Project is to provide pro bono legal representation for children involved in child custody or parenting plan actions in Montana District Courts. Cases are identified through the MLSA intake process.

**PROFESSIONALS INVOLVED IN THE PROJECT**

MLSA, as the sole statewide source of pro bono family law services for low income Montana citizens, currently lists sixty-five attorneys as willing to represent children in dissolution and parenting plan actions. MLSA expects that once the video
and training materials are more readily available, MLSA will be able to recruit more pro
bono attorneys for this work.

A PROJECT CASE

As of the print time for this Guide, MLSA was not currently able to provide
information about a case handled pursuant to the grant because the training materials had
not been distributed to attorneys who are interested working with the project.

CHALLENGES FACED BY THE PROJECT

MLSA encountered some obstacles while working on their project. First, MLSA
had difficulty persuading mental health providers to promote an assessment tool which
did not require scoring by a trained, licensed professional. Additionally, attorneys were
apprehensive about the ramifications of attempting to directly assess a child client’s well-
being. Some of the attorneys’ concerns included questions about competencies required
by a mental health assessment, access to both parents’ information about a child client,
and rules of evidence pertaining to discovery. The mutual concern about blending
professional competencies was a catalyst for a shift in the planned project.

Initially, the assessment segment of the project involved providing attorney
education about a range of child mental health assessment tools. Later, however, the
professionals contributing to the project shifted their focus from education about an
existing screening assessment tool toward developing a “Warning Signs” check list for
attorneys who represent children. Education regarding screenings and tools most
appropriately administered by a licensed mental health provider was considered by project contributors too far removed from the legal practice of representing children. However, mental health and legal professionals agreed that attorneys representing children are appropriately situated in the case to observe signs or symptoms that their young clients may be distressed beyond the range of normal response to parental conflict. This idea developed into producing a specific guide for children’s mental health information and referrals which would provide resources for Montana attorneys who may need access to or collaboration with a child mental health specialist.

A second obstacle MLSA encountered was the need for basic information about how to communicate with children. Attorneys and mental health providers jointly identified the need for some basic information about how to communicate with children. In response, the project director expanded the training packet resources to include information about how children use language to describe their experiences and to comprehend abstract concepts such as time and kinship which may be related to their representation.

A third obstacle faced by MSLA was the blending of representation and guardian ad litem roles in the state of Montana. The ABA Standards of Practice for Attorneys Representing Children in Custody Cases recommend that the role of an attorney be clarified immediately upon appointment, but attorneys in practice in Montana were divided on the issue of clarification of roles. The confusion is accentuated by the courts because some judicial districts, as a matter of course, allow the blending of attorney and guardian ad litem roles. MLSA reported that one of the most compelling problems is the reality of scarce resources for child representation in the rural parts of Montana where
professionals recognize that a blending of responsibilities is simply a reality of practice. This distinction led to interesting discussions among the professionals regarding the appropriate role for an attorney, with reluctance to insist on pure attorney representation because of the risk of the court declining to give any representation or voice.

The final obstacle MLSA encountered was producing the training video. MLSA discovered that the process requiring design, writing, taping and editing the DVD was intensive and complex. The creation of the script for the video which supports and emphasizes the written training materials mandated an additional component for the project and required script writing skills. Vid-Tek Productions specializes in working with non-profit agencies to make video programs available for less cost than private sector companies. However, it became very clear that the evolved MLSA video project was more expensive than originally anticipated. Fortunately, both A.W.A.R.E. and the local child therapist donated some time to the project and were able to re-configure the budget to give Vid-Tek additional resources and improve the quality of the video training. Also, the steps to produce a video are a parallel, simultaneous, project which meant that the work was doubled. Each element of the written materials was adapted or redesigned for the video production, which proved to be time intensive. Furthermore, MLSA learned that the skill set to produce a video differs from the skill set readily available in a public interest non-profit agency. The video production required the project director to be available to work extensively with the videographer and an Americorps VISTA volunteer placed at the Montana Supreme Court with script writing experience.
NEEDS ADDRESSED BY THE PROJECT

MLSA identified a great need for more training, mentoring, partnering, consulting and education for pro bono attorneys or pro bono program staff attorneys. Additionally, MLSA needed more avenues for attorneys to access free or low-cost mental health or social services for child clients. Third, MLSA saw a need for developing local mental health or social service resource materials.

ADVICE FOR PROGRAMS WHO WISH TO REPLICATE THE PROJECT

MLSA took three steps to make their project replicable by other local, state or national entities. First, each task or action is delineated in outline form for distribution to entities that may want to replicate the project. Second, the ABA Standards for Representing Children are included in the packet and are a sound foundation for the addition of specific state or local standards in other geographic areas. Third, the literature review and research conducted for the project is broad and drawn from professional juried journals. The bibliography is included in the packet.

MLSA advises programs that they may have difficulty changing long-established practices to fit advocating for the child. MLSA also warns programs to expect apprehension about professional competencies and how representing children requires a broadening of traditional professional competencies for attorneys.

MLSA suggests that programs obtain a diverse group of professionals to collaborate on their project including judges, attorneys, child welfare clinicians and mental health professionals to determine ways to best represent children. MLSA’s project necessitated collaboration between attorneys and mental health professionals
which were groups that do not have a natural affinity. MLSA found that there are assumptions and stereotypes which may have to be addressed during the course of the project, and it may be the mental health professionals who are the most entrenched.

**BUDGET INFORMATION (ABA Grant information only)**

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**CONTACT INFORMATION**

The contact for information regarding MLSA’s 2005 ABA Child Custody and Adoption Pro Bono Project is:

Dana Toole – Project Director  
616 Helena Ave, Ste. 100  
Helena, MT 59601  
406-442-9830, ext. 21.  
dtoole@mtlsa.org
MATERIALS AVAILABLE

- Written Materials:
  1. Introduction: Welcome Letter, Brook’s Quote (Creighton Law Review), Special Thanks
  2. Chapter One: Representing Children—what attorneys need to know
  3. Chapter Two: Child Clients—how to meet specific needs of a child client
  4. Appendix
  5. Bibliography
  6. Children’s First Power Point Presentation
  7. Front Labels
- Montana Child Custody Pro Bono Project DVD (35:52 minutes) which accompanies and supports written training materials.
COMMUNITY JUSTICE INC., WISCONSIN

PROGRAM DESCRIPTION

Community Justice Inc., (CJI), partnered with the Rainbow Project to fulfill the goals of their project. CJI is a non-profit public interest law firm with four staff attorneys. The focus of CJI is to provide broad-range civil legal services to low-income individuals up to 300% of the Federal Poverty Guideline (FPG) on a sliding fee scale relative to income. CJI’s mission also includes community collaboration and education.

CJI receives a large number of referrals from Wisconsin’s legal service corporation, which estimates that due to financial constraints, it is unable to serve approximately 80% of eligible clients even by its modest eligibility criteria of 125% of the FPG. CJI provides legal services in a broad range of substantive areas, including landlord-tenant, employment, disability and mental health, discrimination, consumer and public benefits. However, approximately 50% of intakes are for family law matters, including divorce, child custody, child support, child welfare, domestic violence, injunctions, adoptions and guardianships. CJI has two staff attorneys whose practice is primarily dedicated to family law.

The Rainbow Project is a non-profit mental health agency, with ten full and part-time staff. All clinical staff have master’s level or above training in social work, education psychology, or counseling psychology. This mission of the Rainbow Project is to serve children who have been victims of child abuse, neglect or sexual abuse, witnesses to domestic violence, or identified as “at risk” coming from families where stress factors in the home environment indicate a high potential for abuse. The Rainbow Project provides short and long term individual counseling, comprehensive assessments,
in-home family treatment, field sessions to help children ease transitions to day care, school programs or foster care, parent education, advocacy, and follow-up and evaluation services for past clients. The Rainbow Project also has a separate prevention program and is actively involved in a community education and interagency coordination to promote awareness, information and training on the effects of child abuse and domestic violence.

MENTAL HEALTH PROJECT DESCRIPTION

To address the needs for providing legal services to children who disclose abuse during the divorce process and to children seeking civil protective relief, CJI developed resource materials and conducted trainings for attorneys and mental health practitioners.

The first half-day training sponsored by CJI was held on December 2, 2005 for attorneys and mental health practitioners on child abuse injunctions and related issues. Fifty-six people attended the training and eleven attorneys filled out applications to take a pro bono case through the project. Lunch and Continuing Legal Education (CLE) credits were provided. Also, several other attorneys expressed an interest and commitment to the project.

Resource materials were developed for and distributed at the training. The director of Child Advocacy at the Task Force on Family Violence, Cyrus Behroozi, J.D., discussed the law surrounding child abuse injunctions in Wisconsin. The Director of training for the residency program in Child and Adolescent Psychiatry at the University of Wisconsin-Madison, and consulting psychiatrist to the Rainbow Project, Hugh
Johnston, M.D., discussed his outline: “Mental Health Issues: Child Abuse Disclosures in the Context of Divorce.”

Also at the training, the Rainbow Project distributed materials including information regarding indicators of sexual abuse and the impact of trauma on children. Furthermore, resource materials from other community agencies on related issues were also distributed to the participants.

The Rainbow Project had a second, more informal, “brown bag” scheduled for April 21, 2006. But due to an emergency, their speaker cancelled. CJI and The Rainbow Project are applying for local funding to continue the programs either twice a year or quarterly during 2006-2007.

CJI also conducted recruitment efforts by developing a referral base and identifying attorneys interested in representing children through the project. They developed intake forms and a volunteer attorney application to process referrals.

CHILDREN THE PROJECT SERVES

To date, one child has been directly served by the funded project. Despite the low number of children served thus far, CJI believes that their training produced an important indirect impact by providing a forum for professionals to connect with one another and improve their practice on behalf of children. Furthermore, this training recruited and trained attorneys for child abuse injunction cases and child custody cases involving child abuse. Children have benefited through the project by: 1) training professionals who will serve them; 2) providing better communication among service providers; and 3) distributing resource materials for the community.
PROFESSIONALS INVOLVED IN THE PROJECT

One volunteer attorney and three CJI staff attorneys served children on a pro bono basis through the funded project. Fourteen attorneys, one in addition to CJI staff, committed to serve children on a pro bono basis through the project. One mental health/social work professional, in addition to Rainbow staff, agreed to serve children on behalf of the project. There is also a significant interest among law students and several judges who attended the training to serve children through the project. A UW law student, Regan Quick-Severin, 3L, has been named the recipient of the Dane County Bar Association (DCBA) Law Student Pro Bono Award for her services over the past year to CJI. Sarah Helvey, director of the CJI project, was also recognized for her work in providing legal services to low-income and unrepresented individuals.

A PROJECT CASE

Through its project, CJI learned the value of bringing mental health services into child representation, especially in cases of child sexual abuse. In one such case a five-year-old child began to act out sexually and disclosed sexual abuse committed by his father. The mother of the child came to CJI concerned about allowing unsupervised visits with the child’s father in light of their recent separation and pending divorce action. A volunteer attorney agreed to provide representation in the child abuse injunction on a pro bono basis and a CJI staff attorney agreed to provide representation to the mother in the divorce case on a sliding fee scale. The child abuse injunction case was dismissed without prejudice due to a change of venue issue and the client, who was indigent and was unable to afford even CJI’s reduced rate for the divorce case. Nevertheless, CJI
provided a valuable two-hour consultation to the client and a referral to the local Legal Service Corporation. The child continued to receive mental health services through the Rainbow Project to address the issues related to the disclosure of sexual abuse. This case shows the value of incorporating mental health services into child representation.

**CHALLENGES FACED BY THE PROJECT**

CJI found that start up time for recruiting attorneys took longer than anticipated. However, they have begun and continue to develop the referral base and are establishing themselves as a resource in the community. CJI will continue the pro bono component as cases become available through intake. They also intend to continue efforts with community partners to establish more restraining order resources in Dane County.

**NEEDS Addressed BY THE PROJECT**

CJI had come to see a great need for more training, mentoring, partnering, consulting and education for pro bono attorneys or pro bono program staff attorneys. Additionally, CJI needed more avenues for attorneys to access free or low-cost mental health or social services for child clients. Third, CJI saw a need for developing local mental health or social service resource materials.

**ADVICE FOR PROGRAMS WHO WISH TO REPLICATE THE PROJECT**

CJI’s resource materials are available for replication by other local, state or national entities. All forms and information developed for their project will be available to other entities for replication purposes.
CJI would advise other programs wanting to replicate this project to broaden their scope. Child abuse injunctions in the context of divorce are a very specific issue. Children and families facing abuse need representation and mental health services in a variety of capacities and services should not be limited by a project that is too narrowly defined.

Secondly CJI would advise other programs, as they have done, to reach out to partnering organizations, individual legal and mental health practitioners and judges to address local issues. Simply starting the conversation and creating a forum and coalition of interested individuals and agencies has been healthy for their community and the children in it.

**BUDGET INFORMATION**

<table>
<thead>
<tr>
<th></th>
<th>COMMUNITY JUSTICE, INC.</th>
<th>THE RAINBOW PROJECT (only ABA grant expenses are listed)</th>
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<tr>
<td><strong>REVENUE</strong></td>
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<td>• $2,328.67: in-kind contribution from CJI</td>
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<td><strong>EXPENDITURES</strong></td>
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<tr>
<td>• $100: CJI staff time for client consultation</td>
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<td>TOTAL = $6,328.67</td>
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**CONTACT INFORMATION**

For more information regarding CJI’s 2005 grant, contact Sharyl Kato at the Rainbow Project. Sharyl can be reached at 608-255-7356, ext 21 or at skato@therainbowproject.net. The current status of the Wisconsin project may have changed since the date this Guide was published. If you have any difficulty reaching Sarah, or have comments, questions, or concerns, please see the Project’s website, [www.abachildcustodyproject.org](http://www.abachildcustodyproject.org) to locate current ABA staff contacts.

**MATERIALS AVAILABLE**

- Training announcement
- Training registration form
- Volunteer lawyer application form
- CLPP Supporter Form
- Intake Form
- Training Evaluation
- Conference Handouts

1. Child Abuse Injunctions in Wisconsin, Cyrus Behroozi, J.D.
2. Mental Health Issues: Child Abuse Disclosures in the Context of Divorce, Hugh Johnston, M.D.
3. Rainbow Project Handout

- Court Forms
  1. Petition in Juvenile Court for Temporary Restraining Order and/or Injunction (Child Abuse)
  2. Notice of Hearing for Temporary Restraining Order (Child Abuse)
  3. Injunction (Child Abuse)
KANSAS LEGAL SERVICES

PROGRAM DESCRIPTION

Kansas Legal Services (KLS) is a statewide non-profit organization dedicated to helping Kansas citizens meet their basic needs through the provision of essential legal, mediation, and employment training services. KLS was formed in 1977 to make legal assistance more widely available to the poor. Since then KLS has progressively focused its efforts on special needs individuals such as victims of domestic violence, the homeless, the elderly, farmers, people with disabling conditions, children in foster care and their families and people who need basic life skills and employment training. KLS strives to eliminate the causes of poverty and mitigate its effects by helping individuals achieve and maintain self-sufficiency and family supporting employment.

KLS serves more than 25,000 individuals in all 105 Kansas counties through thirteen legal services, two mediation and six employment training offices located across the state.

MENTAL HEALTH PROJECT DESCRIPTION

To address the need for representation and support of children in custody cases, KLS’s project involves two components: 1) an interactive sourcebook for youth aged 6 to 14, to encourage youth to work through emotional and mental health issues that may arise from their experiences in custody court proceedings and 2) training sessions for Guardian Ad Litem (GAL) attorneys and mediators on how to use the sourcebook with children involved in custody cases and how to help youth access services and information.
The sourcebook is entitled “Being a Kid Isn’t Easy” and is directed to children in divorce proceedings. It includes activities to familiarize children with court personnel; “how to” activities dealing with anger, confusion and other emotions; and education on expectations and feelings and ways to express themselves in the legal process. This sourcebook has been used at four GAL Trainings in Dodge City, Lawrence, Salina and Wichita, Kansas. Dr. Jane Adams, a children’s mental health professional, was consulted in the development of the sourcebook and presented at each of the GAL trainings. Dr. Adams also presented at GAL trainings on children’s mental health and mental health resources in Kansas. Dr. Adams is the director of Keys for Networking, an advocacy agency for children with serious emotional disorders (SED) and their families. Keys for Networking is also the U.S. Department of Education’s Parent Information and Resource Center in Kansas.

Additionally, Washburn University Law School students helped develop the sourcebook and assisted in placing the sourcebook on the KLS website. www.kansaslegalservices.org.

The four trainings presented for Guardians Ad Litem, attorneys and mediators covered how to use the sourcebooks with children involved in custody cases and how to help youth access mental health services and information. KLS organized the trainings around topics including: children’s mental health issues, advocacy and disability; the criminalization of disability; roles and responsibilities of attorneys; and foster care’s impact on youth. Evaluation surveys from the trainings show that the participants felt that the training was effective and worth their time and that the learning objectives of the training were clearly expressed and clearly achieved.
CHILDREN THE PROJECT SERVES

The children served by the program thus far are those who have been represented by GALs and other attorneys in Kansas, including KLS attorneys in all types of cases in which children are involved. GALs/attorneys were trained in using the sourcebooks with their clients as an introduction to referring them to services in their geographic locale. Referral sources include courts in Kansas, child welfare agencies, social service agencies, and community health centers. The sourcebooks have been and will continue to be distributed as requested by the referring entities. No income guidelines are required for the book distribution. The clients of GALs have no income qualifications as they are appointed when the court deems it appropriate.

PROFESSIONALS INVOLVED IN THE PROJECT

Approximately 200 professionals received the first run of the sourcebook. KLS distributes the sourcebook at their Children’s Advocacy Resource Center, through its pro bono panel as well to the advisory boards of the 13 individual KLS legal services field offices. KLS also will distribute the sourcebook at future Guardian ad Litem trainings, legal aid organizations, to SRS offices across the state, to private attorneys—particularly those who work with pro bono clients, family resource centers, and other counseling agencies who work with children, the Supportive Families Community Action team in Topeka and on the KLS website.
A PROJECT CASE

KLS is not handling any cases pursuant to the grant because this project did not involve direct representation of children. However, numerous attorneys have already used the sourcebook that was distributed at the GAL trainings, and one attorney requested twenty additional copies for a case-related issue.

CHALLENGES FACED BY THE PROJECT

KLS felt that they did not make sufficiently clear, at the outset, the goals that they expected the sourcebook to address. Because of that, significant revisions of the sourcebook were needed.

NEEDS ADDRESSED BY THE PROJECT

KLS had come to see a great need for more training, mentoring, partnering, consulting and education for pro bono attorneys. Additionally, KLS identified the attorneys’ need to access free or low-cost mental health or social services for child clients. Third, KLS saw a need for developing local mental health or social service resource materials.

ADVICE FOR PROGRAMS WHO WISH TO REPLICATE THE PROJECT

Other local state or national entities are free to replicate the KLS sourcebooks. If an agency wants to write its own sourcebook, KLS suggests the following steps:

1. Conduct a review of similar publications (if any exist) for children going through the court process.
2. Research books/articles and studies of children's mental health issues regarding trauma, divorce, family upheaval, etc.

3. Consult with experts in children's mental health on effective and sensitive ways to communicate with children in trauma.

4. Write the book.

5. Have the book reviewed by children's mental health experts prior to field-testing.

6. Field-test the book with children and the professionals who work with them.

7. Gather as much feedback as possible.

8. Revise the book using the feedback.


10. Revise the book.

11. Print, distribute and place on website.

BUDGET INFORMATION

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<thead>
<tr>
<th>Revenue</th>
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<td>• $4000—ABA Grant</td>
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<td>• Approximately 150-200 staff in-kind contribution hours</td>
<td>• $1,200—Children’s mental health consultant/reviewer and presenter at 4 trainings</td>
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CONTACT INFORMATION

For further information regarding KLS’s sourcebooks, contact Tom Stratton, Project Director, Kansas Legal Services-Topeka, 712 S. Kansas Ave., Suite 201, Topeka KS, 66603. Tom can also be reached at 785-354-8531 and at strattont@klsinc.org.

MATERIALS AVAILABLE

• “Being a Kid Isn’t Easy.” Sourcebook. (The sourcebook will be available by request from KLS and also on its website: www.kansaslegalservices.org)

• Jane Adams Bibliography

• GAL brochure

• GAL training agenda

• GAL training evaluations from sessions one, two, three and four
THE PRO BONO PROJECT’S CHILDREN’S LAW PROGRAM, LOUISIANA

PROGRAM DESCRIPTION

The Pro Bono Project, “PBP”, was established in 1986 by the Louisiana Bar Foundation to provide free civil legal services to the poor through the use of pro bono attorneys. PBP’s mission is to provide free quality civil legal services to the poor by engaging volunteer attorneys to render pro bono services.

The Pro Bono Project mobilizes members of the private Bar to provide pro bono legal services in civil matters to individuals whose incomes are at or below the federal poverty level. Since Hurricane Katrina, to make up for the shortfall of volunteer attorneys available (since many attorneys are dealing with their own post-hurricane problems) PBP has fortified itself with 3.5 full-time attorneys, in addition to a legion of volunteer students, interns, and out-of-state volunteer attorneys who have come to assist for differing periods of time. In normal times, PBP has only 1.5 attorneys on staff.

PBP has well-established, long-standing mutual referral relationships with numerous social service and poverty law legal services providers in the community, including New Orleans Legal Assistance, the Legal Aid Bureau, Loyola and Tulane Law School Clinics and the Advocacy Center for the Elderly and Disabled. Collaboration among legal services agencies serving indigent populations is common protocol. PBP differs from agencies with similar missions in that the Project utilizes a volunteer, rather than a staff-based model.
MENTAL HEALTH PROJECT DESCRIPTION

The ABA-funded project is intended to identify mental health services for children in disputed custody cases, to train their attorneys in the needs they and their families may be experiencing, and to provide some of these needs in the form of custody evaluations carried out by supervised social work students.

The American Bar Association has agreed to allow the Children’s Law Program to extend the grant period through April 30, 2007. The purpose of this extension is to allow the New Orleans Pro Bono Project additional time to implement the grant due to unforeseen circumstances and effects from Hurricane Katrina.

CHILDREN THE PROJECT SERVES

The demographics of the target children are not clear since Hurricane Katrina devastated the city and its inhabitants. The projections as to how many people will return, who will return, and when, change on a weekly basis. The children are intended to be of any age or race, but they will all be members of indigent families, most of whom do not already have legal representation of any type. The racial composition of Orleans Parish before Hurricane Katrina was 65% African-American and 35% Caucasian.

The cases the children are involved in are primarily ones in which neither parent has counsel but the parties are unable to reach agreement on custody or visitation issues. The Pro Bono Project then will assist in drafting a consent agreement. In other cases, the court will ask for PBP’s intervention because a custody evaluation is needed but the parties cannot afford to pay for it. In rare cases, The PBP will be involved even though the parents are represented, because the custody dispute is particularly acrimonious or
allegations of sexual abuse have been lodged, and the court has seen fit to appoint separate counsel for the child.

In all cases, The PBP will condition its assistance on children receiving mental health services as needed, and on using attorneys who have received training in the mental health issues involved in custody disputes.

PROFESSIONALS INVOLVED IN THE PROJECT

The PBP children’s project uses two highly experienced social workers, one of whom specializes in child development and the other in custody evaluations. To a limited extent, the social worker who has been acting for several years as a consultant to The Pro Bono Project Child In Need of Care cases (abuse and neglect) will also participate.

These two individuals are negotiating now to leverage the assistance of the Schools of Social Work at local universities, to have students trained and supervised to carry out custody evaluations. They will participate in this in-school training. An agreement in principle has been reached on this, but the details are yet to be determined.

These individuals also will, as a team with the Child Advocate Attorney at The Pro Bono Project, deliver the training for volunteer attorneys.

A local non-profit agency will deliver the arts-based expressive and therapeutic workshops for the parents and the children themselves, as it has been doing for several courts in this region for a number of years. Families must make a token payment to the agency for these workshops.
A number of local mental health service agencies, ideally, would meet some of the needs for family or one-on-one counseling identified in the course of the ABA project, but current circumstances suggest that this will not be possible. The needs are currently enormous for free or low-cost services and the waiting lists are apparently endless.

The volunteer attorneys are the other set of professionals involved.

A PROJECT CASE

The PBP project has not yet launched its operations, so it has no examples to provide at this time.

CHALLENGES FACED BY THE PROJECT

The ABA project’s biggest challenges are the lack of free or low-cost mental health services and custody evaluations available to clients. This situation was dire before Hurricane Katrina but it has gotten, if possible, worse since then as many mental health professionals, of all types and providing services at different levels of cost, have left the city. For the immediate future, in all likelihood, the PBP project will have to provide all the custody evaluations required in the cases it works with and will see important mental health therapy needs go unmet.

Another important challenge is the financial difficulty in which the local universities, and specifically the Schools of Social Work, find themselves since Hurricane Katrina. They can ill-afford at this time to do extra work without compensation, or ask faculty members to do so, no matter how compelling the cause.
NEEDS ADDRESSED BY THE PROJECT

It is hoped that to varying degrees the PBP project will answer 1) the immediate needs of some children to have their voices heard and their parents educated to their needs; 2) the need for reproducible, low-cost training for volunteer attorneys to understand the mental health issues that run through these types of cases; 3) the need for these attorneys ultimately to educate the judges who, mostly out of frustration at the lack of information available to them, seek to have attorneys act as custody evaluators; 4) the need for the court system to institutionalize the use of custody evaluations; and 5) the need for a reproducible, low-cost source of custody evaluations for indigent parents.

ADVICE FOR PROGRAMS WHO WISH TO REPLICATE THE PROJECT

The ABA project is in too early a stage, and is dealing with circumstances so far from the norm, that advice does not seem appropriate at this point.

BUDGET INFORMATION

The fee for both social work trainers will not exceed $10,000. Parents will be charged $50 a piece for the custody evaluations carried out by students, to be paid as an honorarium to the Schools of Social Work providing the students and supervision. They will pay their token workshop fees, for both themselves and their children, to the delivering agency.

CONTACT INFORMATION

For more information regarding PBP’s project, please contact: Catherine Drake, Child Advocate Attorney at 504-581-4043 or cd rake@probono-no.org.
MATERIALS AVAILABLE

No materials are available at this time, but PBP will deliver them when they are developed. At the very least, some type of handbook will be developed as a take-away material for the attorneys who receive training in child development, mental health issues related to divorce and custody, and the custody evaluation process.
Other
Mental Health and
Social Service
Projects
PROGRAM DESCRIPTION

Put Something Back (PSB) is a division of Dade County Legal Aid and is a joint Pro Bono project of the Dade County Bar Association and Eleventh Judicial Circuit Court. PSB organizes members of the private bar to provide free civil legal services to low-income individuals, children and families in Miami-Dade County. To date approximately 225 volunteers attorneys participated in this program to represent children. PSB coordinates a wide range of projects, such as Adopt-an-Agency, Bankruptcy Assistance Clinics, Child Advocacy, Guardian Ad Litem, Habitat for Humanity and Wills on Wheels. PSB also works with Victim Services Center, a nonprofit mental health agency whose mission is to resolve the impact of traumatic events on individuals, including children, using group and individual therapy.

Put Something Back assigns attorneys to represent clients in Divorce, Custody, Paternity, Child support, Adoption and Visitation cases. In addition, PSB assigns attorneys to act as GALs in contested custody and Dependency proceedings. These GALs are charged with assessing what is in the best interests of the child involved in the case and reporting those findings to the Court.

MENTAL HEALTH PROJECT DESCRIPTION

PSB emphasizes to their staff and pro bono attorneys the need for a holistic view toward client counseling. PSB has compiled a complete list of the various mental health and social services agencies that are located throughout Dade County. If an issue arises they either contact Switchboard of Miami, a Health Crisis Network Hotline, or the mental health or social services agency directly to help expedite assistance to their clients. PSB
lets their pro bono attorneys know up front to contact them if these issues arise so that
PSB staff can make the appropriate referral. PSB has pamphlets and brochures from
various mental health and social service agencies to either give directly to the client or
send to the attorney with the pro bono referral so they can then forward the materials to
the client. Clients in these situations need to have a piece of paper with names and
numbers to turn to if need be.

CHILDREN THE PROJECT SERVES

PSB has served thousands of children and currently serves approximately two
hundred children per year. The ages range from infants to 18 and 19 year olds aging out
of Foster Care. The races are varied: White, African American, Hispanic, Haitian, South
American, Russian, and Oriental. The socioeconomic status is normally below the
federal poverty guidelines.

PROFESSIONALS INVOLVED IN THE PROJECT

Over 7,000 attorneys in Miami-Dade County have signed up and joined Put
Something Back in order to deliver pro bono civil legal assistance to the financially
disadvantaged in our community.

A PROJECT CASE

One of PSB’s volunteer attorneys was assigned to represent twin boys who were
in the custody of the father. The mother had executed an agreement that the father could
have custody of the boys, but she wanted to change custody based upon the ill-treatment
of the father and her failure to understand the agreement at the time she executed. The father limited the boy’s time with her and there were signs of mental intimidation. In a very hard fought bitter battle, the volunteer attorney recommended that the mother gain custody of the children and the father relinquish primary residential parenting. Appeals were taken but the mother’s petition was upheld. The volunteer attorney expended approximately 100 hours on this case.

CHALLENGES FACED BY THE PROJECT

The main challenge has been recruiting enough family law attorneys to handle these various cases. There is a certain number of practicing family/child law attorneys in Miami-Dade County. The demand for these practitioners easily outweighs the actual number of family law attorneys available to handle these matters. In addition, it is difficult to locate a Spanish or Creole speaking attorney in some instances.

NEEDS ADDRESSED BY THE PROJECT

PSB had come to see a great need for more training, mentoring, partnering, consulting and education for pro bono attorneys or pro bono program staff attorneys. PSB recognized early on that the need for these resources outweighed their availability. As a result, PSB made a commitment to educating attorneys that practiced in other areas of the law that were interested in issues relating to children in custody and adoption cases. PSB had held trainings at the local courthouse to educate attorneys about collaborating with mental health professionals in the community. In partnering with Lawyers for Children America, PSB went to large law firms around Miami for in-house
trainings in Dependency law. It attracted associates who otherwise would not be involved in this level of litigation for years to come in their practice. PSB also has an extensive list of available Mentors who are experienced in custody and adoption cases. These mentors are assigned to new or inexperienced attorneys to act as “of counsel” to the pro bono attorney as they go through the cases. If an issue arises that the pro bono attorney is not familiar with, he or she can bounce it off to the mentor so as to guide them through the case.

Additionally, PSB needed more avenues for attorneys to access free or low-cost mental health or social services for child clients. PSB also saw a need for developing local mental health or social service resource materials.

ADVICE FOR PROGRAMS WHO WISH TO REPLICATE THE PROJECT

PSB advises programs to incorporate a training and mentoring component to their projects. It is highly likely that a program will not have enough attorneys that specialize in this area to handle the demand. A way to address this situation is to have trainings at local law firms to educate attorneys in this area of law and then assign an experienced mentor to act as “Of Counsel” to them as they handle a particular child’s case.

BUDGET INFORMATION

PSB did not receive funding from the American Bar Association for this mental health work, but previously received a grant for the GAL domestic violence project.
CONTACT INFORMATION

For more information, please contact Karen Ladis at ladis@daledlegalaid.org or by phone at 305-579-5733, ext 2247.

MATERIALS AVAILABLE

- Guardian ad Litem (GAL) program description
- GAL seminar agenda
- GAL seminar flyer
- Parental Alienation Syndrome information sheet
- Professional collaboration document
- Expert document
- The ethical and legal dilemma of therapists serving as experts
- Chapter 64B19-18 consent testing document
- Chapter 64B19-19 Records document
- Lawyer’s request for records documents
- Chapter 64B19-18.007 Requirements for Forensic Psychological Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes
- “How to talk to children about violence” document
THE CHILDREN’S LAW CENTER, CONNECTICUT

PROGRAM DESCRIPTION

The Children's Law Center of Connecticut, Inc. (CLC) is a non-profit agency founded in 1993. CLC provides indigent children with experienced lawyers who give them a voice in family court. They also provide information in legal matters involving children and advocate in support of legislative policies that advance the well being and best interest of children.

CLC works to protect poor children involved in family court by providing high quality legal services and advocating for policies that advance the well being and best interests of children. Through its work representing children the organization seeks to achieve the most stable, safe, and beneficial arrangement for children who are caught in the middle of a family crisis such as a custody battle, divorce or other chronic family conflict.

MENTAL HEALTH PROJECT DESCRIPTION

CLC recently added a mental health professional to the staff in the spring of 2006. CLC hired a Marriage and Family Therapist to work in partnership with the Staff Attorneys to collect collateral information and put into place needed services for their young clients.

CONTACT INFORMATION

For more information, please contact Justine Rakich-Kelly at clc@clcct.org, or by phone at 1-860-232-9993.
LEGAL SERVICES FOR CHILDREN, SAN FRANCISCO, CALIFORNIA

PROGRAM DESCRIPTION

Legal Services for Children’s (LSC) is a non-profit organization founded in 1975. LSC’s attorneys and social workers provide free legal and social work services to children and youth in the San Francisco Bay Area. Their mission is to ensure that their clients have access to the support and services they need to become healthy and productive young adults. LSC’s holistic services empower clients and actively involve them in critical decisions about their lives.

LSC’s team advocacy approach enables them to provide a wide spectrum of services. They represent children in legal guardianship, dependency, school discipline, immigration, emancipation, and restraining order proceedings. Their social workers provide crisis intervention, case management, counseling, and psychosocial assessments. They have a diverse staff with broad language capacity (Spanish, Mandarin, Cantonese), and a wide range of cultural identities and backgrounds. Supporting the work of LSC in-house attorneys and social workers, a panel of pro bono attorneys provides over 3,000 hours per year of free legal assistance and advocacy to our clients. They are a well-known community resource, and they participate regularly in numerous collaborative efforts with other community based organizations.

MENTAL HEALTH PROJECT DESCRIPTION

LSC’s Guardianship Project prevents children who can no longer safely live with a parent from unnecessarily entering the overburdened foster care system. LSC’s attorneys, social workers, legal and social work interns, and pro bono attorneys work
closely with children to ensure they are living in safe and stable homes with trusted adults. This typically involves establishing a legal guardianship with a relative or other adult friend with whom the child has an existing stable and trusting relationship. A legal guardianship also allows children to receive any applicable government benefits through their guardian.

Coupled with the legal guardianship, staff social workers create safety plans, provide crisis intervention, make appropriate referrals to other social service agencies in the community, and provide direct counseling.

CHILDREN THE PROJECT SERVES

Last year, LSC provided direct legal representation and social work services to 217 clients in guardianship matters. Through their intake line and weekly drop-in clinic, LSC provided advice and referrals to an additional 357 youth and caring adults. The majority of children served by this project already live with a relative or other trusted adult, but need a guardianship to stabilize and legalize the situation. Many of these children have been abused or neglected by a parent, or were referred from emergency response units in San Francisco and Alameda. Others are runaway youth needing immediate support and help finding accessible shelter.

PROFESSIONALS INVOLVED IN THE PROJECT

The project is staffed by LSC’s 7 in-house attorneys and 4 social workers, with the support of the 83 attorneys who serve on our pro bono guardianship panel. All cases referred to a pro bono attorney are supervised by an LSC attorney who provides technical
assistance and support as needed. LSC also has an “Attorney of the Day” available Monday-Friday from 1:30-5:00 for assistance.

A PROJECT CASE

In one case, an adolescent client disclosed her history of sexual abuse and exploitation to her LSC social worker, who helped her find a therapist and begin to come to terms with this abuse. The client’s LSC attorney helped her to enroll in school and obtain tutoring to make up for the education she had missed out on when she lacked a stable home and an involved caretaker. Finally, her social worker helped her obtain a part-time after school job so she would have a legal and positive source of income.

LSC’s client recently turned eighteen, and is still living in her guardian’s home. She is enrolled in a continuation high school and continues to work at her part-time job. Although she still struggles with the after-effects of so many years of abuse and neglect, her guardianship the LSC staff has had a positive impact on her life. Now that she has a stable home, a stable education, and a stable job, she has developed new self-confidence and self-respect. She is also beginning to plan for her future, and in the next year she plans to move into her own apartment and to enroll in community college.

CHALLENGES FACED BY THE PROJECT

In the past few years, the pro bono component of the guardianship project has grown exponentially: since 2003, the value of pro bono services donated has more than tripled. The recent successful expansion of LSC’s pro bono panel poses new challenges in its administration and management. In order to successfully maintain an effective and
efficient pro bono panel, and to make sure the children’s social and mental health service needs are addressed, LSC must keep volunteers engaged and active with the panel. This includes building their relationship with other community providers referring cases to LSC, assigning an appropriate and manageable number of cases to the panel, tracking the progress of each open case, completing an evaluation for each closed case, and keeping each attorney engaged and interested in the panel. Each of these tasks requires significant time to administer and coordinate.

NEEDS ADDRESSED BY THE PROJECT

LSC has recognized the need for more training, mentoring, partnering, consulting and education for pro bono attorneys or staff attorneys. In response to this need, LSC recently reorganized its pro bono referral process. Previously, volunteer attorneys relied on a rotating “Attorney of the Day” to provide support and technical assistance. Now, in addition to the “Attorney of the Day”, each pro bono case is assigned to a specific LSC attorney, who oversees the case.

LSC has also recognized the need for increased methods for attorneys to access free or low-cost mental health or social services for child clients. LSC’s social workers, who are actively involved in pro bono cases, are well versed in local resources and aid attorneys in accessing these resources for clients.

Furthermore, LSC has recognized a need for the development of local mental health or social service resource materials.
**BUDGET INFORMATION** (general operating budget)

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<td>• Work Study: $3,200</td>
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<td>• Interest/Dividends: $50</td>
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<td><strong>Total= $1,583,204</strong></td>
<td><strong>Total: $1,570,213</strong></td>
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**CONTACT INFORMATION**

For more information regarding LSC’s program, please contact Abigail Trillin, Managing Attorney, at 415-863-3762 or by e-mail at abigail@lsc-sf.org.

**MATERIALS AVAILABLE**

• Guardianship Manual
Other Ideas
CROSS-TRAINING AMONG PROFESSIONALS

One method for increasing collaboration between attorneys and mental health and social service professionals would be to develop a cross-training for attorneys, mental health and social service workers that would help them improve their practice in custody cases. Professionals may be more likely to attend the training if CEU and CLE credits were provided.

Speakers at the training could include mental health professionals, members of the local judiciary and attorneys who practice in the areas addressed by the program. Topics for speakers may include issues such as:

1. Techniques for interviewing children.
2. Understanding cross cultural differences.
3. Assessing the parties’ credibility.
4. Evaluating the suitability of a parent’s residence as the primary residence for the children.
5. Assessing the ability of each parent to be a primary caregiver.
7. Children’s responses and adaptation to guardianship and adoption.
8. Techniques for determining parenting capacity/parental fitness.
9. Understanding psychiatric drug interactions and psychological testing.
10. Representing the child client who has been diagnosed with a mental illness.
11. Foster care placement of children.
12. Reunification of children with their parents.
13. The State’s custody of children in the juvenile justice system.
15. Privileges and who can waive certain rights.
16. Standards for representing the child’s best interest.
17. Stress management for professionals working on the cases.
Many jurisdictions would benefit from creating a comprehensive referral guide including relevant free or low-cost, accessible mental health and social services for children, their families and guardians.

The first step to accomplish this goal may be to do a comprehensive review of all services that are available to children who are involved in a custody or domestic violence matter. Existing resource guides, phone books and word of mouth could be used to locate resources. The second step would be to compile that information into materials that are accessible, easy-to-read, and targeted not only to attorneys, paralegals and judges but that can be accessed and utilized by pro se individuals on behalf of children as well. The third step would be to incorporate these materials into cross-trainings for attorneys, judges, and service providers. The fourth step would be to identify gaps in services and to convene stakeholders to begin to address these gaps. The final step would be to produce an electronic form of the Guide which will be continually updated. The status of mental health and social service agencies is constantly changing. Therefore, it is necessary to continually update the status of all mental health and social service resource materials so they remain current.

Once compiled, the guide should be organized into a format which can be easily accessed by readers, including judges, service providers and legal professionals. The guide should be comprehensive, in that it would include not only contact information, but an explanation of when and in what situations the program can be most helpful. The guide also should explain whether there are steps that individuals can take to more easily take advantage of the service such as: obtaining a court order mandating a service; an
order requiring payment by another party; obtaining a referral from the court; or obtaining financing through a third party such as Medicaid.

Guides should be distributed through the courts, agencies, schools and attorneys. A press release on the guide could be issued in order to make the public aware of it.
SERVICES FOR CHILDREN AND THEIR FAMILIES

Examples of services that could be targeted for children and their families could include:

1. Behavioral, anger management, or therapeutic services.
2. Free or low-cost mental health services.
3. Educational assessment and support.
4. Mentoring programs.
5. Recreational and occupational therapy.
7. Services for child victims and witnesses of domestic violence.
8. Transitional living programs for families.
10. Post Adoption Services
13. Social services to help access public benefits, insurance and appropriate housing.
14. Referrals for developmentally or physically disabled children.
15. Grief counseling if a family member has died.
16. Stress management services for attorneys, as well as other professionals involved in the program.
Hiring a Mental Health or Social Service Professional

Programs may want to consider hiring on their staff a mental health or social service professional to assist attorneys in representing children. One example could be to hire a pediatrician, psychologist, psychiatrist, or social worker who would coordinate with attorneys to identify any concerning issues that should be addressed for the child or children involved in the case. The mental health or social services provider could then use his or her professional skills to work with the community to provide the appropriate resources for the child’s needs. This method would lighten the workload of attorneys and may persuade attorneys, who otherwise thought they were too busy, too uninformed or not adequately trained, to take on a pro bono child custody case.
Materials as listed in the Guide

California

Guardianship Manual

Florida

- Guardian ad Litem (GAL) program description
- GAL seminar agenda
- GAL seminar flyer
- Parental Alienation Syndrome information sheet
- Professional collaboration document
- Parental Collaboration document
- Expert document
- The ethical and legal dilemma of therapists serving as experts
- Chapter 64B19-18 consent testing document
- Chapter 64B19-19 Records document
- Lawyer’s request for records documents
- Chapter 64B19-18.007 Requirements for Forensic Psychological Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes
- “How to talk to children about violence” document

Houston

- Family Transition Solutions Child Manual
Materials as listed in the Guide

- Family Transition Solutions Parent Manual

Kansas

“Being a Kid Isn’t Easy.” Sourcebook (The sourcebook will be available by request from KLS and also on its website: www.kansaslegalservices.org

- Jane Adams Bibliography
- GAL brochure
- GAL training agenda
- GAL training evaluations from session one
- GAL training evaluations from session two
- GAL training evaluations from session three
- GAL training evaluations from session four

Montana

1. Introduction: Welcome Letter, Brook’s Quote (Creighton Law Review), Special Thanks, Index

2. Chapter One: Representing Children—what attorneys need to know

3. Chapter Two: Child Clients—how to meet specific needs of a child client

4. Appendix and Table of Contents, Montana

5. Bibliography

6. Children’s First Power Point Presentation

7. Front Labels

Wisconsin
Materials as listed in the Guide

Training announcement flyer, Training Sign-in Sheet, Training Final Letter

Training registration form

Volunteer lawyer application form

CLPP Supporter From

Intake Form

Training Evaluation

- Child Abuse Injunctions in Wisconsin, Cyrus Behroozi, J.D.
- The Rainbow Project Handout
- Mental Health Issues: Child Abuse Disclosures in the Context of Divorce, Hugh Johnston, M.D.
- Petition in Juvenile Court for Temporary Restraining Order and/or Injunction (Child Abuse)
- Notice of Hearing for Temporary Restraining Order (Child Abuse)
- Injunction (Child Abuse)
The ABA Child Custody and Adoption Pro Bono Project

wishes to thank Kelly Whalen, 2006 Summer Intern from Loyola University Chicago School of Law, for her assistance in preparing this Guide, as well as to all of the included programs for taking the time to provide the necessary information.
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- Notice of Hearing for Temporary
Restraining Order (Child Abuse)

- Injunction (Child Abuse)
40-4-212. Best interest of child. (1) The court shall determine the parenting plan in accordance with the best interest of the child. The court shall consider all relevant parenting factors, which may include but are not limited to:

(a) the wishes of the child's parent or parents;
(b) the wishes of the child;
(c) the interaction and interrelationship of the child with the child's parent or parents and siblings and with any other person who significantly affects the child's best interest;
(d) the child's adjustment to home, school, and community;
(e) the mental and physical health of all individuals involved;
(f) physical abuse or threat of physical abuse by one parent against the other parent or the child;
(g) chemical dependency, as defined in 53-24-103, or chemical abuse on the part of either parent;
(h) continuity and stability of care;
(i) developmental needs of the child;
(j) whether a parent has knowingly failed to pay birth-related costs that the parent is able to pay, which is considered to be not in the child's best interests;
(k) whether a parent has knowingly failed to financially support a child that the parent is able to support, which is considered to be not in the child's best interests;
(l) whether the child has frequent and continuing contact with both parents, which is considered to be in the child's best interests unless the court determines, after a hearing, that contact with a parent would be detrimental to the child's best interests. In making that determination, the court shall consider evidence of physical abuse or threat of physical abuse by one parent against the other parent or the child, including but not limited to whether a parent or other person residing in that parent's household has been convicted of any of the crimes enumerated in 40-4-219(8)(b).
(m) adverse effects on the child resulting from continuous and vexatious parenting plan amendment actions.

(2) A de facto parenting arrangement, in the absence of a prior parenting decree, does not require the child's parent or parents to prove the factors set forth in 40-4-219.

(3) The following are rebuttable presumptions and apply unless contrary to the best interest of the child:

(a) A parenting plan action brought by a parent within 6 months after a child support action against that parent is vexatious.
(b) A motion to amend a final parenting plan pursuant to 40-4-219 is vexatious if a parent seeks to amend a final parenting plan without making a good faith effort to comply with the provisions of the parenting plan or with dispute resolution provisions of the final parenting plan.

History: En. 48-332 by Sec. 32, Ch. 336, L. 1975; R.C.M. 1947, 48-332; amd. Sec. 1, Ch. 379, L. 1987; amd. Sec. 1, Ch. 303, L. 1989; amd. Sec. 1, Ch. 467, L. 1995; amd. Sec. 15, Ch. 343, L. 1997.
RULE 1.6: CONFIDENTIALITY OF INFORMATION

(a) A lawyer shall not reveal information relating to the representation of a client unless the client gives informed consent, the disclosure is impliedly authorized in order to carry out the representation or the disclosure is permitted by paragraph (b).

(b) A lawyer may reveal information relating to the representation of a client to the extent the lawyer reasonably believes necessary:

(1) to prevent reasonably certain death or substantial bodily harm;

(2) to secure legal advice about the lawyer's compliance with these Rules;

(3) to establish a claim or defense on behalf of the lawyer in a controversy between the lawyer and the client, to establish a defense to a criminal charge or civil claim against the lawyer based upon conduct in which the client was involved or to respond to allegations in any proceeding concerning the lawyer's representation of the client;

or

(4) to comply with other law or a court order.
40-4-219. Amendment of parenting plan—mediation. (1) The court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child. In determining the child's best interest under this section, the court may, in addition to the criteria in 40-4-212, also consider whether:

(a) the parents agree to the amendment;
(b) the child has been integrated into the family of the petitioner with consent of the parents;
(c) the child is 14 years of age or older and desires the amendment;
(d) one parent has willfully and consistently:
   (i) refused to allow the child to have any contact with the other parent; or
   (ii) attempted to frustrate or deny contact with the child by the other parent; or
(e) one parent has changed or intends to change the child's residence in a manner that significantly affects the child's contact with the other parent.

(2) A court may modify a de facto parenting arrangement in accordance with the factors set forth in 40-4-212.

(3) The court shall presume a parent is not acting in the child's best interest if the parent does any of the acts specified in subsection (1)(d) or (e).

(4) The court may amend the prior parenting plan based on subsection (1)(e) to provide a new residential schedule for parental contact with the child and to apportion transportation costs between the parents.

(5) Attorney fees and costs must be assessed against a party seeking frivolous or repeated amendment if the court finds that the amendment action is vexatious and constitutes harassment.

(6) A parenting plan may be amended upon the death of one parent pursuant to 40-4-221.

(7) As used in this section, "prior parenting plan" means a parenting determination contained in a judicial decree or order made in a parenting proceeding. In proceedings for amendment under this section, a proposed amended parenting plan must be filed and served with the motion for amendment and with the response to the motion for amendment. Preference must be given to carrying out the parenting plan.

(8) (a) If a parent or other person residing in that parent's household has been convicted of any of the crimes listed in subsection (8)(b), the other parent or any other person who has been granted rights to the child pursuant to court order may file an objection to the current parenting order with the court. The parent or other person having rights to the child pursuant to court order shall give notice to the other parent of the objection as provided by the Montana Rules of Civil Procedure, and the other parent has 20 days from the notice to respond. If the parent who receives notice of objection fails to respond within 20 days, the parenting rights of that parent are suspended until further order of the court. If that parent responds and objects, a hearing must be held within 30 days of the response.

(b) This subsection (8) applies to the following crimes:
   (i) deliberate homicide, as described in 45-5-102;
   (ii) mitigated deliberate homicide, as described in 45-5-103;
   (iii) sexual assault, as described in 45-5-502;
   (iv) sexual intercourse without consent, as described in 45-5-503;
   (v) deviate sexual conduct with an animal, as described in 45-2-101 and prohibited under 45-5-505;
(vi) incest, as described in 45-5-507;
(vii) aggravated promotion of prostitution of a child, as described in 45-5-603(1)(b);
(viii) endangering the welfare of children, as described in 45-5-622;
(ix) partner or family member assault of the type described in 45-5-206(1)(a);
(x) sexual abuse of children, as described in 45-5-625.
(9) Except in cases of physical abuse or threat of physical abuse by one parent against the other
parent or the child, or when a parent has been convicted of a crime enumerated in subsection (8)(b), the
court may, in its discretion, order the parties to participate in a dispute resolution process to assist in
resolving any conflicts between the parties regarding amendment of the parenting plan. The dispute
resolution process may include counseling or mediation by a specified person or agency, and court
action.

**History:** En. 48-339 by Sec. 39, Ch. 536, L. 1975; R.C.M. 1947, 48-339; amd. Sec. 4, Ch. 127, L. 1979; amd. Sec. 2, Ch.
410, L. 1979; amd. Sec. 1, Ch. 449, L. 1983; amd. Sec. 2, Ch. 509, L. 1987; amd. Sec. 2, Ch. 303, L. 1989; amd. Sec. 2, Ch.
405, L. 1989; amd. Sec. 9, Ch. 350, L. 1995; amd. Sec. 3, Ch. 467, L. 1995; amd. Sec. 23, Ch. 343, L. 1997.
APPENDIX 4

RULE 1.14: CLIENT WITH DIMINISHED CAPACITY

(a) When a client's capacity to make adequately considered decisions in connection with a representation is diminished, whether because of minority, mental impairment or for some other reason, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. (b) When the lawyer reasonably believes that the client has diminished capacity, is at risk of substantial physical, financial or other harm unless action is taken and cannot adequately act in the client's own interest, the lawyer may take reasonably necessary protective action, including consulting with individuals or entities that have the ability to take action to protect the client and, in appropriate cases, seeking the appointment of a guardian ad litem, conservator or guardian.

(c) Information relating to the representation of a client with diminished capacity is protected by Rule 1.6. When taking protective action pursuant to paragraph (b), the lawyer is impliedly authorized under Rule 1.6(a) to reveal information about the client, but only to the extent reasonably necessary to protect the client's interests.
40-4-205. Guardian ad litem. (1) The court may appoint a guardian ad litem to represent the interests of a minor dependent child with respect to the child's support, parenting, and parental contact. The guardian ad litem may be an attorney. The county attorney, a deputy county attorney, if any, or the department of public health and human services or any of its staff may not be appointed for this purpose.

(2) The guardian ad litem has the following general duties:
   (a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts related to the child's support, parenting, and parental contact;
   (b) to interview or observe the child who is the subject of the proceeding;
   (c) to make written reports to the court concerning the child's support, parenting, and parental contact;
   (d) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's support, parenting, and parental contact; and
   (e) to perform other duties as directed by the court.

(3) The guardian ad litem has access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or caretakers.

(4) The court shall enter an order for costs and fees in favor of the child's guardian ad litem. The order must be made against either or both parents, except that if the responsible party is indigent, the costs must be waived.

History: En. 48-324 by Sec. 24, Ch. 536, L. 1975; R.C.M. 1947, 48-324; amd. Sec. 1, Ch. 93, L. 1979; amd. Sec. 1, Ch. 434, L. 1993; amd. Sec. 4, Ch. 394, L. 1995; amd. Sec. 119, Ch. 546, L. 1995; amd. Sec. 13, Ch. 343, L. 1997.
40-4-215. Investigations and reports. (1) If a parent or a court-appointed third party requests, or if the court finds that a parenting proceeding is contested, the court may order an investigation and report concerning parenting arrangements for the child. The investigator may be the child's guardian ad litem or other professional considered appropriate by the court. The department of public health and human services may not be ordered to conduct the investigation or draft a report unless the person requesting the investigation is a recipient of financial assistance, as defined in 53-4-201, or a participant in the food stamp program, as defined in 53-2-902, and all reasonable options for payment of the investigation, if conducted by a person not employed by the department, are exhausted. The department may consult with any investigator and share information relevant to the child's best interests. The cost of the investigation and report must be paid according to the final order. The cost of the educational evaluation under subsection (2)(a) must be paid by the state as provided in 3-5-901.

(2) The court shall determine, if appropriate, the level of evaluation necessary for adequate investigation and preparation of the report, which may include one or more of the following:
   (a) parenting education;
   (b) mediation pursuant to 40-4-301;
   (c) factfinding by the investigator; and
   (d) psychological evaluation of the parties.

(3) In preparing a report concerning a child, the investigator may consult any person who has information about the child and the child's potential parenting arrangements. Upon order of the court, the investigator may refer the child to professional personnel for diagnosis. Except as required for children 16 years of age or older, the investigator may consult with and obtain information from medical, psychiatric, or other expert persons who have served the child in the past without obtaining the consent of the persons or entities authorized by law to grant or withhold access to the records. The child's consent must be obtained if the child is 16 years of age or older unless the court finds that the child lacks mental capacity to consent. If the requirements of subsection (4) are fulfilled, the investigator's report may be received in evidence at the hearing.

(4) The court shall mail the investigator's report to counsel and to any party not represented by counsel at least 10 days prior to the hearing. When consistent with state and federal law, the investigator shall make available to counsel and to any party not represented by counsel the investigator's file of underlying data and reports, complete texts of diagnostic reports made to the investigator pursuant to the provisions of subsection (3), and the names and addresses of all persons whom the investigator has consulted. Any party to the proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing. The results of the investigation must be included in the court record and may, without objection, be sealed.

History: En. 48-335 by Sec. 35, Ch. 536, L. 1975; R.C.M. 1947, 48-335; amd. Sec. 1, Ch. 277, L. 1981; amd. Sec. 1, Ch. 624, L. 1987; amd. Sec. 2, Ch. 434, L. 1993; amd. Sec. 7, Ch. 561, L. 1993; amd. Sec. 48, Ch. 18, L. 1995; amd. Sec. 122, Ch. 546, L. 1995; amd. Sec. 18, Ch. 343, L. 1997; amd. Sec. 3, Ch. 486, L. 1997; amd. Sec. 5, Ch. 465, L. 2001; amd. Sec. 32, Ch. 585, L. 2001.

Provided by Montana Legislative Services
ARNE JOHN JACOBSEN, Petitioner and Respondent, v. MINNIE LARUE THOMAS, Respondent and Appellant.

No. 03-010

SUPREME COURT OF MONTANA

APPENDIX 7

2004 MT 273; 323 Mont. 183; 100 P.3d 106; 2004 Mont. LEXIS 449

December 11, 2003, Submitted on Briefs September 28, 2004, Decided


PRIOR HISTORY: APPEAL FROM: District Court of the Fourth Judicial District, In and for the County of Missoula, Cause No. DR-01-69, The Honorable John W. Larson, Judge presiding.

DISPOSITION: Affirmed.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant mother challenged an order of the Fourth Judicial District Court, Missoula County (Montana), which designated respondent father as the primary residential parent of the parties' two children. A prior decree dissolving the parties' marriage incorporated a stipulated parenting plan, under which both parties were to relocate to North Carolina and were to equally share parenting of the children by following an alternating weekly schedule.

OVERVIEW: A guardian ad litem appointed by the trial court recommended that the father be the primary residential parent and that the parties no longer equally share parenting time. The court held that the trial court did not err in allowing the guardian to submit her recommendations, because the guardian had not exceeded the authority she was granted by the trial court. The trial court intended the guardian to fulfill both the general statutory duties of a guardian ad litem and to carry out its requests regarding the move to North Carolina. The court found that, while the trial court had erred in disallowing the testimony and cross examination of the guardian, who was also an attorney, at the final hearing, the error was not so significant as to materially prejudice the mother, because she was given numerous and meaningful opportunities to examine the guardian during the year and a half long proceedings. Thus, reversal was not required. The court concluded that the trial court did not abuse its discretion in modifying the parenting plan, because a change of circumstances occurred such that amendment was necessary to serve the best interests of the children.
OUTCOME: The court affirmed the trial court's order.

CORE TERMS: guardian, parenting, guardian ad litem, recommendation, cross examination, credibility, appointed, parental, best interest, meaningful opportunity, deposition, custody, final hearing, investigator, recommended, residential, modifying, exceeded, appoint, duties, clearly erroneous, cross-examination, interviewed, assess, cross examine, final report, ad litem, standardized, caregiver, contempt

**LexisNexis(R) Headnotes**

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review

Civil Procedure > Appeals > Standards of Review > De Novo Review

**HN1** The standard of review for a district court's findings related to modification of a parenting plan is whether those findings are clearly erroneous. When findings are not clearly erroneous, an appellate court reverses when an abuse of discretion by the district court is clearly demonstrated. Abuse of discretion occurs only when the district court acted arbitrarily without the employment of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice. The appellate court reviews questions of law de novo. More Like This Headnote | Shepardize: Restrict By Headnote

Estate, Gift & Trust Law > Probate > General Overview

Family Law > Guardians > General Overview

**HN2** Both Mont. Code Ann. 40-4-205 and Mont. Code Ann. 40-4-215 give a guardian authority to conduct an investigation. Under Mont. Code Ann. 40-4-205(1), (2)(a), a guardian may conduct investigations regarding a child's support, parenting, and parental contact that the guardian considers necessary. Under Mont. Code Ann. 40-4-215, a guardian may conduct an investigation into parenting arrangements, if someone other than the guardian, including the trial court, considers it necessary. More Like This Headnote

Estate, Gift & Trust Law > Probate > General Overview

Family Law > Guardians > General Overview

**HN3** There is no general requirement that a guardian ad litem be an expert. The only mandatory requirement in all cases is that a guardian not have a conflict of interest with the best interests of the children. More Like This Headnote

Estate, Gift & Trust Law > Probate > General Overview
HN4 See Mont. Code Ann. § 40-4-205.

Mont. Code Ann. § 40-4-215 provides that a guardian ad litem may perform investigations.


HN6 An attorney appointed by a trial court to represent a child is not also the guardian ad litem. Mont. Code Ann. § 40-4-205 states a guardian ad litem may be an attorney. This indicates that lay persons may act as guardians. Therefore, the statute contemplates a guardian ad litem has a unique role to protect the interests of the child. This role is different from the traditional advocacy role played by attorneys. When a court appoints a guardian ad litem under § 40-4-205, unless the court specifically indicates it intends the guardian to act as an attorney representing the child, the guardian is not to act as an attorney. Instead, the guardian is required to fulfill the statutory role to objectively aid the court in its decisions regarding the best interests of the child. Mont. Code Ann. § 40-4-215 applies to Mont. Code Ann. § 40-4-205, in that a guardian ad litem must testify and be subject to cross examination if they give evidence concerning an investigation.

HN7 See Mont. R. Civ. P. 61.
Evidence > Procedural Considerations > Rulings on Evidence

**HN9** Under Mont. R. Civ. P. 61, for error to be the basis for a new trial, it must be so significant as to materially affect the substantial rights of the complaining party. More Like This Headnote

Civil Procedure > Judicial Officers > General Overview

Criminal Law & Procedure > Trials > Examination of Witnesses > General Overview

Family Law > Child Custody > Procedures

**HN10** A judge violates due process requirements if he bases a child custody order on statements in a welfare department report without requiring the authors of the report to testify at a hearing and be subject to cross-examination. Parents are to be given a meaningful opportunity to examine witnesses in custody cases so the trier of fact can assess factual disputes and weigh credibility. More Like This Headnote

Family Law > Child Custody > Enforcement > General Overview

**HN11** See Mont. Code Ann. § 40-4-219.

Civil Procedure > Appeals > Standards of Review > General Overview

Family Law > Child Custody > Enforcement > General Overview

**HN12** Although it is preferable for a district court to incorporate the "change of circumstances" and "best interest" language of Mont. Code Ann. § 40-4-219 into its findings and conclusions, it is not error when a court fails to do so if all the requirements of the statute are implicit in the court's findings. More Like This Headnote

**COUNSEL:** For Appellant: P. Mars Scott, P. Mars Scott Law Offices, Missoula, Montana.


**JUDGES:** Justice JOHN WARNER We Concur: KARLA M. GRAY, PATRICIA O. COTTER, JAMES C. NELSON, JIM RICE.

**OPINIONBY:** John Warner

**OPINION:** **[**185**] [***107**] Justice John Warner delivered the Opinion of the Court.

**[**P1**]** Minnie LaRue Thomas (LaRue) appeals from an order of the Fourth Judicial District Court, Missoula County, designating
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- 2004 MT 273

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Arne Jacobsen (Arne) as the primary residential parent of their two children. We affirm.

[*P2] We address the following issues on appeal:

[*P3] 1. Did the District Court err by allowing the Guardian ad Litem (Guardian) to submit recommendations which exceeded her authority as initially established by the District Court?

[*P4] 2. Did the District Court err by not allowing testimony and cross examination of the Guardian at the August 20, 2002, hearing?

[*P5] 3. Did the District Court err in modifying the stipulated final parenting plan?

I. FACTUAL AND PROCEDURAL BACKGROUND

[*P6] A decree dissolving the marriage of LaRue and Arne was entered May 14, 2001. It incorporated a stipulated parenting plan for the parties' two children. Under this plan, both parties were to relocate from Missoula to North Carolina. The parties were to equally share parenting of the children by following an alternating week schedule. Numerous proceedings followed over the next year and a half. Those proceedings will be mentioned here to the extent relevant to the issues presented on appeal.

[*P7] In May and July, 2001, Arne made motions to the court to hold LaRue in contempt, alleging she interfered with his time with the children. After a July, 2001, hearing on Arne's contempt motions, the court sua sponte appointed a guardian ad litem.

[*P8] On September 10, 2001, the Guardian submitted a report to the court which recommended that Arne be the primary residential parent of the children at the location of his choice and that the parties no longer equally share parenting time with the children. Eight days later, Arne filed a notice of his intent to move to Utah and a proposed revised parenting plan. LaRue then filed objections to the Guardian's report and to Arne's notice of intent to move and proposed new parenting plan. In addition, she also requested the court appoint a child psychologist to perform an investigation and assessment instead of the Guardian.

[*P9] The court held hearings on October 29, 30 and November 8, 2001. The court then orally vacated the stipulated parenting plan, named Arne as the primary caregiver, and allowed him to relocate. Arne then moved to Utah with the children. The court also required the Guardian to submit a status report during the Christmas holidays, 2001. The Guardian submitted two more reports. LaRue then entered a subpoena duces tecum for the Guardian. She also made a motion to [*108] enforce the original stipulated plan. At a hearing on February 5, 2002, the court orally denied LaRue's motion to enforce the stipulated plan. However, the court allowed LaRue to depose the Guardian which she did at length in March. The Guardian submitted her final report to the court and the parties in early August, 2002. On August 20, 2002, the court held a final hearing. In October of 2002, the court issued findings of fact, conclusions of law and an order which made Arne the primary caregiver. LaRue now appeals. Further facts are discussed below.

II. STANDARD OF REVIEW

HN1 [*P10] The standard of review for a district court's findings related to modification of a parenting plan is whether those findings are clearly erroneous. In re Marriage of Oehlke, 2002 MT 79, P 9, 309 Mont. 254, P 9, 46 P.3d 49, P 9. When findings are
not clearly erroneous, we reverse when an abuse of discretion by the district court is clearly demonstrated. Oehlke, P 9. Abuse of discretion occurs only when the district court acted arbitrarily without the employment of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice. In re Marriage of Robison, 2002 MT 207, P 15, 311 Mont. 246, P 15, 53 P.3d 1279, P 15. We review questions of law de novo. Robison, P 15.

III. DISCUSSION

ISSUE ONE

[*P11] Did the District Court err by allowing the Guardian to submit recommendations which exceeded her authority [*187] as initially established by the District Court?

[*P12] LaRue argues the Guardian was appointed under 40-4-205, MCA, rather than 40-4-215, MCA, so the Guardian was not given the authority to conduct an investigation and assessment. She therefore argues the Guardian did not have authority to recommend a change in the stipulated final parenting plan. She asserts the Guardian was not appointed to be an attorney for the children and was not professionally qualified to perform a parenting investigation or assessment as she has no professional training in child development. LaRue also asserts the Guardian did not find someone to act as a guardian ad litem in North Carolina as directed by the court. Asserting the Guardian exceeded her authority by providing a self-initiated investigation, LaRue argues the District Court erred in relying on her recommendations for its decisions.

[*P13] Arne counters that the District Court granted broad authority to the Guardian. He argues the Guardian's actions in conducting an investigation, parenting assessment, and the recommendations she submitted to modify the stipulated final parenting plan were within her authority. The Guardian, who submitted a brief on appeal, generally agrees with Arne.

[*P14] We hold the District Court did not err in allowing the Guardian to submit her recommendations because the Guardian did not exceed the authority she was granted by the court. The Guardian was appointed at the hearing on the contempt motions. In light of the evidence of the disruptive communications between the parties, the District Court on its own initiative appointed a guardian ad litem "to make sure that the rights of the child (sic) are protected." When Arne's attorney pointed out the parties intended to move to North Carolina, the court stated: "Well, if there are problems here in Montana, there is going to be a guardian ad litem in North Carolina. We will start where there are problems. There're (sic) problems here; a guardian ad litem here." These statements indicate the court intended the Guardian to address current parenting problems in order to protect the children.

[*P15] The court then issued a four page order appointing the Guardian. The order appears to use a standardized form for such appointments, modified to include two additional paragraphs emphasized in bold at the beginning to address the move to North Carolina. Under the standardized language regarding the Guardian's duties, the form reads: "The Guardian Ad Litem, in addition to attendance at all proceedings, shall meet with the parties, their counsel, and the [*188] child(ren); may contact psychologist/counselors, [*109] family members, friends, neighbors, or school personnel, and shall conduct such other investigation as would assist the court in its determination of the best interests of the child(ren)." This language, in addition to other standardized language in the order, indicates that the court intended to give the Guardian broad authority to address the best interests of the children in any way she deemed necessary.
Although the order does not cite either 40-4-205, MCA, or 40-4-215, MCA, it clearly indicates the court intended the Guardian to fulfill both the general statutory duties of a guardian ad litem and to carry out its requests regarding the move to North Carolina. Further, both 40-4-205, MCA, and 40-4-215, MCA, give a guardian authority to conduct an investigation. Under 40-4-205(1) and (2)(a), MCA, a guardian may "conduct investigations" regarding the "child's support, parenting, and parental contact" that the guardian "considers necessary." Under 40-4-215, MCA, a guardian may conduct an investigation into "parenting arrangements" if someone other than the guardian, including the court, considers it necessary. Therefore, there was no need for the court to order a specific type of investigation under 40-4-215, MCA, because the guardian already had authority under 40-4-205(1) and (2)(a), MCA.

In this case, the Guardian investigated and concluded that the discord was so great between the parties that a 50/50 co-parenting arrangement would not be in the best interests of the children and also that Arne would be able to provide a more predictable, stable routine for the children. Our review of the record indicates that the findings regarding the discord between the parties and regarding the relative stability of Arne's and LaRue's lifestyles, as adopted by the District Court, are not clearly erroneous. Therefore, the Guardian did not exceed her authority when she recommended that the stipulated parenting plan not be followed because her investigation revealed that the stipulation was not in the best interests of the children.

The District Court did not err in accepting the Guardian's report even though she was not an expert in a child development field. We have held there is no general requirement a guardian ad litem be an expert. Krause v. Sisk (In re Krause), 2001 MT 37, PP11-14, 304 Mont. 202, PP11-14, 19 P.3d 811, PP11-14. The only mandatory requirement in all cases is that a guardian not have a conflict of interest with the best interests of the children. Krause, PP 11-14. LaRue does not claim the Guardian has interests adverse to the children. Therefore, it was not err for the court to deny LaRue's request for another investigation.

ISSUE TWO

Did the District Court err by not allowing testimony and cross examination of the Guardian at the August 20, 2002, hearing?

At the final hearing, the District Court raised the issue of whether there was an ethical conflict for an attorney serving as a guardian ad litem to testify and be subject to cross examination because attorneys are not normally allowed to testify under the Rules of Professional Conduct. The court stated it was raising the issue because it had come up in another case the previous week and the court wanted to avoid error in this case. The court sought input from both counsel and from the Guardian. Both counsel favored testimony based on past experience and the rights of the parties. The Guardian thought the answer depended on whether a guardian was serving more as an attorney or as an investigator for the court regarding the best interests of the children.

The court then decided that the Guardian would not testify or be subject to cross examination at that hearing in order to err on the side of caution. The court allowed the parties to submit briefing on the issue and allowed LaRue to submit objections to the Guardian's final report as an alternative to cross examination. LaRue and the Guardian submitted briefs. Arne did not. The District Court did not again address this issue after receiving the briefing and did not make findings or conclusions on the positions stated by LaRue and the Guardian.
LaRue argues on appeal that the District Court erred by failing to allow the Guardian to testify and be subject to cross examination. She asserts that under 40-4-205(2)(d), MCA, a guardian is to appear and participate in all proceedings. She also points out that under 40-4-215, MCA, an investigator is subject to being called to testify and subject to cross examination. LaRue argues there is no exception for the instance where the guardian happens to be an attorney.

Based on Krause, P 19, LaRue asserts she has a constitutional liberty interest in the custody of her children and that it is a denial of due process to simultaneously give a guardian authority to investigate and report to the court and then prevent their testimony based on Rule 3.7, M.R.Prof.Cond. She argues cross examination is also necessary to ensure the best interests of the children are protected. She cites In re Marriage of Rolfe (1985), 216 Mont. 39, 699 P.2d 79, and In re Custody of J.M.D. (1993), 259 Mont. 468, 857 P.2d 708, for the proposition that an attorney and guardian ad litem cannot have the same role. LaRue also notes the Rules of Professional Conduct are not to be used for one party to gain a tactical advantage.

Procedurally, LaRue points out the Guardian in this case was allowed to act as both an attorney and a witness during previous court hearings. LaRue also notes the Guardian's reports and recommendations were submitted into evidence. LaRue argues that even though she was allowed to cross examine the Guardian at a previous hearing, the Guardian had since submitted additional reports with new information that LaRue had not had an opportunity to address. She argues she was also not allowed to question why the Guardian chose not to include information she believed was pertinent. Finally, she notes the Guardian was again allowed to call and examine witnesses at the August 20, 2002, hearing.

Arne asserts the court appointed the Guardian under 40-4-205, MCA, and therefore, the cross examination provisions of 40-4-215, MCA, do not apply. He also argues that because LaRue deposed the Guardian and, because she was allowed to examine or cross examine the Guardian at previous hearings, any error is harmless. Further, Arne points out that at the August 20 hearing, LaRue admitted she did not believe the Guardian had withheld any information. Finally, Arne argues because LaRue was able to obtain all the background documentation from the Guardian during her deposition and was also able to examine or depose all the people the Guardian interviewed, the guardian ad litem disclosure requirements of Krause, P 28, have been met. He asserts LaRue was not prejudiced by her inability to examine the Guardian one more time.

The Guardian points out there are currently no standards or guidelines for guardians ad litem in Montana. She notes there are model guidelines available and that most states have held guardians ad litem are to protect what they believe to be the best interest of the child even if the child client disagrees. Further, the Guardian generally agrees with Arne in that even if she should have been available for cross examination, it was harmless error because LaRue had numerous opportunities to question her, including an extensive deposition.

Arne and the Guardian also argue LaRue did not preserve the due process argument for appeal. However, LaRue's brief to the District Court does preserve this issue.

The District Court erred in disallowing the testimony and cross examination of the Guardian at the final hearing. However, we hold this error does not require reversal in this case.

The relevant portions of 40-4-205, MCA, read:
The court may appoint a guardian ad litem to represent the interests of a minor dependent child with respect to the child's support, parenting, and parental contact. The guardian ad litem may be an attorney.

The guardian ad litem has the following general duties:

(a) to conduct investigations that the guardian ad litem considers necessary to ascertain the facts related to the child's support, parenting, and parental contact;

(b) to interview or observe the child who is the subject of the proceeding;

(c) to make written reports to the court concerning the child's support, parenting, and parental contact;

(d) to appear and participate in all proceedings to the degree necessary to adequately represent the child and make recommendations to the court concerning the child's support, parenting, and parental contact; and

(e) to perform other duties as directed by the court.

The guardian ad litem has access to court, medical, psychological, law enforcement, social services, and school records pertaining to the child and the child's siblings and parents or caretakers.

This language was significantly amended in 1995 when "guardian ad litem" was inserted for "attorney," the provision that "the guardian ad litem may be an attorney" was added, and subsections (2) and (3) regarding the duties and access of guardians ad litem were added. However, the Commissioners' Note to § 40-4-205, MCA, notes that the section may still be used to specifically appoint an attorney to provide legal representation. The note says: "This section authorizes the court to appoint an attorney to represent a minor or dependent child . . . ."

In contrast, § 40-4-215, MCA, provides that a guardian ad litem may perform investigations. Subsection (4) states: "Any party to the proceeding may call the investigator and any person the investigator has consulted for cross-examination. A party may not waive the right of cross-examination prior to the hearing." Therefore, the provisions of § 40-4-205, MCA, and § 40-4-215, MCA, set up the conflict recognized by the judge in this case, in that an attorney may be appointed as guardian ad litem and then be required to testify.

As the parties point out, we have not previously addressed this issue. However, we have held that an attorney appointed by the court to represent a child is not also the guardian ad litem. Rolfe, 216 Mont. at 52, 699 P.2d at 86.

In addition, § 40-4-205, MCA, states the guardian ad litem "may" be an attorney. This indicates lay persons may act as guardians. Therefore, the statute contemplates a guardian ad litem has a unique role to protect the interests of the child. This role is different from the traditional advocacy role played by attorneys. We hold that when a court appoints a guardian ad litem under § 40-4-205, MCA, unless the court specifically indicates it intends the guardian to act as an attorney representing the child, the guardian is not to act as an attorney. Instead, the guardian is required to fulfill the statutory role to objectively aid the court in its decisions regarding the best interests of the child. Section 40-4-215, MCA, applies to § 40-4-205, MCA, in that a guardian ad
litem must testify and be subject to cross examination if they give evidence concerning an investigation. Consequently, the District Court erred in failing to require the Guardian to testify in this case.

[*P33] In spite of this error, no reversal is required here. Rule 61, M.R.Civ.P., provides:

**HN6** No error in either the admission or the exclusion of evidence and no error or defect in any ruling or order or in anything done or omitted by the court or by any of the parties is ground for granting a new trial or for setting aside a verdict or for vacating, modifying or otherwise disturbing a judgment or order, unless refusal to take such action appears to the court inconsistent with substantial justice. The court at every stage of the proceeding must disregard any error or defect in the proceeding which does not affect the substantial rights of the parties.

We have held **HN7** under Rule 61, "for error to be the basis for a new trial, it must be so significant as to materially affect the substantial rights of the complaining party." *Montana Dept. of Transp. v. Simonson*, 2004 MT 60, P 14, 320 Mont. 249, P 14, 87 P.3d 416, P 14.

[*P34] As LaRue points out, the right to parent her children is a significant interest. [*112*] **Krause**, P 19. In addressing testimony involving disputed custody issues, we have held that allowing one parent to testify by telephone was reversible error where the other parent objected because the objecting parent was entitled to a meaningful opportunity to confront the witness and cross-examine effectively so the judge could make credibility determinations. *Bonamarte v. Bonamarte* (1994), 263 Mont. 170, 178, 866 P.2d 1132, 1137. In addition, *In re Moyer* (1977), 173 Mont. 208, 211, 567 P.2d 47, 49, stated: "It is [*193*] true that a judge violates due process requirements if he bases his child custody order on statements in a welfare department report without requiring the authors of the report to testify at a hearing and be subject to cross-examination." These cases establish that parents be given a meaningful opportunity to examine witnesses in custody cases so the trier of fact can assess factual disputes and weigh credibility.

[*P35] In this case, however, the court's error was not so significant as to materially prejudice LaRue. She was given numerous and meaningful opportunities to examine the Guardian during the year and a half long proceedings.

[*P36] First, although the Guardian submitted five reports, the first and by far the longest report is the most significant because it contains the Guardian's recommendation that Arne be the primary residential parent. As noted above, this first report makes the recommendation to change custody from joint parenting to one parent acting as the primary caretaker. To challenge this recommendation, LaRue cross examined the Guardian at the hearing during which this report was first considered by the court. During this hearing, LaRue was able to both question factual information presented in the report and was able to challenge the Guardian's credibility. At the conclusion of this three day hearing, the court decided to vacate the joint parenting agreement and decided that Arne would be the primary caregiver. Therefore, LaRue was able to cross examine the Guardian with relation to the facts, her opinions, and her credibility before the court made its key decision in this case. Further, the Guardian's subsequent four reports, including the final report, mainly indicate to the court the Guardian did not find any information that would change her recommendations, despite further investigations.

[*P37] Second, as is provided for by 40-4-215(4), MCA, LaRue had the opportunity to call as witnesses the people who the Guardian interviewed in making her recommendations. Many of these people did testify and LaRue was able to challenge how the Guardian's report represented their perspectives. Without exception, every person who was interviewed by the Guardian who also
testified stated the Guardian’s report properly presented their input. Therefore, LaRue was able to challenge in court both the Guardian’s credibility in reporting to the court and the facts in the report.

[*P38] Third, LaRue deposed the Guardian at length. This deposition was entered into evidence at the final hearing. Therefore, LaRue was able to challenge the Guardian’s credibility through this deposition in [*194] addition to her examinations of the Guardian at previous hearings.

[*P39] Finally, although LaRue asserts the Guardian was bias because she did not contact all the people LaRue wanted her to, the Guardian did interview numerous people referred by LaRue. LaRue also had the ability to call any witnesses she desired. The record makes clear that LaRue was given ample and meaningful opportunity to present her disagreements with the facts in the Guardian’s report. She was also given ample and meaningful opportunity to question the Guardian’s factual assertions and credibility. Under the unique facts of this case, we hold the District Court’s error in this case does not require reversal because LaRue’s rights were not materially prejudiced.

ISSUE THREE

[*P40] Did the District Court err in modifying the stipulated final parenting plan?

[*P41] LaRue argues the District Court did not meet the prerequisites to modify the stipulated final parenting plan under 40-4-219, MCA, because it did not find there was a change in circumstances and because it failed to properly assess the best interests of the [***113] children. She argues that a change in circumstances that justifies a modification must significantly affect the child, and a voluntary choice to relocate by an adult will not suffice. LaRue also asserts the court did not properly assess the best interests of the children when it relied on the Guardian’s recommendations. LaRue also points out facts that favor her being the residential parent in favor of her position. Conversely, Arne argues from facts relied on by the court. The Guardian generally agrees with Arne on this issue.

[*P42] We hold the District Court properly modified the parenting plan. Section 40-4-219, MCA, governs when a court may amend a parenting plan. This section reads:

(1) HN11 The court may in its discretion amend a prior parenting plan if it finds, upon the basis of facts that have arisen since the prior plan or that were unknown to the court at the time of entry of the prior plan, that a change has occurred in the circumstances of the child and that the amendment is necessary to serve the best interest of the child. In determining the child's best interest under this section, the court may, in addition to the criteria in 40-4-212, also consider whether:

. . . .

(d) one parent has willfully and consistently:

[*195] (i) refused to allow the child to have any contact with the other parent; or

(ii) attempted to frustrate or deny contact with the child by the other parent;
(3) The court shall presume a parent is not acting in the child's best interest if the parent does any of the acts specified in subsection (1)(d) or (8).

[*P43*] We have held that although it is preferable for a district court to incorporate the statutory "change of circumstances" and "best interest" language into its findings and conclusions, it is not error when a court fails to do so if all the requirements of the statute are implicit in the court's findings. *Arneson-Nelson v. Nelson (In re Arneson-Nelson)*, 2001 MT 242, P30, 307 Mont. 60, P30, 36 P.3d 874, P30; *In re Marriage of Burk*, 2002 MT 173, P 11, 310 Mont. 498, P 11, 51 P.3d 1149, P 11; Rule 61, M.R.Civ.P.

[*P44*] In this case, the court did not use the change of circumstances language. However, the court stated: "I'm denying the motion to implement the stipulated parenting plan. I believe it's impossible to perform as drafted and agreed upon by the parties and that's not due to their lack of effort. ... It's due to their highly complicated method of communication that can't yield meaningful agreement without the involvement of a sophisticated mediator." In a later order, the court found that "the level of conflict between the parties had increased to the level that they were only able to resolve issues concerning visitation through ... mediation ... ." Implicit in these findings is the reality that substantial change occurred in the circumstances and this change significantly affected the children because the parties were unable to follow the stipulated plans. Therefore, the change in circumstances requirement of § 40-4-219, MCA, was met.

[*P45*] Regarding the best interests of the children, the District Court found that "LaRue was continually frustrating Arne's scheduled parenting time" and that although the parties worked with a third party "toward a parenting schedule ... LaRue also refused to comply with the agreements made ... ." Again, while the court did not use the statutory language, implicit in these findings is the court's conclusion that LaRue's conduct was not in the best interests of the children under § 40-4-219(3), MCA, and § 40-4-219(1)(d)(ii), MCA, because she frustrated Arne's contact with the children. Therefore, amendment of the parenting plan was in the children's best interests under § 40-4-219, MCA. [*196*]

[*P46*] Finally, we disagree with LaRue that the court erred by relying on the Guardian's recommendations because her report was allegedly not in the children's best interests. Specifically, the Guardian noted both parties would have to work and both parties would need to hire child care. Therefore, this factor was not held against LaRue. Further, the Guardian's recommendation was not primarily based on where the parties would live, [***114*] North Carolina or Utah. Rather, she recommended, and the court agreed, that wherever the parties lived, co-parenting was not an option due to the discord between them. She then recommended, and the court agreed, that Arne would be able to provide more stability and predictability for the children. As noted above, the underlying findings upon which these conclusions are based are not clearly erroneous. Therefore, the District Court did not abuse its discretion in modifying the parenting plan because a change of circumstances occurred such that amendment was necessary to serve the best interests of the children.

**IV. CONCLUSION**

[*P47*] Because the District Court properly considered the Guardian's investigation and recommendations and issued an order in the best interests of the children, we affirm.
JOHN WARNER

We Concur:

KARLA M. GRAY

PATRICIA O. COTTER

JAMES C. NELSON

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In re the MARRIAGE OF BEVERLY C. ROLFE, Petitioner and Appellant, and OLIVER W. ROLFE, Respondent and Respondent

No. 84-345

Supreme Court of Montana

APPENDIX 8

216 Mont. 39; 699 P.2d 79; 1985 Mont. LEXIS 763

March 14, 1985, Submitted on Briefs
May 2, 1985, Decided

PRIOR HISTORY: [***1]
Appeal from the District Court of Missoula County. Fourth Judicial District. Hon. John S. Henson, Judge Presiding.

DISPOSITION: Reversed and remanded.

CASE SUMMARY

PROCEDURAL POSTURE: Appellant wife challenged the property settlement, and maintenance and child custody award by the Fourth Judicial District, Missoula County (Montana).

OVERVIEW: The wife and respondent husband were divorced after 15 years of marriage. After a bitter fight between the wife and husband, the district court awarded custody of their two sons to the father. The district court divided the marital property, awarded the wife, who had stopped teaching when they were married, maintenance for one year, and determined that the husband was not responsible for child support payments already incurred. The court held that the district court was in the better position to resolve child custody and that its decision would only be disturbed if there was an abuse of discretion. The district court considered all of the factors listed in Mont. Code Ann. 40-4-212 in awarding child custody and that there was sufficient evidence to support the findings. The property settlement was reversed because the district court failed to indicate the basis for its determination where conflicting valuation evidence was presented and because the court questioned the credulity given to the husband's valuations. The maintenance award did not meet the requirement of 40-4-203. Section 40-4-208(1) did not allow for the retroactive modification of a child support order.

OUTCOME: The court affirmed the child custody but reversed and remanded the property settlement and maintenance.

CORE TERMS: marriage, marital, valued, child custody, pension, best interest, custody, household goods, custody dispute,
disability, appointed, prenuptial, child support, psychiatrist, psychologist, producing, awarding, guardian, earn, visitation, nonvested, modify, legal representative, property settlement, client-lawyer, colleagues, valuation, clear abuse of discretion, physical condition, paramount concern

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Civil Procedure > Appeals > Standards of Review > Clearly Erroneous Review

Family Law > Child Custody > Procedures

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Procedures

**HN1** The trial judge in a divorce proceeding is in a better position than an appellate court to resolve child custody. The district court's decision is presumed correct and will be upheld unless clear abuse of discretion is shown. The appealing party must show, by clear error, that the record does not support the judgment of the district court. Mont. R. Civ. P. 52(a).

Civil Procedure > Judgments > General Overview

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Property Distribution > General Overview

**HN2** In dividing property in a marriage dissolution the district court has far-reaching discretion and its judgment will not be altered without a showing of clear abuse of discretion. The test of abuse of discretion is whether the trial court acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice.

Civil Procedure > Appeals > Standards of Review > Abuse of Discretion

Family Law > Marital Termination & Spousal Support > Dissolution & Divorce > Property Distribution > General Overview

**HN3** When conflicting valuation evidence is presented the district court must indicate the basis for its determination. If no explanation is made the court has abused its discretion.

Real Property Law > Brokers > General Overview

**HN4** Retirements benefits are part of the marital estate.
HN5 Mont. Code Ann. 40-4-202(1) allows property acquired before the marriage to be considered in equitably apportioning the marital estate. However, this statute does not mandate that each party be returned the value of all the property they brought into the marriage. More Like This Headnote | Shepardize: Restrict By Headnote

HN6 In awarding maintenance the district court must consider whether assets awarded to the spouse seeking maintenance are income producing. More Like This Headnote | Shepardize: Restrict By Headnote

HN7 In a divorce case a district court must indicate its reasons for refusing to grant attorneys fees. More Like This Headnote | Shepardize: Restrict By Headnote

HN8 Mont. Code Ann. 40-4-208(1) states that except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to the motion for modification. More Like This Headnote | Shepardize: Restrict By Headnote

HN9 A lawyer shall not intentionally fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by Model Code of Prof'l Responsibility DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating
with courtesy and consideration all persons involved in the legal process. In his representation of a client, a lawyer may where permissible, exercise his professional judgment to waive or fail to assert a right or position of his client. DR 7-101.

**Legal Ethics > Client Relations > Effective Representation**

**HN10** Any mental or physical condition of a client that renders him incapable of making a considered judgment on his own behalf casts additional responsibilities upon his lawyer. Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions which are normally the prerogative of the client to make. If a client under disability has no legal representative, his lawyer may be compelled in court proceedings to make decisions on behalf of the client. If the client is capable of understanding the matter in question or of contributing to the advancement of his interests, regardless of whether he is legally disqualified from performing certain acts, the lawyer should obtain from him all possible aid. If the disability of a client and the lack of a legal representative compel the lawyer to make decisions for his client, the lawyer should consider all circumstances then prevailing and act with care to safeguard and advance the interests of his client. But obviously a lawyer cannot perform any act or make any decision which the law requires his client to perform or make, either acting for himself if competent, or by a duly constituted representative if legally incompetent. Model Code of Prof'l Responsibility EC 7-12.

**Family Law > Child Custody > General Overview**

**HN11** When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reasons, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client. A lawyer may seek the appointment of a guardian or take other protective action with respect to the client, only when the lawyer reasonably believes that the client cannot adequately act in the client's interest. Model Rules of Prof'l Conduct R. 1.14.

**Family Law > Delinquency & Dependency > General Overview**

**HN12** The court may appoint an attorney to represent the interests of a minor dependent child with respect to his support, custody, and visitation. The county attorney and the deputy county attorneys, if any, may not be appointed for this purpose. The court shall enter an order for costs and fees in favor of the child's attorney. The order shall be made against either or both parents, except that if the responsible party is indigent, the costs shall be waived. Mont. Code Ann. 40-4-205. The interest referred to in this statute is the child's best interests, not the child's wishes. In all matters relating to child custody and visitation, the best interests of the child control.
The attorney for the child is not a guardian ad litem.

The guardian is not required to advocate whatever placement might seem preferable to a client of tender years. A young child may well prefer the less disciplined environment to the more disciplined one. He may prefer the parent who takes him on outings for recreational activities over the one who stays home to prepare his meals and keep the home clean. But the guardian would be abdicating his responsibility to his client and the court to use his best professional judgment, were he to automatically recommend that young child's preference without further scrutiny. A child who has been living for some time with one parent might understandably select that parent, good or bad, because it represents the only home the child has ever known. This "psychological parenthood," while relevant, is not conclusive concerning what is in the child's best interests. A child may have his thinking consciously or subconsciously colored by one parent against the other. The guardian ad litem must try to delve into this question and take all relevant factors into account regardless of what the child may or may not believe he ought to say.

If the court-appointed attorney concludes that the child's expressed wishes are not in his best interest the attorney must disclose this to the court. The district court must be clearly informed of the child's wishes and the basis for the attorney's determination that it is not in the child's best interest to live with the preferred parent.

COUNSEL: Datsopoulos, MacDonald & Lind, Dennis E. Lind, Missoula, for petitioner and appellant. Mulroney, Delaney & Scott, P. Mars Scott, Connell & Beers, Thomas Beers, Missoula, for respondent and respondent.

JUDGES: Mr. Justice Sheehy delivered the Opinion of the Court. Mr. Justices Harrison, Morrison, Gulbrandson and Hunt concur.

OPINION: [*42] [**81] Beverly Rolfe appeals from a property settlement, and a maintenance and child custody award by
the Fourth Judicial District, Missoula County. The child custody is affirmed; property settlement and maintenance are remanded.

Beverly Rolfe (hereinafter wife) and Oliver Rolfe (hereinafter husband) were married in 1968 and divorced in 1983. They have two sons, a 14 year old and a 10 year old. The husband, 46 years old and in good physical health, is a tenured professor at the University of Montana earning $28,484 as a full professor under contract for ten months. He has a Ph.D. in Romance Linguistics, has taught at the University since 1970, and intends to continue. The wife, 46 years old and in good health except for periodic blackouts for which she takes medication, was a homemaker throughout the marriage. She did typing and occasional odd jobs, earning $1,000 to $2,000 a year during the marriage. She has a B.A. in education and taught for several years prior to marriage but quit in 1968. The District Court found "It is possible for [the wife] to earn approximately $17,000 per year based on her previous experience, education and training."

The parties fought bitterly over child custody; both claiming the other was mentally ill and would physically and mentally abuse the children. They introduced extensive testimony and exhibits to foster their claims. The court listened to conflicting testimony for four days. A psychiatrist, a psychologist, the husband's mother, the wife's mother, the wife's brother, three friends and members of their church, a foster-care parent, three university colleagues of the husband, and the husband's former attorney all testified. Sixteen exhibits were introduced into evidence. Clearly the marriage was very unhappy and the record raises questions about either parents' ability to raise the children.

At first the children expressed a desire to live with their mother, but later said they preferred to live with their father. Both children, but particularly the older child, vehemently expressed this preference by telephoning school counselors, principals, attorneys and other professionals, checking out library books, and emphatically telling the judge their preference in camera. The children's attorney, appointed by the court to represent their interest, believed the children's best interest was to be placed with their mother and, contrary to the children's wishes, advocated this position. The attorney based his belief on the psychiatrist's and psychologist's recommendations and on conversations with the children. The older child complained to the judge about the attorney.

The parties also fought over the division of the marital estate. The marital estate was valued at $179,980.70. It was divided as follows:

<table>
<thead>
<tr>
<th>Wife</th>
<th>Husband</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity in family home</td>
<td>$46,000</td>
</tr>
<tr>
<td>Equity in rental units</td>
<td>$16,434</td>
</tr>
<tr>
<td>Family cabin</td>
<td>$20,000</td>
</tr>
<tr>
<td>Cars</td>
<td>0</td>
</tr>
<tr>
<td>Checking account</td>
<td>1,000</td>
</tr>
<tr>
<td>Certificate of Deposit</td>
<td>1,000</td>
</tr>
<tr>
<td>Investments</td>
<td>$6,284</td>
</tr>
<tr>
<td>Retirement Fund</td>
<td>$20,800</td>
</tr>
<tr>
<td>Tax Shelter Annuity</td>
<td>7,665</td>
</tr>
<tr>
<td>Life Insurance Withdrawal</td>
<td>2,916.70</td>
</tr>
</tbody>
</table>
Credits | 3,542.50 | 3,542.50
---|---|---
Household items | 17,660 | 4,880
Payments to wife | 2,250 | 
| $87,886.50 | $92,094.20
Less property brought to the marriage | 2,410 | 9,955
| $85,476.50 | $82,139.20
Less debts assumed | 3,901 | 1,645
| $81,575.50 | $80,494.20

The wife valued the marital estate at approximately $160,106. The major differences in the parties' values were in the rental units and the household goods. He valued the rental units, which he received, at $23,056 and she valued them at $35,733. He valued the household goods at $22,540 and she did not value them. She received household goods valued at $17,660, while he received $4,880 of household goods. With a few exceptions the husband's asset valuations and his proposed distributions were used. The trial court gave no reasons for this.

The wife raises five issues on appeal: error in awarding child custody to the father, error in distributing property of the marital estate, error in awarding her maintenance for only one year, error in refusing to award attorneys fees, and error in determining the husband was not responsible for child support payments already incurred.

The children, through their attorney, also raise the issue of error in child custody. In addition, the children's attorney asks this Court to address the ethical question of the role of the attorney appointed for a child in a custody dispute. Should the attorney zealously represent and advocate the child's wishes or advocate what he determines is the best interest of the child? This question is considered at the end of the opinion.

**Issue No. 1: Child Custody**

The wife's first issue is that to determine the children's best interests the District Court emphasized the children's wishes and ignored the factors listed in Section 40-4-212, MCA, giving greater weight to the husband's evidence and refusing to follow the recommendation of the children's attorney. She argues this is reversible error and this Court should grant her custody of the children.

As this Court has iterated many times, the trial judge in a divorce proceeding is in a better position than this Court to resolve child custody. The district court's decision is presumed correct and will be upheld unless clear abuse of discretion is shown. The appealing party must show, by clear error (Rule 52(a), M.R.Civ.P.) that the record does not support the judgment of the district court. Lee v. Gebhardt (1977), 173 Mont. 305, 309, 567 P.2d 466, 468.
In this case, both parties stockpiled an impressive supply of ammunition for verbal warfare with each other. The District Court heard testimony from a psychiatrist, a psychologist, a school counselor, neighbors, relatives, and colleagues. Much of the testimony conflicts and some of it concerns the possibility of physical abuse of the children by both parents. The record indicates that the judge's paramount concern was the children's best interest, not merely their wishes. The findings show the judge considered all the factors listed in Section 40-4-212, MCA.

The psychiatrist, the psychologist and the children's attorney all recommended that the children be placed with their mother. Undoubtedly, the wife presented credible evidence supporting her custody claim, but the husband also provided evidence from family friends and colleagues and the District Court found this testimony more credible. It is the District Court's determination of the children's best interest, not the expert witnesses' opinion, that controls. The factors set forth in Section 40-4-212, MCA, were considered, appropriate findings were made, and sufficient evidence supported those findings. The custody award is affirmed.

Issue No. 2: Property Distribution

The wife argues that the property distribution is wrong for the following reasons: the husband's values were adopted nearly verbatim without the court indicating the basis of the determination despite conflicting evidence from the wife's experts and the husband; the husband overvalued property the wife received and undervalued property he received; the husband received more income producing property than the wife; the value of personal property brought into the marriage 15 years ago was set off; and, there are numerous errors in the value of the marital estate caused by counting some items twice and omitting others.

The standard of review of a property settlement has been stated many times. In dividing property in a marriage dissolution the district court has far-reaching discretion and its judgment will not be altered without a showing of clear abuse of discretion. The test of abuse of discretion is whether the trial court acted arbitrarily without employment of conscientious judgment or exceeded the bounds of reason resulting in substantial injustice. Applying this standard, the District Court abused its discretion and we find four substantial injustices: the husband's values, while not adopted absolutely verbatim, were almost always accepted without explanation even though the record indicates some of the husband's values are questionable; as her share of the marital estate the wife received household goods with inflated values while the husband received income producing property such as stocks and an annuity; non-income producing property brought into the marriage 15 years ago was "deducted from the division of property" resulting in an inequitable and unworkable property division; and, various "credits" -- payments on real property, withdrawals from checking accounts, child support -- appeared as distributions of property but it is unclear what a "credit" is in this context.

The husband's pension was valued at the amount of his contribution. It is well established in this state and other states that retirements benefits are part of the marital estate. Valuing pensions presents several problems; as the Supreme Court of California, en banc, pointed out in Re Marriage of Brown (1976), one problem is what value, if any, should be assigned to nonvested benefits.
Pension rights can be categorized into three classes:

(1) Matured -- Participant has an unconditional right to immediate payment.

(2) Vested but not matured -- Participant's claim to the pension rights would survive voluntary or involuntary termination but funds are not presently payable.

(3) Nonvested -- Participant has no claim to pension rights in the event of termination.

In this case, there may be nonvested pension benefits in the form of employers' future contribution. The value of these benefits was not considered.

Nonincome-producing assets to wife [***10] . More serious error exists because the District Court adopted the husband's values for household goods and then awarded most of this property to the wife. The District Court considers the husband's testimony to be the more credible for valuing but this Court questions that credulity. One example is an item called a "sterling set of twelve." The husband [*47] valued it at $3,500 and suggested that it be awarded to the wife. The wife had it appraised and it was valued at $1,068. The husband testified that many of these "assets" were acquired very cheaply at rummage sales and their value comes from his labor. He prepared detailed lists with such items as:

- Waffle Iron $40.00
- Bath Towels $75.00
- Canning Jars $40.00
- Iron $20.00

This makes up much of the wife's property award while he receives Montana Power Stock, tax annuities and his pension. This is inequitable. This Court sympathizes [***84] with the District Court because it was forced to referee two adults using the court system to place a value on tea cups and bath towels. On remand we suggest the court must reach a decision about the division of household assets really having a market [***11] value and the value of non-marketable items should not be included in the marital estate.

Prenuptial property. Section 40-4-202(1), MCA, allows property acquired before the marriage to be considered in equitably apportioning the marital estate. However, this statute does not mandate that each party be returned the value of all the property they brought into the marriage. In this case because the length of the marriage, 15 years, the District Court erred in returning the value of these assets to the parties. This prenuptial property was also "valued" by the husband. It consisted of:

<table>
<thead>
<tr>
<th>Husband</th>
<th>Wife</th>
</tr>
</thead>
<tbody>
<tr>
<td>Equity in home</td>
<td>$1,500</td>
</tr>
<tr>
<td>Furniture, etc.</td>
<td>1,555 $1,310</td>
</tr>
<tr>
<td>Car</td>
<td>1,800 400</td>
</tr>
</tbody>
</table>
Cash 5,000
Coffee Grinders 100

$ 9,955  $ 1,710

These assets have long since been consumed, just as the capital assets of a business eventually are matched against income as expenses.

It is not clear what the District Court intended in the way it handled the prenuptial property of the parties. Its computations indicate [*48] the District Court first determined the values of the marital estate to be assigned to the parties, and then subtracted the prenuptial values [***12] from each party's share, instead of from the opposite party's share. This had the effect of taking away from each party the value of the property each party brought into the marriage.

Various credits. The wife contended that the District Court double counted assets. The District Court amended its findings to correct a $1,000 error. The findings show "credits" as assets, withdrawals as assets and payments as assets. This Court suggests that the District Court determine the value of the present estate, divide it, and then consider whether prior distributions or payments should be added or deducted from one or the other of the parties.

Issue No. 3: Maintenance

The wife argues that the District Court relied too heavily on the husband's assertion that the wife could earn $17,000 a year as an elementary school teacher. We agree.

It may be a fact that a kindergarten teacher in Missoula earns $17,000 per year but there is nothing in the record to support the finding that the wife in this case can earn that amount. The wife is 46 years old, without a teaching certificate at this time, and without teaching experience for the last 16 years. The husband has continued to [***13] work throughout their marriage and is now making $2,000 per month. Awarding maintenance for one year simply does not meet the criteria of Section 40-4-203, MCA. It ignores the time necessary to find employment, the standard of living of the marriage, the duration of the marriage, the age and physical condition of the wife, and the husband's ability to meet his needs. *Cromwell v. Cromwell* (1979), 180 Mont. 40, 588 P.2d 1010.

In *Bowman v. Bowman* (Mont. 1981), 633 P.2d 1198, 38 St.Rep. 1515, this Court held that in awarding maintenance the district court must consider whether assets awarded to the spouse seeking maintenance are income producing. On remand, after reconsidering the distribution of the marital estate, the District Court must reconsider the wife's salary prospects and duration of maintenance.

Issue No. 4: Attorneys Fees

The wife argues that the District Court did not state the reason for refusing to grant her attorneys fees, therefore this Court [*49] should grant her attorneys fees. This court has held that in a divorce case a district court must indicate its reasons for refusing to grant attorneys fees. *Hammeren [**85] v. Hammeren [***14]* (Mont. 1982), [201 Mont. 443,] 663 P.2d 1152,
In this case the District Court at Finding no. 37, states "after considering the financial resources of both parties, the Court finds that both parties have the ability to pay their own attorney's fees and should do so." This is a clear indication of the court's reasoning, therefore the denial of attorneys fees is upheld.

**Issue No. 5: Child Support Payments**

In April 1983 the parties filed a stipulation with the District Court that the husband would pay child support of $400 per month. In June 1983, there was a hearing to determine whether the children could go to Canada with the husband, but no request to modify support was made. On July 6, 1985, Judge Henson issued an order that said nothing specific about child support. The final sentence of that order stated, "The provisions of the stipulation regarding custody and visitation rights of the children shall remain in force and effect in all respects except as specifically amended by this order." In other words, on July 6, 1983, the District Court ordered the husband to pay child support during the summer. In the fall the husband sought to modify the stipulation retroactively so as not to pay support during the time he had the children.

**HN8** Section 40-4-208(1), MCA, states, "Except as otherwise provided in 40-4-201(6), a decree may be modified by a court as to maintenance or support only as to installments accruing subsequent to the motion for modification." The District Court did not have the power on March 2, 1984 to modify payments resulting from a July 9, 1983 order. The District Court is reversed on this issue and the husband is ordered to make the child support payments due during the summer of 1983.

We do not address the issue of child support from the noncustodial parent in compliance with In re the Marriage of Carlson (Mont. 1984), [214 Mont. 209], 693 P.2d 496, 41 St.Rep. 2419 because the husband does not raise it.

**[*50]** *Role of Attorney Appointed to Represent Children in Custody Dispute*

The attorney appointed by the District Court to represent the children has raised an important and difficult ethical question -- is the attorney appointed to represent a child in a custody dispute ethically bound to advocate the child's wishes or to advocate the child's best interests? Our remarks on this question are prefaced with the comment that we are addressing only the very narrow question of court-appointed representation of a child in a custody dispute arising out of a divorce. Nothing is being said about the representation of individuals suffering any disability besides minority nor are we addressing the representation of minors in adversary or quasi-adversary proceedings. Clients under a disability are as entitled to the protection of their due process rights as any other client; if anything, these individuals have a greater need for zealous representation.

Disciplinary Rule 7-101(A) is the applicable rule under the Code of Professional ethics.

**HN9** DR 7-101 Representing a Client Zealously.

"(A) A lawyer shall not intentionally:

"(1) Fail to seek the lawful objectives of his client through reasonably available means permitted by law and the Disciplinary Rules, except as provided by DR 7-101(B). A lawyer does not violate this Disciplinary Rule, however, by acceding to reasonable requests of opposing counsel which do not prejudice the rights of his client, by being punctual in fulfilling all professional commitments, by avoiding offensive tactics, or by treating with courtesy and consideration all persons involved in the
legal process.

"...

"(B) In his representation of a client, a lawyer may:

"(1) Where permissible, exercise his professional judgment to waive or fail to assert a right or position of his client."

Ethical Consideration 7-12 is also applicable.

"Any mental or physical condition of a client that renders him incapable of making a considered judgment on his own behalf casts additional responsibilities upon his lawyer. Where an incompetent is acting through a guardian or other legal representative, a lawyer must look to such representative for those decisions which are normally the prerogative of the client to make. If a client under disability has no legal representative, his lawyer may be compelled in court proceedings to make decisions on behalf of the client. If the client is capable of understanding the matter in question or of contributing to the advancement of his interests, regardless of whether he is legally disqualified from performing certain acts, the lawyer should obtain from him all possible aid. If the disability of a client and the lack of a legal representative compel the lawyer to make decisions for his client, the lawyer should consider all circumstances then prevailing and act with care to safeguard and advance the interests of his client. But obviously a lawyer cannot perform any act or make any decision which the law requires his client to perform or make, either acting for himself if competent, or by a duly constituted representative if legally incompetent."

Under the presently proposed Rules of Professional Conduct the applicable rule will be Rule 1.14.

RULE 1.14 Client Under a Disability.

"(a) When a client's ability to make adequately considered decisions in connection with the representation is impaired, whether because of minority, mental disability or for some other reasons, the lawyer shall, as far as reasonably possible, maintain a normal client-lawyer relationship with the client.

"(b) A lawyer may seek the appointment of a guardian or take other protective action with respect to the client, only when the lawyer reasonably believes that the client cannot adequately act in the client's interest."

Ordinarily, a lawyer's relationship with a disabled client should not differ from the normal client-lawyer relationship. In a normal client-lawyer relationship the lawyer's role is not to determine the client's interest, his role is to advocate the client's interest.

The child custody dispute presents a unique situation because the child, although not a party to the action, is the person most affected by the action. The reason there is a custody action is that the child is not yet mature enough to be self-determining. In recognition of this the legislature passed Section 40-4-205, MCA.

"The court may appoint an attorney to represent the interests of a minor dependent child with respect to his support, custody, and visitation. The county attorney and the deputy county attorneys, if any, may not be appointed for this purpose. The court shall
enter an order for costs and fees in favor of the child's attorney. The order shall be made against either or both parents, except that if the responsible party is indigent, the costs shall be waived."

The interest referred to in this statute is the child's best interests, [*52] not the child's wishes. As this Court has reiterated many times, in all matters relating to child custody and visitation, the best interests of the child control.

We recognize that in Montana HN13 the attorney for the child is not a guardian ad litem. Nevertheless his role in a custody dispute is to advocate the child's best interest, not the child's wishes. This is a difficult role, particularly when the child's expressed wishes conflict with the attorney's determination of his best interests. But, given the immaturity of the client and the pressures that often exist in a divorce situation, it is this Court's opinion that the best interests of the child, the paramount concern in all custody disputes, is best served by modifying the traditional lawyer-client relationship.

[**87] As the Alaska Court stated in Veazy v. Veazy (Alaska 1977), 560 P.2d 382, 390:

"[I]t is equally plain that the guardian is not required to advocate whatever placement might seem preferable to a client of tender years. A young child may well prefer the less disciplined environment to the more disciplined one. He may prefer the parent who takes him on outings for recreational activities over the one who stays home to prepare his meals and keep the home clean. But the guardian would be abdicating his responsibility to his client and the court to use his best professional judgment, were he to automatically recommend that young child's preference without further scrutiny. A child who has been living for some time with one parent might understandably select that parent, good or bad, because it represents the only home the child has ever known. This 'psychological parenthood,' while relevant, is not conclusive concerning what is in the child's best interests.

"A child may have his thinking consciously or subconsciously colored by one parent against the other. The guardian ad litem must try to delve into this question and take all relevant factors into account regardless of what the child may or may not believe he 'ought' to say."

This Court is aware that determining a child's best interests is difficult and is concerned about the child's right to an advocate. We reiterate our position that a child's wishes deserve serious consideration, In Re Marriage of Kramer (1978), 177 Mont. 61, 69, 580 P.2d 439, 444. HN15 If the court-appointed attorney concludes that the child's expressed wishes are not in his best interest the attorney must disclose this to the court. The district court must be clearly informed of the child's wishes and the basis for the attorney's determination [*53] that it is not in the child's best interest to live with the preferred parent.

Reversed and remanded for further proceedings in accordance with this opinion. Costs to the wife.

MR. JUSTICES HARRISON, MORRISON, GULBRANDSON and HUNT concur.
APPENDIX 9

RULE 1.8: CONFLICT OF INTEREST: CURRENT CLIENTS: SPECIFIC RULES

(a) A lawyer shall not enter into a business transaction with a client or knowingly acquire an ownership, possessory, security or other pecuniary interest adverse to a client unless:
(1) the transaction and terms on which the lawyer acquires the interest are fair and reasonable to the client and are fully disclosed and transmitted in writing to the client in a manner that can be reasonably understood by the client;
(2) in matters in which a lawyer wishes to assert a retaining lien against client property, papers or materials in the lawyer’s possession to secure payment for the lawyer’s services and costs advanced relating to such property, papers or materials, a written agreement for such a lien shall expressly set forth the limitations contained in paragraph (i)(3);
(3) the client is advised in writing of the desirability of seeking and is given a reasonable opportunity to seek the advice of independent legal counsel on the transaction; and
(4) the client gives informed consent, in a writing signed by the client, to the essential terms of the transaction and the lawyer’s role in the transaction, including whether the lawyer is representing the client in the transaction.
(b) A lawyer shall not use information relating to representation of a client to the disadvantage of the client unless the client gives informed consent, except as permitted or required by these Rules.
(c) A lawyer shall not solicit any substantial gift from a client, including a testamentary gift, or prepare on behalf of a client an instrument giving the lawyer or a person related to the lawyer any substantial gift unless the lawyer or other recipient of the gift is related to the client. For purposes of this paragraph, related persons include a spouse, child, grandchild, parent, grandparent or other relative.
(d) Prior to the conclusion of representation of a client, a lawyer shall not make or negotiate an agreement giving the lawyer literary or media rights to a portrayal or account based in substantial part on information relating to the representation.

(e) A lawyer shall not provide financial assistance to a client in connection with pending or contemplated litigation, except that:

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(1) a lawyer may advance court costs and expenses of litigation, the repayment of which may be contingent on the outcome of the matter;
(2) a lawyer representing an indigent client may pay court costs and expenses of litigation on behalf of the client;
(3) a lawyer may, for the sole purpose of providing basic living expenses, guarantee a loan from a regulated financial institution whose usual business involves making loans if such loan is reasonably needed to enable the client to withstand delay in litigation that would otherwise put substantial pressure on the client to settle a case because of financial hardship rather than on the merits, provided the client remains ultimately liable for repayment of the loan without regard to the outcome of the litigation and, further provided that neither the lawyer nor anyone on his/her behalf offers, promises or advertises such financial assistance before being retained by the client.

(f) A lawyer shall not accept compensation for representing a client from one other than the client unless:
(1) the client gives written informed consent;
(2) there is no interference with the lawyer's independence of professional judgment or with the client-lawyer relationship; and
(3) information relating to representation of a client is protected as required by Rule 1.6.

(g) A lawyer who represents two or more clients shall not participate in making an aggregate settlement of the claims of or against the clients, or in a criminal case an aggregated agreement as to guilty or nolo contendere pleas, unless each client gives informed
consent, in a writing signed by the client. The lawyer's disclosure shall include
the existence
and nature of all the claims or pleas involved and of the participation of each
person in the
settlement.
(h) A lawyer shall not:
(1) make an agreement prospectively limiting the lawyer's liability to a client for
malpractice unless the client is independently represented in making the
agreement;
or
(2) settle a claim or potential claim for such liability with an unrepresented client
or
former client unless that person is advised in writing of the desirability of
seeking and
is given a reasonable opportunity to seek the advice of independent legal counsel
in
connection therewith.
(i) A lawyer shall not acquire a proprietary interest in the cause of action or
subject matter
of litigation the lawyer is conducting for a client, except that the lawyer:
(1) may acquire and assert a charging lien only against causes of action or
counterclaims in litigation pursuant to and only to the extent specified in MCA
37-61-
420(2); such a charging lien does not extend to other client property, papers or
materials in the lawyer's possession, to any matter not in litigation, or to any
matter
otherwise not covered by the specific language of MCA 37-61-420(2);
(2) may contract with a client for a reasonable contingent fee in a civil case; and
(3) may not acquire or assert a retaining lien to secure payment due for the
lawyer's
services against any client property, papers or materials other than those related
to the
matter for which payment has not been made and, upon termination of
representation,
10
shall deliver to the client any client property, papers or materials reasonably
necessary
to protect the client's interest in the matter to which the property, papers or
materials
relate as provided in Rule 1.16(d).
(j) A lawyer shall not have sexual relations with a client unless a consensual sexual
relationship existed between them when the client-lawyer relationship
commenced.
(k) While lawyers are associated in a firm, a prohibition in the foregoing paragraphs (a) through (i) that applies to any one of them shall apply to all of them.
Children First
Court and Judge’s Rulings

- Judges are highly trained officials
- Judges do not have crystal balls
- Courts must rule based upon the “Best Interest of the Child” standard
  - Judges may need more information
    - Parenting Assessments, Home Studies
    - Guardian ad litem’s
    - Psychological Evaluations

Children’s Reactions to Dissolution

- Confusion
- Sadness
- Anger
- Attempts to get parents back together
YOUR GOAL:
SUCCESSFUL CO-PARENTING

- Well adjusted children
  - Loving & trusting both parents
  - Positive support from family as they grow

- Well adjusted parents
  - Cooperating for the good of the children

Mutual respect
Living independent, successful lives

How to co-parent by creating Parenting Plans

- That will work for your children
- That will work for you
Co-parenting

- How to talk about your co-parent
- Managing children's activities
- Clothing for the children
- Relationships with relatives
- Exposure to alcohol, tobacco
- Unexpected schedule changes

There IS a lot to decide
(In the Best Interests of the Children)

- Tax status
- Change in circumstances
  - Schedule/work/living arrangements
- Special needs
- Religious education
- A plan for future decision making
Why it can be so hard to make parenting plan agreements:

· Your world is changing:
  - You and your co-parent may disagree right now
  - Children’s needs cannot be put off for later

· Change causes normal feelings:
  - Loss & Grief
  - Anger & Defensiveness
  - Overwhelmed by details and demands on your time

Co-parent Communication
Decision Making

· Parenting Communications

· Decision Making
  - Emergency
  - Every Day
  - School/Health/Spiritual
Parenting Plan Objectives

- Protect Best Interests of Minors
- Physical Care of Minor Children
- Maintain Emotional Stability & Minimize exposure to parental conflict
- Provide for changing needs as children grow & mature
- Sets authority and responsibility for each parent
- Helps avoid future court battles over children

Residential Schedule

- Pre-school ages
- School Year Schedule
- Holidays
- Winter/Spring Vacations
- Summer Vacation
- Other Vacations with Parents
Factors in Parenting Arrangements

- Developmental Level
- Behavioral Style
- Cooperation between Parents
Developmental Level

- Age in Years
- Emotional Age of Child and of Each Parent

Birth to Three Years

- Contact with each parent every day or two that is predictable and routine
- Living and Child Care arrangements that don’t change often
- One primary home
Three to Six Years

- Frequent and regular contact with each parent
- One primary home
- Up to week long contacts with the other parent on an occasional basis
- The same day care provider

Six to Twelve Years

- Longer periods of time with each parent
- One primary home is not as important but overnight transitions during the school week are to be avoided
- Strong communication between parents and rules that are the same are very important
Adolescence

- Consistency between parents regarding rules and limits
- A high degree of Communication between parents

Behavioral Style

(of child and each parent)

- Activity Level
- Adaptability
- Reaction to a New Situation
- Rhythmicity
- Intensity
- Mood
- Distractibility
- Persistence
- Sensory Threshold
Some children have more difficulty going back and forth between parents due to their behavioral style.

Some parents have more difficulty with their children going back and forth due to their behavioral style.
MCA Required Access to Information & Notice Section

- Access to information about your child's medical, dental, psychological, and school records.
- Notice to co-parent of:
  - moves
  - Employers
  - Health insurance
  - Phone and address

Child Support & Health Insurance

- Child Support: an entitlement for your children
  - Montana Child Support Enforcement Division
  - Financial Affidavits
- Health Insurance
  - Private, Employer, Group
  - CHIPS
  - Medicaid
**Dispute Resolution Plan**

- Notify your co-parent about the disagreement
- How will you avoid court in the future?
  - Attorneys Negotiate
  - Mediation
  - Counseling

**Regular Review of the Parenting Plan**

- Children Grow and Change: Constantly
  - Annual Review
  - Every Other Year
Ways to make these recommendations more flexible

Cooperate

Communicate

Support each other
Cooperation between Parents

- Level of Communication

- Ability to work together for the best interests of the child

A NEW PARENTING RELATIONSHIP
From Intimate to Businesslike

Intimate:
- Casual
- Spontaneous
- Courteous

- Based on give & take
- Sharing a life together

Businesslike:
- Formal
- Planned
- Courteous

- Based on being reliable & following through
- Sharing your children together
Effects of Conflict between Parents

- Need for the child to take sides
- Poor self esteem
- Emotional disturbance
- Poor academic performance
- Delinquency
YOU DO HAVE CHOICES:

- NEGOTIATE TOGETHER - Talk it out yourselves
- USE ATTORNEYS TO NEGOTIATE - Attorneys work it out, and check back with you as needed to finalize decisions.
- MEDIATE - Get together with an impartial third party
- USE ATTORNEYS TO GO TO COURT - Attorneys prepare evidence, professionals evaluate parenting situation, witnesses testify in court, judge makes the decision

What's Best for YOUR Kids?

What is best for your children?

ATTORNEYS GO TO COURT

NEGOTIATE TOGETHER

YOUR PARENTING PLAN

MEDIATE

USE ATTORNEYS TO NEGOTIATE
When Parents Can Work Together

- Children will be still be distressed for a short time
- Good adjustment by the child before long
- Both Parents can continue to enjoy their child
- Parents can help each other
CHILDREN'S RIGHTS
WHEN PARENTS NO LONGER LIVE TOGETHER

1. Let us love both of you
   Please don’t make us take sides
2. Don’t argue when we can hear

3. Don’t say bad things about each other

And - Don’t let other people say bad things about each other when we can hear
4. Don't use us to give messages to each other
   Talk to each other when you need to

5. Follow the schedule unless you both agree to change it
6. If you move away, call us, write us, don't forget us

7. Try to agree about what's best for us
Let us love both of you
Dear Colleague:

We are writing to inform you of an exciting new ABA-funded project in Dane County. The Children’s Legal Protection Project’s (CLPP) focus is to enhance the connection between legal advocacy for children and critical mental health and social services. The project also includes a pro bono component in which attorneys provide representation in child abuse injunction cases.

To kick off this project, we will be holding our first (free!) training on Friday, December 2, 2005 from 12:00-2:30 p.m. in Room #201 of the City County Building in Madison. Lunch will be provided (please bring your own beverage). The training will cover the following topics:

12:00-1:00 – Child Abuse Injunctions in Wisconsin
   Cyrus Behroozi, J.D.
   Director or Child Advocacy
   Task Force on Family Violence, Milwaukee, WI

1:00-2:00 – Mental Health Issues: Child Abuse Disclosures in the Context of Divorce
   Sharyl Kato
   Director and Child & Family Therapist
   The Rainbow Project, Inc., Madison, WI

2:00-2:30 – Panel Discussion: Emerging Issues at the Intersections of Child Custody, Domestic Violence and Mental Health
   Confirmed to date:
   Hon. Mary Beth Keppel
   Dane County Family Court Commissioner
   Kristin Hoffschmidt
   Domestic Abuse Intervention Services, Madison, WI
   Dr. Hugh Johnston
   Consulting Psychiatrist, The Rainbow Project, Inc., Madison, WI

If you are able to join us for the training on December 2nd, please complete and return the enclosed Registration Form. If you are interested in participating in the program as a volunteer lawyer in a child abuse injunction case, please complete and return the enclosed Application Form. If you are unable to volunteer or attend the conference, please consider making a tax-deductible contribution to the Children’s Legal Protection Project. If you have any questions or for further information, please do not hesitate to contact us.

We hope you will team with us in this important project!

Sincerely,

Sharyl Kato
Director and Child and Family Therapist
The Rainbow Project, Inc.
(608) 255-7356
skato@therainbowproject.net

Sarah Helvey
Managing Attorney
Community Justice Inc.
(608) 204-9642
schelvey@communityjusticeinc.org

The Children’s Legal Protection Project is supported by a grant from the American Bar Association (ABA) Child Custody Pro Bono Project.
Marriage and Divorce

In 1990 the marriage rate was just double the divorce rate (approximately 2.4 million marriages and 1.2 million divorces). Following the literally millions of divorces during the preceding decade approximately 35% of the minor children in the United States were affected by the divorce of their parents.

Despite the spousal conflicts leading to divorce, almost ninety per cent of divorcing parents are able to reach a mutual agreement regarding custody and visitation with little or no intervention from the Court. Because the other ten per cent of the divorcing parents cannot agree on custody and visitation issues initially, they are likely not to be able to agree on parenting issues in the future. Courts strive to help these families by creating flexible arrangements that will hopefully work as families grow and change.

Unfortunately the adversarial nature of the system that is supposed to provide relief serves only to become an alternate forum for the expression of conflict.

For instance, Sullivan (FN1) (1997) studied sixty-one divorcing families with children over a five year period. After five years many of the parents were still fighting and nearly one third of the children continued to be subject to intense bitterness between the parents.

Children become the prize to be won or lost in what often becomes an escalating conflict. And, the courts, often at a loss as to what determination to make for which children, turn to mental health experts for advice.

With increasing caseloads and limited time to assess a divorcing parent's claim for designation as either residential or responsible parent the courts have responded to simplistic accusations which cast blame on one parent in order to make it easier for the other parent to prevail.

Notable among the allegations made by counsel in representing their client's claim for “sole ownership” of the “prize” is that of “parental alienation syndrome”. The popularity of such a claim has been enhanced by the prolific writing and public appearances of Richard Gardner, M.D. as originator of this “syndrome” (FN2) (Gardner, R., 1992).

FN1: Sullivan, (1997)
FN2: Gardner, R., 1992
In this article we will challenge both the scientific and legal legitimacy of this syndrome. After first defining "parental alienation syndrome" (PAS) we will review the criteria by which expert testimony may be accepted into evidence and explore the shortcomings of PAS under Frye and Daubert. We will then delineate the mental health expert's ethical obligation when serving as an expert before the court as it relates to PAS. We will review the relevant case law as it pertains to the admissibility of PAS before the courts. Finally we will offer alternative areas for inquiry into the source of impaired parent child relationships occurring in the context of child custody litigation.

PAS

Termination of a spousal relationship without attendant damage to the parental relationship is a difficult task. When one parent refuses to allow the other parent to be involved in the child's life, conflict ensues and a return to court becomes inevitable. Where one parent sabotages (intentionally or unintentionally) the other parent's role in the child's life or a child becomes estranged from a parent the term “parental alienation” is used.

The term has its historical roots in the common law tradition where the tort of alienation of affection was a cause of action against a third party adult who “steals” the affection of the plaintiff's spouse (FN3) (Niggemyer, K., 1998).

More recently Richard Gardner (FN4) (1992) coined the term “Parental Alienation Syndrome” to describe the situation in which, he asserts, a child is brainwashed solely by an alienating parent's actions.

Wood (FN5) (1994) notes that in developing the PAS “the criteria Dr. Garner uses to determine whether PAS is present are essentially borrowed from and built upon his earlier - and now widely discredited - objective test for determining whether children were fabricating allegations of sexual abuse, the “Sex Abuse Legitimacy Scale” (SALS).

Gardner believes that PAS arises almost exclusively in the context of child custody disputes. Gardner further asserts that, while a child contributes to the development of the alienation process, the predominant source of alienation is one parent, generally the mother.

Unfortunately, again, too many courts and too many of the mental health professionals upon whom they rely have blithely accepted in toto Gardner's theoretical writings without the critical examination requisite either under the law or the ethical standards of professional psychological practice.

Before accepting PAS as science in family litigation it behooves both the family practitioner and the court to have a clearer understanding of what is more hyperbole than substance.
Among the legal tools available to aid the court in determining the value and utility of expert testimony in deciding a particular case are the Federal Rules of Evidence and the Frye rule.

The Frye rule is derived from a 1923 Federal Court of Appeals decision (Frye v. United States, 293 F. 1013, 1014, D.C. Cir. 1923) which holds that for scientific evidence to be admissible in court it must be gathered using techniques that have gained general acceptance in their field.

In 1993 the U.S. Supreme Court issued a decision in Daubert v. Merrell Dow Pharmaceuticals, Inc. (Daubert v. Merrell Dow Pharmaceuticals, Inc., 113 S. Ct. 2786, 2792-93, 1993) that provided a more clear cut, albeit sometimes ambiguous, set of guidelines for the admissibility of scientific expert testimony.

In setting forth the factors that should be considered when determining if a theory or technique qualifies as scientific knowledge that will assist the trier of fact the Court did not forgo Frye. The factors enumerated in Daubert are: (a) Is the theory or technique based on methodology that can or has been tested? (b) Has the theory or technique been the subject of peer review and publication? (c) What is the known or potential rate of error? (d) Does the technique enjoy general acceptance within the scientific community? (the old Frye rule!).

The court held that the Frye rule, including general acceptance as the primary determinant of admissibility of evidence based on scientific techniques, had been superceded by the revised Federal Rules of Evidence (1974).

Rotgers and Barrett (1996) cogently argue that the Daubert decision (and the Frye decision before it) has “important implications for...psychologists and other health care professionals....whose professions have taken on the mantle of science”.

They point out that mental health practitioners (psychologists, psychiatrists), despite the doubtful scientific status of many theories and assessment techniques in the field, have held themselves out to the public (and to the courts) as utilizing scientifically valid theories and methods of practice and therefor should be held to the same standards by courts as other professions that have done the same.

What then are the courts’ standards?

In Daubert the Supreme Court sought to clarify the criteria for the determination of admissibility of expert testimony. According to Rule 702 of the Federal Rules of Evidence “If scientific, technical or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue, a witness qualified as an expert by knowledge, skill, experience, training, or education may testify thereto in the form of an opinion or otherwise”.
That the evidence must be reliable is implied by the use in Rule 702 of the term “scientific knowledge”. According to the Supreme Court the term “scientific knowledge” “implies a grounding in the methods and procedures of science”. In a similar vein “the word ‘knowledge’ connotes more than subjective belief or unsupported speculation”. In any case involving scientific evidence “evidentiary reliability will be based on scientific validity”.

This approach allowed, in Daubert, sound science (based on sound scientific methodology) to prevail even though it was new science and not yet widely accepted among the scientific community from which it sprang.

Writing in the Journal of the American Medical Association Gold (FN10) (1993) and his colleagues warn that the implication for medical (or mental health) practitioners under Daubert, and Frye before it, is “first and foremost....that there is a difference between science and pseudoscience, and that it is the judge’s role to ensure that testimony offered as ‘scientific’ meets a minimum test of validity before it may be put to the jury”.

How then does Gardner’s PAS meet the standard of scientific knowledge under the criteria set forth in either Frye or Daubert?

**(a) Is the theory or technique based on methodology that can be or has been tested?**

There are many competing theories of human behavior on which mental health professionals have drawn in reaching diagnoses and treatment recommendations. There is also a large scientific literature that has addressed empirically testable predictions based on those theories.

However, many theoretical constructs are presented by clinicians as expert testimony for which there is no scientific validation. Gardner’s PAS is one of these “syndrome” theories for which the scientific basis is non-existent.

Rogers and Barrett (FN11) (1996) note that “although it is possible to identify common behavior patterns among persons who are known to have suffered traumatic experiences of various types, syndrome theory, and often the testimony based on it, goes well beyond this possibility to state that “all” persons who suffer particular types of trauma show characteristic behaviors”.

These authors go on to cite Gardner’s PAS as the exemplar of “some practitioners (who) have been willing to engage in reverse logic and state that because an individual demonstrated a particular behavior pattern, trauma must have occurred”. They go on to acknowledge that the fit between syndrome theories and particular legal questions is often good but, they point out, these theories have not been scientifically tested.
Referring to the exhaustive and erudite critique of PAS by Wood (FN12) (1994) they note further that the lack of scientific testing “makes any conclusions or accounts of events that are based on syndrome theories problematic. Even if the data relied upon are gathered using scientifically valid methods, if the theoretical explanation underlying the data is faulty, the data may be presented in a fashion that misleads the trier of fact”.

(b) Has the theory or technique been the subject of peer review and publication?

Berliner and Conte (FN13) (1993) scathingly note “Indeed the entire scale (the SALS) and the Parental Alienation Syndrome on which it is based have never been subjected to any kind of peer review or empirical test”.

Less kind have been comments such as Conte’s (FN14) (Moss, D.C., 1988) quoted in when referring to the SALS “…is probably the most unscientific garbage I’ve seen in the field in all my time…to base social policy on something as flimsy as this is exceedingly dangerous”.

Stephanie Dallam (FN15) (1998) examined Gardner’s counter-claim that his work has been published in peer-reviewed journals, a list of which is provided at Gardner’s website.

She reports that two publications were chapters in books, two other articles were published in a newsletter of the American Academy of Psychoanalysis, and the two remaining articles were published in legal journals – none of these six being peer reviewed journals!

This author’s exploration of Gardner’s website reveals that he cites thirty (30) cases in which PAS has been introduced as evidence before a family court. A more thorough investigation reveals that one case (In the Interest of T.M.W., 553 So. 2nd 260, 262, Fla. Dist. Ct. App., 1988) is cited three times! and in fact PAS was not accepted as scientifically valid!

(c) What is the known or potential rate of error?

The known or potential rate of error refers to the psychometric properties of a test or assessment methodology. In developing a predictive measuring tool one is concerned with both the reliability and validity of the instrument or theory.

As defined in classical test theory reliability consists of the extent to which an obtained score (or value or assertion) corresponds to the “true” (or real world) score. Is what is measured being measured accurately (reliably)? Are the results consistent when the same case is examined by different evaluators? The “true” score is an abstraction that can never be known for sure, the obtained score is a statistical measurement of the combination of this unknowable score and some error variance.
The manner in which an estimate of a score's reliability is derived (parallel form, split half, test-retest, and internal consistency methods), that is, whether it yields scores on which one can rely as providing a true picture of the property being measured, have crucial implications for forensic testimony.

Validity, as classically defined, consists of the extent to which it is known what a test measures (FN16) (Anastasi, A., 1983).

A test is considered to have face validity if its items have some clear and obvious relationship to the purpose of the test (if for example the test is a measure of depression we would expect to see items like “Are you feeling depressed?” as indicative of it having face validity).

A more important measure would be criterion related validity. This is a measure that consists of the relationship between a test or test score and some other measured (or known) variable.

Substantial correlation between test findings and current status, behavior or condition demonstrates concurrent validity. Substantial correlation between test findings and future events, conditions or behaviors provide evidence of their predictive validity. Finally construct validity consists of the extent to which observed relationships between test findings and present or future events, conditions or behaviors can be conceptualized in terms of a sound theoretical rationale that accounts for both the test findings and the extra-test behaviors or states.

Commenting on the poor test construction of the SALS Berliner and Conte (FN17) (1993) commented that “there are no studies which have determined if the Scale can be coded reliably. Many of the criteria are poorly defined. There have been no scientific tests of the ability of the SALS to discriminate among cases”.

In assessing the SALS criteria for reliability Campbell (FN18) (1997) notes that the SALS criteria are “vague and ill defined” and that as a result they invite a wide range of subjective opinion and therefore “Gardner's criteria cannot support expert testimony in legal proceedings”.

Deed (FN19) (Sherman, R., 1993) applied Gardner’s SALS (Sex Abuse Legitimacy Scale), from which PAS theory is derived, to confirmed cases of sexual abuse and found that the SALS produced inaccurate assessments.

Gardner (FN20) (1993) himself, in summing up whether PAS should be properly admitted in court, admitted that “PAS is an initial offering and cannot have pre-existing scientific validity”.

(d) Does the technique enjoy general acceptance within the scientific community? (the old Frye rule!)

Gianelli (FN21) (1980) asserts that the principal justification for the Frye test is that “it establishes a method for ensuring the reliability of scientific evidence”. This
serves to take the responsibility of determining the validity of a scientific principle away from the trial judge and leaving the determination to experts who know most about it.

In the case of PAS Gardner has based his theory entirely upon the observation of his own patients. It is for the most part self-published which circumvents peer review, and has not attracted wide acceptance in the scientific community (FN22) (Campbell, T.W., 1997; Dallam, S., 1998; Moss, D.C. 1988).

In refusing to admit PAS into evidence a Florida court (FN23) (In the Interest of T.M.W., 553 So. 2nd 260, 262 Fla. Dist. Ct. App., 1988) noted that “no determination was made in the order or on the record as to general professional acceptance of the ‘parental alienation syndrome’ as a diagnostic tool”.

The Court went on to caution that “when considering the theory of expert testimony...it is vitally important to avoid the confusion engendered by reference to syndromes...At the present time experts have not achieved consensus on the existence of a psychological syndrome...use of the word syndrome leads only to confusion, and to unwarranted and unworkable comparisons to battered child syndrome”.

The Expert’s Obligation

For better or worse there is an inherent conflict between the goals of lawyers and the goals of ethical experts: the legal system is adversarial, science is not. Attorneys need partisan experts to persuade the trier of fact, be it judge or jury. Lawyers, according to Champagne and his colleagues (FN24) (1991) “seemingly want articulate, partisan experts with integrity”.

Sales and Shuman (FN25) (1993) argue that “to the extent that ethics governs all scientific and professional behavior – which it does – it is only appropriate that it become the first metric against which to judge the expert witnessing of scientists and professionals”.

Sales and Shuman point out that the most obvious case of the applicability of the ethics code to expert witnessing is the obligation to be competent (FN26) (American Psychological Association, 1992).

By becoming familiar with the applicable ethical standards governing the professional behavior of psychologists and psychiatrists a more reasoned judgement can be made about the admissibility of PAS in the courtroom. While we rely primarily on the ethical standards for psychologists (FN27) (American Psychological Association, 1992) in the following discussion it should be apparent to the reader that these standards speak to expected ethical professional behavior of any designation when one agrees to appear as a mental health expert before the courts.

Section 1.06 Basis for Scientific and Professional Judgements calls for psychologists to “rely on scientifically and professionally derived knowledge when making scientific or professional judgements”. Not having met the standards inherent in
Daubert and in Frye renders PAS unable to pass muster under this brief, but indispensable, ethical dictum.

Rotgers and Barrett (FN28) (1996) have made an effort to guide psychologists in their considerations concerning serving as an expert witness. They point out four standards of professional conduct (FN29) (American Psychological Association 1992) that appear to be clearly applicable to psychologists’ expert testimony that are specifically reinforced by the Daubert decision. These include, in addition to Standard 1.06, the following:

- **Standard 2.02 “Competence and Appropriate Use of Assessments and Interventions”** requires psychologists to select assessment instruments on the basis of research indicating the appropriateness of the instruments for the specific issue at hand and further enjoins psychologists from misusing those instruments.

- **Standard 2.04 “Use of Assessment in General and With Special Populations”** requires familiarity with the psychometric properties and limitations of assessment instruments used in the practice of psychology.

- **Standard 2.05 “Interpreting Assessment Results”** requires psychologists to directly state reservations they may have about the accuracy and limitations of their assessments.

As has been noted in the section above, PAS does not meet the courts' threshold requirement to qualify as scientific. Clearly then, the offering of PAS to the courts as an explanatory construct, let alone a basis for making recommendation about the future of children’s lives, does not meet the minimal set of ethical standards incumbent on experts appearing before the court.

**The Courts View**

While there are a few ‘hold out’ jurisdictions which continue to preserve the notion of alienation of affection most states have abolished the cause of action for alienation of affection and consequently a cause of action for parental alienation has effectively been precluded. In their rejection of the construct of alienation of affection various courts have ruled in the following fashion:

The Minnesota Supreme Court rejected an appellate court's creation of the “Intentional interference with custody rights” noting that “children can be devastated by divorce" and that “the law should not provide a means of escalating intrafamily warfare" (FN30) (Larson v. Dunn, 460 N.W. 2nd 39, 45-46 Minn. 1990) but that other remedies exist when a parent or other relative interferes with custody arrangements, and that “creating a tort of this nature is the job of the legislature, not the court”.

Florida courts (FN31) (In the Interest of T.M.W., 553 So. 2nd 260, 262, Fla. Dist. Ct. App. 1989) have noted that there has been no claim of general professional acceptance of PAS as a tool for diagnostic evaluation, and in fact that there is no consensus by experts that such a syndrome even exists.
In *Bartanus v. Lis* (FN32) (*Bartanus v. Lis*, 480 A.2nd 1178, 1181, Pa. Super. Ct. 1984) the court held that a cause of action for alienation of a child's affection is not recognized in Pennsylvania. In so ruling the court quoted *The Restatement (Second) of Torts* para 699, "one who, without more, alienates from its parents the affections of a child, whether a minor of full age, is not liable to the child's parents".

The Missouri Court of Appeals recognized a tort of alienation of affection of a minor or adult child (FN33) (*R.J. v. S.L.J.*, 801 S.W.2nd 608, 609, Mo. Ct. App. 1991) but in ruling opined that although the mother had a moral duty not to alienate the children's affections with respect to the father, she did not have a legal duty.

Despite expert testimony by a psychologist who asserted that the situation in question was the "worst case of PAS he had ever seen" a Wisconsin Court of Appeals held that there was "limited research data" to support, as "a successful cure" for children suffering from PAS, the removal of such children from their mother’s custody in affirming the trial court’s refusal to transfer custody to the father (FN34) (*Weiderholt v. Fischer*, 485 N.W. 2nd 442, 444, Wis. Ct. App. 1992).

The PAS criteria used by Gardner, as noted above, are essentially borrowed from and built upon his earlier (and now widely discredited) test for determining whether children were fabricating allegations of sexual abuse, the “Sexual Abuse Legitimacy Scale” (SAL Scale) (FN35) (Gardner, R., 1992).

The only appellate court to rule on the admissibility of the SAL Scale held it inadmissible because there was no showing that it had "some reasonable degree of recognition and acceptability among the spectrum of scientific or medical experts in the field" (FN36) (*Page v. Zordan*, 564 So. 2nd 500, Fla. Dist. Ct. App. 1990).

Wood (FN37) (Wood, C.L., 1994) very appropriately, comments that "although it might be argued that this court properly ignored the PAS testimony, the problem is that the court even admitted it at all. The mere admission of unreliable and untested testimony into evidence in the first place means that courts admitting evidence of this theory may rule on it differently, creating results that range from potentially very dangerous to inconsistent".

Finally, in her comprehensive review of PAS Wood was unable to find a single reported case where PAS testimony was introduced on behalf of the mother.

**Assessing the Utility of PAS**

Dallam (FN38) (1998) exhorts in her review of Gardner's theories that "all psychological evidence upon which a child's safety will turn must be subjected to empirical testing".

As we have hopefully made clear, straightforward observation, confirmed by a consensus of experts, reveals that rather than subjecting his theories to scientific review Gardner has published through his own press or in nonscientific journals. Because his
theories are based on his clinical observations (not on scientific data) they should be understood in the context of his atypical views concerning parent child relations (For a greater explication on his theories concerning pedophila as a “part of the natural repertoire of human sexual activity” (Richard A. Gardner, M.D., True and False Allegations of Child Sex Abuse, 1992) or that child abuse allegations are “third greatest wave of hysteria” the nation has seen, following the Salem witch trials and the McCarthyite witch hunting for communists in the 1940’s the reader is referred again to the very excellent reviews by Dallam (Stephanie Dallam, The Evidence for Parental Alienation Syndrome: An Examination of Gardner’s Theories and Opinions, Treating Abuse Today, 1998) or Wood (Cherri L. Wood, The Parental Alienation Syndrome: A Dangerous Aura of Reliability, 1994).

It would be far better for the courts, in their deliberations as to parental fitness when making custody determinations, to utilize the work of Benjamin D. Garber (FN39) (1996). Garber has noted that PAS theory confuses cause and effect, whereas science has demonstrated that a cause can not necessarily be inferred from an effect (In the realm of statistics “correlation does not imply causation”. It is often noted, with great fanfare in the press, that fashion hemlines or the winning league in the Super Bowl or the World Series correlate with either a rise or fall in the Dow Jones Industrial average – but that correlation does not imply causation!).

He cautions that it is very easy for a presumption of alienation “to take on a life of its own without proper consideration of the many alternative (and often more likely) causes of a child’s distress during parental separation and divorce”.

That parental conflict and the custodial parent’s ability to function have profound impact on children’s adjustment to divorce has been recognized in legal opinions. For instance, In re: Marriage of Carney (FN40) (Carney, 598 P. 2nd 37, Cal. 1979) the California Court recognized the child’s need for stability in its primary parenting relationship.

Johnston’s (FN41) (1989, 1994, 1995) research finds that where there is high conflict, or evidence of domestic violence, between the parents, children can deteriorate dramatically.

The ambivalence towards or rejection of one parent may be related to any number of factors (FN42) (Garber, B.D., 1996; Waldren, K.H. and Joanis, D. E., 1996) and not necessarily the psychopathology of one parent.

Among the many alternative factors to PAS for an expert to consider are:

- (1) developmentally normal separation problems,
- (2) deficits in the non-custodial parent’s skills,
- (3) oppositional behavior,
- (4) high-conflict divorce proceedings,
- (5) other serious emotional or medical problems of one family member,
- (6) child abuse,
- (7) inappropriate, unpredictable, or violent behavior by one parent,
- (8) incidental causes, such as the child’s dislike of a parent’s new roommate or lover,
• (9) alienation by third parties,
• (10) the child’s unassisted manipulation of one or both parents, or
• (11) fears for the absent parent’s welfare.

The value of an expert’s contribution to the courts’ deliberations regarding children’s welfare should be based on clinically sound reasoning formulated from empirically derived data that will serve the best interest of the child and not on unsubstantiated hyperbole.

**Footnotes**


**FN3**: Kathleen Niggemeyer, Parental Alienation is Open Heart Surgery: It Needs More Than a Band-Aid to Fix It, 34 *Cal. W. L. Rev* 567-589.

**FN4**: See Gardner, supra note 2.


**FN6**: *Frye v. United States*, 293 F. 1013, 1014 (D.C. Cir. 1923).


**FN11**: See Rotgers and Barrett, supra note 9.

**FN12**: See Wood, supra note 5.


FN17 See Berliner and Conte, supra note 13.


FN22 Campbell, supra note 18; Dallam, supra note 15; Moss, supra note 14.


FN25 Bruce D. Sales and Daniel W. Shuman, Reclaiming the integrity of science in expert witnessing, Ethics and Behavior, 1993, 223.

FN26 Principle A: Competence, and Section 7.02 Forensic Assessment (b) (c) of American Psychological Association, Ethical principles of psychologists and code of conduct, American Psychologist, 1992, 1597.

FN27 Id.

FN28 Rotgers and Barrett, supra note 9.

FN29 Supra note 26.

FN30 Larson v. Dunn, 460 N.W. 2nd 39, 45-46 (Minn. 1990).

FN31 Supra note 23.


FN37: Wood, supra note 5.

FN38: Dallam, supra note 15.


Introduction

Americans' divorce rates continue to hover around 50%\(^1\). Half of all children have witnessed the breakup of their parents' marriage, and of these children half again likely will see the breakup of a parent's second marriage\(^2\).

Florida's families are at particular risk. The Centers for Disease Control and Prevention's National Center for Health Statistics ranked Florida's divorce rate as the 10th highest in the nation\(^3\). Coupled with a looming decrease in court funding and an increasing fiscal demand on court services (owing to the amendment to Article V, commonly referred to as Revision 7, which will call for a larger portion of the courts' funding to come from local governments' coffers) Family Courts will face an increasingly difficult burden in assisting divorcing families to get on with their post divorce lives.

Alternatives to litigation have been in place since the adoption of mediation as a court sanctioned intervention over twenty-five years ago\(^4\).

Collaborative law, an innovative and increasingly popular process, enables divorcing parties and parties involved in other family law disputes, each represented by counsel, to resolve the parties' differences in a nonadversarial setting. Collaborative practice is gaining increased acceptance by both divorcing spouses and the attorneys who represent them\(^5\).

Newer intervention strategies, the use of parenting coordinators appointed of the courts to assist families in custody dispute litigation, have been conceptualized and formulated but not yet adopted\(^6\).

Nevertheless there remain a significant number of divorcing families appearing before the courts in whose children's lives and futures are at potential risk because of allegations of parental unfitness or parental psychopathology that adversely impact parenting capacities, undue amounts of conflict between the parents, or interpersonal issues disturbing parent-child relationships or leading to other behavioral and emotional problems in the children\(^7\).

The Premise of Interprofessional Cooperation

The courts, and the lawyers who represent families in conflict, sometimes are at a loss as to how to gather information that will help in decision-making and facilitate goal-setting and satisfactory settlements. These decisions may include shared or sole parenting responsibility, whether and when to allow for relocations on the part of one of the parents, what services the family will need to establish or reestablish acceptable levels of functioning, and what interventions may assist the family members to reduce high levels of conflict and to being to cooperate with each other.

Most seasoned (and reasoned) professionals who work with families in dissolution and post-dissolution cases do recognize that they may be faced with problems outside of their area of training and expertise, and acknowledge the need for and value of using the resources of other disciplines for effective dispute resolution.

Few would argue that there are not some inherent conflicts between children's and adults' needs in these cases, including how, despite being an advocate for one of the parents, to bring the child's perspective more keenly into the decision-making dialogue “in the best interests of the child”\(^8\).
This article is an attempt to provide information about psychological intervention choices for families, for the lawyers that represent them, and the courts that make decisions about their lives. More specifically, this article will provide an overview of some considerations bearing on the determination of when to use psychological services (evaluation, investigation, parent coordination) in the context of a particular dispute resolution model (litigation, negotiation, collaboration)9.

Cases Resolvable Outside of the Courtroom

In most cases that go uncontested, or in which the parties readily are able to agree on their own, or with the help of a mediator or collaborative lawyers, how access and decision-making should occur, there may be less need for the assistance of non-lawyer professionals outside the court room.

This notwithstanding, parents and their lawyers who are concerned about achieving the best possible solutions for their post-divorce parenting, or where there may be mutually recognized stumbling blocks (such as how to handle a child’s special needs) nevertheless may benefit from the assistance of mental health professionals.

Psychologist as Dispute Resolution Facilitator. Psychologists can function within the extra-judicial and collaborative divorce processes in all of the various ways that they can function within a litigation context, as described below in this article.

The psychologist-mediator, rather than a lawyer-mediator may be the most appropriate choice when assistance is required to craft a parenting plan that best addresses the circumstances and needs of all family members, especially when the parties are represented by lawyers or the financial issues in the case are not complex. Parents whose primary concerns are not their own legal issues, but the impact of the divorce on their children, including emotional and developmental effects, or who are grappling with the need of one of the parents to move from the jurisdiction, may benefit from the neutral assistance of a psychology professional in order to understand how best to address these concerns in their post-divorce parenting plans or in the context of settling their other issues.

Currently, there is increasing recognition among both lawyers and the public about the high financial and emotional costs of pursuing a divorce through the court system, which is contributing to a rising interest in collaborative law. Many persons who do not have “uncontested” divorces and do have some areas of mild to medium conflict still can be helped, particularly with the aid of psychological professional in a collaborative law setting, to resolve their differences privately and voluntarily outside of litigation.

In the transparent and extra-judicial collaborative process, helping professionals, including financial and other experts as well as mental health experts, may be mutually hired by the parties to advise them and their lawyers. Psychological professionals are particularly well-suited to function in this milieu as advisors, mediators, educators, evaluators, and mutually agreed-to arbitrators and problem-solvers to facilitate a satisfactory resolution and settlement.

The Litigated Dispute and its Resolution

In the litigated case, when there are expressed concerns about emotional or psychological problems that adversely effect parenting abilities or the children’s emotional well-being, or when the parties’ conflicts have become such that their
hostility impedes any progress towards settlement, the services of a psychologist may be called upon by the court to assist the court in the decision-making process. One or both parties also may call upon the services of a psychologist as an expert witness for the party for the purpose of assisting the presentation of that party’s case.

However a psychologist becomes involved in the litigation, and in whatever role, the ultimate goal of the psychologist is to provide input and recommendations that can provide a basis for informed settlement discussions on residency and parenting plans that meet the unique needs of the family involved in the litigation.

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Psychologist as Guardian Ad Litem1: While a full blown psychological evaluation may be called for when a party's mental status is at issue, the appointment of a psychologist acting as guardian ad litem may be more suited to serve the investigatory needs of the litigation and the needs of the children. These are cases where the results of testing are not as important as is a complete examination of social and psychological factors affecting the welfare of one of the family members.

Such cases would include situations in which one of the children has special needs resulting from (or caused by) a psychiatric illness or hospitalization, recurring behavior problems outside the family setting (e.g., sexual acting out or substance abuse, repeated criminal activity), developmental disabilities, or problems in learning. These are the life events and settings in which a skilled child psychologist may be in a better position than a lawyer acting as guardian to gather and interpret investigatory findings for the court.

While there are no formal procedures, or professional guidelines for a guardian to follow, a guardian typically functions as an information gathering arm of the court – interviewing collateral informants about the family and its members, reviewing records, and also making in-person visits to places (school, home, hospital), which the
court and most evaluators practicably cannot take the time to do.

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A guardian typically is experienced by the parents as a more neutral and facilitative (vs. adversarial, intrusive or evaluative) professional than is a psychological evaluator. Often the guardian, unlike the evaluator, can make suggestions along the way, either to counsel or the parties that, while not having the force of law behind them, nevertheless may serve to effect a behavioral shift in the family system resulting in a more harmonious road to conflict resolution.

The appointment of an expert in child psychology (as opposed to a lawyer or layperson who may not be well-versed in psychological considerations) as a guardian may facilitate both information gathering and the provision of recommendations such that the dissolution proceedings may resolve without the need for litigation.

**Psychologist as Parenting Coordinator.** High conflict families - families in which one or both of the parents require monitoring because of allegations of physical or sexual abuse, substance abuse, child neglect and endangerment, interference with custody and visitation, emotional blackmailing of children leading to alienation, and other inappropriate or dangerous behaviors -- often remain difficult to help. Judges, attorneys, guardians, custody evaluators, and other involved mental health professionals who are familiar with these cases recognize the problems that frequently persist, and despite numerous attempted more traditional interventions, end up in a revolving door of litigation. These are the families that judges have referred to mediation, parent education, counseling and other services, all to no avail. These families may be appropriate referrals for the developing new intervention of parent coordination.

The currently proposed model for court-ordered parent coordinator intervention is that of an experienced psychologist who is granted limited authority to intervene in high conflict divorce cases. (A model for voluntary parenting coordinator also currently is being structured for use in less litigious cases and also as a form of arbitrator for extra-judicial collaborative cases.) The coordinator may be assigned during initial divorce or custody litigation, or post-divorce. Parenting coordinators, much like guardians ad litem, are basically professionals working to facilitate the child's best interests. However, unlike a guardian or evaluator who is time-limited, or a therapist who may be "fired," the parenting coordinator can be made available over the course of the children's minority to assist the family resolve its issues with the support of the court.

Parenting coordination services are often experienced as positive and helpful as resolution of various disputes despite the one parent's conflicts and feelings about the other parent. Outside of the court system, the parents can develop increasingly collaborative efforts under the parenting coordinator's guidance and direction in the children's best interest.

There is at present no legislation in Florida, as there is in other states, providing requirements for the training and certification of parenting coordinators, but such legislation has been proposed. The cost of participating in this process can be demonstrably less than the cost of litigation.
or usually even of evaluation as the parties pre-pay for services that are then available as needed over the course of the children’s minority. The current proposal is not without some controversy, however, and the particulars of court-ordered parenting coordination services remain to be finalized. However, voluntarily agreed-to services of psychologists experienced in this hybrid intervention still can be selected by parties and their lawyers to address ongoing or foreseeable issues as a means of facilitating settlements.

The chart in Appendix A summarizes the various roles of the psychologist within the litigation context. As you can see, the nature of the problem, the need for and quality of the litigation, and the motivation of the litigants will determine the appropriate utilization of a psychologist to assist in the resolution of the family’s conflict.
## General Considerations

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## Legal Statutory Considerations

| Access to professional by parties or counsel | Limited by issues of neutrality and privilege | Usually open | Open |
| Requires Court Appointment | Yes | Yes | Yes |
| Statutory Guidelines | Yes | Few and not usually followed¹ | Legislation pending |
| Professional Guidelines | Yes | No | Guidelines are evolving |

## Procedural Considerations

| Requires Expertise in Child Development and Family Dynamics | Yes | No | Yes |
| Time Limited | Yes | No | No |
| Subject to Challenge | Yes | Yes | No |
| Number of hours to complete | 30 - 40 | Depends on nature of case and problem, 40+ | Usually less than twenty hours initially with subsequent follow-up |

¹ The statute provides for the Guardian Ad Litem to make motions through counsel – often times when the Guardian is an attorney the Guardian may act as counsel and later be subject to challenge for not following the statutory requirements.
ENDNOTES

1 This is the Census Bureau's often-cited "50%" rate, the proportion of marriages taking place right now that will eventually divorce, which as recently as 2000 had been revised downward to roughly 43% by the National Center for Health Statistics, but was moved back up to around 50% by the Census Bureau in 2002 (2002 CENSUS BUREAU REPORT ON MARRIAGE AND DIVORCE; http://www.census.gov/prod/2002pubs/p70-80.pdf). Note that subsequent marriages actually have a higher divorce rate than first marriages.


3 For 1998, the Florida Department of Health's Office of Vital Statistics reported 80,466 divorces, or about 5.3 divorces per 1,000 couples. By comparison, the national rate that year was 3.5 divorces per 1,000 couples. In 1994, the most recent statistics available, the Centers for Disease Control and Prevention's National Center for Health Statistics ranked Florida's divorce rate as the 10th highest in the nation.

4 Alternative Dispute Resolution (ADR) has been utilized by the Florida Court System to resolve disputes for over 25 years, starting with the creation of the first citizen dispute settlement (CDS) center in Dade County in 1975. Since that time, the uses of mediation and arbitration have grown as the Legislature and judiciary have created one of the most comprehensive court-connected mediation programs in the country.

5 For more information on collaborative law, see the website of the Collaborative Family Lawyers of South Florida http://www.collaborativefamilylawfl.com/

6 “Since there is no statutory guideline [for Parent Coordinators], there is no standardization between the circuits: in some areas it is confidential, in others it is not; in some circuits it is by stipulation of the parties only, in others PCs can be designated at the judge’s discretion; in some areas there are standard orders and in others not; and so on. The FLAFCC PC Taskforce has taken a short break to allow other committees do their job; however, the work of the PC Joint Committee designated by Justice Pariente to develop a PC Rule will be suspended, awaiting for a revised statute to pass. Meanwhile, the administrative office of the state is compiling information for the Florida Supreme Court, a legislative committee has been formed to look into PC and domestic violence...” [Personal communication, Linda Fieldstone, Supervisor, Family Court Services, Eleventh Judicial Circuit; Board of Directors AFCC, Association of Family and Conciliation Courts].

Note that the implementation of a parenting coordination statute is not without some controversy: in addition to domestic violence issues, there is not yet a consensus on the qualifications that should be mandated for statutory court-appointed Parent Coordinators, or on all procedural and substantive due process issues. The authors of this article are themselves in some disagreement on this subject.


8 See, for example:


9 Discussions about the different roles that mental health practitioners can serve in custody disputes (as therapist, family consultant, lawyer's expert consultant, mediator, co-parent facilitator) and how to use them within the statutory and ethical boundaries of these agreed upon
roles, as well as the ethical and statutory guidelines for neutral child custody evaluators, including the ethical dilemmas presented by the often conflicting needs of children and adults, will be tabled for presentation in a subsequent article.

10 F.S.A. ¶61.20; Fla. Fam. L.R.P. Rule 12.363; F.S.A. ¶ 490.003

11 F.S.A. ¶ 61.402 Qualifications of guardians ad litem: A guardian ad litem must be either a citizen certified by the Guardian Ad Litem Program to act in family law cases or an attorney who is a member in good standing of The Florida Bar. Prior to certifying a guardian ad litem to be appointed under this chapter, the Guardian Ad Litem Program must conduct a security background investigation as provided in s. 39.821.

12 F.S.A. ¶ 61.403; Fla. Fam. L.R.P. Form 12.942(b)
CLPP SUPPORTER FORM

Unfortunately, I am unable to attend the training and/or participate in this project as a volunteer lawyer, but enclosed is my contribution of:

$25
$50
$100
$250
Other (amount _____ )

Please make checks payable to CJI, specifying CLPP in the memo. All contributions to CLPP will be placed in a special fund for this project.

Unfortunately, I am unable to attend the training and/or participate in this project as a volunteer lawyer, but here is my recommendation for another individual who may interested:

Name: ______________________
Firm/Agency: __________________
Address: ______________________
____________________________
Phone: ______________________
Email: ______________________

PLEASE RETURN THIS FORM TO:
ATTORNEY SARAH HELVEY
PROJECT DIRECTOR, CHILDREN’S LEGAL PROTECTION PROJECT
222 S. HAMILTON STREET, STE, 22
MADISON, WI 53703

THANK YOU!
Introduction

Americans' divorce rates continue to hover around 50%¹. Half of all children have witnessed the breakup of their parents' marriage, and of these children half again likely will see the breakup of a parent's second marriage².

Florida's families are at particular risk. The Centers for Disease Control and Prevention's National Center for Health Statistics ranked Florida's divorce rate as the 10th highest in the nation³. Coupled with a looming decrease in court funding and an increasing fiscal demand on court services (owing to the amendment to Article V, commonly referred to as Revision 7, which will call for a larger portion of the courts' funding to come from local governments' coffers) Family Courts will face an increasingly difficult burden in assisting divorcing families to get on with their post divorce lives.

Alternatives to litigation have been in place since the adoption of mediation as a court sanctioned intervention over twenty-five years ago⁴.

Collaborative law, an innovative and increasingly popular process, enables divorcing parties and parties involved in other family law disputes, each represented by counsel, to resolve the parties' differences in a nonadversarial setting. Collaborative practice is gaining increased acceptance by both divorcing spouses and the attorneys who represent them⁵.

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This article is an attempt to provide information about psychological intervention choices for families, for the lawyers that represent them, and the courts that make decisions about their lives. More specifically, this article will provide an overview of some considerations bearing on the determination of when to use psychological services (evaluation, investigation, parent coordination) in the context of a particular dispute resolution model (litigation, negotiation, collaboration) 9.

**Cases Resolvable Outside of the Courtroom**

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<td>Number of hours to complete</td>
<td>30 – 40</td>
<td>Depends on nature of case and problem, 40+</td>
<td>Usually less than twenty hours initially with subsequent follow-up</td>
</tr>
</tbody>
</table>

<sup>1</sup> The statute provides for the Guardian Ad Litem to make motions through counsel – often times when the Guardian is an attorney the Guardian may act as counsel and later be subject to challenge for not following the statutory requirements.
ENDNOTES

1 This is the Census Bureau's often-cited "50%" rate, the proportion of marriages taking place right now that will eventually divorce, which as recently as 2000 had been revised downward to roughly 43% by the National Center for Health Statistics, but was moved back up to around 50% by the Census Bureau in 2002 (2002 CENSUS BUREAU REPORT ON MARRIAGE AND DIVORCE; http://www.census.gov/prod/2002pubs/p70-80.pdf). Note that subsequent marriages actually have a higher divorce rate than first marriages.


3 For 1998, the Florida Department of Health's Office of Vital Statistics reported 80,466 divorces, or about 5.3 divorces per 1,000 couples. By comparison, the national rate that year was 3.5 divorces per 1,000 couples. In 1994, the most recent statistics available, the Centers for Disease Control and Prevention's National Center for Health Statistics ranked Florida's divorce rate as the 10th highest in the nation.

4 Alternative Dispute Resolution (ADR) has been utilized by the Florida Court System to resolve disputes for over 25 years, starting with the creation of the first citizen dispute settlement (CDS) center in Dade County in 1975. Since that time, the uses of mediation and arbitration have grown as the Legislature and judiciary have created one of the most comprehensive court-connected mediation programs in the country.

5 For more information on collaborative law, see the website of the Collaborative Family Lawyers of South Florida http://www.collaborativefamilylawfl.com/

6 “Since there is no statutory guideline [for Parent Coordinators], there is no standardization between the circuits: in some areas it is confidential, in others it is not; in some circuits it is by stipulation of the parties only, in others PCs can be designated at the judge’s discretion; in some areas there are standard orders and in others not; and so on. The FLAFCC PC Taskforce has taken a short break to allow other committees do their job; however, the work of the PC Joint Committee designated by Justice Pariente to develop a PC Rule will be suspended, awaiting for a revised statute to pass. Meanwhile, the administrative office of the state is compiling information for the Florida Supreme Court, a legislative committee has been formed to look into PC and domestic violence...” [Personal communication, Linda Fieldstone, Supervisor, Family Court Services, Eleventh Judicial Circuit; Board of Directors AFCC, Association of Family and Conciliation Courts].

Note that the implementation of a parenting coordination statute is not without some controversy; in addition to domestic violence issues, there is not yet a consensus on the qualifications that should be mandated for statutory court-appointed Parent Coordinators, or on all procedural and substantive due process issues. The authors of this article are themselves in some disagreement on this subject.


8 See, for example:


9 Discussions about the different roles that mental health practitioners can serve in custody disputes (as therapist, family consultant, lawyer's expert consultant, mediator, co-parent facilitator) and how to use them within the statutory and ethical boundaries of these agreed upon
roles, as well as the ethical and statutory guidelines for neutral child custody evaluators, including the ethical dilemmas presented by the often conflicting needs of children and adults, will be tabled for presentation in a subsequent article.

10 F.S.A. ¶61.20; Fla. Fam. L.R.P. Rule 12.363; F.S.A. ¶ 490.003

11 F.S.A. ¶ 61.402 Qualifications of guardians ad litem: A guardian ad litem must be either a citizen certified by the Guardian Ad Litem Program to act in family law cases or an attorney who is a member in good standing of The Florida Bar. Prior to certifying a guardian ad litem to be appointed under this chapter, the Guardian Ad Litem Program must conduct a security background investigation as provided in s. 39.821.

12 F.S.A. ¶ 61.403; Fla. Fam. L.R.P. Form 12.942(b)
Freud vs. Holmes: The Psychologist as Expert Witness
By
Jerome H. Poliacoff, Ph.D., P.A.

Medical malpractice, product liability, employment contracts, even maritime law are all litigation arenas in which counsel is often unusually well prepared, well versed, and even confident when communicating in the language of the testifying expert. When questions of emotion, or motivation, or developmental need are raised the same well read counsel seems almost befuddled and lost in a foreign tongue that may well stir up perceptions and attitudes based more in myth and stereotype than practical and observable reality.

X-rays and statistical sampling may be subject to debate but have, even for the layman, at least an aura of scientific reliability and authenticity. However, ask about depression or post traumatic stress disorder and misperception abounds. Often times the not so antique notion of psychologist as ‘shrink’ or ‘witch doctor’ coupled with the belief that ‘only crazy people’ even speak to psychologists serves to undermine effective representation when matters psychological are at issue (in fact psychology has as its historical underpinnings both philosophy and physics and not witchcraft or wizardry as some would prefer to believe).

This article is dedicated to an effort to assist counsel become more effective in either the challenge or utilization of expert psychological testimony by providing a clearer understanding of what it is a psychologist does or should be expected to do and the statutory, ethical and practice rules that govern that activity. In the following pages we will address the essential parameters governing the work of the psychologist in the forensic arena, including:

- The framework for being considered an expert
- The ethical rules governing forensic activity by psychologists
- The dilemma for both counsel and psychologist of dual role conflicts
- The scope and limits of the psychologist’s tools
- The need to assess and rule out malingering
- The criteria for finding the right psychologist as expert.

THE FRAMEWORK FOR BEING CONSIDERED AN EXPERT

Experts (not just anyone with a Harvard degree willing to travel more than fifty miles to offer an opinion) are people who are very skillful or well informed in some special field. However, not every well-informed or very skillful individual is entitled to testify at trial as an expert witness. To testify as an expert, the witness must be “qualified”; that is, the court (following the rationale of the Federal Rules of Civil Procedure, Rule 702) must be convinced that the witness possesses knowledge, skill, experience, training, or education that will assist the trier of fact to understand the evidence.

The list of potential experts that an attorney can choose from was recently expanded by the United States Supreme Court's decision in Daubert v. Merrell Dow Pharmaceuticals, Inc. (1993), (hereinafter cited as Daubert). The Supreme Court agreed to review Daubert in order to address long-standing divisions among the lower courts regarding the relationship between the Federal Rules of Evidence and the Frye rule when determining the admissibility of scientific evidence by expert testimony.

Federal Rule of Evidence 702 establishes the threshold criteria for admission of expert testimony:
(a) whether the scientific, technical, or other specialized knowledge will assist the trier of fact to understand the evidence or to determine a fact in issue and
(b) whether the expert is sufficiently qualified to render such testimony based on his or her knowledge, skill, experience, training, or education.
Standards regarding what constitutes an expert vary among courts. Some courts look to objective measures such as degrees, licenses, and professional accomplishments. Others apply Rule 702 liberally, determining that an expert's qualifications go to the weight of the evidence rather than to its admissibility.

Once the proposed expert is deemed qualified in a field of expertise and the relevance of the proffered evidence has been established, Federal Rule 703 looks to whether the facts or data in the particular case on which an expert bases his or her opinion are of a type reasonably relied on by experts in that field.

As with the application of Rule 702, judges have traditionally enjoyed wide latitude in the application of Rule 703. Interpretation of the phrase "of a type reasonably relied upon" has been left to the judge's discretion within the context of the particular case at hand.

The Frye general acceptance standard has traditionally been invoked by courts as the criteria by which Rule 703 is applied. This standard evolved out of a 1923 case involving the admissibility of evidence derived from a systolic blood pressure deception test. Evidence based on the deception test was ruled inadmissible because it had not yet gained general acceptance in the scientific community. Following Frye, some courts began to impose this general acceptance standard to expert testimony: inquiring whether the expert had employed a well-founded methodology "sufficiently established to have gained general acceptance in the particular field in which it belongs" (Frye v. United States, 1923). 1

In Daubert, the Supreme Court has clarified the criteria for determining the admissibility of expert testimony, holding that the Frye general acceptance rule is superseded by the adoption of the Federal Rules of Evidence (1975). According to the Court, there is nothing in the Federal Rules as a whole, or Rule 702 in particular, which indicates that general acceptance is a necessary precondition to the admissibility of scientific evidence. The Court's rationale was based on the notion that the general acceptance test imposes a strict standard for admissibility that is at odds with the more relaxed approach to opinion testimony envisioned in the Federal Rules of Evidence.

The proper framework for assessing admissibility of scientific testimony, according to Daubert, is found in the language of Rule 702. The trial judge must act as a "gatekeeper," preliminarily deciding whether the scientific testimony is both relevant and reliable. That the evidence must be reliable is implied by the use in Rule 702 of the term "scientific knowledge." According to the Supreme Court, "The adjective 'scientific' implies a grounding in the methods and procedures of science."

Similarly, "the word 'knowledge' connotes more than subjective belief or unsupported speculation." In order to qualify as scientific knowledge, expert testimony must be based on conclusions derived from a scientific method. According to the Court, in any case involving scientific evidence, "evidentiary reliability" will be based upon "scientific validity."

As to Rule 702's requirement that the evidence be helpful to the trier of fact, the Court declares that the proper test is one of "fit." There must be "a valid scientific connection to the pertinent inquiry" in order for scientific expert testimony to be admissible. That is, the court must be able to

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1 It is important to note that in Federal court and those state courts adopting the Federal Rules, even if an expert's testimony has met certain hurdles, it may be deemed inadmissible if the testimony's potential for unfair prejudice is judged to substantially outweigh its value in assisting the trier of fact to reach a decision (Rule 403). For example, some forms of expert testimony on theories of heritability of intelligence might be excluded from a trial in which there were strong overtones of racial or ethnic bias, where the proffered expert testimony was deemed to be inflammatory to the jury or otherwise might interfere with a reasoned verdict.
• discern that scientific research has been done that is pertinent to the legal questions at hand
• that the evidence to be presented is based on that research and
• that the expert utilized scientifically reliable methods for gathering the data on which conclusions are based.

The Court sets forth a number of factors that should be considered when determining whether a theory or technique qualifies as scientific knowledge that will assist the trier of fact. In brief, these factors are as follows:

(a) Is the theory or technique based on a methodology that can or has been tested?
(b) Has the theory or technique been the subject of peer review and publication?
(c) What is the known or potential rate of error? and
(d) Does the technique enjoy general acceptance within the scientific community? (the old Frye rule!).

It is important to note that this analysis extends only to the question of the admissibility of scientific evidence and leaves open the question of standards for the admission under Rule 702 of "technical or other specialized knowledge."

The Court concludes its analysis with a reminder that the inquiry into admissibility should be a flexible one, "based solely on principles and methodology." It notes that any concerns regarding the potential harm to jurors' decision making of exposure to bad science are more appropriately countered by methods such as cross-examination, presentation of opposing evidence, and proper instruction to the jury, rather than by rigid standards such as general acceptance.

In sum, in rejecting Frye's general acceptance requirement, the Supreme Court, in Daubert, emphasizing that FRE 702 governs the admissibility of expert testimony, set the focus not on general acceptance, but on whether the expert is proposing to testify to specialized knowledge that will assist the trier of fact to understand or determine a fact at issue.

THE ETHICAL RULES GOVERNING FORENSIC ACTIVITY BY PSYCHOLOGISTS

The most widely disseminated yet most often ignored set of guidelines for the conduct of psychologists acting in the role of "expert" may be found in the Ethical Principles of Psychologists and Code of Conduct ( American Psychological Association, 1992 ). There are four standards of professional conduct that appear clearly applicable to psychologists' expert testimony and are specifically reinforced by the Court's decision in Daubert:

• **Standard 1.06**, "Basis for Scientific and Professional Judgments", charges psychologists to rely on scientific and professionally derived knowledge in their practice.
• **Standard 2.02**, "Competence and Appropriate Use of Assessments and Interventions", requires psychologists to select assessment instruments on the basis of research indicating the appropriateness of the instruments for the specific issue at hand and directs psychologists to actively work to prevent misuse of those instruments.
• **Standard 2.04**, "Use of Assessment in General and With Special Populations", prescribes familiarity with the psychometric properties and limitations of assessment instruments used in the practice of psychology.
• **Standard 2.05**, "Interpreting Assessment Results", requires psychologists to directly state reservations they may have about the accuracy and limitations of their assessments.

In addition to the Ethical Principles of Psychologists and Code of Conduct the Specialty Guidelines for Forensic Psychologists ( Committee on Ethical Guidelines for Forensic Psychologists, 1990 ) address similar issues from a specialized perspective. Although only the Ethical Principles of Psychologists and Code of Conduct are enforceable by the American Psychological Association, both sets of principles and guidelines provide the ethical basis for
many of the practical challenges to psychological expert testimony. Expert testimony should be based on adherence to the following practical and easily discernable parameters:

1. **Data should be gathered using the most scientifically reliable and valid assessment tools available.**
   Psychologists, and the attorneys who cross examine them, should be acutely aware of the limitations of assessment tools from both a theoretical and psychometric perspective, particularly those that are not standardized or that have limited scientific research findings documenting their reliability or validity.

   It is also important for psychologists to recognize that assessment instruments may be inadequate not only because they fail to measure a particular construct adequately, but because the construct itself may be theoretically inadequate, poorly defined, or so broad as to be meaningless.

2. **Conclusions should be drawn based on theories having scientific validity.**
   There are many competing theories of behavior from which diagnoses and treatment recommendations may be drawn. There is also a large scientific literature that has addressed empirically testable predictions based on those theories. However, many theoretical constructs are presented by psychologists in expert testimony for which there is no scientific validation, or for which the scientific basis is very slim. The current emergence of ‘syndrome’ testimony is a case in point.

   Although the fit between syndrome theories and particular legal questions may be good, these theories have not been scientifically tested. This lack of scientific testing makes any conclusions or accounts of events that are based on syndrome theories problematic. Even if the data relied upon are gathered using scientifically valid methods, if the theoretical explanation underlying the data is flawed, the data may be presented in a way that misleads the trier of fact.

3. **Testimony should be presented based on both the sufficiency of the theory and the underlying empirical data as it applies to the legal questions to be addressed.**
   Many of the concerns before the Court have not been specifically or adequately studied in the scientific literature, or if they have, the data are equivocal or inadequate.

   In *Daubert* the court specifically cites evidence of the scientific reliability and validity of the methods and theories on which expert testimony is based as touchstones for determining whether particular testimony is admissible.

4. **Data gathering methods (tests, interviews) need to be psychometrically sound.**
   Psychologists as experts need to be aware of the psychometric properties of the instruments they use and the strengths and limitations of those instruments. More importantly they may need to adequately justify their use of less psychometrically valid instruments over ones that have better psychometric properties.

   An ethical expert witness will also be prepared to report the limitations of his or her data-gathering procedures and discuss how those limitations may affect the conclusions drawn from those data.

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2 Richard Gardner's (1992) construct of *Parental Alienation Syndrome* is a case in point. PAS is presented by Gardner as a palpable constellation of symptoms present whenever a child is emotionally distanced from a parent in the context of divorce litigation. He asserts that this is always the case when such emotional distance is present and attributes this to malevolence on the part of the mother more often than not. Excellent criticism of this ‘syndrome’ may be found in articles by this author (Poliacoff, Greene and Smith, 1999) and by Cherri Wood (1994).
DUAL ROLE CONFLICTS

The most simply stated of ethical proscriptions “a psychologist refrains from taking on professional or scientific obligations when preexisting relationships would create a risk of such harm” (Standard 1.17(b) the Ethical Principles of Psychologists and Code of Conduct) and “Forensic psychologists recognize potential conflicts of interest in dual relationships with parties to a legal proceeding....” (Standard IV.D Specialty Guidelines for Forensic Psychologists) and intuitively the clearest and most comprehensible are also, when ignored, the ones which most frequently compromise psychologists’ proffer of expert testimony.

Both psychological and psychiatric organizations have sought to limit circumstances when dual functions are performed by a single professional. The Ethical Guidelines for the Practice of Forensic Psychiatry (American Academy of Psychiatry and the Law, 1989) state:

A treating psychiatrist should generally avoid agreeing to be an expert witness or to perform an evaluation of his patient for legal purposes because a forensic evaluation usually requires that other people be interviewed and testimony may adversely affect the therapeutic relationship.

In a similar fashion, the Specialty Guidelines for Forensic Psychologists denotes the following:

Forensic psychologists avoid providing professional services to parties in a legal proceeding with whom they have personal or professional relationships that are inconsistent with the anticipated relationship. (p. 659).

The Ethical Principles of Psychologists and Code of Conduct of the American Psychological Association exhorts that "In most circumstances, psychologists avoid performing multiple and potentially conflicting roles in forensic matters" (p. 1610). Finally, the most recent and the most specific of these codes, the American Psychological Association’s (1994) Guidelines for the Conduct of Child Custody Evaluations emphatically states:

Psychologists generally avoid conducting a child custody evaluation in a case in which the psychologist served in a therapeutic role for the child or his or her immediate family or has had other involvement that may compromise the psychologist’s objectivity....In addition, during the course of a child custody evaluation, a psychologist does not accept any of the involved participants in the evaluation as a therapy client. Therapeutic contact with the child or involved participants following a child custody evaluation is undertaken with caution....

In fact the prohibitions are so seemingly readily understood that a search of the psychological literature yields but two articles addressing dual role conflicts (Greenburg and Shuman, 1997; Strasburger, Gutheil, and Brodsky, 1997) outside of the guidelines themselves.

Yet, despite being incompatible with good patient care and existing clinical and forensic practice guidelines, some psychologists (bowing to the pressures of tightened insurance reimbursement rules and the appeal of a growing market for forensic services), have been induced to appear, often willingly, as forensic expert witnesses on behalf of their patients. Unfortunately claims for violation of this precept are the bane of professional insurance liability carriers and boards of professional conduct. Appropriately, clinical, ethical, and legal disquiet arises when the treating expert offers psycholegal assessment - an assessment for which the treating expert does not have adequate professional basis, for which there are inherent role conflicts, and for which there will almost certainly be negative implications for the continuance of treatment.

Strasburger, Gutheil and Brodsky (1997) caution that attempting to treat and evaluate the same person typically creates a role conflict. Such role conflict manifests itself in a host of potentially intractable problems including: different conceptions of truth and causation, different forms of alliance, different types of assessment, and different ethical guidelines. Although
circumstances sometimes compel a practitioner to assume the dual role of therapist and evaluator, the problems that surround this practice argue for its avoidance whenever possible.

The knowledgeable attorney will recognize that therapists are not typically trained to know that the rules of procedure, rules of evidence, and that the standard of proof is different for court room testimony than for clinical practice. Unfortunately for the not so knowledgeable attorney the temptation to use therapists as forensic experts on behalf of patient-litigants exists because of erroneous beliefs about efficiency, candor, neutrality, and expertise.

Using a therapist to provide forensic assessment appears, at first blush, efficient because the therapist has already spent time with the patient and knows much about him or her that others are yet to learn. The prospect of avoiding substantial expenditures of time and money for an additional evaluation is as equally appealing.

The misguided perception is often that a therapist does not appear to be the attorney's hired gun who came into the case solely to assist in advancing or defeating a legal claim or defense. A therapist's forensic assessment may appear more neutral and less immediately subject to financial incentives to reach a particular result than does a separate forensic evaluation. And, it is further (and inappropriately) assumed that if a therapist has the expertise to treat the condition for which a patient seeks compensation, *ipso facto* the therapist has the expertise to testify about it. Indeed, in many ways it would appear from this analysis that one would have to be foolish not to have therapists also testify as forensic experts.

Nevertheless an examination of the differences between the therapeutic and forensic relationships, process, and expertise reveals that engaging in such misguided efforts at expediency is foolishness of the first magnitude.

Greenburg and Shuman (1997) assert, in their eloquent exposition on the salient differences between forensic and clinical practice, that

"the therapeutic and forensic roles demand different and inconsistent orientations and procedures. The superficial and perilous appeal of using a therapist as a forensic examiner is debunked by examining the conceptual and practical differences between the therapist-patient relationship and the forensic examiner-litigant relationship."

The salient differences are highlighted in the table below:

<table>
<thead>
<tr>
<th>Conflict domain</th>
<th>Clinical</th>
<th>Forensic</th>
</tr>
</thead>
<tbody>
<tr>
<td>Whose client is it?</td>
<td><em>Client</em> of the <em>psychologist</em></td>
<td><em>Client</em> of the <em>attorney</em></td>
</tr>
<tr>
<td>Legal protection against disclosure</td>
<td><em>Psychologist-patient privilege</em></td>
<td><em>Attorney-client</em> and <em>attorney-work-product privileges</em></td>
</tr>
<tr>
<td>Evaluative attitude</td>
<td><em>Psychologist</em>: Supportive, accepting, and empathic</td>
<td><em>Forensic evaluator</em>: Assessor, usually neutral, objective, and detached</td>
</tr>
<tr>
<td>Areas of professional competency</td>
<td><em>Psychologist</em> must be competent in <em>clinical assessment</em> and <em>treatment</em> of the patient's impairment</td>
<td><em>Forensic evaluator</em> must be competent in <em>forensic evaluation procedures</em> and relevant <em>psycholegal issues</em></td>
</tr>
<tr>
<td>Application of expertise</td>
<td><em>Psychologist</em> uses expertise to test rival diagnostic hypotheses to identify appropriate <em>therapeutic intervention</em></td>
<td><em>Forensic evaluator</em> tests different sets of rival psycholegal hypotheses generated by the elements of the law applicable to the case</td>
</tr>
</tbody>
</table>
Table: Degree of scrutiny to which information is subjected

| Degree of scrutiny to which information is subjected | Therapy is based on information from the person being treated, that may be incomplete, grossly biased, or honestly misperceived | Forensic examiner offers opinions regarding historical truth and validity of the psychological aspects of a litigant's claims |
| Assessment procedure and degree of structure | Psychological evaluation is less complete and less structured. Patient provides structure. Patient and psychologist work to define the goals of interaction. | Forensic evaluators conduct highly structured assessments using structured interviews supplemented with a battery of psychological tests |
| Adversarial aspect | Psychotherapeutic process is rarely adversarial | Forensic evaluation is adversarial in that evaluator seeks information that both supports and refutes litigant's legal assertions |
| Goals of the relationship | Psychotherapy is predicated on a working alliance, geared to the patient's benefit | A forensic evaluation strives to obtain objective information that may ultimately aid a trier of fact |
| Effect of examiner's attitude | Positive relationship between the success of the therapist-patient alliance and success in therapy | Forensic examiner must be detached, skeptical, and must carefully question what the litigant presents. It is less likely that his or her judgment-laden testimony would cause serious or lasting emotional harm to the litigant |

Similarly, under both the test of "general acceptance" in the relevant professional community (Frye v. United States, 1923) and the "good grounds given what is known" test of Daubert, forensic assessment by a patient's therapist does not generally provide a reliable basis for a forensic assessment and therefore should be avoided by the ethical psychologist and viewed skeptically by the courts.

Unfortunately the Courts are slow to recognize this inherent conflict of roles. As yet, despite the explicit ethical precepts addressing this dual role conflict, there are no reported judicial decisions to date that address the exclusion of a forensic assessment by a psychologist or psychiatrist who serves as a litigant's therapist. Nevertheless it should be evident that deviating from the ethical codes or practice guidelines of one's profession is an appropriate and effective basis for impeaching a witness and the explicit ethical and specialty guidelines that address this problem simplify this task for the cross-examining attorney.

**THE SCOPE AND LIMITS OF THE PSYCHOLOGIST'S TOOLS**

Most psychologists would agree that psychological testing can be helpful in uncovering the abilities, skills, personality characteristics, and unconscious dynamics of the individuals involved in an evaluation.

Unfortunately many lawyers and judges have an unrealistic view of what psychological testing can accomplish. There is often an assumption, tied to the mythology of testing, that testing, presumed to be an infallible tool, will provide a scientific foundation for the forensic evaluation. In this mythology there is a view that psychological tests allow the evaluator to be truly objective and therefore unbiased. This assumption is, of course, untrue.
For instance the greater the evaluator relies on test data, especially projective test data, in the assessment process, the more easily challenged are the conclusions and recommendations under cross-examination. Thus, there appears to be little appreciation among members of the legal community for the limitations of psychological testing, specifically, for the limited validation of psychological tests for some forensic purposes.

When considering the utility of testing as part of an evaluation it should be noted that many 'treating' psychologists simply do not understand the legal issues involved in litigation, nor do they adequately understand the way in which psychological knowledge can (or should) be used in such cases.

Psychologists who bow to the pressures of practicing outside their expertise, or worse, in a dual role are poorly prepared to address the legal issues at hand and to know exactly what is needed in the way of a comprehensive evaluation. Plainly stated, most psychologists lack adequate training to conduct forensic evaluations. As a result, they fail to distinguish the role of the forensic evaluator from that of clinician. They are then likely to adopt the procedures most familiar to them - those that they learned as a part of their graduate training and their ongoing clinical practice.

While space limitations preclude a discussion of psychometric issues as test construction, validity, reliability, it behooves the attorney to gain at least a passing familiarity with the kinds of tests commonly utilized by psychologists.

The psychological tests most commonly used by psychologists can be grouped roughly into four categories: (a) measures of intelligence, (b) measures of academic functioning, (c) measures of personality and (d) measures of neuropsychological functioning. A fifth category of standardized assessment that is of crucial consideration, and often overlooked by even seasoned forensic examiners, is that of tests for malingering, which will, because of its indispensable role in any forensic examination, be addressed in a section below.

The first category, measures of intelligence, includes such well-known tests as the Wechsler Intelligence Scale for Children-III (WISC-III) the Wechsler Adult Intelligence Scale-Revised (WAIS-R), and the Stanford-Binet Intelligence Scale, 4th Edition (SB-4). These tests were developed to assess abilities important for academic and occupational success.

The second category, measures of academic functioning, includes such tests as the Wide Range Achievement Test-Revised (WRAT-R) and the Woodcock-Johnson Psychoeducational Battery-Revised. These assessment instruments provide the examiner with a measure of achievement in school-related areas (e.g., reading, spelling, mathematics, etc.) and are more frequently used when assessing children.

The third category, includes objective measures such as the Minnesota Multiphasic Personality Inventory-2 (MMPI-2), the Millon Clinical Multiaxial Inventory-III (MCMI-III), the Cattell 16 Personality Factor Questionnaire (16PF), and the California Psychological Inventory (CPI). Also included are projective measures such as the Rorschach Inkblot Technique, Thematic Apperception Test (TAT), sentence completion tests, and various drawing tests. All of these involve instruments that were developed to assess personality functioning and/or dimensions of psychopathology.

Finally, the fourth category, measures of neuropsychological functioning, includes various batteries of sub tests, such as the Luria –Nebraska and the Halsted-Reitan batteries, designed to assess location, impact, and effect of head injuries.

Psychological tests were developed primarily to address clinical questions, especially those related to clinical diagnosis and treatment planning. As such, although they often can contribute valuable information in a forensic evaluation, there are limitations to the role they can
play. Lawyers and judges should understand that psychological tests should only be used in conjunction with other standard data-gathering techniques, such as interviews and observations.

The Specialty Guidelines for Forensic Psychologists are especially clear in this regard:

Where circumstances reasonably permit, forensic psychologists seek to obtain independent and personal verification of data relied upon as part of their professional services to the court. (VI-(F), p.662) Forensic psychologists attempt to corroborate critical data that form the basis of their professional product. (VI-(F),1, p.662).

Finally, impressions derived from test data should be treated as hypotheses subject to verification through corroborative procedures. Evaluators are wise to guard against overzealous extrapolation of test data to the substantive issues in the court case.

THE NEED TO ASSESS AND RULE OUT MALINGERING

In any circumstance where there is a financial incentive to be ill or to claim injury, such as litigation in the civil court system, the intentional production of symptoms must be assessed. The Diagnostic and Statistical Manual of Mental Disorders – Fourth Edition (DSM-IV) (American Psychiatric Association, 1994) defines the essential feature of malingering as the “intentional production of false or grossly exaggerated physical or psychological symptoms, motivated by external incentives such as avoiding military duty, avoiding work, obtaining financial compensation, evading criminal prosecution, or obtaining drugs”.

Under some circumstances, feigning illness while a captive of the enemy during wartime, malingering may represent adaptive behavior. In the context of litigation it is best understood as a type of response that distorts the production of an accurate record.

The DSM-IV authors suggest that malingering should be strongly suspected if any combination of the following is noted:

1. The medicolegal context of presentation (e.g., the person is referred by an attorney to the clinician for examination), and, or
2. A marked discrepancy between the person’s claimed stress or disability and objective findings, and, or
3. A lack of cooperation during the diagnostic evaluation or in complying with a prescribed treatment regimen, and or
4. The presence of Antisocial Personality Disorder

The fourth point should however be broadened for this discussion: Malingering may occur with virtually every DSM-IV diagnosis, or in the complete absence of a diagnosis. The construct of malingering is better understood by the evident incentives and circumstances of the situation, rather than the person’s individual psychology.

There is ample research on the characteristic interview and test response pattern of malingerers. In general these characteristic patterns depend to some degree on the specific response pattern being observed, i.e., malingering, defensiveness, disinterest, or something else again.

Malingerers generally report relatively rare symptoms as well as a higher total number of symptoms. Malingerers are usually more likely to discuss their disorder; to report a sudden onset of the disorder or a sudden cessation of symptoms if that serves some extrinsic goal.

The assessment of malingering on many of the personality tests (MMPI-2, MCMI-III) centers on the validity scales as predictors of distorted response sets. More recently specific
malingering assessment instruments have been validated for use in forensic settings, including the *Malingering Probability Scales (MPS)* and the *Validity Indicator Profile (VIP)*. The VIP relies for its scoring on fairly sophisticated statistical analyses made possible only recently by the advent of increased computing power. The MPS looks at response sets to statements about plausible but clinically improbable items.

Other methods of assessment include focusing on personality rather than style of responding. In this approach the degree of sociopathy, and hence the higher the likelihood of malingering, is assessed. The best exemplar of this approach is Hare’s *Psychopathy Checklist – Revised*.

More recently there has been significant research interest in adding physiological methods of deception detection assessment to the battery of tools available to forensic examiners.

Whatever the approach or underlying theory the detection of malingering (or its absence) is a crucial component of any forensic assessment battery. One cannot reasonably, or scientifically, make a claim as to the degree of “psychological certainty” about a cause or condition without first demonstrating that the possibility of malingering has been taken into account.

**CRITERIA FOR FINDING THE RIGHT PSYCHOLOGIST AS EXPERT**

The *Federal Rules of Civil Procedure* express the intent that expert witnesses, through their specialized knowledge, will be used only to assist the jury in understanding the evidence or determining a fact in issue. In actuality, an attorney hires an expert to serve one primary purpose - to be a convincing and effective “salesperson” for the attorney’s position.

Locating the right expert for a particular case can be an attorney’s most challenging, important, or frustrating task. Among the criteria that should be considered in the selection process are the expert’s (a) credentials, (b) presentation, (c) availability, (d) endurance, (e) sensitivity, and (f) consistency.

Credentials are but a threshold factor in that they tell an attorney little else about the expert’s suitability as a witness. Because the purpose of using an expert is to persuade the fact finder the best credentialed expert may not be the best choice. As often as not a less credentialed but equally qualified expert with better communication skills may be the superior choice.

A successful expert witness is able to present a complex and often technical subject to lay people. Ideally, an attorney will choose an expert who can testify effectively and persuasively regarding the precise issue and who has the credentials to do so.

Availability of an expert witness in an age of scheduling problems and trial continuances is critical. Professionals who work as experts are accustomed to the lack of certainty in scheduling and should be able to adjust their schedules accordingly.

A demanding trial schedule can be both physically and mentally challenging for an expert particularly after a full day of examination. It behooves hiring counsel to both inquire into the health of the expert and to be available to process the day’s events during a post examination review.

The expert must be sensitive to the differences in knowledge, training, and vocabulary used by himself and the attorney. Effective communication between the two professions, whereby the expert and the attorney attain maximum use of each other’s skills, is maximized when each is available to the other for review of salient elements of their respective files.
Miscommunication and unavailability to discuss findings and prospective examination questions is a sure recipe for litigation disaster.

Experts have (and have given) opinions, sometimes as if offering the gospel. Combined with a current technology that allows opposing counsel to easily retrieve an expert’s previous utterances an attorney wants an expert who has not taken contradictory positions on the subject of his or her expected testimony. It goes without saying then that an attorney will seek experts who have taken a strong, unshakable stance on an issue, not someone who has waffled back and forth.

In turn, the potential expert witness should be prepared to disclose to the attorney hiring them everything that qualifies him or her to carry the title ‘expert’. The expert should be prepared to discuss and verify his or her college and postgraduate studies, degrees, teaching positions, memberships in professional associations, honors, literary works, and work experience.

In addition to supplying a list of credentials, the expert must be prepared to provide the attorney with a listing and copy of all works that he or she has written as well as a listing of all the cases in which he or she has testified as an expert at trial or by deposition.

Equally as important, an expert should make an attorney aware of any ‘skeletons in the closet’ that might impeach his or her testimony, such as criminal convictions, sanctions by his or her profession for ethical violations, sanctions by a court, undeserved credit for authorship of an article, and so on. This information is bound to come out and is best disclosed sooner than later.

Finally, the hiring attorney wants to spend as much time and effort as necessary in preparing the psychologist to understand the language of the law as it pertains to the case at hand. All too frequently the attorney will defer to the expert as an expert in all areas, including even mind reading trial strategy! Like all good marriages, even if they are brief, the relationship between the two parties has to work. And like all good relationships it takes time, preparation and effort.
REFERENCES


American Psychological Association (1992). Ethical principles of psychologists and code of conduct. American Psychologist, 47, 1597-1611


Daubert v. Merrell Dow Pharmaceuticals, Inc. 113 S. Ct. 2786 (1993)


Frye v. United States. 293 F. 1013 (D.C. Cir. 1923).


“It is clear we have matured as lawyers when we bring law to our children. In accepting appointments to serve as lawyers to children, we accept the challenge to go beyond what we have known and to take on the task of expanding our law to include historically disenfranchised children. In accepting such appointments, we acknowledge our willingness to bring the power of our law to our children”

64B19-18.007 Requirements for Forensic Psychological Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes.

(1) For the purposes of this rule the following definitions apply:
   (a) “Parent” means parent or legal guardian identified by the court order.
   (b) “Child(ren)” means those identified by the court order.

(2) The minimum standard of performance in court-ordered child custody evaluation and family law proceedings includes, but is not limited to, the following:
   (b) The psychologist who has accepted an appointment as an evaluator shall not serve as guardian ad litem, mediator, therapist or parenting coordinator regarding the children in the instant case. The psychologist who has had a prior role as guardian ad litem, mediator, therapist or parenting coordinator shall not accept an appointment as an evaluator for the children in the instant case.
   (c) The psychologist shall inform the parents or legal guardian in writing and obtain their signature verifying notification of the limits of confidentiality.
   (d) The psychologist shall submit the evaluation report pursuant to court order or provide prior notification to the court, if the report will not be provided by the due date.
   (e) The evaluation report shall include all of the following. The failure to include any of the following shall be documented.
      1. Evaluations of both parents, or legal guardian including observations, test results, and impressions.
      2. Evaluations of the children identified in the court order including observations and where appropriate, test results and impressions.
      3. Description of interactions between each parent or legal guardian and each child identified in the court order.
      4. Collateral sources of information as needed.
      5. Request medical records as needed.
   (3) It is a conflict of interest for a psychologist who has treated a minor or any of the adults involved in a custody or visitation action to perform a forensic evaluation for the purpose of recommending with which adult the minor should reside, which adult should have custody, or what visitation should be allowed. Consequently, a psychologist who treats a minor or any of the adults involved in a custody or visitation action may not also perform a forensic evaluation for custody, residence or visitation of the minor. So long as confidentiality is not violated, a psychologist may provide a court, or a mental health professional performing a forensic evaluation, with factual information about the minor derived from treatment, but shall not state an opinion about custody, residence or visitation disputes.

Specific Authority 490.004(4) FS. Law Implemented 490.009(2)(s) FS. History–New 6-14-94, Formerly 61F13-20.007, Amended 1-7-96, Formerly 59AA-18.007, Amended 9-30-04.
Rule 64B19-18.006, F.A.C.- Repealed Effective September 30, 2004

64B19-18.006 Prohibition Against Treating Psychologists Performing Forensic Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation.

It is a conflict of interest for a psychologist who has treated a minor or any of the adults involved in a custody or visitation action to perform a forensic evaluation for the purpose of recommending with which adult the minor should reside, which adult should have custody, or what visitation should be allowed. Consequently, a psychologist who treats a minor or any of the adults involved in a custody or visitation action may not also perform a forensic evaluation for custody, residence or visitation of the minor. This subsection does not limit a psychologist who treats a minor from providing a court or a mental health professional performing an evaluation with information about the minor from the psychologist’s perspective as a treating psychologist, so long as the psychologist does not violate confidentiality.

Put Something Back
A Joint Pro Bono Project of the Eleventh Judicial Circuit and Dade County Bar Association

in conjunction with

MORGAN LEWIS & BOCKIUS

Present

KIDS IN THE CROSSFIRE

This seminar will teach attorneys about the role of the Guardian Ad Litem in contested custody cases. It is designed to train attorneys how to investigate and make a determination as to "the best interest(s) of a child/children" caught in the crossfire of custody disputes. No prior family law experience is necessary. You only need the desire to assist a child in need of your services.

Faculty
Honorable Eugene J. Fierro
Sharon Langer, Esq.
Keith Olin, Esq.

When: Thursday, June 28, 2001

Where: Morgan Lewis & Bockius
200 S. Biscayne Blvd., Ste. 5300

Time: 12:00 p.m. - 1:30 p.m.

Cost: Free to all attorneys who agree to accept one GAL appointment.

CLE: 1.5 CLE including .5 ethics applied for.

QUESTIONS? Please call Karen Josefsberg Ladis, Esquire, Project Coordinator, or Anastasia Forquer, Esq., at 579-3733 X2249 if you have any questions.

THANK YOU!
The Montana Legal Services Association Child Custody Pro Bono Project honors the memory of Ann Liechty, who was a dedicated child law advocate who lived and worked in Billings, Montana.

Special Thanks from Montana Legal Services Association to those listed here for their assistance, support, and commitment to Montana’s children

ABA Child Custody and Adoption Pro Bono Project

Montana Supreme Court
Justice Brian Morris

First Judicial District of Montana
Honorable Thomas C. Honzel
Honorable Dorothy McCarter
Honorable Jeffrey M. Sherlock

Seventh Judicial District of Montana
Honorable Katherine M. Irigoin

Twenty-first Judicial District of Montana
Honorable James A. Haynes
Attorney Eileen Larkin

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Donna Hale, LCSW  ACSW

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Amy O’Neal

Dedicated Young Actors
Aaron Folsom    Clare Menahan
Alexia Heimbach   Mercedes Heimbach
CHILDREN’S LEGAL PROTECTION PROJECT
OF DANE COUNTY
A PARTNERSHIP OF THE RAINBOW PROJECT INC. AND COMMUNITY JUSTICE INC.

VOLUNTEER LAWYER APPLICATION FORM

DATE: ____________________

NAME: _________________________________________________________________

FIRM/AGENCY: __________________________________________________________

ADDRESS: _______________________________________________________________

CITY/STATE/ZIP: _________________________________________________________

PHONE: ___________________________ E MAIL: _____________________________

PRIMARY PRACTICE AREA/S: _______________________________________________

Please note that previous family law experience is not a requirement for participation in the CLPP, as training and support is provided through the project.

HAVE YOU EVER PROVIDED REPRESENTATION IN A CHILD ABUSE INJUNCTION CASE? Y/N  (IF YES, PLEASE ESTIMATE # __________ )

HAVE YOU EVER PROVIDED REPRESENTATION IN A DOMESTIC ABUSE INJUNCTION CASE? Y/N  (IF YES, PLEASE ESTIMATE # __________ )

HAVE YOU EVER PROVIDED REPRESENTATION IN A CHILD CUSTODY/PLACEMENT MATTER?  Y/N  (IF YES, PLEASE ESTIMATE # __________ )

HOW DID YOU HEAR ABOUT CLPP? _________________________________________

ANY QUESTIONS OR COMMENTS?

PLEASE RETURN THIS FORM TO:
ATTORNEY SARAH HELVEY
PROJECT DIRECTOR, CHILDREN’S LEGAL PROTECTION PROJECT
222 S. HAMILTON STREET, STE, 22
MADISON, WI 53703

The Children’s Legal Protection Project is supported by a grant from the American Bar Association (ABA) Child Custody Pro Bono Project.
May 2006

Dear Montana Attorney:

Welcome to the Montana Legal Services Association Child Custody Pro Bono Project. We are very pleased to offer training for attorneys who represent Montana’s youngest citizens. These materials are available through funding from the American Bar Association 2005 Child Custody and Adoption Pro Bono Project, and collaboration with A.W.A.R.E. a Montana children’s mental health provider.

The 2005 ABA designated topic for Child Custody Pro Bono Projects is “to enhance the connection between legal advocacy for children in custody cases and critical mental health and social services.” The Montana Legal Services Association has developed information packets for Montana attorneys who volunteer to represent children in custody and parenting plan actions. The express focus of the project is to inform attorneys about children’s unique emotional and social needs during family transitions.

For your convenience, the training materials are supplemented with the enclosed DVD and separated into two chapters. Please keep in mind, however, that there are significant connections throughout the training and neither chapter stands alone. It is important to complete the entire training.

➢ Chapter I: Representing Children: What Attorneys Need to Know

➢ Chapter II: Child Clients: How to Meet Specific Needs of a Child Client

Thank you for participating in the training and for your work representing children.

Sincerely,

Klaus Sitte   Alison Paul   Dana Toole M.S.W.
Executive Director   Deputy Director   Mediation Program Developer
THE CHILD ABUSE INJUNCTION STATUTE - WS 813.122

The Definition of Abuse - Conduct or Threat

WS 813.122 defines abuse as conduct, as defined under 48.02(1)(a) and (b) to (gm) or the threat to engage in any conduct under 48.02(1), other than conduct under 48.02(1)(am).

48.02(1) provides the definitions of abuse from the General Provisions of the Children's Code:

"Abuse", other than used in referring to abuse of alcoholic beverages or other drugs, means any of the following:

48.02(1)(a) Physical injury inflicted on a child by other than accidental means.

NOTE: 813.122 does not define or refer to a definition of "physical injury" in the statutes. 48.02(14g), however, defines physical injury as including, but not limited to, lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm, as defined by 939.22(14).

48.02(1)(b) Sexual intercourse or sexual contact under s. 940.225, 948.02 or 948.025 (See Appendix of Wisconsin Statutes).

940.225 Sexual assault
948.02 Sexual assault of a child
948.025 Engaging in repeated acts of sexual assault of the same child

48.02(1)(c) A violation of s. 948.05.

948.05 Sexual exploitation of a child

48.02(1)(d) Permitting, allowing or encouraging a child to violate s. 944.30.

944.30 Prostitution

48.02(1)(e) A violation of s. 948.055.

948.055 Causing a child to view or listen to sexual activity
In addition, in Milwaukee County, cases are sent to children's court if the petitioner is a minor.

**NOTE:** If the action is brought in children's court, Form JC-1690 should be used for the petition.

Civil court will have jurisdiction in other actions brought under this section. Confirm the local procedure with the Clerk of Courts.

**NOTE:** For cases with civil court jurisdiction, Form CV-412 should be used for the petition.

**Guardian ad Litem**

The court shall appoint a GAL if the respondent is a parent of the child. 813.122(3)(bm)

If the respondent is not a parent, the court may appoint a GAL on its own motion or the motion of any party. 813.122(3)(b)1

**Confidentiality of the Proceedings**

The court, on its own motion or the motion of any party may order:

1. That all persons, other than the parties, their attorneys, witnesses, child victim advocates, service representatives, as defined in s. 895.73(1)(c), court personal and GAL, be excluded from any hearing under this section. 813.122(3)(b)2

2. That access to any record of an action under this section be available only to the parties, their attorneys, any GAL, court personnel and any applicable court upon appeal. 813.122(3)(b)3

**Commencement of the Action—The Petition and Temporary Restraining Order**

**Requirements of the Petition - 813.122(6)(a)**

The petition shall allege facts sufficient to show the following:

1. The name of the petitioner and the child victim.
2. The name of the respondent.
3. That the respondent engaged in, or based on prior conduct of the respondent and child, may engage in, abuse of the child victim.
1. The petitioner files a petition alleging the elements set forth in 813.122(6)(a). 813.122(5)(a)1

2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of 813.122(5)(a)2

3. After hearing, the judge finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the child victim and the respondent may engage in, abuse of the child victim. 813.122(5)(a)3

**NOTE:** An extension/adjournment must be in writing and signed by both parties (See Form CV-408).

**NOTE:** The injunction may only be entered against the respondent named in the petition. 813.122(5)(c)

**NOTE:** The injunction hearing must be heard by a judge. 813.122(5)(a)

**The Effect and Duration of the Child Abuse Injunction**

The Child Abuse Injunction orders the respondent to avoid the child’s residence or any premises temporary occupied by the child victim or both, and to avoid contacting or causing any person other than a party’s attorney to contact the child victim unless the petitioner consents in writing and the judge or court commissioner agrees that the contact is in the best interests of the child victim. 813.122(5)(a)

The injunction may be effective for no more than 2 years or until the child victim attains 18 years of age, whichever occurs first. 813.122(5)(d)1

**Visitation and Support**

If the respondent is the parent of the child victim, the judge shall modify the order to provide the parent reasonable visitation rights, unless the judge finds that visitation would endanger the child’s physical, mental or emotional health. The judge may provide that any visitation be supervised. 813.122(5)(b)

An injunction under this section may direct the payment of child support using a method of calculation authorized under s. 767.25. 813.122(5)(e)
be notified by the petitioner after the extension is granted. 813.122(5)(d)4

**Penalty for Violation of the TRO or Injunction**

A party who knowingly violates a TRO or injunction under this section shall be fined not more than $1,000.00 or imprisoned for not more than 9 months or both. 813.122(11)

**Full Faith and Credit**

An order or injunction issued under this section shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members. 813.122(12)
(b) The court or circuit court commissioner, on its or his or her own motion or the motion of any party, may order one or more of the following:

1. That a guardian ad litem be appointed for the child victim in accordance with s. 48.235.
2. That all persons, other than the parties, their attorneys, witnesses, child victim advocates, service representatives, as defined in s. 895.73 (1) (o), court personnel and any guardian ad litem, be excluded from any hearing under this section.
3. That access to any record of an order under this section be available only to the parties, their attorneys, any guardian ad litem, court personnel and any applicable court upon appeal.

(bm) The court or circuit court commissioner shall appoint a guardian ad litem if the respondent is a parent of the child.

(c) An action under this section may pertain to more than one child victim.

(4) TEMPORARY RESTRAINING ORDER. (a) A judge or circuit court commissioner shall issue a temporary restraining order ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents in writing and the judge or circuit court commissioner agrees that the contact is in the best interests of the child victim, if all of the following occur:

1. The petitioner submits to the judge or circuit court commissioner a petition alleging the elements set forth under sub. (6) (a).
2. The judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (5). A judge shall hold a hearing on issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 7 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

(5) INJUNCTION. (a) A judge may grant an injunction ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents to that contact in writing and the judge agrees that the contact is in the best interests of the child victim, if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (6) (a).
2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.
3. After hearing, the judge finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

(b) If the respondent is the parent of the child victim, the judge shall modify the order under par. (a) to provide the parent reasonable visitation rights, unless the judge finds that visitation would endanger the child's physical, mental or emotional health. The judge may provide that any authorized visitation be supervised.

(c) The injunction may be entered only against the respondent named in the petition.
Child Abuse Injunctions in Wisconsin

Cyrus A. Behroozi
Director of Child Advocacy
Task Force on Family Violence of Milwaukee, Inc.

Wisconsin Statute § 813.122
Governed child abuse injunctions in the State of Wisconsin

- Petitioner: The party requesting the court issue an order of protection
- Respondent: The party against whom the order is sought
- Petition: The legal papers requesting a Temporary Restraining Order and Injunction hearing
- Temporary Restraining Order (TRO): A 7 day order barring the respondent from having contact with the child
- Injunction: An order barring contact or setting other conditions on the respondent's contact with the child victim

The Definition of Abuse

Conduct or Threat

- Physical Injury
- Selections from the Criminal Code
- Emotional Damage

The Definition of Physical Injury

813.122 does not define or refer to a definition of physical injury in the statutes. 48.02(14g) defines physical injury as including, but not limited to:

- Lacerations
- Fractured bones
- Internal Injuries
- Severe or frequent bruising
- Great bodily harm, as defined by 939.22(14)

Definitions of Abuse from the Criminal Code

The child abuse injunction statute also defines the following acts as abuse:

- Sexual intercourse or sexual contact with a child
- Sexual exploitation of a child
- Permitting, allowing or encouraging a child to engage in prostitution
- Causing a child to view or listen to sexual activity
- Exposing genital or pubic area to a child

Physical Abuse

Defined by WS § 48.02(1)(A)
Physical injury inflicted on a child by other than accidental means
Commencing the Action

The Petition and Temporary Restraining Order

The petition shall allege facts sufficient to show the following:

- The name of the petitioner and the child victim.
- The name of the respondent.
- That the respondent engaged in, or based on prior conduct of the respondent and child, may engage in, abuse of the child victim.
- If a payment of child support is requested, that the payment is reasonable and necessary under the s. 767.25 criteria.

The Temporary Restraining Order

Notice to the respondent is not required before issuing the TRO. The judge or court commissioner shall issue a TRO if:

- The petition alleges the elements set forth in s. 813.122(6)(a).
- The judge or court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the respondent and child victim, may engage in abuse of the child victim.

The Effect of the TRO

The TRO orders the respondent to avoid the child's residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents in writing and the judge or court commissioner agrees that the contact is in the best interests of the child victim.

The Duration of the TRO

The TRO remains in effect until a hearing is held on issuance of an injunction. The injunction hearing shall be held within seven days after the TRO is issued unless:

- The time is extended upon the written consent of the parties.
- The time is extended once for 7 days upon a finding that the respondent has not been served with a copy of the TRO although the petitioner has exercised due diligence.

The Injunction Hearing

An injunction will issue if all of the following occur:

- The petitioner has filed a petition alleging the elements set forth in s. 813.122(6)(a). The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.
- After hearing, the judge finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

Confidentiality of the Proceedings

The court, on its own motion or the motion of any party, may order:

- That all persons, other than the parties, their attorneys, witnesses, child victim advocates, service representatives, as defined in s. 895.73(1)(c), court personnel and GAL, be excluded from any hearing under this section.
- That access to any record of an action under this section be available only to the parties, their attorneys, any GAL, court personnel and any applicable court upon appeal.
Full Faith and Credit

An order or injunction issued under this section shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

Thank you for your support

TASK FORCE on FAMILY VIOLENCE

Cyrus A. Behroozi
1400 North 6th Street
(414) 276-1911
cbehroozi@ttfv.org
The Effect and Duration of the Child Abuse Injunction

- The Child Abuse Injunction orders the respondent to avoid the child's residence or any premises temporary occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents in writing and the judge or court commissioner agrees that the contact is in the best interests of the child victim.
- The injunction may be effective for no more than 2 years or until the child victim attains 18 years of age, whichever occurs first.

Visitation and Support Orders

- If the respondent is the parent of the child victim, the judge shall modify the order to provide the parent reasonable visitation rights, unless the judge finds that visitation would endanger the child's physical, mental or emotional health.
- The judge may provide that any visitation be supervised.
- An injunction under this section may direct the payment of child support using a method of calculation authorized under s. 767.25.

Surrender of Firearms

An injunction issued under this section shall:
- Inform the respondent of the requirements and penalties under s. 941.29 (Possession of a Firearm).
- Require the respondent to surrender any firearm in their possession to the sheriff of the county in which the action was commenced, the sheriff of the county in which they reside, or another person designated by the respondent and approved by the judge or court commissioner. If the judge or court commissioner finds the person designated by the respondent to be inappropriate, they must place the reasons for the finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the court, the judge or court commissioner shall inform the recipient of the requirements and penalties under s. 941.29(4).

Exception for Peace Officers

The injunction may not require a peace officer to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

Extensions of the Injunction

- When an injunction in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the child victim. This extension shall remain in effect until 6 months after the date the court first entered the injunction or until the child attains 18 years of age, whichever occurs first.
- If the petitioner states that an injunction is necessary to protect the child victim, the court may extend the injunction for not more than 2 years or until the child attains 18 years of age, which ever occurs first.
- The statute does not require notice to the respondent before the extension of an injunction in either manner, however, they must be notified by the petitioner after the extension is granted.

Penalty for Violation of the TRO or Injunction

A party who knowingly violates a TRO or injunction under this section shall be fined not more than $1,000.00 or imprisoned for not more than 6 months or both.
The Definition of Emotional Damage

The statute does not define emotional damage, but allows such a claim if:
A child's parent, guardian, or legal custodian has neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment for the child to take steps to alleviate the symptoms.

Who can Petition

An action may pertain to more than one child victim:
- The child victim
- The parent of a child victim
- The legal guardian of a child victim
- The Guardian ad Litem in a CHIPS case
- Any party or governmental or social agency involved in a CHIPS case

Venue

WS § 801.50(5s)

The venue of an action under 813.122 shall be in the county in which the cause of action arose or where the petitioner or respondent resides.

Who can be subject to an order

- An adult or child who engages in physical abuse
- If a claim of emotional damage, the child's parent, guardian or legal custodian if they have neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment for the child to take steps to alleviate the symptoms

Jurisdiction and Forms

Family Court or Children's Court will exercise jurisdiction:
- If the respondent is a child, or the action is brought as part of a CHIPS proceeding, Children's Court has exclusive jurisdiction.
  (Form JC-1690)
- In Milwaukee County, if the respondent is not the parent of the child victim, Children's Court will hear the action.
- If there is an underlying divorce or paternity action Family Court will hear the action.
  (Form CV-412)

The Role of the Guardian ad Litem

- The court shall appoint a GAL if the respondent is a parent of the child victim.
- The court may appoint a GAL on its own motion or the motion of any party if the respondent is not a parent.
(b) A firearm surrendered under par. (a) 2. may not be returned to the respondent until a judge or circuit court commissioner determines all of the following:

1. That the injunction issued under sub. (5) has been vacated or has expired and not been extended.

2. That the person is not prohibited from possessing a firearm under any state or federal law or by the order of any federal court or state court, other than an order from which the judge or circuit court commissioner is competent to grant relief.

(c) If a respondent surrenders a firearm under par. (a) 2. that is owned by another person other than the respondent, the person who owns the firearm may apply for its return to the circuit court for the county in which the person to whom the firearm was surrendered is located. The court shall order such notice as it considers adequate to be given to all persons who have or may have an interest in the firearm and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the firearm returned. If the court returns a firearm under this paragraph, the court shall inform the person to whom the firearm is returned of the requirements and penalties under s. 941.29 (4).

(6) PETITION. (a) The petition shall allege facts sufficient to show the following:

1. The name of the petitioner and the child victim.

2. The name of the respondent.

3. That the respondent engaged in, or based on prior conduct of the respondent and the child victim may engage in, abuse of the child victim.

4. If the payment of child support is requested, that the payment of child support is reasonable or necessary based on criteria provided under s. 767.25.

(b) Upon request, the clerk of circuit court shall provide, without cost, the simplified forms obtained under s. 46.03 (7) (d) to a petitioner.

(7) CONTACT. Any order under this section directing a person to avoid contact with a child victim prohibits the person from knowingly touching, meeting, communicating or being in visual or audio contact with the child victim, except as provided in any modifications of the order under sub. (5) (b).

(9) ENFORCEMENT ASSISTANCE. (a) If an order is issued under this section, upon request by the petitioner, the court or circuit court commissioner, as applicable, shall order the sheriff to assist in executing or serving the temporary restraining order or injunction.

(1) 1. If an injunction is issued or extended under sub. (5), the clerk of the circuit court shall notify the department of justice of the injunction and shall provide the department of justice with information concerning the period during which the injunction is in effect and information necessary to identify the respondent for purposes of a firearms restrictions record search under s. 175.35 (2g) (c).

2. Except as provided in subd. 3., the department of justice may disclose information that it receives under subd. 1. only as part of a firearms restrictions record search under s. 175.35 (2g) (e).

3. The department of justice shall disclose any information that it receives under subd. 1. to a law enforcement agency when the information is needed for law enforcement purposes.

(b) Within one business day after an order or injunction is issued, extended, modified or vacated under this section, the clerk of the circuit court shall send a copy of the order or injunction, or of the order extending, modifying or vacating an order or injunction, to the sheriff or to any other local law enforcement agency which is the central repository for orders and injunctions and which has jurisdiction over the child victim's premises.

(e) The sheriff or other appropriate local law enforcement agency under par. (b) shall enter the information received under par. (b) concerning an order or injunction issued, extended, modified or vacated under this section into the transaction information for management of enforcement system no later than 24 hours after receiving the information and shall make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or injunction issued under this section. The information need not be maintained after the order or injunction is no longer in effect.

(10) ARREST. A law enforcement officer shall arrest and take a person into custody if all of the following occur:

(a) A petitioner under sub. (6) (a) presents the law enforcement officer with a copy of an order issued under sub. (4) or (5), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.

(b) The law enforcement officer has probable cause to believe that the person has violated the order issued under sub. (4) or (5).

(11) PENALTY. Whoever knowingly violates a temporary restraining order or injunction issued under this section shall be fined not more than $1,000 or imprisoned for not more than 9 months or both.

(12) NOTICE OF FULL FAITH AND CREDIT. An order or injunction issued under sub. (4) or (5) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members. This section implicitly envisions a change of placement and custody if the trial court issues a child abuse injunction against a parent who has custody or placement of a child under a divorce order or judgment. Scott M.H. v. Kathleen M.H. 218 Wis. 2d xxv (1989); 581 N.W.2d 564 (1998).

813.123 Vulnerable adult restraining orders and injunctions. (1) DEFINITIONS. In this section:

(a) "Abuse" has the meaning given in s. 55.01 (1).

(b) "Bodily harm" has the meaning given in s. 939.22 (4).

(c) "County protective services agency" means the county department designated in s. 55.02.

(d) "False representation" includes a promise that is made with the intent not to fulfill the promise.

(e) "Great bodily harm" has the meaning given in s. 939.22 (14).

(f) "Misappropriation of property" has the meaning given in s. 55.01 (4p).

(g) "Neglect" has the meaning given in s. 55.01 (4r).

(h) "Vulnerable adult" has the meaning given in s. 940.285 (1) (e).

(2) COMMENCEMENT OF ACTION AND RESPONSE. No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. The vulnerable adult, a parent, an adult sibling, an adult child or the legal guardian of the vulnerable adult or a county protective services agency may be a petitioner under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

(3) GENERAL PROCEDURE. (a) Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order, the court or circuit court commissioner shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (5) on whether to issue an injunction, which is the final relief. If the court or circuit court commissioner issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court or circuit court
ENFORCEMENT ASSISTANCE. (a) If an order is issued under this section, upon request by the petitioner the court or circuit court commissioner shall order the sheriff to accompany the petitioner and assist in placing him or her in physical possession of his or her residence or to otherwise assist in executing or serving the temporary restraining order or injunction. The petitioner may, at the petitioner's expense, use a private process server to serve papers on the respondent.

(b) The petitioner does not violate the court order under sub. (3) or (4) if he or she admits into his or her residence a person ordered under sub. (3) or (4) to avoid that residence.

(2) NE EXEAT AND RECEIVERS

NOTICE OF FULL FAITH AND CREDIT. An order or injunction issued under sub. (3) or (4) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

The definition of "household member" requires a continuous residential living arrangement between the parties. The definition of "household member" includes the central repository for orders and injunctions which has jurisdiction over the petitioner's premises.

(3) GENERAL PROCEDURE.

(4) COMMENCEMENT OF ACTION AND RESPONSE. No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6) (a). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. The child victim or a parent, stepparent or legal guardian of the child victim may file a temporary restraining order, the order shall set forth the

(5) TRANSCEPTED. The judge or circuit court commissioner shall record the temporary restraining order or injunction hearing upon the request of the petitioner.

(6) PENALTIES. (a) Whoever knowingly violates a temporary restraining order or injunction issued under sub. (3) or (4) shall be fined not more than $1,000 or imprisoned for not more than 9 months or both.

813.122 Child abuse restraining orders and injunctions.

DEFINITIONS. In this section:

(a) "Abuse" has the meaning given in s. 48.02 (1) (a) and (b) to (gm) and, in addition, includes a threat to engage in any conduct which has the meaning given in s.

(b) "Child" means any person under 18 years of age.

(c) "Child victim" means the child who is the victim or the alleged victim of abuse.

(d) "Child victim advocate" means any person who counsels child victims, assists child victims in coping with the impact of the crime or otherwise acts in support of child victims.

(2) COMMENCEMENT OF ACTION AND RESPONSE. No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6) (a). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. The child victim or a parent, stepparent or legal guardian of the child victim may be a petitioner under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

(3) GENERAL PROCEDURE. (a) Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order, the court or circuit court commissioner shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (5) on whether to issue an injunction, which is the final relief. If the court or circuit court commissioner issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court or circuit court commissioner does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

Firearms Surrender

An injunction issued under this section shall:

1. Inform the respondent of the requirements and penalties under s. 941.29. 813.122(5m)1
   Possession of a Firearm

2. Require the respondent to surrender any firearms in their possession to the sheriff of the county in which the action was commenced, the sheriff of the county in which they reside, or another person designated by the respondent and approved by the judge. If the judge finds the person designated by the respondent to be inappropriate, they must place the reasons for this finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the court, the judge shall inform the recipient of the requirements and penalties under s. 941.29(4). 813.122(5m)2
   Possession of a Firearm

The injunction may not require a peace officer to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty. 813.122(5)(ag)

NOTE: If an injunction has issued, make sure the judge administers the firearms warning on the record following the hearing.

Extensions

1. When an injunction in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the child victim. This extension shall remain in effect until 6 months after the date the court first entered the injunction or until the child attains 18 years of age, which ever occurs first. 813.122(5)(d)2

2. If the petitioner states that an injunction is necessary to protect the child victim, the court may extend the injunction for not more than 2 years or until the child attains 18 years of age, which ever occurs first. 813.122(5)(d)3

The statute does not require notice to the respondent before the extension of an injunction in either manner, however, they must
4. If the payment of child support is requested, that the payment of child support is reasonable and necessary based on the criteria provided under s. 767.25.

(b) Upon request, the clerk of circuit court shall provide, without cost, the simplified forms obtained under s. 46.03(7)(d) to a petitioner.

The Temporary Restraining Order - 813.122(4)

The judge or court commissioner shall issue a TRO if both:
1. The petition alleges the elements set forth in 813.122(6)(a). 813.122(4)(a)1
2. The judge or court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the child victim and respondent may engage in, abuse of the child victim. 813.122(4)(a)2

NOTE: Notice to the respondent is not required before issuing the TRO.

The Effect and Duration of the TRO

The TRO orders the respondent to avoid the child’s residence or any premises temporary occupied by the child victim or both, and to avoid contacting or causing any person other than a party’s attorney to contact the child victim unless the petitioner consents in writing and the judge or court commissioner agrees that the contact is in the best interests of the child victim. 813.122(4)(a)

The TRO remains in effect until a hearing is held on issuance of an injunction. The injunction hearing shall be held within seven days after the TRO is issued unless:

1. The time is extended upon the written consent of the parties. 813.122(4)(c)
2. The time is extended once for 7 days upon a finding that the respondent has not been served with a copy of the TRO although the petitioner has exercised due diligence. 813.122(4)(c)

The Injunction Hearing

Statutory Requirements

An injunction will be issued if all of the following occur:
48.02(1)(f) A violation of s. 948.10.
948.10 Exposing genital or pubic area

48.02(1)(gm) Emotional damage for which the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms.

NOTE: For a discussion of "emotional damage" in the context of a Child Abuse Injunction see In the Interest of H.Q. and P.Q., 152 Wis.2d 701, 449 N.W.2d 75 (Ct. App. 1989)

Who may petition for the Child Abuse Injunction

1. The child victim. 813.122(2)
2. The parent of a child victim. 813.122(2)
3. A stepparent of a child victim. 813.122(2)
4. The legal guardian of a child victim. 813.122(2)
5. The Guardian ad Litem in a CHIPS case. 48.235(4)(a)6
6. Any party to or any governmental or social agency involved in the proceeding if a CHIPS proceeding. 48.25(6)

NOTE: An action under this section may pertain to more than one child victim. 813.122(3)(c)

Against whom may they petition

1. An adult or a child who engages in abuse. 48.14(10), 757.69(1)(g)(7)

2. If a claim of emotional damage, a child's parent, guardian or legal custodian if they have neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms. 48.02(1)(gm)

Venue

The venue of an action under this statute shall be in the county in which the cause of action arose or where the petitioner or respondent resides. 801.50(5s)

Jurisdiction and Forms

If the respondent is a child, or the action is brought as part of a CHIPS proceeding, children's court has exclusive jurisdiction over the case. 48.13,
The Rainbow Project Child and Family Counseling and Resource Clinic is a non-profit agency serving families of diverse cultural, economic, traditional and nontraditional backgrounds. We serve families with young children, primarily ages 10 and under, in Dane County and the surrounding areas. Rainbow Project provides client centered and responsive services within a variety of settings. These services include long and short term counseling, early intervention, education and prevention services to children, adults, families and the community. These services are intended to: a) help break the often generational cycle of child abuse, neglect and domestic violence, including services to families with patterns which put members at risk for abuse or future mental health problems; b) promote positive change and mental health within families including building, strengthening and supporting healthy parent/child relationships; and c) advocate for the mental health needs and support of families and children in the community.

CHILDREN AND FAMILIES SERVED: Project staff provide services to young children and their families. Children eligible for Rainbow services have been involved in one or more of the following: 1) victim of child abuse, neglect or sexual abuse; 2) witness to domestic violence; 3) presenting problems in social/emotional development and behavior (many children referred to us exhibit aggressive, violent behavior towards others or to themselves, or may often appear very passive and withdrawn from social contacts; many of these children have difficulty adjusting in day care or school settings); 4) identified "at risk," coming from families where stress factors in the home environment indicate there is high potential for abuse, neglect or domestic violence to occur (i.e., presence of alcohol/drug abuse, family history of abuse, neglect or domestic violence; financial crisis; unemployment; mental or physical illness; separation of parent and child; divorce; death in the family, etc.); and 5) serious problems in the relationship between parent and child.

Children and families are referred to us from many sources, including Dane County Human Services, family, civil and criminal courts, self referrals, day care centers, schools, hospitals, law enforcement agencies, Domestic Abuse Intervention Services, mental health specialists, alcohol/drug abuse treatment programs and other community support agencies.

TREATMENT PROGRAM: The Rainbow Project staff includes the Project Director, Child and Family Therapists and Adult and Family Therapists providing:

- Comprehensive assessment of family members and parent-child interaction
- Individual treatment plans for each child and parent, focusing on social-emotional development and behavior changes within the family system
- In home treatment combined with individual, family and group treatment at Rainbow Project
- Field sessions in day care or school programs and foster homes to help children through transitions, to ensure successful integration of children into new settings and to provide consistency and alternatives in permanency planning for young children
- Parent education provided in both individual and group sessions, to help parents learn positive child management skills, to provide child development information and to improve the parent-child relationship
- Advocacy, referral, and follow-up services for waiting list families and for enrolled multi-problem families requiring more than one agency's services
- Follow-up and evaluation services for past clients

PREVENTION PROGRAM

- Consultations in day care, school or hospital programs
- Community education and interagency coordination to promote awareness, information and training on the effects and treatment of child abuse, neglect and domestic violence; also in the areas of discipline, parent education and social-emotional development.
Facts About Child Abuse and Neglect

Defining Child Abuse and Neglect
Child abuse is any mistreatment of a child that results in harm or injury and that has no "reasonable" explanation. Child abuse is generally divided into several categories including physical, sexual, emotional, and neglect.

Physical Abuse includes hitting, shaking, beating, burning, and strangling a child.

Sexual Abuse includes allowing children to witness sexual acts, involving a child in pornography, touching/fondling, or rape.

Emotional Abuse includes criticizing, belittling, insulting, rejecting, and withholding love, support or guidance.

Neglect is failing to provide for a child's wellbeing and not meeting a child's needs for things like proper food, medical care, hygiene, shelter, education, love and attention, and supervision.

Children who are abused may:
★ have unexplained injuries
★ be frightened of parents and afraid to go home
★ be either overly compliant or demanding
★ be tired a lot, or complain of nightmares and not sleeping well
★ have poor hygiene
★ act overly mature or immature
★ have knowledge about sexual activity that is beyond what is normal for their age
★ have poor peer relationships
★ show a drastic change in school achievement or overall behavior patterns
★ miss school a lot
(These signs don't prove that a child is being abused, but they might be a sign that the child or family needs help.)

Adults who abuse may:
★ have conflicting, unconvincing, or no explanation for the child's injury
★ seem unconcerned about the child's wellbeing
★ describe the child in a negative way
★ use harsh physical discipline with the child
★ be overly protective of the child or severely limit the child's contact with other children
★ depend on the child for emotional support
★ be secretive and isolated
★ seem apathetic or depressed
★ abuse alcohol or drugs
(These signs don't prove that an adult is abusing a child, but they might be a sign that the child or family needs help.)

If you suspect abuse, report it—it's the right thing to do.
Whether or not you are a legally mandated reporter, we all have the moral mandate to protect children. ANY person may report if there is reason to believe a child has been abused or neglected or has been threatened with abuse or neglect. If you suspect that child abuse or neglect is happening to a child, contact your local child protective services agency. If you believe a child is in immediate danger, contact your local police department.

For more information on specific signs and symptoms of abuse and how to find your local child protection services agency see Prevent Child Abuse Wisconsin's website at: www.preventchildabusewi.org.
Child Abuse and Neglect Statistics

It is difficult to determine exactly how many children are abused and neglected each year. Several national and state studies have been conducted, but because they use different data collection methods it is not easy to decipher and compare results. The following are some specific findings from several studies and contact information to enable you to locate these resources and research these findings in greater depth.

National Child Abuse and Neglect Statistics

- In 2000 there were estimated to be 879,000 victims of child abuse and neglect in the U.S.
- 62.8% of victims suffered from neglect, 19.3% from physical abuse, 10.1% from sexual abuse, and 7.7% were emotionally or psychologically maltreated. 16.6% of cases fell under “other” types of maltreatment which were not coded as one of the main types of maltreatment.
- 51.9% of victims were female and 48.1% were male.
- Children ages 0-3 had the highest rate of victimization and the rate declined as victims’ ages increased.
- Over half of victims were White, 24.7% were African American, 14.2% were Hispanic, 1.6 were American Indian/Alaska Natives and 1.4 percent were Asian-Pacific Islanders.
- In 2000, younger children were more likely to be the victim of abuse that was fatal—children younger than a year old accounted for 43.7% of fatalities and 85.1% were children younger than 6 years old.
- 83.7% of child victims were maltreated by one or more of their parents.


Additional data may be found by contacting the National Clearinghouse on Child Abuse and Neglect Information, 1-800-FYI-3366, or on the internet at: http://www.calib.com/nccanch or http://www.acf.dhhs.gov/programs/cb.

Wisconsin Child Abuse and Neglect Statistics

- In 2001 there were 38,672 reported cases of child abuse and neglect in Wisconsin.
- Specifically, there were:
  o 1,844 substantiated cases of physical abuse
  o 4,606 substantiated cases of sexual abuse
  o 77 substantiated cases of emotional abuse
  o 3,628 substantiated cases of child neglect
- 17 child deaths were due to substantiated child abuse or neglect
- Parents or step-parents were 64% of abusers.


For county specific data go to: www.dhfs.state.wi.us, click on “programs and services,” "youth services" then “child protective services,” and then “2000-2001 Child Abuse and Neglect Report.”

Prevent Child Abuse Wisconsin
Moments in Wisconsin in 2001

Every 21 days a child died from abuse or neglect.

Every 2 hours and 20 minutes a child under the age of 5 was abused or neglected.

Every 52 minutes a child was sexually abused.

Every 13 minutes a child was reported abused or neglected.

Every 33 minutes a child was neglected.

Every 42 minutes a child was physically abused.

40,215 children were reported abused and neglected in 2001 in Wisconsin

That's about the same as the population of Brookfield, Wausau, or Fond du Lac and would fill more than half of the seats in Camp Randall Stadium.

- About 1/4 of the reported allegations were substantiated that children were maltreated.
- More than 1/3 (38%) of the substantiated abuse and neglect cases are for children 5 years of age and younger.
- More than 3/4 (77.34%) of the substantiated cases for children are abused or neglected by their own parent, caretaker, relative, or other household member.

Most experts agree child abuse and neglect are greatly under reported.


The Children's Trust Fund, Child Abuse Prevention Fund and Prevent Child Abuse Wisconsin sponsor Blue Ribbons for KIDS to educate Wisconsin children, families and communities about the need for child abuse and neglect prevention.
INDICATORS of SEXUAL ABUSE: Preschool age

A. Physical Indicators

1. difficulty urinating or having bowel movements
2. blood on child’s underpants
3. genital or anal bruises, fissures and lacerations
4. frequent vaginal infections
5. sexually transmitted diseases
6. under 5% of all sexually abused children show physical indicators of victimization
   - the preschool child exhibits a very fast rate of physical healing
   - an adult male penis can penetrate a young child’s anus with lubrication, without physical injury to the child
   - a young female child’s hymen is pliable and able to stretch, intercourse does not necessarily mean that the hymen is torn

B. Behavioral Indicators

1. acting out or passive withdrawal
2. persistent and inappropriate sexual play with toys, animals, or peers
3. detailed and unexplained sexual knowledge beyond age expectations
4. seductive, precocious sexual behavior or gender confusion
5. aggressive sexual behavior, especially with boy victims
6. excessive, persistent, public masturbation
7. disturbances in eating patterns, ie binge eating, loss of appetite, gagging, hoarding food
8. disturbances in toileting patterns, ie wetting/soiling themselves
9. disturbances in sleeping patterns, ie nightmares, night terrors, fear of the dark, fear of being alone in bedroom, wanting to sleep with a parent
10. extraordinary fear of the same sex adults, babysitters, etc.
11. unexplained and unusually intensive guardedness, mistrust, clingingness and watchfulness
12. verbal statements by the child

Kuehnle, Kathryn, Ph.D., Evidence of Sexual Abuse
MYTHS AND FACTS ABOUT CHILD SEXUAL ABUSE

Sexual Abuse is hard to talk about. It is a subject surrounded by secrecy and taboos. Some misconceptions which prevent dealing effectively with the problem include the following myths:

<table>
<thead>
<tr>
<th>MYTH</th>
<th>FACT</th>
</tr>
</thead>
<tbody>
<tr>
<td>The abuser is a weird or dangerous stranger.</td>
<td>In 85% of cases, the abuser is a person the child knows, often a relative or family friend.</td>
</tr>
<tr>
<td>Children may lie or fantasize about sexual activity.</td>
<td>Children usually do not have sexual information unless they have been exposed to it.</td>
</tr>
<tr>
<td>Children provoke sexual abuse by their seductive behavior.</td>
<td>Seductive behavior is not the cause. Responsibility lies with the abuser.</td>
</tr>
<tr>
<td>If the child did not want it, he/she could say &quot;stop.&quot;</td>
<td>Children are taught not to question the behavior of adults. The abuser uses a position of authority and power to bribe, coerce, or threaten the child.</td>
</tr>
<tr>
<td>Nonviolent sexual behavior between a child and an adult is not harmful to the child.</td>
<td>All victims experience feelings of shame, guilt, and anger, even if there are no obvious outward signs.</td>
</tr>
<tr>
<td>Discussing sexual abuse will frighten or upset children.</td>
<td>Having information can influence a child’s response to the initial approach of a sexual abuser. A child who has some awareness is better able to protect him/herself and an assault may be prevented.</td>
</tr>
</tbody>
</table>

Source: City-County Committee on Sexual Assault Questions Parents Ask, January 1985.
HOW CHILDREN ARE AFFECTED BY DOMESTIC VIOLENCE
Adapted from Sojourner Truth House

THE RAINBOW PROJECT, INC.
831 EAST WASHINGTON AVENUE; MADISON, WI 53703

• CURRENT RESEARCH INDICATES THAT DOMESTIC VIOLENCE IMPACTS CHILDREN IN A VARIETY OF WAYS.

THE NATURE & EXTENT OF THE IMPACT WILL VARY DEPENDING ON SEVERAL FACTORS

• The duration, severity, & frequency of domestic situations
• History & status of parent/family mental health, emotional needs, & parent education needs
• The history & current stability of the parent/child relationship (e.g. whether or not other problems of child abuse, neglect, alcohol/drug abuse, separation, or other risk factors have occurred)
• The age, gender, & developmental stage of the child

• Studies clearly indicate that we can no longer presume that children free of physical injuries are not injured psychologically, developmentally, & emotionally by domestic violence.

• SOME BATTERERS PHYSICALLY INJURE CHILDREN DURING THEIR ATTACKS ON THE ADULT VICTIM.

• Sometimes children are used as a weapon by the abuser against the victim. A child may be physically injured when thrown at the victim, or abused for the purpose of coercing the adult victim.

• Sometimes children are accidentally injured during the batterer’s assault on the victim. A child may be injured while being held by the adult victim, or injured while trying to stop the batterer’s attack.

• SOME BATTERERS ASSAULT THE ADULT VICTIM IN FRONT OF THE CHILDREN.

• Despite what abusers may believe or say, children often either directly witness the assaults, or indirectly witness the violence by overhearing the episodes, or by viewing the aftermath—the injuries & property damage.

• Research reveals that children who witness domestic violence are affected in much the same way as children who are physically & sexually abused.

• SOME BATTERERS USE THE CHILDREN TO COERCIVELY CONTROL THE ADULT VICTIM.

• Like the adult victim, children may also be isolated & not allowed to participate in peer activities or friendships.

• The abuser may engage the children in the abuse of the adult victim by encouraging or forcing the child to participate in the physical or emotional assaults.
HOW CHILDREN ARE AFFECTED BY DOMESTIC VIOLENCE
Adapted from Sojourner Truth House

THE RAINBOW PROJECT, INC.
831 EAST WASHINGTON AVENUE; MADISON, WI 53703

- Threats of violence may be used against children, pets, or other loved objects. Attacks against pets or loved objects are particularly traumatic for young children, who often do not make a distinction between themselves & the pet or object. Consequently, the abuser's attack against the pet is experienced by the child as an attack against the child.

- The abuser may interrogate the children about the adult victim’s activities, force the victim to always be accompanied by a child or children, or take the child away after each violent episode to ensure that the victim will not leave.

- Sometimes children are forced to watch the abuse against the adult victim.

- SOME BATTERERS USE THE CHILDREN AS “PAWNS” TO CONTINUE CONTROLLING THE ADULT VICTIM AFTER SHE HAS LEFT THE ABUSER.
  - The batterer’s intent is to control the victim using any means possible with little regard for the damaging effects on children.
  - Lengthy custody battles may be used as a way to continue the abuse & control of the victim.
  - Children may be held hostage or abducted to punish the victim.
  - Visitation periods may become uncomfortable for the children; either because of physical abuse, or constant interrogation about the activities of the adult victim. Some abusers may go into long tirades about the victim’s behaviors, or break into tears; blaming the victim for “causing” the separation.

- The negative effects of domestic violence in interrupting childhood development can be seen in cognitive, psychological, & physical symptoms. Some behaviors have frequently been observed as characteristic of children who have witnessed domestic violence. It is important to remember that a child may be presenting all the following behavioral characteristics & not have witnessed domestic violence. The high frequency & severity of behavioral problems exhibited by children, however, are important signals indicating delays in social & emotional development, lowered self concept, & an inability to control their own behavior.

  CHARACTERISTIC BEHAVIORS FALL WITHIN A WIDE RANGE, & INCLUDE:
  - Eating/sleeping disorders
  - Mood related disorders (such as depression, or emotional neediness)
  - Over-compliance, clingingness, withdrawal
  - Rigid & controlling of self & others
  - Ritualistic or regressive behaviors
  - Developmental delays in speech, cognitive, & physical motor skills
  - Over-dependence on adults

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PAGE 2 OF 3
How Children are Affected by Domestic Violence
Adapted from Sojourner Truth House

The Rainbow Project, Inc.
831 East Washington Avenue; Madison, WI 53703

- Easily distracted (unable to focus attention)
- Difficulty controlling their behavior in large groups
- Difficulty with transitions (between places or activities)
- Dramatic play with dolls, puppets, or peers involving significant, repeated violence towards others (especially when this is the exclusive content of the play)
- Aggressive acting out, destructive rages
- Detachment, avoidance, a fantasy family life
- Somatic complaints (fingernail biting, restlessness, shaking, stuttering)
- School problems
- Suicidal ideation

Children’s experience with domestic violence can also affect perceptions & problem-solving skills.
- Young children often see themselves as the cause of the abuser’s violence.
- Children may experience feelings such as shame, guilt, anger, anxiety, fear, low self-esteem, depression, mistrust, & conflicted loyalties.
- Children use either passive behaviors (such as withdrawal or compliance), or aggressive behaviors (such as verbal or physical attacks), rather than assertive problem-solving skills.

There are also long-term effects as these children become adults.
- Since important developmental tasks are interrupted, children can carry these deficits into adulthood. They may never recover from falling behind in certain academic tasks or interpersonal skills. These deficits can affect their abilities to maintain jobs & relationships.
- Male children, in particular, are affected & are more likely to use violence in their dating & marital relationships.

Protecting Children
- Often, the most effective way to protect children from experiencing the effects of domestic violence, is to protect & support the victim. Holding the perpetrator, rather than the victim, accountable for the abuse is critical in protecting both the victim & the child.
In homes where domestic violence occurs, young children are often overlooked, particularly if they show no direct physical signs of harm. Research indicates, however, that children are significantly affected by witnessing domestic violence, calling its effect “similar to the reactions of children who have been physically abused” (Edington & Last). Statistics also show that children from violent homes are victims of abuse or neglect at a rate 1500% higher than that of the general population. They can either be direct victims of abuse, or suffer indirectly while trying to protect a non-offending parent. Unfortunately, it is these indirect victims who often suffer in silence.

**Variables**

Characteristics of young children affected by witnessing domestic abuse vary with each child.

**The degree to which young children are affected, the nature of these effects, & the long-term implications for the child depend on a number of the following variables**

- Child’s age and gender (boys tend to externalize, while girls internalize)
- Child’s own developmental strengths (e.g. child’s understanding of what is happening when their parents argue and their ability to cope with what they see and feel)
- History & current status/stability of the parent-child relationship (e.g., whether or not other problems of child abuse, neglect, alcohol/drug abuse, separation, or other risk factors have occurred/are occurring)
- Quantity & quality of alternative role models & support resources available for the child
- Duration, severity, & frequency of domestic abuse situations witnessed
- History & current status of parent/family mental health, emotional needs, & parent education needs

**Indications**

There are some behaviors that have frequently & commonly been observed as characteristic of children who have witnessed domestic abuse. It is important to remember that a child may present all of the following characteristics & not have witnessed domestic violence. The high frequency & severity of behavior problems exhibited by a child are, however, important signals indicating that the child’s emotional needs are not likely being met, & that stress (e.g., anxiety, fears) is affecting the child’s social & emotional development, self-concept, & ability to control their own behaviors.
Acute Stress Period - Four Weeks

The time when most individuals will experience acute stress reactions is within the first four weeks following a critical incident. It is during this time that debriefing is used to prevent the onset of posttraumatic stress disorder (PTSD).

PTSD Period - Four Weeks After

Posttraumatic Stress reactions are the same as acute stress reactions. The only difference is that once acute stress reactions continue beyond the initial four week period, or additional reactions emerge beyond that four week period (delayed response), the diagnosis of PTSD is likely. Once an individual moves to PTSD additional trauma specific intervention is critical. Debriefing is the process that many believe can help prevent PTSD from taking hold.

Acute Stress - PTSD Reactions

<table>
<thead>
<tr>
<th>REEXPERIENCING</th>
<th>PERSISTENT AVOIDANCE</th>
<th>INCREASED AROUSAL</th>
</tr>
</thead>
<tbody>
<tr>
<td>• Intrusive thoughts, feelings</td>
<td>• Of thoughts, feelings, talking of activities, places, people associated with trauma</td>
<td>• Sleep difficulty</td>
</tr>
<tr>
<td>• Traumatic dreams</td>
<td>• Inability to Recall</td>
<td>• Irritability, assaultive behavior</td>
</tr>
<tr>
<td>• Flashbacks</td>
<td>• Numbing, detachment, estrangement</td>
<td>• Difficulty concentrating</td>
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<tr>
<td>• Intense Psychological Distress</td>
<td>• Restricted affect</td>
<td>• Difficulty remembering</td>
</tr>
<tr>
<td>triggered by reminders</td>
<td>• Foreshortened future</td>
<td>• Hypervigilance</td>
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<tr>
<td>• Physiological Reactivity</td>
<td></td>
<td>• Startle response</td>
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PTSD is the diagnosis when these reactions persist or develop four weeks beyond the initial incident and when there exists one or more reexperiencing reactions; three or more avoidance reactions and two or more arousal reactions.


PTSD Reactions in Children

* **Cognitive dysfunction involving memory and learning.** “A” students become “C” students; severe reactions cause others to fail altogether.

* **Inability to concentrate.** Children who once could complete two and three different tasks now have difficulty with a single task. Parents and educators often react negatively to this behavior because they simply do not understand its cause.
Behaviorally children may exhibit the following:

* Trouble sleeping, being afraid to sleep alone even for short periods of time

* Be easily startled (terrorized) by sounds, sights, smells similar to those that existed at the time of the event - a car backfiring may sound like the gun shot that killed someone; for one child, his dog pouncing down the stairs brought back the sound of his father falling down the stairs and dying

* Become hypervigilant - forever watching out for and anticipating that they are about to be or are in danger

* Seek safety "spots" in their environment, in whatever room they may be in at the time. Children who sleep on the floor instead of their bed after a trauma do so because they fear the comfort of a bed will let them sleep so hard that they won't hear danger coming

* Become irritable, aggressive, act tough, provoke fights

* Verbalize a desire for revenge

* Act as if they are no longer afraid of anything or anyone verbalizing that nothing ever scares them anymore. (in the face of danger, respond inappropriately)

* Forget recently acquired skills

* Return to behaviors they had previously stopped, i.e. bed wetting, nail biting, or developing disturbing behaviors such as stuttering

* Withdraw and want to do less with their friends

* Develop physical complaints: headaches, stomach problems, fatigue, and other ailments not previously present

* Become accident prone, taking risks they had previously avoided, putting themselves in life threatening situations, reenacting the event as a victim or a hero

* Developing a pessimistic view of the future, losing their resilience to overcome additional difficulties, losing hope, losing their passion to survive, play, and enjoy life
INTRODUCTION TO TRAUMA
AND ITS IMPACT ON CHILDREN

I. Threats to resiliency:

1). Resiliency is a complex developmental process, like “intelligence” or “creativity”. Like other traits, it has both a biological and an acquired component.

2). Its function is to protect the child (or adult) from the detrimental effects of overwhelming stress (trauma). Put simply, it either reduces the intensity of the stressful event as it is perceived, increases the child’s ability to cope afterward, or both. Like “shock absorbers” which soften an impact, without consistent nurturing and support through the normal stressful events of life (ex: going to school for the first time, or other normal but scary experiences), the event may have more of a negative impact. Further, if the problem is chronic, children can become more vulnerable later in life to developing mental illness.

3). Understandably trauma, in the form of child abuse (sexual, physical, or emotional), neglect, and witnessing domestic violence, directly threatens a child’s resiliency.

4). In the aftermath of trauma, it is the job of those who work with children to provide the safety needed to learn new ways of coping. In other words, we assist the parents in developing the child’s resiliency.

II. Observable Symptoms in Response to Trauma:

While fully appreciating a child’s responses to traumatic events takes time, certain useful information about the coping strategies the child employs and the support the child is receiving in the wake trauma can be observed in a relatively brief time period (such as during visitation). This information can be used to fine tune the kinds of interventions that may best help the child cope in that specific setting.

While this is a very complex topic, for the purposes of being useful for supervising visitation, it can be said that there are three main response styles children exercise in the wake of trauma. These can be seen as children interact with their primary caregiver(s): Self Engaged / Self Aware Responses, Self Protective Responses, Disorganized Responses.

1). Self Engaged or Self Aware Response

Children who have not suffered unusual stress and at the same time have parents who have given consistent support through the “everyday emergencies”, typically have fairly well developed resiliency resources. In other words, they typically don’t have the added stress of being either ignored or over reacted to when they express their upset feelings. As a result they are actively engaged or dealing with the experience, are fully aware of how it feels to them, and aren’t afraid to say so.

Example: During a visit with his mother, a child who has been sexually molested by his mother’s ex-boyfriend tells her “I’m mad that you let Gary into the house!” The mother responds with feeling “I am so sorry! He will never hurt you again!”
2. Self Protective Responses

The main issue leading to these type of responses is that for whatever reason, the children aren't safe enough to express their feelings. Out of past rejection experiences or intense fear of reprisals, they can not be explicit. Alternatively, their present living environment may not yet be safe. With no one to help them, they protect themselves from dealing with the experience. The specific ways they keep themselves safe can be observed to take three generally different forms: Avoidance behaviors, Caretaking behaviors, and Controlling behaviors.


The child won't talk about, acknowledge, or behave as if the traumatic event had a serious impact or even happened. In some rare & extreme circumstances, the child may genuinely not remember the event. More frequently however, avoidance behaviors reflect a child who is fully aware, but just not ready to deal with the experience. This may have more to do with the severity of the event itself or the child’s worries about it rather than the child’s history with his/her parents. This may or may not be determined. However, clarity may be gained by observing the parent with the child. If the parent does not appear to respect the child’s need to avoid, it is likely that the child is already well aware of it and protecting him/herself.

Example: During a visit, a father tries to get the child to talk about what happened to her despite the supervisor’s requests for him not to. The quiet child breaks away from her father and anxiously jumps around on the furniture.

B). Caretaking Behaviors.

Frequently through approval or pressure from the parents, a child may be “trained” to deal with problems by taking care of others. This conveniently prevents the child from having to deal with them. This avoidance style often develops when parents have a history of untreated trauma themselves. When a parent has deficient resiliency resources of their own, they may rely on the children’s support as their own self protective strategy. This is the “parentified child” who feels responsible for caring for his/her parent and younger siblings.

Example: In the middle of a visit, a seven year old girl nervously asks the supervisor if she can take her 6 month old baby sister to the bathroom to change her diaper. The mother exhaustedly says “Thank you honey! I’m so tired this morning!”

C). Controlling Behaviors.

In the context of a traumatic event, some parents may be traumatized themselves and may be unable to adequately take charge of protecting and responding to the needs of the child. Over compensating for the loss of control in their family, some children “take matters in their own hands”. In other words, the child responds by ensuring his needs get met by himself. This strategy can “protect” the child from the initial trauma by giving him more important things to worry about, particularly his own safety.
At a child's level there is little they actually have control over, however abused children are often observed trying to establish their own little dictatorships with playmates (and sometimes parents). The thinking is that if they can control their environment, they can keep themselves safe. Then, what hurt them in the past can never happen again.

In less problematic forms, this may merely reflect a determinedly independent child who is quite challenging with adults who do not establish their authority. However, at its worst, this indicates a child who is extremely afraid that if he gives up control he will be exploited. Often this is the situation where "instrumental aggression" is used. The child uses violence to teach other children to do things his way. In this situation, the child is constantly protecting himself from unknown but perceived threats.

In some situations the problem is made worse when parents have "control issues" of their own. The child's need to control his environment is perceived as a threat to the adult's own independence. These parents really have a hard time with the "terrible two's".

Example: Fifteen minutes into the visit, a boy hits his sister when she continually refuses to play their game by his own rules. His dad tries to make him do a "time out" on his knees in the corner. When asked, the dad tells the supervisor he will be in time out until the end of the visit. The supervisor intervenes.

3. The Disorganized Pattern.

Of the three response styles discussed so far, this is the most primitive, and in many cases the hardest to rectify. A complex combination of factors can combine making this response pattern a deeply ingrained one: The occurrence of an incident or series of incidents of lengthy duration beginning at a very young age, neglect, and particularly, the lack of solid attachment between parent and child. In other words, the child is developmentally impoverished in profound ways. The integrity of a child's developing identity and resiliency resources are threatened far beyond the "typical" impact of the traumatic events themselves. In other words the trauma may essentially be irrelevant compared to the child's other problems. Sometimes these are referred to as "lost children".

This response style is referred to as "disorganized" because the child's behavior is so primitive at times that there seems to be no pattern or "sense" to it. Sometimes it is referred to as infantile as well. The child's chronological age may be much older, but patterns of eye contact, language use, play, etc., are random, immature and brief.

Another possibility regarding this style is that is that the problems associated with poor attachment (lack of trust in the parent, lack of reciprocity, where the child learns her behavior has an impact on the parent's behavior and vise versa, lack of or inconsistency of nurturing, etc.) can far overshadow the impact of a traumatic event.

Example: During a visit, the mother seems to stare blankly for periods as her 5 year old boy occupies himself with a block while babbling to himself. When the parent engages the child, there is little eye contact sought or feeling expressed by the mom, but the boy does respond and they connect briefly. After a few moments however, the boy slips into a blank stare of his own. The mother doesn't notice.
Stress and Trauma in Children

By Naomi Drew
Author of Hope and Healing: Peaceful Parenting in an Uncertain World

Don't think that just because your children aren't talking about their fears they don't Even children who have been shielded from the news can't help but pick up things a playground or even passing a newsstand. Sometimes between children's TV shows news flashes that sound terrifying: "Shopping mall bombed in Israel," "Chances of a attack in the United States," "Can we survive bioterrorism?" All of these ideas have into the national consciousness, and our children are absorbing them. Listen to some words:

"Sometimes I'm scared," confided 13 year-old Frank. "My dad was going to go to Fr didn't want him to go on the plane. I was so relieved when he canceled the trip."

Five year-old Hannah expressed feelings of fear also. "When you do a war, what if side wins? What would happen to us?"

Eight year old Ben said, "It's not a very good time. There's war in Afghanistan and t in the world. I don't like the bombings."

Fifteen year-old Amy said: "I feel unsafe to know that people are dying all over the frightening to think about."

Nine year-old Tess gets upset every time she sees reports of war on television. "It f will never be peaceful again. I'm worried the world may come to an end."

Young people of all ages are more vulnerable than ever to the effects of stress. If you think your child might be suffering from reactions to stress or trauma of any ki are some signs to be aware of:

Ages 3 - 5
- physical complaints like stomach aches and headaches
- fearfulness and feelings of not being safe
- stranger or separation anxiety
- compulsively "playing out" the source of trauma; e.g. building towers with blocks a crashing them down.
- avoidance of situations that may or may not be related to the trauma
- sleep disturbances
- loss of acquired developmental skills (like dressing oneself)
- frequent crying
Ages 6 - 10
- physical complaints and concerns about their health
- anxiety and fearfulness
- compulsive re-enactment of the trauma through play or drawing
- "omen formation" - believing that warning signs predicted the trauma, and a tendency to be hyper-alert in order to recognize new warning signs.
- preoccupation with how the crisis could have been solved or averted
- sleep problems

Pre-adolescence and Adolescence
- nightmares and flashbacks, difficulty sleeping, and feeling detached or estranged
- impulsive and aggressive behaviors.
- over-preoccupation with other concerns unrelated to the trauma
- rebelliousness and anti-social behaviors
- risk-taking behaviors

Teens can normally be rebellious, even a little aggressive, but if this becomes excessive, it's time to seek professional intervention. If your teen starts engaging in promiscuous behavior, starts dabbling in drugs, or using alcohol, all these are danger signals. Also, any changes in behavior -- eating, sleeping, recreation, homework, or activities with friends -- may be very reassuring too.

There are lots of things you can do in your own home to help your child calm, cope, and recover. Now let's take a look at what they are.

Helping Children Cope With Stress

Here's a general break-down of age-related strategies for helping children cope.

Ages 3 - 5
- Children of this age need plenty of reassurance that they are safe, but make sure it's authentic. Avoid statements like, "We will never have another terrorist attack again," and instead say, "I am here for you and I'll always protect you in every way I can. And when school (or day-care) your teachers are keeping you safe." Taking your children to visit the local police and fire department so they can talk directly with the people who work there can be very reassuring too.

For young children, Dr. Perri Klass, pediatrician and author of Love and Modern Medicine, says, "It's alright to make the promise you can't keep for sure: 'I'll be here to take care of you tomorrow and every day.'" She says, "Even 5 year-olds understand that everyone dies sometime and will be comforted if you simply say, 'I have every intention of being here for you. I'm going to be very careful about what I do.'" (Parenting, Dec./Jan. 2005)

- Let your children know it's okay to feel afraid or sad if that's how they are feeling. Validate their concerns and provide emotional support during these times rather than trying to talk them out of their feelings. Validating your child's feelings is essential. Initiate discussion, but don't push. Open the door gently and encourage your child without being intrusive.

Try sitting down on the edge of your child's bed at night before she goes to sleep. Cuddle together and then say something like, "I'm just wondering how you've been feeling today. Have you had a good day?" Or, "I'm just checking in. Anything you'd like to talk about?" Let your child take the lead from there.

- Encourage play that allows your child to act out some of the things he's afraid of. Fireman or police officer is a healthy way to do this. This is how young children try to make sense of what we've lived through. As long as this type of play doesn't become obsessional, it's a good outlet.

- Like we talked about earlier, encouraging your child to draw or paint whatever is on her mind is very healing. You'll find lots of way to help her do this later in the chapter.
- Listen and reflect back whatever your child has to say. Sometimes this can be hard because, as parents, we often want to fix the problem. But by listening and empathizing, allow our child a safe space to reveal what he really feels. When 5 year-old Tad told her he was afraid to fly, she encouraged him to talk about it. Here’s their conversation:

Tad: I don’t want to go to Disney World for vacation.
Mom: Why not?
Tad: I’m afraid bad people will come on the plane and hurt us.
Mom: So you’re afraid that we’ll get hurt if we fly.
Tad: Look what happened to all those people who were on the planes the hijackers took.
Mom: You’re afraid hijackers might come on our plane?
Tad: Yes. I don’t want us to die.

By just plain listening Mom allowed Tad to get his fears out on the table. Then she gave reassurances like, “I know how scary it is to fly right now. I was a little nervous then I thought about all the planes that fly safely every day, and all the people travel them. In fact our neighbor Tom flies several times a month for his job, and he’s got it safely every time. I know the airlines are taking extra measures keep all their passengers safe.”

Mom didn’t try to talk Tad out of his feelings. Instead, she listened, reflected back, and gave reassurances that were authentic. After that, Tad wasn’t as nervous about their trip.

Ages 6 - 10
- Children this age may avoid discussing painful feelings. Be open and encourage them to open up to you. Dr. Janine S. Shelby of UCLA Medical Center developed this wonderful activity to help children express feelings: make a personalized book with your child on the cover. On each of four pages write the following:
  ~ Page 1 - This is Sara. Something happened that was very scary.
    (Sara draws her picture on this page.)
  ~ Page 2 - Sara doesn’t want to talk about it. Here’s what would happen if she did. (Child writes or draws a related picture.)
  ~ Page 3 - If Sara starts talking about how she feels, this could happen too.
    _ She would feel worse.
    _ Mom and Dad wouldn’t like hearing how she’s really feeling.
    _ Something else might happen.
    (Help your child check off the appropriate choice and write about it further.)
  ~ Page 4 - If Sara decides to talk about what’s on her mind, I wonder how she might feeling?
    (Here draw a happy face and a sad face. Have your child circle one. Then she can explain why she feels the way she does.)
(Adapted from the article “Brief Therapy with Traumatized Children” by Janine S. Sli)

Other things that help children of this age are:
- Deep breathing and visualization
- Positive self-statements like, “I am safe and well.”
- Altruism, reaching out to help others. Guidance counselor Jane Mangino says: “After children have expressed their feelings, the thing that helps them the most is taking action.” When children help others it removes their own feelings of helplessness.

I have used each of these for years with children of all ages and they are extremely effective. Take the time to teach your child these techniques and you will be giving them a lifelong gift for calming and de-stressing. The younger you start the better. You can actually start this as part of a bedtime ritual with children as young as four.

Pre-adolescents and Adolescents
- Discussing fears openly with an empathetic listener
- Deep breathing
- Visualization and relaxation techniques
- Positive self-statements like, “I am safe and well.”
- Altruism, reaching out to help others. This is particularly helpful for kids of this age them to translate fears into positive action gives them a healthy vehicle for healing. wonderful website you can go to for ideas on how your teen can help. It's called Te! Their website is: http://ala8.ala.org/teenhoopla/activism.html Here your teen can access a wide range of helping activities from homelessness to rainforest. If you child expresses feelings of hopelessness about the world, have hir here. It will show him that people really can make a difference, especially people his
Sometimes just being there with your teen in a safe and loving setting, is enough to open up. Or by gently asking questions about other parts of his life and listening wit judgment. Our intent listening is the best way to get our teens to talk more. When w authentic interest, and validate what they say, they usually end up sharing more.
Physical affection also opens channels to communication. Many kids in their teens st be cuddled when they're alone with us. The kind of closeness that cuddling brings can help a teen feel safe to open up.
For kids of all ages, know that your loving presence is the most soothing thing of all more time to listen. It will be the best investment of time you've ever made.

Naomi Drew is recognized around the world as an expert on conflict resolution and peacemaking in schools and homes. Hailed as visionary, her work has enabled edu parents, and people of all ages to live together more cooperatively.

Her work has been recognized by educational leaders throughout the country. Peo ages have attested to durable changes in their relationships after applying the princ outlines. Her work has been featured in magazines, newspapers, radio, and TV anc currently serves as a parenting expert for “Classroom Close-ups,” a public television

She is the author of four books, serves as a consultant to school districts, leads sen runs parenting courses. You can read more on Naomi Drew's work at her website LearningPeace.com
Mental Health Issues:
Child Abuse Disclosure in the Context of Divorce

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11th Commandment ??

How do we

“Respect the Children”

First, by understanding the rights of children

Second, by upholding those rights
The Invisible Rights of Children

- What are rights?

A right is a stringent claim. The stronger the claim, the more likely a society will accept responsibility for developing policy designed to meet the claim on behalf of all of its citizens.

-Purtilo, 2005
The Invisible Rights of Children

- Children cannot make a claim, much less a stringent claim
- Children are dependent upon caring and thoughtful adults to:
  - Understand their unique needs
  - Advocate on their behalf (from a position of knowledge)
Invisible Right # 1: Special Safety

- **Assault – physical and emotional**
  - As compared to adults, children are less able to recognize, avoid, or defend in situations that present physical or emotional danger

- **Neglect – physical and emotional**
  - As compared to adults, children are less able to meet their own needs

- **Exploitation – physical and emotional**
  - As compared to adults, children are less able to recognize and cope with situations of exploitation
A Brief Digression: Disclosure

- Adult Disclosures (in divorce)
  - Almost all disclosures have complex determinants:
    - A desire to protect the child
    - A desire to retaliate against the ex-spouse
    - A desire to achieve more control
    - A desire to express fears and anxieties
    - An effort to cope with guilt

“Either/Or” questions are dangerous!
A Brief Digression: Disclosure

- Are there reliable “signs” of abuse/neglect?
  - None are perfect
  - No single “sign” is as important as the overall big picture
  - Any significant change in behavior that does not have a sensible explanation is of concern
  - Social isolation is of concern
  - An attitude of secrecy is of concern
A few of the Myths and Realities

- **Myths**
  - Abusive parents don’t love their children (especially those who sexually abuse)
  - Abused children are not bonded to their abusive parents
  - Abuse and neglect only occurs in poor families

- **Realities**
  - In general, neglect causes more harm than abuse
  - Emotional abuse/neglect is under-reported
  - Child factors are often overlooked
Invisible Right # 2: Attachment

• Attachment/bonding is essential for development
  - Gaps in attachment *always* result in gaps in development
  - Thus, gaps in attachment are *always* harmful

• Sometimes there is a need to transfer attachment
  - Obviously, this should be accomplished without a gap in attachment
  - This requires planning, foreshadowing, and a positive affiliation between the attachment figures
Invisible Right #3: Environment

- The principle of “Critical Developmental Periods”
  - Many aspects of development must occur during discrete time periods
  - If development does not occur during those discrete time periods, the opportunity is then lost

- Some obvious examples:
  - Language, bladder control, vision

- Less obvious examples:
  - Emotional self-regulation, social trust, morality, executive function
A summary

- The unique rights of childhood
  - Special safety
  - Attachment continuity
  - A developmentally appropriate environment
Traumatic Experiences in Early Childhood

• What do we mean by “trauma”
  – A significant violation of a child’s fundamental rights
    • Physical/emotional assault, neglect, absence of attachment/bonding
  – Physical injury is the most obvious
  – Emotional neglect is often the most serious
Traumatic Experiences in Early Childhood

- What are the effects of trauma in early childhood
  - The most worrisome is that the scaffolding upon which further development depends is damaged
  - The result is that the resulting impairment often seems out of proportion to the trauma itself
Traumatic Experiences in Early Childhood

- A few examples:
  - Loss of early attachment impairs all development related to attachment
    - Emotional self-regulation, social reciprocity
  - Significantly painful/frightening experiences impairs "exploratory development"
    - Avoidance of new situations, new people, social anxiety along with exaggerated fear responses
  - Distorted attachments (formed with abusive parents)
    - Pathological distortion of later relationships, a pattern of "seeking" abusive partners, lack of self-respect
Case #1 Jessica

- 2 ½ years-old, history of neglect, multiple delays
- Abandoned at 1 ½ years-old, place with aunt
- Is in the process of forming solid attachment to aunt

“Out of nowhere” father appears and wants custody!
Case #1 Jessica

• Father’s history
  – Alcohol and drug abuse
  – Criminal activity (fraud)
  – Homeless
  – Has just found “steady” work
Case #1 Jessica

You are father’s attorney. What would you do?

You are the aunt’s attorney. What would you do?

You are the child’s attorney. What would you do?
Case #2 Tracy

- 7 year-old girl
- Disclosed sexual abuse multiple times by stepfather
- Older siblings reported their witnessing of the abuse
- Mother expresses disbelief
Case #2 Tracy

- All children placed in foster care
- Stepfather not charged with anything
- Older siblings eventually returned to the home
- Tracy remains in foster care and now has multiple complex mental health problems clearly related to the assault

The county feels they have no choice but to begin the process of returning Tracy to her home.
Case #2 Tracy – Now What???

You are stepfather’s attorney. What would you do?

You are the mom’s attorney. What would you do?

You are Tracy’s attorney. What would you do?
Case #3 Judy

- 8 years-old
- Parents divorced, history of domestic violence
- Judy has told mom she has been sexually assaulted by father x4
- Retraining order against dad (not to contact mom/children)
Case #3 Judy

- A dramatic and peculiar event
  - Father breaks in through basement window
  - Abducts Judy, terrorizing her and three other sibs
  - Mom call police, dad returns Judy
  - No charges are filed

- Both parents continue in legal battle for custody
Case #3 Judy

You are dad’s attorney. What would you do?

You are mom’s attorney. What would you do?

You are Judy’s attorney. What would you do?
Ethical Issues
Practical Problems

- Balancing conflicting rights and needs
- Advocating for internally conflicted parents
- Ethical distress in therapists
Ethical Issues: the dimensional quality of rights

• Balancing conflicting rights and needs
  – Dad’s home is a slightly more enriched environment than Mom’s
    ... or
  – Mom is moderately better bonded than Dad
    ... or
  – Supervision is really better at Mom’s home

Does any of this have any meaning in the legal system?
Ethical Issues

• Advocating for internally conflicted parents
  – Dad wants what is best for his child (a strong and deeply held desire)
  – Dad wants custody of his child (an immediate wish)
  – His custody is not best for the child

*How do we best advocate for Dad?*
Ethical Issues

- Ethical distress in therapists
  - The “system,” with all of its imperfections decides to do something awful
  - Does the therapist help the child (enabling the system)?
  - Does the therapist refuse to participate (abandoning the child)?
Research Dilemma

Parent Factors
- Family History
- Mental Illness
- Substance Ab.
- Poverty
- Life Stress
- Abuse

Child Factors
- Dev. Disability
- Mental Illness
- Comm. Dis.
- Behavior Prob.
- Phys. Illness
- Sexual Abuse

Neglect
Research Dilemma

Parent Factors

- Family History
- Mental Illness
- Substance Ab
- Poverty
- Life Stress
- Abuse

Child Factors

- Dev. Disability
- Mental Illness
- Comm. Dis.
- Behavior Prob.
- Phys. Illness
- Sexual Abuse

Neglect

Arrows indicate interactions and influences between factors.
Questions will be taken during the panel discussion
A Brief Digression: Disclosure

- Child Disclosures
  - Physical and emotional assault is usually disclosed with ambivalence, reluctance, and shame
    - Children often feel that they are bad and deserving of the abuse
    - Children often fear retribution
    - Children often fear that they may lose their parent
  - Exploitation may be disclosed casually
    - Children may not recognize that they are being exploited
  - Reliability is a complex issue
    - Most experts agree that the “big picture” reliability is good
    - Depending on the age, fine details are not reliable
    - Children are vulnerable to coaching
    - Suggestibility is an issue that is often over-emphasized
The Invisible Rights of Children

• The uniqueness of children’s rights as a result of three key differences as compared to adults:
  – Children are vulnerable
  – Children are dependent
  – Children are developing
Under oath, I petition the court for a temporary restraining order and/or injunction against the respondent under §813.122, Wis. Stats, based on the following:

1. The petitioner is (name)_____________________.
   - a child. ☐ parent. ☐ stepparent. ☐ legal guardian. ☐ agency involved in CHIPS proceeding.

2. The respondent is ☐ a child.
   ☐ an adult and there is a pending CHIPS action in the juvenile court involving the child victim.

3. The respondent ☐ is ☐ is not the parent of the child.

4. The respondent is:

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5. The respondent has engaged in, or based on prior conduct of the child and the respondent may engage in:
   (Mark any of the following boxes that apply.)
   - a. Physical injury inflicted on the child by other than accidental means.
   - b. Sexual intercourse or sexual contact contrary to §§940.225, 948.02, 948.025, 948.095, Wis. Stats.
   - c. Sexual exploitation of the child contrary to §948.05, Wis. Stats.
   - d. Permitting, allowing, or encouraging the child to violate the prostitution laws contrary to §944.30, Wis. Stats.
   - e. Forcing the child to view sexual activity contrary to §948.055, Wis. Stats.
   - f. Exposing genitals or pubic area to the child contrary to §948.10, Wis. Stats.
   - g. Causing the child to expose genitals or pubic area contrary to §948.10, Wis. Stats.
   - h. Emotional damage to the child as defined in to §48.02(1)(g), Wis. Stats.

6. Stated below or attached as part of this petition is a statement of facts indicating that the respondent has engaged in or threatened to engage in child abuse. (State when, where, what happened, and who did what to whom:)
   - ☐ See attached.

__________________________
Date of Birth

Case No. ____________________________

For Official Use
I REQUEST THAT THE COURT (Mark any of the following boxes that apply):

☐ 1. Immediately issue a temporary restraining order and set a time for a hearing on a final injunction requiring the respondent to:
   ☐ a. avoid the residence of the child and any premises temporarily occupied by him or her.
   ☐ b. avoid contacting the child and causing any other person to have contact with him or her in any way unless the court agrees such contact is in the best interests of the child.
   ☐ c. other:

☐ 2. Appoint a guardian ad litem for the child.
☐ 3. Set reasonable or necessary child support.
☐ 4. Grant an award in a reasonable amount for the costs of maintaining this action and attorney fees, if deemed appropriate, and such other relief as may be just and equitable.
☐ 5. Direct the sheriff to assist in executing or serving this temporary restraining order and injunction.

Subscribed and sworn to before me
on ____________________________

Notary Public, State of Wisconsin
My commission expires: _____________

Signature of Petitioner

Distribution:
1. Original - Court
2. Petitioner
3. Respondent
4. Law Enforcement
5. Other: ____________________________

This form shall not be modified. It may be supplemented with additional material.

Page 2 of 2
STATE OF WISCONSIN, CIRCUIT COURT, ________________________ COUNTY

IN THE INTEREST OF

Name

Date of Birth

Case No. ________________________

To the respondent:

Name: ____________________________________________________________________________
Address: ____________________________________________________________________________

On the basis of the petition, the court finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child and the respondent may engage in, abuse of (name) ___________________________, the child, whose date of birth is ____________________________.

THE COURT ORDERS that a hearing for an injunction be held:

Date: ____________  Time: ____________  Location: ____________________________

Presiding Judge ____________________________

Failure to appear could result in an injunction being issued directing:

a. That you avoid the child's residence and/or any other premises temporarily occupied by the child now and in the future;
b. That you avoid contacting or causing any other person to contact the child, unless certain conditions are met; and
c. Any other appropriate orders.

Violation of an injunction issued at this hearing may result in your arrest and imposition of criminal penalties.

THE COURT FURTHER ORDERS:

☐ 1. The respondent avoid the child's residence and/or any premises temporarily occupied by the child.
☐ 2. The respondent avoid contact or causing contact with any person other than a party's attorney to contact the child, unless the petitioner consents in writing, and the court agrees the contact is in the best interests of the child. Contact means knowingly touching, meeting, communicating, or being in visual or audio contact with the child.
☐ 3. Service of this notice and order shall be made (time period) ____________________________ prior to the hearing date.
☐ 4. If requested, the sheriff shall serve and assist in executing this temporary restraining order;
other: ____________________________________________________________________________
☐ 5. (Name) ____________________________ is appointed guardian ad litem for the child.
(A guardian ad litem is mandatory if the respondent is a parent of the child.)
☐ 6. Other: ____________________________________________________________________________

THIS ORDER IS IN EFFECT UNTIL THE INJUNCTION HEARING IS HELD.

Violation of this order shall result in immediate arrest, is punishable by imprisonment not to exceed 9 months or a fine not to exceed $1,000, or both, and payment of filing and service fees.

If an injunction is issued, the judge or court commissioner must order the respondent not to possess a firearm while the injunction is in effect.

This injunction is entitled to full faith and credit in every civil or criminal court of the United States or any other state, or Indian tribal courts (to the extent such tribal courts have personal jurisdiction over non-tribal members).

If you need help in this matter because of a disability, please call: ____________________________


BY THE COURT:

Circuit Court Judge/Circuit Court Commissioner ____________________________
Name Printed or Typed ____________________________
Date ____________________________

JC-1691, 06/03 Notice of Hearing - Temporary Restraining Order (Child Abuse) §§48.25(6) and 813.122, Wisconsin Statutes

This form shall not be modified. It may be supplemented with additional material.
STATE OF WISCONSIN, CIRCUIT COURT, COUNTY

IN THE INTEREST OF

Name

Date of Birth

Case No.

THE COURT FINDS:
1. The petitioner has filed a petition alleging child abuse.
2. The respondent is:

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</table>

3. The petitioner has served upon the respondent a copy of the petition and notice of the time for a hearing on the issuance of the injunction; or the respondent has served upon the petitioner notice of the time for a hearing on the issuance of the injunction. The respondent had an opportunity to be heard. This court has personal and subject matter jurisdiction.
4. Based on the hearing held on the petition, there are reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child and the respondent may engage in, abuse of the child.

THE COURT ORDERS:
- [ ] 1. The respondent avoid the child’s residence and/or any premises temporarily occupied by the child now and in the future.
- [ ] 2. The respondent avoid contacting or causing any person other than a party’s attorney to contact the child unless petitioner consents in writing and the court agrees the contact is in the best interests of the child. **Contact means knowingly touching, meeting, communicating or being in visual or audio contact with the child.**
- [ ] 3. If requested, the sheriff shall serve and assist in executing this injunction; other:
- [ ] 4. Other:

THE COURT FURTHER ORDERS the respondent is prohibited from possessing a firearm until the expiration of this injunction. Possession of a firearm is a Class G Felony punishable by a fine not to exceed $25,000 or imprisonment not to exceed 10 years, or both. A respondent may retain a firearm only if the respondent is a peace officer and only to the extent required by the peace officer’s employer. The respondent shall immediately surrender any firearms that he or she owns or has in his or her possession to:
- [ ] the sheriff of this county. [ ] the sheriff of the county in which the respondent resides:
- [ ] another person:

Name and Address

THIS INJUNCTION SHALL BE EFFECTIVE UNTIL ____________________________.

Violation of this order shall result in immediate arrest, is punishable by imprisonment not to exceed 9 months or a fine not to exceed $1,000, or both, and payment of filing and service fees.

This injunction is entitled to full faith and credit in every civil or criminal court of the United States or any other state, or Indian tribal courts (to the extent such tribal courts have personal jurisdiction over non tribal members).

Distribution:
1. Original - Court
2. Petitioner
3. Respondent
4. Law Enforcement
5. Department of Justice or Designee

[ ] The respondent was present in court and personally served with a copy of this order.

BY THE COURT:

Circuit Court Judge

Name Printed or Typed

Date

JC-1082, 09/03 Injunction (Child Abuse) §§48.25(6) and 813.122, Wisconsin Statutes

This form shall not be modified. It may be supplemented with additional material.
STATE OF WISCONSIN, CIRCUIT COURT, COUNTY

IN THE INTEREST OF

Injunction (Child Abuse)

Name

Case No.

Date of Birth

THE COURT FINDS:

1. The petitioner has filed a petition alleging child abuse.
2. The respondent is:

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<tbody>
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3. The petitioner has served upon the respondent a copy of the petition and notice of the time for a hearing on the issuance of the injunction; or the respondent has served upon the petitioner notice of the time for a hearing on the issuance of the injunction. The respondent had an opportunity to be heard. This court has personal and subject matter jurisdiction.
4. Based on the hearing held on the petition, there are reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child and the respondent may engage in, abuse of the child.

THE COURT ORDERS:

☐ 1. The respondent avoid the child's residence and/or any premises temporarily occupied by the child now and in the future.
☐ 2. The respondent avoid contacting or causing any person other than a party's attorney to contact the child unless petitioner consents in writing and the court agrees the contact is in the best interests of the child. Contact means knowingly touching, meeting, communicating or being in visual or audio contact with the child.
☐ 3. If requested, the sheriff shall serve and assist in executing this injunction; other:
☐ 4. Other:

THE COURT FURTHER ORDERS the respondent is prohibited from possessing a firearm until the expiration of this injunction. Possession of a firearm is a Class G Felony punishable by a fine not to exceed $25,000 or imprisonment not to exceed 10 years, or both. A respondent may retain a firearm only if the respondent is a peace officer and only to the extent required by the peace officer's employer. The respondent shall immediately surrender any firearms that he or she owns or has in his or her possession to:
☐ the sheriff of this county.
☐ the sheriff of the county in which the respondent resides:
☐ another person:

Name and Address

THIS INJUNCTION SHALL BE EFFECTIVE UNTIL ____________________________.

Violation of this order shall result in immediate arrest, is punishable by imprisonment not to exceed 9 months or a fine not to exceed $1,000, or both, and payment of filing and service fees.

This injunction is entitled to full faith and credit in every civil or criminal court of the United States or any other state, or Indian tribal courts (to the extent such tribal courts have personal jurisdiction over non tribal members).

Distribution:
1. Original - Court
2. Petitioner
3. Respondent
4. Law Enforcement
5. Department of Justice or Designee

☐ The respondent was present in court and personally served with a copy of this order.

BY THE COURT:

Circuit Court Judge

Name Printed or Typed

Date

JC-1692, 06/03 Injunction (Child Abuse)

§§48.25(6) and 813.122, Wisconsin Statutes

This form shall not be modified. It may be supplemented with additional material.
Child Abuse Injunctions in Wisconsin
Prepared by Cyrus A. Behroozi, J.D.
Director of Child Advocacy
Task Force on Family Violence of Milwaukee, Inc.
Revised July 2005

THE CHILD ABUSE INJUNCTION STATUTE - WS 813.122

The Definition of Abuse - Conduct or Threat

WS 813.122 defines abuse as conduct, as defined under 48.02(1)(a) and (b) to (gm) or the threat to engage in any conduct under 48.02(1), other than conduct under 48.02(1)(am).

48.02(1) provides the definitions of abuse from the General Provisions of the Children's Code:

"Abuse", other than used in referring to abuse of alcoholic beverages or other drugs, means any of the following:

48.02(1)(a) Physical injury inflicted on a child by other than accidental means.

NOTE: 813.122 does not define or refer to a definition of "physical injury" in the statutes. 48.02(14g), however, defines physical injury as including, but not limited to, lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm, as defined by 939.22(14).

48.02(1)(b) Sexual intercourse or sexual contact under s. 940.225, 948.02 or 948.025 (See Appendix of Wisconsin Statutes).

940.225 Sexual assault
948.02 Sexual assault of a child
948.025 Engaging in repeated acts of sexual assault of the same child

48.02(1)(c) A violation of s. 948.05.

948.05 Sexual exploitation of a child

48.02(1)(d) Permitting, allowing or encouraging a child to violate s. 944.30.

944.30 Prostitution

48.02(1)(e) A violation of s. 948.055.

948.055 Causing a child to view or listen to sexual activity
48.14(10) In addition, in Milwaukee County, cases are sent to children's court if the petitioner is a minor.

**NOTE:** If the action is brought in children's court, Form JC-1690 should be used for the petition.

Civil court will have jurisdiction in other actions brought under this section. Confirm the local procedure with the Clerk of Courts.

**NOTE:** For cases with civil court jurisdiction, Form CV-412 should be used for the petition.

**Guardian ad Litem**

The court shall appoint a GAL if the respondent is a parent of the child. 813.122(3)(bm)

If the respondent is not a parent, the court may appoint a GAL on its own motion or the motion of any party. 813.122(3)(b)1

**Confidentiality of the Proceedings**

The court, on its own motion or the motion of any party may order:

1. That all persons, other than the parties, their attorneys, witnesses, child victim advocates, service representatives, as defined in s. 895.73(1)(c), court personal and GAL, be excluded from any hearing under this section. 813.122(3)(b)2

2. That access to any record of an action under this section be available only to the parties, their attorneys, any GAL, court personnel and any applicable court upon appeal. 813.122(3)(b)3

**Commencement of the Action - The Petition and Temporary Restraining Order**

**Requirements of the Petition - 813.122(6)(a)**

The petition shall allege facts sufficient to show the following:

1. The name of the petitioner and the child victim.
2. The name of the respondent.
3. That the respondent engaged in, or based on prior conduct of the respondent and child, may engage in, abuse of the child victim.
1. The petitioner files a petition alleging the elements set forth in 813.122(6)(a), 813.122(5)(a)

2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of 813.122(5)(a)

3. After hearing, the judge finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the child victim and the respondent may engage in, abuse of the child victim. 813.122(5)(a)

**NOTE:** An extension/adjournment must be in writing and signed by both parties (See Form CV-408).

**NOTE:** The injunction may only be entered against the respondent named in the petition. 813.122(5)(c)

**NOTE:** The injunction hearing must be heard by a judge. 813.122(5)(a)

**The Effect and Duration of the Child Abuse Injunction**

The Child Abuse Injunction orders the respondent to avoid the child's residence or any premises temporary occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents in writing and the judge or court commissioner agrees that the contact is in the best interests of the child victim. 813.122(5)(a)

The injunction may be effective for no more than 2 years or until the child victim attains 18 years of age, whichever occurs first. 813.122(5)(d)

**Visitation and Support**

If the respondent is the parent of the child victim, the judge shall modify the order to provide the parent reasonable visitation rights, unless the judge finds that visitation would endanger the child's physical, mental or emotional health. The judge may provide that any visitation be supervised. 813.122(5)(b)

An injunction under this section may direct the payment of child support using a method of calculation authorized under s. 767.25. 813.122(5)(e)
be notified by the petitioner after the extension is granted. 813.122(5)(d)4

Penalty for Violation of the TRO or Injunction

A party who knowingly violates a TRO or injunction under this section shall be fined not more than $1,000.00 or imprisoned for not more than 9 months or both. 813.122(11)

Full Faith and Credit

An order or injunction issued under this section shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members. 813.122(12)
(b) The court or circuit court commissioner, on its or his or her own motion or the motion of any party, may order one or more of the following:

1. That a guardian ad litem be appointed for the child victim in accordance with s. 48.235.
2. That all persons, other than the parties, their attorneys, witnesses, child victim advocates, service representatives, as defined in s. 895.73 (1) (c), court personnel and any guardian ad litem, be excluded from any hearing under this section.
3. That access to any record of an action under this section be available only to the parties, their attorneys, any guardian ad litem, court personnel and any applicable court upon appeal.

(bm) The court or circuit court commissioner shall appoint a guardian ad litem if the respondent is a parent of the child.

(c) An action under this section may pertain to more than one child victim.

(4) TEMPORARY RESTRAINING ORDER. (a) A judge or circuit court commissioner shall issue a temporary restraining order ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents in writing and the judge or circuit court commissioner agrees that the contact is in the best interests of the child victim, if all of the following occur:

1. The petitioner submits to the judge or circuit court commissioner a petition alleging the elements set forth under sub. (6) (a).
2. The judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (5). A judge shall hold a hearing on issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 7 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

(5) INJUNCTION. (a) A judge may grant an injunction ordering the respondent to avoid the child victim's residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents to that contact in writing and the judge agrees that the contact is in the best interests of the child victim, if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (6) (a).
2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.
3. After hearing, the judge finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

(b) If the respondent is the parent of the child victim, the judge shall modify the order under par. (a) to provide the parent reasonable visitation rights, unless the judge finds that visitation would endanger the child's physical, mental or emotional health. The judge may provide that any authorized visitation be supervised.

(c) The injunction may be entered only against the respondent named in the petition.

(d) 1. An injunction under this subsection is effective according to its terms, but for not more than 2 years or until the child victim attains 18 years of age, whichever occurs first.
2. When an injunction in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the child victim. This extension shall remain in effect until 6 months after the date the court first entered the injunction or until the child attains 18 years of age, whichever occurs first.
3. If the petition states that an extension is necessary to protect the child victim, the court may extend the injunction for not more than 2 years or until the child attains 18 years of age, whichever occurs first.
4. Notice need not be given to the respondent before extending an injunction under subd. 2. or 3. The petitioner shall notify the respondent after the court extends an injunction under subd. 2. or 3.

(e) An injunction under this section may direct the payment of child support using a method of calculation authorized under s. 767.25.

(5m) NOTICE OF RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS. (a) An injunction issued under sub. (5) shall do all of the following:

1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29.
2. Except as provided in par. (ag), require the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action under this section was commenced, to the sheriff of the county in which the respondent resides or to another person designated by the respondent and approved by the judge or circuit court commissioner. The judge or circuit court commissioner shall inform the person designated by the respondent, unless the judge or circuit court commissioner finds that the person is inappropriate and places the reasons for the finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the judge or circuit court commissioner, the judge or circuit court commissioner shall inform the person to whom the firearm is surrendered of the requirements and penalties under s. 941.29 (4).

(ag) If the respondent is a peace officer, an injunction issued under sub. (5) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

(am) 1. When a respondent surrenders a firearm under par. (a)
2. to a sheriff, the sheriff who is receiving the firearm shall prepare a receipt for each firearm surrendered to him or her. The receipt shall include the manufacturer, model and serial number of the firearm surrendered to the sheriff and shall be signed by the respondent and by the sheriff to whom the firearm is surrendered.

2. The sheriff shall keep the original of a receipt prepared under subd. 1. and shall provide an exact copy of the receipt to the respondent. When the firearm covered by the receipt is returned to the respondent under par. (b), the sheriff shall surrender to the respondent the original receipt and all of his or her copies of the receipt.

3. A receipt prepared under subd. 1. is conclusive proof that the respondent owns the firearm for purposes of returning the firearm covered by the receipt to the respondent under par. (b).
4. The sheriff may not enter any information contained on a receipt prepared under subd. 1. into any computerized or direct electronic data transfer system in order to store the information or disseminate or provide access to the information.

(aw) A sheriff may store a firearm surrendered to him or her under par. (a) 2. in a warehouse that is operated by a public warehouse keeper licensed under ch. 99. If a sheriff stores a firearm at a warehouse under this paragraph, the respondent shall pay the costs charged by the warehouse for storing that firearm.
Child Abuse Injunctions in Wisconsin

Cyrus A. Behroozi
Director of Child Advocacy Task Force on Family Violence of Milwaukee, Inc.

Wisconsin Statute § 813.122

Governs child abuse injunctions in the State of Wisconsin
- **Petitioner**: The party requesting that the court issue an order of protection
- **Respondent**: The party against whom the order is sought
- **Petition**: The legal papers requesting a Temporary Restraining Order and injunction hearing
- **Temporary Restraining Order (TRO)**: A 7-day order barring the respondent from having contact with the child
- **Injunction**: An order barring contact or setting other conditions on the respondent's contact with the child victim

The Definition of Abuse

**Conduct or Threat**
- Physical Injury
- Selections from the Criminal Code
- Emotional Damage

Physical Abuse

Defined by WS § 48.02(1)(A)

Physical injury inflicted on a child by other than accidental means

The Definition of Physical Injury

813.122 does not define or refer to a definition of physical injury in the statutes. 48.02(14g) defines physical injury as including, but not limited to:
- Lacerations
- Fractured bones
- Internal Injuries
- Severe or frequent bruising
- Great bodily harm, as defined by 939.22(14)

Definitions of Abuse from the Criminal Code

The child abuse injunction statute also defines the following acts as abuse:
- Sexual intercourse or sexual contact with a child
- Sexual exploitation of a child
- Permitting, allowing or encouraging a child to engage in prostitution
- Causing a child to view or listen to sexual activity
- Exposing genital or pubic area to a child
Commencing the Action

The Petition and Temporary Restraining Order

The petition shall allege facts sufficient to show the following:
- The name of the petitioner and the child victim.
- The name of the respondent.
- That the respondent engaged in, or based on prior conduct of the respondent and child, may engage in, abuse of the child victim.
- If the payment of child support is requested, that the payment of support is reasonable and necessary under the s. 767.25 criteria.

The Temporary Restraining Order

Notice to the respondent is not required before issuing the TRO. The judge or court commissioner shall issue a TRO if:
- The petition alleges the elements set forth in s. 813.122(6)(e).
- The judge or court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the child victim and respondent, may engage in abuse of the child victim.

The Effect of the TRO

The TRO orders the respondent to avoid the child’s residence or any premises temporary occupied by the child victim or both, and to avoid contacting or causing any person other than a party’s attorney to contact the child victim unless the petitioner consents in writing and the judge or court commissioner agrees that the contact is in the best interests of the child victim.

The Duration of the TRO

The TRO remains in effect until a hearing is held on issuance of an injunction. The injunction hearing shall be held within seven days after the TRO is issued unless:
- The time is extended upon the written consent of the parties.
- The time is extended once for 7 days upon a finding that the respondent has not been served with a copy of the TRO although the petitioner has exercised due diligence.

The Injunction Hearing

An injunction will issue if all of the following occur:
- The petitioner has filed a petition alleging the elements set forth in s. 813.122(6)(e). The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.
- After hearing, the judge finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

Confidentiality of the Proceedings

The court, on its own motion or the motion of any party, may order:
- That all persons, other than the parties, their attorneys, witnesses, child victim advocates, service representatives, as defined in s.895.73(1)(c), court personal and GAL be excluded from any hearing under this section.
- That access to any record of an action under this section be available only to the parties, their attorneys, any GAL, court personnel and any applicable court upon appeal.
Full Faith and Credit

An order or injunction issued under this section shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

Thank you for your support

TASK FORCE on FAMILY VIOLENCE
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The Effect and Duration of the Child Abuse Injunction

- The Child Abuse Injunction orders the respondent to avoid the child's residence or any premises temporary occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents in writing and the judge or court commissioner agrees that the contact is in the best interests of the child victim.
- The injunction may be effective for no more than 2 years or until the child victim attains 16 years of age, whichever occurs first.

Visitation and Support Orders

- If the respondent is the parent of the child victim, the judge shall modify the order to provide the parent reasonable visitation rights, unless the judge finds that visitation would endanger the child's physical, mental or emotional health.
- The judge may provide that any visitation be supervised.
- An injunction under this section may direct the payment of child support using a method of calculation authorized under s. 767.25.

Surrender of Firearms

An injunction issued under this section shall:
- Inform the respondent of the requirements and penalties under s. 941.28 (Possession of a Firearm).
- Require the respondent to surrender any firearm in their possession to the sheriff of the county in which the action was commenced, the sheriff of the county in which they reside, or another person designated by the respondent and approved by the judge or court commissioner. If the judge or court commissioner finds the person designated by the respondent to be inappropriate, they must place the reasons for this finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the court, the judge or court commissioner shall inform the recipient of the requirements and penalties under s. 941.28(4).

Exception for Peace Officers

The injunction may not require a peace officer to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

Extensions of the Injunction

- When an injunction in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the child victim. This extension shall remain in effect until 6 months after the date the court first entered the injunction or until the child attains 18 years of age, whichever occurs first.
- If the petitioner states that an injunction is necessary to protect the child victim, the court may extend the injunction for not more than 2 years or until the child attains 18 years of age, whichever occurs first.
- The statute does not require notice to the respondent before the extension of an injunction in either manner, however, they must be notified by the petitioner after the extension is granted.

Penalty for Violation of the TRO or Injunction

A party who knowingly violates a TRO or injunction under this section shall be fined not more than $1,000.00 or imprisoned for not more than 9 months or both.
The Definition of Emotional Damage

The statute does not define emotional damage, but allows such a claim if:
A child's parent, guardian, or legal custodian has neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment for the child to take steps to alleviate the symptoms.

Who can Petition

An action may pertain to more than one child victim:
• The child victim
• The parent of a child victim
• The legal guardian of a child victim
• The Guardian ad litem in a CHIPS case
• Any party or governmental or social agency involved in a CHIPS case

Venue

WS § 801.50(5s)
The venue of an action under 813.122 shall be in the county in which the cause of action arose or where the petitioner or respondent resides.

Who can be subject to an order

• An adult or child who engages in physical abuse
• If a claim of emotional damage, the child's parent, guardian or legal custodian if they have neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment for the child to take steps to alleviate the symptoms

Jurisdiction and Forms

Family Court or Children's Court will exercise jurisdiction
• If the respondent is a child, or the action is brought as part of a CHIPS proceeding, Children's Court has exclusive jurisdiction. (Form JC-1690)
• In Milwaukee County, if the respondent is not the parent of the child victim, Children's Court will hear the action.
• If there is an underlying divorce or paternity action Family Court will hear the action. (Form CV-412)

The Role of the Guardian ad Litem

• The court shall appoint a GAL if the respondent is a parent of the child victim.
• The court may appoint a GAL on its own motion or the motion of any party if the respondent is not a parent.
INJUNCTIONS, NE ExeAT AND RECEIVERS 813.123

813.123 (1) Definitions. In this section:

(a) "Abuse" has the meaning given in s. 55.01 (1).
(b) "Bodily harm" has the meaning given in s. 939.22 (4).
(c) "County protective services agency" means the county department designated in s. 55.02.
(d) "False representation" includes a promise that is made with the intent not to fulfill the promise.
(e) "Great bodily harm" has the meaning given in s. 939.22 (14).
(f) "Misappropriation of property" has the meaning given in s. 55.01 (4p).
(g) "Neglect" has the meaning given in s. 55.01 (4r).
(h) "Vulnerable adult" has the meaning given in s. 940.285 (1).

(2) Commencement of action and response. No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. The vulnerable adult, a parent, an adult sibling, an adult child or the legal guardian of the vulnerable adult or a county protective services agency may be a petitioner under this section. Section 813.06 does not apply to an action under this section. The respondent may answer the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

(3) General procedure. (a) Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order, the circuit court commissioner shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (5) on whether to issue an injunction, which is the final relief. If the court or circuit court commissioner issues a temporary restraining order, the order shall be set forth the date for the hearing on an injunction. If the court or circuit court
(b) The petitioner does not violate the court order under sub. (3) or (4) if he or she admits into his or her residence a person ordered under sub. (3) or (4) to avoid that residence.

(9) NOTICE OF FULL FAITH AND CREDIT. An order or injunction issued under sub. (3) or (4) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

This section is constitutional.

Sub. (3) (am) provides for a limited-term injunction as an alternative to a restraining order under sub. (3) (a) when 3 stated conditions are met. Johnson v. Miller, 157 Wis. 2d 482, 459 N.W.2d 886 (Ct. App. 1990).

A person convicted of violating a temporary injunction may not collaterally attack the validity of the injunction in a criminal prosecution to enforce the injunction. State v. Buzelew, 168 Wis. 2d 642, 484 N.W.2d 362 (Ct. App. 1992).

This section does not authorize granting an injunction without filing a formal petition, thus precluding an injunction against the petitioner. Lalunertne v. Stange, 200 Wis. 2d 179, 546 N.W.2d 182 (Ct. App. 1996), 95-1718.

The definition of "household member" requires a personal residential living arrangement between the parties. They need not reside in only one place, but must reside together on a continuous basis. Petrowsky v. Krause, 223 Wis. 2d 32, 588 N.W.2d 318 (Ct. App. 1996), 97-2205.

Only a true threat is constitutionally punishable under statutes criminalizing threats. The constitutional boundaries for a true threat apply in domestic-abuse—abuse—incest—child—abuse—cases under this section. Acts underlying an earlier violent domestic-abuse—incest—child—abuse—case were relevant to a prediction of what the defendant would do if the domestic—incest—child—abuse—inequities were not granted, and if victim's threats were true threats. Wink v. Hoffart, 2004 WI App 196, 232 Wis. 2d 447, 606 N.W.2d 606, 99-1361.


813.122 Child abuse restraining orders and injunctions. (1) DEFINITIONS. In this section:

(a) "Abuse" has the meaning given in s. 48.02 (1) (a) (i) and (b) (gm) and, in addition, includes a threat to engage in any conduct under s. 48.02 (1), other than conduct under s. 48.02 (1) (am).

(b) "Child" means any person under 18 years of age.

(c) "Child victim" means the child who is the victim or the alleged victim of abuse.

(d) "Child victim advocate" means any person who counsels child victims, assists child victims in coping with the impact of the crime or otherwise acts in support of child victims.

(2) COMMENCEMENT OF ACTION AND RESPONSE. No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6) (a). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. The child victim or a parent, stepparent or legal guardian of the child victim may be a petitioner under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

(3) GENERAL PROCEDURE. (a) Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order, the court or circuit court commissioner shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (5) on whether to issue an injunction, which is the final relief. If the court or circuit court commissioner issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court or circuit court commissioner does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.
Firearms Surrender

An injunction issued under this section shall:

1. Inform the respondent of the requirements and penalties under s. 941.29, 813.122(5m)(1)
   941.29 Possession of a Firearm

2. Require the respondent to surrender any firearms in their possession to the sheriff of the county in which the action was commenced, the sheriff of the county in which they reside, or another person designated by the respondent and approved by the judge. If the judge finds the person designated by the respondent to be inappropriate, they must place the reasons for this finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the court, the judge shall inform the recipient of the requirements and penalties under s. 941.29(4), 813.122(5m)(2)
   941.29(4) Possession of a Firearm

The injunction may not require a peace officer to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty. 813.122(5)(ag)

**NOTE:** If an injunction has issued, make sure the judge administers the firearms warning on the record following the hearing.

Extensions

1. When an injunction in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the child victim. This extension shall remain in effect until 6 months after the date the court first entered the injunction or until the child attains 18 years of age, which ever occurs first. 813.122(5)(d)(2)

2. If the petitioner states that an injunction is necessary to protect the child victim, the court may extend the injunction for not more than 2 years or until the child attains 18 years of age, which ever occurs first. 813.122(5)(d)(3)

The statute does not require notice to the respondent before the extension of an injunction in either manner, however, they must
4. If the payment of child support is requested, that the payment of child support is reasonable and necessary based on the criteria provided under s. 767.25. (b) Upon request, the clerk of circuit court shall provide, without cost, the simplified forms obtained under s. 46.03(7)(d) to a petitioner.

The Temporary Restraining Order - 813.122(4)

The judge or court commissioner shall issue a TRO if both:

1. The petition alleges the elements set forth in 813.122(6)(a). 813.122(4)(a)
2. The judge or court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the child victim and respondent may engage in, abuse of the child victim. 813.122(4)(a)

NOTE: Notice to the respondent is not required before issuing the TRO.

The Effect and Duration of the TRO

The TRO orders the respondent to avoid the child’s residence or any premises temporary occupied by the child victim or both, and to avoid contacting or causing any person other than a party’s attorney to contact the child victim unless the petitioner consents in writing and the judge or court commissioner agrees that the contact is in the best interests of the child victim. 813.122(4)(a)

The TRO remains in effect until a hearing is held on issuance of an injunction. The injunction hearing shall be held within seven days after the TRO is issued unless:

1. The time is extended upon the written consent of the parties. 813.122(4)(c)
2. The time is extended once for 7 days upon a finding that the respondent has not been served with a copy of the TRO although the petitioner has exercised due diligence. 813.122(4)(c)

The Injunction Hearing

Statutory Requirements

An injunction will be issued if all of the following occur:
48.02(1)(f) A violation of s. 948.10.
948.10 Exposing genital or pubic area

48.02(1)(gm) Emotional damage for which the child's parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms.

NOTE: For a discussion of "emotional damage" in the context of a Child Abuse Injunction see In the Interest of H.Q. and P.Q., 152 Wis.2d 701, 449 N.W.2d 75 (Ct. App. 1989)

Who may petition for the Child Abuse Injunction

1. The child victim. 813.122(2)
2. The parent of a child victim. 813.122(2)
3. A stepparent of a child victim. 813.122(2)
4. The legal guardian of a child victim. 813.122(2)
5. The Guardian ad Litem in a CHIPS case. 48.235(4)(a)6
6. Any party to or any governmental or social agency involved in the proceeding if a CHIPS proceeding. 48.25(6)

NOTE: An action under this section may pertain to more than one child victim. 813.122(3)(c)

Against whom may they petition

1. An adult or a child who engages in abuse.
48.14(10), 757.69(1)(g)(7)

2. If a claim of emotional damage, a child's parent, guardian or legal custodian if they have neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms. 48.02(1)(gm)

Venue

The venue of an action under this statute shall be in the county in which the cause of action arose or where the petitioner or respondent resides. 801.50(5s)

Jurisdiction and Forms

If the respondent is a child, or the action is brought as part of a CHIPS proceeding, children's court has exclusive jurisdiction over the case. 48.13,
Child Abuse Injunctions in Wisconsin
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Revised July 2005

THE CHILD ABUSE INJUNCTION STATUTE - WS 813.122

The Definition of Abuse - Conduct or Threat

WS 813.122 defines abuse as conduct, as defined under 48.02(1)(a) and (b) to (gm) or the threat to engage in any conduct under 48.02(1), other than conduct under 48.02(1)(am).

48.02(1) provides the definitions of abuse from the General Provisions of the Children’s Code:

"Abuse", other than used in referring to abuse of alcoholic beverages or other drugs, means any of the following:

48.02(1)(a) Physical injury inflicted on a child by other than accidental means.

NOTE: 813.122 does not define or refer to a definition of "physical injury" in the statutes. 48.02(14g), however, defines physical injury as including, but not limited to, lacerations, fractured bones, burns, internal injuries, severe or frequent bruising or great bodily harm, as defined by 939.22(14).

48.02(1)(b) Sexual intercourse or sexual contact under s. 940.225, 948.02 or 948.025 (See Appendix of Wisconsin Statutes).

940.225 Sexual assault

948.02 Sexual assault of a child

948.025 Engaging in repeated acts of sexual assault of the same child

48.02(1)(c) A violation of s. 948.05.

948.05 Sexual exploitation of a child

48.02(1)(d) Permitting, allowing or encouraging a child to violate s.

944.30 Sexual exploitation of a child

48.02(1)(e) A violation of s. 948.055.

948.055 Causing a child to view or listen to sexual activity
48.14(10) In addition, in Milwaukee County, cases are sent to children's court if the petitioner is a minor.

**NOTE:** If the action is brought in children's court, Form JC-1690 should be used for the petition.

Civil court will have jurisdiction in other actions brought under this section. Confirm the local procedure with the Clerk of Courts.

**NOTE:** For cases with civil court jurisdiction, Form CV-412 should be used for the petition.

**Guardian ad Litem**

The court shall appoint a GAL if the respondent is a parent of the child. 813.122(3)(bm)

If the respondent is not a parent, the court may appoint a GAL on its own motion or the motion of any party. 813.122(3)(b)1

**Confidentiality of the Proceedings**

The court, on its own motion or the motion of any party may order:

1. That all persons, other than the parties, their attorneys, witnesses, child victim advocates, service representatives, as defined in s. 895.73(1)(c), court personal and GAL, be excluded from any hearing under this section. 813.122(3)(b)2

2. That access to any record of an action under this section be available only to the parties, their attorneys, any GAL, court personnel and any applicable court upon appeal. 813.122(3)(b)3

**Commencement of the Action - The Petition and Temporary Restraining Order**

**Requirements of the Petition - 813.122(6)(a)**

The petition shall allege facts sufficient to show the following:

1. The name of the petitioner and the child victim.
2. The name of the respondent.
3. That the respondent engaged in, or based on prior conduct of the respondent and child, may engage in, abuse of the child victim.
1. The petitioner files a petition alleging the elements set forth in 813.122(6)(a). 813.122(5)(a)

2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of 813.122(5)(a)

3. After hearing, the judge finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the child victim and the respondent may engage in, abuse of the child victim. 813.122(5)(a)

**NOTE:** An extension/adjournment must be in writing and signed by both parties (See Form CV-408).

**NOTE:** The injunction may only be entered against the respondent named in the petition. 813.122(5)(c)

**NOTE:** The injunction hearing must be heard by a judge. 813.122(5)(a)

**The Effect and Duration of the Child Abuse Injunction**

The Child Abuse Injunction orders the respondent to avoid the child’s residence or any premises temporary occupied by the child victim or both, and to avoid contacting or causing any person other than a party’s attorney to contact the child victim unless the petitioner consents in writing and the judge or court commissioner agrees that the contact is in the best interests of the child victim. 813.122(5)(a)

The injunction may be effective for no more than 2 years or until the child victim attains 18 years of age, whichever occurs first. 813.122(5)(d)

**Visitation and Support**

If the respondent is the parent of the child victim, the judge shall modify the order to provide the parent reasonable visitation rights, unless the judge finds that visitation would endanger the child’s physical, mental or emotional health. The judge may provide that any visitation be supervised. 813.122(5)(b)

An injunction under this section may direct the payment of child support using a method of calculation authorized under s. 767.25. 813.122(5)(e)
be notified by the petitioner after the extension is granted. 813.122(5)(d)4

Penalty for Violation of the TRO or Injunction

A party who knowingly violates a TRO or injunction under this section shall be fined not more than $1,000.00 or imprisoned for not more than 9 months or both. 813.122(11)

Full Faith and Credit

An order or injunction issued under this section shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members. 813.122(12)
(b) The court or circuit court commissioner, on its or his or her own motion or the motion of any party, may order one or more of the following:

1. That a guardian ad litem be appointed for the child victim in accordance with s. 48.235.

2. That all persons, other than the parties, their attorneys, witnesses, victim advocates, service representatives, as defined in s. 895.73 (1) (c), court personnel and any guardian ad litem, be excluded from any hearing under this section.

3. That access to any record of an action under this section be available only to the parties, their attorneys, any guardian ad litem, court personnel and any applicable court upon appeal.

(bm) The court or circuit court commissioner shall appoint a guardian ad litem if the respondent is a parent of the child.

(c) An action under this section may pertain to more than one child victim.

(4) TEMPORARY RESTRAINING ORDER. (a) A judge or circuit court commissioner shall issue a temporary restraining order ordering the respondent to avoid the victim's residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents in writing and the judge or circuit court commissioner agrees that the contact is in the best interests of the child victim, if all of the following occur:

1. The petitioner submits to the judge or circuit court commissioner a petition alleging the elements set forth under sub. (6) (a).

2. The judge or circuit court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

(b) Notice need not be given to the respondent before issuing a temporary restraining order under this subsection. A temporary restraining order may be entered only against the respondent named in the petition.

(c) The temporary restraining order is in effect until a hearing is held on issuance of an injunction under sub. (5). A judge shall hold a hearing on issuance of an injunction within 7 days after the temporary restraining order is issued, unless the time is extended upon the written consent of the parties or extended once for 7 days upon a finding that the respondent has not been served with a copy of the temporary restraining order although the petitioner has exercised due diligence.

(5) INJUNCTION. (a) A judge may grant an injunction ordering the respondent to avoid the victim's residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party's attorney to contact the child victim unless the petitioner consents to that contact in writing and the judge agrees that the contact is in the best interests of the child victim, if all of the following occur:

1. The petitioner files a petition alleging the elements set forth under sub. (6) (a).

2. The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.

3. After hearing, the judge finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

(b) If the respondent is the parent of the child victim, the judge shall modify the order under par. (a) to provide the parent reasonable visitation rights, unless the judge finds that visitation would endanger the child's physical, mental or emotional health. The judge may provide that any authorized visitation be supervised.

(c) The injunction may be entered only against the respondent named in the petition.

(d) 1. An injunction under this subsection is effective according to its terms, but for not more than 2 years or until the child victim attains 18 years of age, whichever occurs first.

2. When an injunction in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the child victim. This extension shall remain in effect until 6 months after the date the court first entered the injunction or until the child attains 18 years of age, whichever occurs first.

3. If the petitioner states that an extension is necessary to protect the child victim, the court may extend the injunction for not more than 2 years or until the child attains 18 years of age, whichever occurs first.

4. Notice need not be given to the respondent before extending an injunction under sub. 2. or 3. The petitioner shall notify the respondent after the court extends an injunction under sub. 2. or 3.

(e) An injunction under this section may direct the payment of child support using a method of calculation authorized under s. 767.25.

(5m) NOTICE OF RESTRICTION ON FIREARM POSSESSION; SURRENDER OF FIREARMS. (a) An injunction issued under sub. (5) shall do all of the following:

1. Inform the respondent named in the petition of the requirements and penalties under s. 941.29.

2. Except as provided in par. (ag), require the respondent to surrender any firearms that he or she owns or has in his or her possession to the sheriff of the county in which the action under this section was commenced, to the sheriff of the county in which the respondent resides or to another person designated by the respondent and approved by the judge or circuit court commissioner. The judge or circuit court commissioner shall approve the person designated by the respondent: unless the judge or circuit court commissioner finds that the person is inappropriate and places the reasons for the finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the judge or circuit court commissioner, the judge or circuit court commissioner shall inform the person to whom the firearm is surrendered of the requirements and penalties under s. 941.29 (4).

3. If the respondent is a peace officer, an injunction issued under sub. (5) may not require the respondent to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

3. (am) 1. When a respondent surrenders a firearm under par. (a) 2. to a sheriff, the sheriff who is receiving the firearm shall prepare a receipt for each firearm surrendered to him or her. The receipt shall include the manufacturer, model and serial number of the firearm surrendered to the sheriff and shall be signed by the respondent and by the sheriff to whom the firearm is surrendered.

2. The sheriff shall keep the original of a receipt prepared under subd. 1. and shall provide an exact copy of the receipt to the respondent. When the firearm covered by the receipt is returned to the respondent under par. (b), the sheriff shall surrender to the respondent the original receipt and all of his or her copies of the receipt.

3. A receipt prepared under subd. 1. is conclusive proof that the respondent owns the firearm for purposes of returning the firearm covered by the receipt to the respondent under par. (b).

4. The sheriff may not enter any information contained on a receipt prepared under subd. 1. into any computerized or direct electronic data transfer system in order to store the information or disseminate or provide access to the information.

(aw) A sheriff may store a firearm surrendered to him or her under par. (a) 2. in a warehouse that is operated by a public warehouse keeper licensed under ch. 99. If a sheriff stores a firearm at a warehouse under this paragraph, the respondent shall pay the costs charged by the warehouse for storing that firearm.
Child Abuse Injunctions in Wisconsin

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Wisconsin Statute § 813.122
Governs child abuse injunctions in the State of Wisconsin
- **Petitioner:** The party requesting that the court issue an order of protection
- **Respondent:** The party against whom the order is sought
- **Petition:** The legal papers requesting a Temporary Restraining Order and Injunction hearing
- **Temporary Restraining Order (TRO):** A 7 day order barring the respondent from having contact with the child
- **Injunction:** An order barring contact or setting other conditions on the respondent's contact with the child victim

The Definition of Abuse

**Conduct or Threat**
- Physical Injury
- Selections from the Criminal Code
- Emotional Damage

Physical Abuse
Defined by WS § 48.02(1)(A)
Physical injury inflicted on a child by other than accidental means

The Definition of Physical Injury

813.122 does not define or refer to a definition of physical injury in the statutes. 48.02(14g) defines physical injury as including, but not limited to:
- Lacerations
- Fractured bones
- Internal Injuries
- Severe or frequent bruising
- Great bodily harm, as defined by 939.22(14)

Definitions of Abuse from the Criminal Code

The child abuse injunction statute also defines the following acts as abuse:
- Sexual intercourse or sexual contact with a child
- Sexual exploitation of a child
- Permitting, allowing or encouraging a child to engage in prostitution
- Causing a child to view or listen to sexual activity
- Exposing genital or pubic area to a child
Commencing the Action

The Petition and Temporary Restraining Order

The petition shall allege facts sufficient to show the following:
- The name of the petitioner and the child victim.
- The name of the respondent.
- That the respondent engaged in, or based on prior conduct of the respondent and child, may engage in, abuse of the child victim.
- If the payment of child support is requested, that the payment of support is reasonable and necessary under the s. 767.25 criteria.

The Temporary Restraining Order

Notice to the respondent is not required before issuing the TRO. The judge or court commissioner shall issue a TRO if:
- The petition alleges the elements set forth in s. 813.122(6)(e).
- The judge or court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child victim and respondent, may engage in abuse of the child victim.

The Effect of the TRO

The TRO orders the respondent to avoid the child’s residence or any premises temporarily occupied by the child victim or both, and to avoid contacting or causing any person other than a party’s attorney to contact the child victim unless the petitioner consents in writing and the judge or court commissioner agrees that the contact is in the best interests of the child victim.

The Duration of the TRO

The TRO remains in effect until a hearing is held on issuance of an injunction. The injunction hearing shall be held within seven days after the TRO is issued unless:
- The time is extended upon the written consent of the parties.
- The time is extended once for 7 days upon a finding that the respondent has not been served with a copy of the TRO although the petitioner has exercised due diligence.

The Injunction Hearing

An injunction will issue if all of the following occur:
- The petitioner has filed a petition alleging the elements set forth in s. 813.122(6)(e). The petitioner serves upon the respondent a copy of the petition and notice of the time for hearing on the issuance of the injunction, or the respondent serves upon the petitioner notice of the time for hearing on the issuance of the injunction.
- After hearing, the judge finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child victim and the respondent may engage in, abuse of the child victim.

Confidentiality of the Proceedings

The court, on its own motion or the motion of any party, may order:
- That all persons, other than the parties, their attorneys, witnesses, child victim advocates, service representatives, as defined in s.895.73(1)(c), court personal and GAL, be excluded from any hearing under this section.
- That access to any record of an action under this section be available only to the parties, their attorneys, any GAL, court personnel and any applicable court upon appeal.
Full Faith and Credit

An order or injunction issued under this section shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

Thank you for your support

TASK FORCE on FAMILY VIOLENCE
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1400 North 6th Street
(414) 276-1911
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The Effect and Duration of the Child Abuse Injunction

- The Child Abuse Injunction orders the respondent to avoid the child’s residence or any premises temporary occupied by the child victim or both, and to avoid contacting or causing any person other than a party’s attorney to contact the child victim unless the petitioner consents in writing and the judge or court commissioner agrees that the contact is in the best interests of the child victim.
- The injunction may be effective for no more than 2 years or until the child victim attains 18 years of age, whichever occurs first.

Visitation and Support Orders

- If the respondent is the parent of the child victim, the judge shall modify the order to provide the parent reasonable visitation rights, unless the judge finds that visitation would endanger the child’s physical, mental or emotional health.
- The judge may provide that any visitation be supervised.
- An injunction under this section may direct the payment of child support using a method of calculation authorized under s. 767.25.

Surrender of Firearms

An Injunction issued under this section shall:
- Inform the respondent of the requirements and penalties under s. 941.29 (Possession of a Firearm).
- Require the respondent to surrender any firearm in their possession to the sheriff of the county in which the action was commenced, the sheriff of the county in which they reside, or another person designated by the respondent and approved by the judge or court commissioner. If the judge or court commissioner finds the person designated by the respondent to be inappropriate, they must place the reasons for this finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the court, the judge or court commissioner shall inform the recipient of the requirements and penalties under s. 941.29(4).

Exception for Peace Officers

The injunction may not require a peace officer to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty.

Extensions of the Injunction

- When an injunction in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the child victim. This extension shall remain in effect until 6 months after the date the court first entered the injunction or until the child attains 18 years of age, whichever occurs first.
- If the petitioner states that an injunction is necessary to protect the child victim, the court may extend the injunction for not more than 2 years or until the child attains 18 years of age, whichever occurs first.
- The statute does not require notice to the respondent before the extension of an injunction in either manner, however, they must be notified by the petitioner after the extension is granted.

Penalty for Violation of the TRO or Injunction

A party who knowingly violates a TRO or injunction under this section shall be fined not more than $1,000.00 or imprisoned for not more than 9 months or both.
The Definition of Emotional Damage

The statute does not define emotional damage, but allows such a claim if:
A child's parent, guardian, or legal custodian has neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment for the child to take steps to alleviate the symptoms.

Who can Petition

- An action may pertain to more than one child victim
- The child victim
- The parent of a child victim
- The legal guardian of a child victim
- The Guardian ad litem in a CHIPS case
- Any party or governmental or social agency involved in a CHIPS case

Venue

WS § 801.50(5s)

The venue of an action under 813.122 shall be in the county in which the cause of action arose or where the petitioner or respondent resides.

Who can be subject to an order

- An adult or child who engages in physical abuse
- If a claim of emotional damage, the child's parent, guardian or legal custodian if they have neglected, refused, or been unable for reasons other than poverty to obtain the necessary treatment for the child to take steps to alleviate the symptoms.

Jurisdiction and Forms

Family Court or Children's Court will exercise jurisdiction
- If the respondent is a child, or the action is brought as part of a CHIPS proceeding, Children's Court has exclusive jurisdiction.
  (Form JC-1690)
- In Milwaukee County, if the respondent is not the parent of the child victim, Children's Court will hear the action.
- If there is an underlying divorce or paternity action Family Court will hear the action.
  (Form CV-412)

The Role of the Guardian ad Litem

- The court shall appoint a GAL if the respondent is a parent of the child victim.
- The court may appoint a GAL on its own motion or the motion of any party if the respondent is not a parent.
INJUNCTIONS, NE EXEAT AND RECEIVERS 813.123

(b) A firearm surrendered under par. (a) 2. may not be returned to the respondent until a judge or circuit court commissioner determines all of the following:

1. That the injunction issued under sub. (5) has been vacated or has expired and not been extended.
2. That the person is not prohibited from possessing a firearm under any state or federal law or by the order of any federal court or state court, other than an order from which the judge or circuit court commissioner is competent to grant relief.

(c) If a respondent surrenders a firearm under par. (a) 2. that is owned by a person other than the respondent, the person who owns the firearm may apply for its return to the circuit court for the county in which the person to whom the firearm was surrendered is located. The court shall order such notice as it considers adequate to be given to all persons who have or may have an interest in the firearm and shall hold a hearing to hear all claims to its true ownership. If the right to possession is proved to the court's satisfaction, it shall order the firearm returned. If the court returns a firearm under this paragraph, the court shall inform the person to whom the firearm is returned of the requirements and penalties under s. 941.29 (4).

(6) PETITION. (a) The petition shall allege facts sufficient to show the following:
1. The name of the petitioner and the child victim.
2. The name of the respondent.
3. That the respondent engaged in, or based on prior conduct of the respondent and the child victim may engage in, abuse of the child victim.
4. If the payment of child support is requested, that the payment of child support is reasonable or necessary based on criteria provided under s. 767.25.
(b) Upon request, the clerk of circuit court shall provide, without cost, the simplified forms obtained under s. 46.03 (7) (d) to a petitioner.

(7) CONTACT. Any order under this section directing a person to avoid contact with a child victim prohibits the person from knowingly touching, meeting, communicating or being in visual or audio contact with the child victim, except as provided in any modifications of the order under sub. (5) (b).

(9) ENFORCEMENT ASSISTANCE. (a) If an order is issued under this section, upon request by the petitioner, the court or circuit court commissioner, as applicable, shall order the sheriff to assist in executing or serving the temporary restraining order or injunction.

(10) ARREST. A law enforcement officer shall arrest and take a person into custody if all of the following occur:
(a) A petitioner under sub. (6) (a) presents the law enforcement officer with a copy of an order issued under sub. (4) or (5), or the law enforcement officer determines that such an order exists through communication with appropriate authorities.
(b) The law enforcement officer has probable cause to believe that the person has violated the order issued under sub. (4) or (5).

(11) PENALTY. Whoever knowingly violates a temporary restraining order or injunction issued under this section shall be fined not more than $1,000 or imprisoned for not more than 9 months or both.

(12) NOTICE OF FULL FAITH AND CREDIT. An order or injunction issued under sub. (4) or (5) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members.

This section implicitly envisions a change of placement and custody if the trial court issues a child abuse injunction against a parent who has custody or placement of a child under a divorce order or judgment. Scott M.H. v. Kathleen M.H. 218 Wis. 2d 665, 581 N.W.2d 564 (Ct. App. 1998), 97-0814.

813.123 Vulnerable adult restraining orders and injunctions. (1) DEFINITIONS. In this section:
(a) "Abuse" has the meaning given in s. 55.01 (1). (b) "Bodily harm" has the meaning given in s. 939.22 (4). (c) "County protective services agency" means the county department designated in s. 55.02. (d) "False representation" includes a promise that is made with the intent not to fulfill the promise. (e) "Great bodily harm" has the meaning given in s. 939.22 (14). (f) "Misappropriation of property" has the meaning given in s. 55.01 (4p). (g) "Neglect" has the meaning given in s. 55.01 (4r). (h) "Vulnerable adult" has the meaning given in s. 940.285 (1). (e) (2) COMMENCEMENT OF ACTION AND RESPONSE. No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. The vulnerable adult, a parent, an adult sibling, an adult child or the legal guardian of the vulnerable adult or a county protective services agency may be a petitioner under this section. Section 813.06 does not apply to an action under this section. The respondent may be the subject of the action under this section. The respondent may be the subject of the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

(3) GENERAL PROCEDURE. (a) Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order, the commission shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (5) on whether to issue an injunction, which is the final relief. If the court or circuit court commissioner issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court or circuit court...
ENFORCEMENT ASSISTANCE. (a) If an order is issued under this section, upon request by the petitioner or the court or circuit court commissioner, the sheriff shall serve the petitioners and assist in placing him or her in physical possession of his or her residence or to otherwise assist in executing or serving the temporary restraining order or injunction. The petitioner may, at the petitioner’s expense, serve a process on his or her residence for purposes of a firearms restrictions record search under s. 75.35 (2g). (c).

2. Except as provided in subd. 3., the department of justice may disclose information that it receives under subd. 1. only as part of a firearms restrictions record search under s. 75.35 (2g). (c).

3. The department of justice shall disclose any information that it receives under subd. 1. to a law enforcement agency when the information is needed for law enforcement purposes. (b) Within 10 business days after an order or injunction is issued, extended, modified or vacated under this section, the clerk of the circuit court shall send a copy of the order or injunction, or of the order extending, modifying or vacating an order or injunction, to the sheriff or to any other local law enforcement agency which is the central repository for orders and injunctions and which has jurisdiction over the petitioner’s premises. (c) No later than 24 hours after receiving the information under par. (b), the sheriff or other appropriate local law enforcement agency under par. (b) shall send the information concerning an order or injunction issued, extended, modified or vacated under this section into the transaction information for management of enforcement system. The sheriff or other appropriate local law enforcement agency shall also make available to other law enforcement agencies, through a verification system, information on the existence and status of any order or injunction issued under this section. The information need not be maintained after the order or injunction is no longer in effect. (d) The issuance of an order under s. 813.12 (3) or (4) is enforceable despite the existence of any other criminal or civil order restricting or prohibiting contact.

ARREST. A law enforcement officer shall arrest and take a person into custody if all of the following occur: (a) A petitioner under sub. (5) presents the law enforcement officer with a copy of a court order issued under sub. (3) or (4), or the law enforcement officer determines that such an order exists through communication with appropriate authorities. (b) The law enforcement officer has probable cause to believe that the person has violated the court order issued under sub. (3) or (4) by any circuit court in this state. (c) A respondent who does not appear at a hearing at which the court orders an injunction under s. 813.12 (3) but who has been served with a copy of the petition and notice of the time for hearing under s. 813.12 (3) has constructive knowledge of the existence of the injunction and shall be arrested for violation of the injunction regardless of whether he or she has been served with a copy of the injunction.

TRANSCRIPTS. The judge or circuit court commissioner shall record the temporary restraining order or injunction hearing upon the request of the petitioner.

PENALTY. (a) Whoever knowingly violates a temporary restraining order or injunction issued under sub. (3) or (4) shall be fined not more than $1,000 or imprisoned for not more than 9 months or both.

(b) The petitioner does not violate the court order under sub. (3) or (4) if he or she admits into his or her residence a person ordered under sub. (3) or (4) to avoid that residence.

NOTICE OF FULL FAITH AND CREDIT. An order or injunction issued under sub. (3) or (4) shall include a statement that the order or injunction may be accorded full faith and credit in every civil or criminal court of the United States, civil or criminal courts of any other state and Indian tribal courts to the extent that such courts may have personal jurisdiction over nontribal members. Sub. (3) (am) provides for a limited-term injunction as an alternative to a restraining order under sub. (5) (a) when 3 stated conditions are met. Johnson v. Miller, 157 Wis. 2d 482, 459 N.W.2d 886 (Cl. App. 1990).

A person convicted of violating a temporary injunction may not automatically attack the validity of the injunction in a criminal prosecution to enforce the injunction. State v. Bouzel, 168 Wis. 2d 642, 484 N.W.2d 362 (Cl. App. 1992).

This section does not authorize granting an injunction without filing a formal petition, thus precluding an injunction against the petitioner. Lattanzo v. Stange, 200 Wis. 2d 179, 546 N.W.2d 182 (Cl. App. 1996), 95-1718.

The definition of "residential member" requires a current residential living arrangement between the parties. They need not reside in only one place, but must reside together on a continuous basis. Petrowsky v. Krause, 223 Wis. 2d 32, 588 N.W.2d 318 (Cl. App. 1996), 97-2225.

Only a true threat is constitutionally punishable under statutes criminalizing threats. The constitutional boundaries for a true threat apply in domestic-abuse-injunction cases under this section. Acts occurring an earlier similar domestic-abuse injunction were relevant to a prediction of what the defendant would do if the domestic-abuse injunction was not granted. Wittig v. Hoffart, 2005 WI App 196, ___ Wis. 2d ___, N.W.2d ____, 04-1653.


Child abuse restraining orders and injunctions. Definitions. In this section:

"Abuse" has the meaning given in s. 48.02 (1) (a) and (b) to (gm) and, in addition, includes a threat to engage in any conduct under s. 48.02 (1), other than conduct under s. 48.02 (1) (am).

"Child" means any person under 18 years of age.

"Child victim" means the child who is the victim or the alleged victim of abuse.

"Child victim advocate" means any person who counsels child victims, assists child victims in coping with the impact of the crime or otherwise acts in support of child victims.

COMMENCEMENT OF ACTION AND RESPONSE. No action under this section may be commenced by complaint and summons. An action under this section may be commenced only by a petition described under sub. (6) (a). The action commences with service of the petition upon the respondent if a copy of the petition is filed before service or promptly after service. The child victim or a parent, stepparent or legal guardian of the child victim may be a petitioner under this section. Section 813.06 does not apply to an action under this section. The respondent may respond to the petition either in writing before or at the hearing on the issuance of the injunction or orally at that hearing.

GENERAL PROCEDURE. (a) Procedure for an action under this section is in 2 parts. First, if the petitioner requests a temporary restraining order, the court or circuit court commissioner shall issue or refuse to issue that order. Second, the court shall hold a hearing under sub. (5) on whether to issue an injunction, which is the final relief. If the court or circuit court commissioner issues a temporary restraining order, the order shall set forth the date for the hearing on an injunction. If the court or circuit court commissioner does not issue a temporary restraining order, the date for the hearing shall be set upon motion by either party.

Unofficial text from 03-04 Wis. Stats. database. See printed 03-04 Statutes and 2005 Wis. Acts for official text under s. 35.18 (2) stats. Report errors to the Revisor of Statutes at (608) 266-2011, FAX 266-6978, http://www.legis.state.wi.us/rsb/
Firearms Surrender

An injunction issued under this section shall:

1. Inform the respondent of the requirements and penalties under s. 941.29, 813.122(5m)1

   941.29 Possession of a Firearm

2. Require the respondent to surrender any firearms in their possession to the sheriff of the county in which the action was commenced, the sheriff of the county in which they reside, or another person designated by the respondent and approved by the judge. If the judge finds the person designated by the respondent to be inappropriate, they must place the reasons for this finding on the record. If a firearm is surrendered to a person designated by the respondent and approved by the court, the judge shall inform the recipient of the requirements and penalties under s. 941.29(4), 813.122(5m)2

   941.29(4) Possession of a Firearm

The injunction may not require a peace officer to surrender a firearm that he or she is required, as a condition of employment, to possess whether or not he or she is on duty. 813.122(5)(ag)

NOTE: If an injunction has issued, make sure the judge administers the firearms warning on the record following the hearing.

Extensions

1. When an injunction in effect for less than 6 months expires, the court shall extend the injunction if the petitioner states that an extension is necessary to protect the child victim. This extension shall remain in effect until 6 months after the date the court first entered the injunction or until the child attains 18 years of age, which ever occurs first. 813.122(5)(d)2

2. If the petitioner states that an injunction is necessary to protect the child victim, the court may extend the injunction for not more than 2 years or until the child attains 18 years of age, which ever occurs first. 813.122(5)(d)3

The statute does not require notice to the respondent before the extension of an injunction in either manner, however, they must
4. If the payment of child support is requested, that the payment of child support is reasonable and necessary based on the criteria provided under s. 767.25. (b) Upon request, the clerk of circuit court shall provide, without cost, the simplified forms obtained under s. 46.03(7)(d) to a petitioner.

The Temporary Restraining Order - 813.122(4)

The judge or court commissioner shall issue a TRO if both:
1. The petition alleges the elements set forth in 813.122(6)(a). 813.122(4)(a)1
2. The judge or court commissioner finds reasonable grounds to believe that the respondent has engaged in, or based upon prior conduct of the child victim and respondent may engage in, abuse of the child victim. 813.122(4)(a)2

NOTE: Notice to the respondent is not required before issuing the TRO.

The Effect and Duration of the TRO

The TRO orders the respondent to avoid the child’s residence or any premises temporary occupied by the child victim or both, and to avoid contacting or causing any person other than a party’s attorney to contact the child victim unless the petitioner consents in writing and the judge or court commissioner agrees that the contact is in the best interests of the child victim. 813.122(4)(a)

The TRO remains in effect until a hearing is held on issuance of an injunction. The injunction hearing shall be held within seven days after the TRO is issued unless:

1. The time is extended upon the written consent of the parties. 813.122(4)(c)
2. The time is extended once for 7 days upon a finding that the respondent has not been served with a copy of the TRO although the petitioner has exercised due diligence. 813.122(4)(c)

The Injunction Hearing

Statutory Requirements

An injunction will be issued if all of the following occur:
48.02(1)(f) A violation of s. 948.10.

948.10 Exposing genital or pubic area

48.02(1)(gm) Emotional damage for which the child’s parent, guardian or legal custodian has neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms.

NOTE: For a discussion of “emotional damage” in the context of a Child Abuse Injunction see In the Interest of H.O. and P.Q., 152 Wis.2d 701, 449 N.W.2d 75 (Ct. App. 1989)

Who may petition for the Child Abuse Injunction

1. The child victim. 813.122(2)
2. The parent of a child victim. 813.122(2)
3. A stepparent of a child victim. 813.122(2)
4. The legal guardian of a child victim. 813.122(2)
5. The Guardian ad Litem in a CHIPS case. 48.235(4)(a)(5)
6. Any party to or any governmental or social agency involved in the proceeding if a CHIPS proceeding. 48.25(6)

NOTE: An action under this section may pertain to more than one child victim. 813.122(3)(c)

Against whom may they petition

1. An adult or a child who engages in abuse. 48.14(10), 757.69(1)(g)(7)

2. If a claim of emotional damage, a child’s parent, guardian or legal custodian if they have neglected, refused or been unable for reasons other than poverty to obtain the necessary treatment or to take steps to ameliorate the symptoms. 48.02(1)(gm)

Venue

The venue of an action under this statute shall be in the county in which the cause of action arose or where the petitioner or respondent resides. 801.50(5s)

Jurisdiction and Forms

If the respondent is a child, or the action is brought as part of a CHIPS proceeding, children’s court has exclusive jurisdiction over the case. 48.13,
Mental Health Issues:  
Child Abuse Disclosure in the Context of Divorce

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11th Commandment ??

How do we

“Respect the Children”

First, by understanding the rights of children

Second, by upholding those rights
The Invisible Rights of Children

- What are rights?

A right is a stringent claim. The stronger the claim, the more likely a society will accept responsibility for developing policy designed to meet the claim on behalf of all of its citizens.

-Purtilo, 2005
The Invisible Rights of Children

- Children cannot make a claim, much less a stringent claim
- Children are dependent upon caring and thoughtful adults to:
  - Understand their unique needs
  - Advocate on their behalf (from a position of knowledge)
Invisible Right # 1: Special Safety

- **Assault – physical and emotional**
  - As compared to adults, children are less able to recognize, avoid, or defend in situations that present physical or emotional danger

- **Neglect – physical and emotional**
  - As compared to adults, children are less able to meet their own needs

- **Exploitation – physical and emotional**
  - As compared to adults, children are less able to recognize and cope with situations of exploitation
A Brief Digression: Disclosure

- Adult Disclosures (in divorce)
  - Almost all disclosures have complex determinants:
    - A desire to protect the child
    - A desire to retaliate against the ex-spouse
    - A desire to achieve more control
    - A desire to express fears and anxieties
    - An effort to cope with guilt

“Either/Or” questions are dangerous!
A Brief Digression: Disclosure

- Are there reliable “signs” of abuse/neglect?
  - None are perfect
  - No single “sign” is as important as the overall big picture
  - Any significant change in behavior that does not have a sensible explanation is of concern
  - Social isolation is of concern
  - An attitude of secrecy is of concern
A few of the Myths and Realities

• Myths
  – Abusive parents don’t love their children (especially those who sexually abuse)
  – Abused children are not bonded to their abusive parents
  – Abuse and neglect only occurs in poor families

• Realities
  – In general, neglect causes more harm than abuse
  – Emotional abuse/neglect is under-reported
  – Child factors are often overlooked
Invisible Right # 2: Attachment

- Attachment/bonding is essential for development
  - Gaps in attachment *always* result in gaps in development
  - Thus, gaps in attachment are *always* harmful

- Sometimes there is a need to transfer attachment
  - Obviously, this should be accomplished without a gap in attachment
  - This requires planning, foreshadowing, and a positive affiliation between the attachment figures
Invisible Right # 3: Environment

• The principle of “Critical Developmental Periods”
  - Many aspects of development must occur during discrete time periods
  - If development does not occur during those discrete time periods, the opportunity is then lost

• Some obvious examples:
  - Language, bladder control, vision

• Less obvious examples:
  - Emotional self-regulation, social trust, morality, executive function
A summary

- The unique rights of childhood
  - Special safety
  - Attachment continuity
  - A developmentally appropriate environment
Traumatic Experiences in Early Childhood

• What do we mean by “trauma”
  – A significant violation of a child’s fundamental rights
    • Physical/emotional assault, neglect, absence of attachment/bonding
  – Physical injury is the most obvious
  – Emotional neglect is often the most serious
Traumatic Experiences in Early Childhood

- What are the effects of trauma in early childhood
  - The most worrisome is that the scaffolding upon which further development depends is damaged
  - The result is that the resulting impairment often seems out of proportion to the trauma itself
Traumatic Experiences in Early Childhood

- A few examples:
  - Loss of early attachment impairs all development related to attachment
    - Emotional self-regulation, social reciprocity
  - Significantly painful/frightening experiences impairs “exploratory development”
    - Avoidance of new situations, new people, social anxiety along with exaggerated fear responses
  - Distorted attachments (formed with abusive parents)
    - Pathological distortion of later relationships, a pattern of “seeking” abusive partners, lack of self-respect
Case #1 Jessica

- 2 ½ years-old, history of neglect, multiple delays
- Abandoned at 1 ½ years-old, place with aunt
- Is in the process of forming solid attachment to aunt

“Out of nowhere” father appears and wants custody!
Case #1 Jessica

- Father’s history
  - Alcohol and drug abuse
  - Criminal activity (fraud)
  - Homeless
  - Has just found “steady” work
Case #1 Jessica

You are father’s attorney. What would you do?

You are the aunt’s attorney. What would you do?

You are the child’s attorney. What would you do?
Case #2 Tracy

- 7 year-old girl
- Disclosed sexual abuse multiple times by stepfather
- Older siblings reported their witnessing of the abuse
- Mother expresses disbelief
Case #2 Tracy

- All children placed in foster care
- Steppather not charged with anything
- Older siblings eventually returned to the home
- Tracy remains in foster care and now has multiple complex mental health problems clearly related to the assault

The county feels they have no choice but to begin the process of returning Tracy to her home.
Case #2 Tracy — Now What???

You are stepfather’s attorney. What would you do?

You are the mom’s attorney. What would you do?

You are Tracy’s attorney. What would you do?
Case #3 Judy

- 8 years-old
- Parents divorced, history of domestic violence
- Judy has told mom she has been sexually assaulted by father x4
- Retraining order against dad (not to contact mom/children)
Case #3 Judy

- A dramatic and peculiar event
  - Father breaks in through basement window
  - Abducts Judy, terrorizing her and three other sibs
  - Mom call police, dad returns Judy
  - No charges are filed
- Both parents continue in legal battle for custody
Case #3 Judy

You are dad’s attorney. What would you do?

You are mom’s attorney. What would you do?

You are Judy’s attorney. What would you do?
Ethical Issues
Practical Problems

- Balancing conflicting rights and needs
- Advocating for internally conflicted parents
- Ethical distress in therapists
Ethical Issues: the dimensional quality of rights

- Balancing conflicting rights and needs
  - Dad’s home is a slightly more enriched environment than Mom’s
    ... or
  - Mom is moderately better bonded than Dad
    ... or
  - Supervision is really better at Mom’s home

Does any of this have any meaning in the legal system?
Ethical Issues

- Advocating for internally conflicted parents
  - Dad wants what is best for his child (a strong and deeply held desire)
  - Dad wants custody of his child (an immediate wish)
  - His custody is not best for the child

How do we best advocate for Dad?
Ethical Issues

- Ethical distress in therapists
  - The “system,” with all of its imperfections decides to do something awful
  - Does the therapist help the child (enabling the system)?
  - Does the therapist refuse to participate (abandoning the child)?
Research Dilemma

Parent Factors

- Family History
- Mental Illness
- Substance Ab.
- Poverty
- Life Stress

Child Factors

- Dev. Disability
- Mental Illness
- Comm. Dis.
- Behavior Prob.
- Phys. Illness

Abuse
Neglect
Sexual Abuse
Questions will be taken during the panel discussion
A Brief Digression: Disclosure

- **Child Disclosures**
  - Physical and emotional assault is usually disclosed with ambivalence, reluctance, and shame
    - Children often feel that they are bad and deserving of the abuse
    - Children often fear retribution
    - Children often fear that they may lose their parent
  - Exploitation may be disclosed casually
    - Children may not recognize that they are being exploited
  - Reliability is a complex issue
    - Most experts agree that the “big picture” reliability is good
    - Depending on the age, fine details are not reliable
    - Children are vulnerable to coaching
    - Suggestibility is an issue that is often over-emphasized
The Invisible Rights of Children

• The uniqueness of children’s rights as a result of three key differences as compared to adults:
  – Children are vulnerable
  – Children are dependent
  – Children are developing
STATE OF WISCONSIN, CIRCUIT COURT, ____________________________ COUNTY

IN THE INTEREST OF

__________________________
Name

__________________________
Date of Birth

Case No.

Notice of Hearing - Temporary Restraining Order (Child Abuse)

To the respondent:

Name:

Address:

On the basis of the petition, the court finds reasonable grounds to believe that the respondent has engaged in, or based on prior conduct of the child and the respondent may engage in, abuse of (name) ____________________________, of the child, whose date of birth is ____________________________.

THE COURT ORDERS that a hearing for an injunction be held:

Date ____________ Time ____________ Location

Presiding Judge

Failure to appear could result in an injunction being issued directing:
a. That you avoid the child’s residence and/or any other premises temporarily occupied by the child now and in the future;
b. That you avoid contacting or causing any other person to contact the child, unless certain conditions are met; and
c. Any other appropriate orders.

Violation of an injunction issued at this hearing may result in your arrest and imposition of criminal penalties.

THE COURT FURTHER ORDERS:

☐ 1. The respondent avoid the child’s residence and/or any premises temporarily occupied by the child.

☐ 2. The respondent avoid contacting or causing any person other than a party’s attorney to contact the child, unless the petitioner consents in writing, and the court agrees that the contact is in the best interests of the child. Contact means knowingly touching, meeting, communicating, or being in visual or audio contact with the child.

☐ 3. Service of this notice and order shall be made (time period) __________________________ prior to the hearing date.

☐ 4. If requested, the sheriff shall serve and assist in executing this temporary restraining order.

☐ 5. (Name) ____________________________ is appointed guardian ad litem for the child.

(A guardian ad litem is mandatory if the respondent is a parent of the child.)

☐ 6. Other: ____________________________

THIS ORDER IS IN EFFECT UNTIL THE INJUNCTION HEARING IS HELD.

Violation of this order shall result in immediate arrest, is punishable by imprisonment not to exceed 9 months or a fine not to exceed $1,000, or both, and payment of filing and service fees.

If an injunction is issued, the judge or court commissioner must order the respondent not to possess a firearm while the injunction is in effect.

This injunction is entitled to full faith and credit in every civil or criminal court of the United States or any other state, or Indian tribal courts (to the extent such tribal courts have personal jurisdiction over non-tribal members).

If you need help in this matter because of a disability, please call:

Distribution:
1. Original – Court; 2. Petitioner; 3. Respondent; 4. Law Enforcement

BY THE COURT:

Circuit Cour: Judge/Circuit Court Commissioner

Name Printed or Typed

Date

JC-1691, 06/03 Notice of Hearing - Temporary Restraining Order (Child Abuse) §68.25(6) and 813.122, Wisconsin Statutes

This form shall not be modified. It may be supplemented with additional material.
Under oath, I petition the court for a temporary restraining order and/or injunction against the respondent under §813.122, Wis. Stats, based on the following:

1. The petitioner is (name) ____________________________________________.
   ☐ a child. ☐ parent. ☐ stepparent. ☐ legal guardian. ☐ agency involved in CHIPS proceeding.

2. The respondent is ☐ a child.
   ☐ an adult and there is a pending CHIPS action in the juvenile court involving the child victim.

3. The respondent ☐ is ☐ is not the parent of the child.

4. The respondent is:

<table>
<thead>
<tr>
<th>Name</th>
<th>Address</th>
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<table>
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<tr>
<th>Date of birth</th>
<th>Sex</th>
<th>Race</th>
<th>Height</th>
<th>Weight</th>
<th>Hair color</th>
<th>Eye color</th>
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5. The respondent has engaged in, or based on prior conduct of the child and the respondent may engage in:
   (Mark any of the following boxes that apply.)
   ☐ a. Physical injury inflicted on the child by other than accidental means.
   ☐ b. Sexual intercourse or sexual contact contrary to §§940.225, 948.02, 948.025, 948.095, Wis. Stats.
   ☐ c. Sexual exploitation of the child contrary to §948.05, Wis. Stats.
   ☐ d. Permitting, allowing, or encouraging the child to violate the prostitution laws contrary to §944.30, Wis. Stats.
   ☐ e. Forcing the child to view sexual activity contrary to §948.055, Wis. Stats.
   ☐ f. Exposing genitals or pubic area to the child contrary to §948.10, Wis. Stats.
   ☐ g. Causing the child to expose genitals or pubic area contrary to §948.10, Wis. Stats.
   ☐ h. Emotional damage to the child as defined in to §48.02(1)(gm), Wis. Stats.

6. Stated below or attached as part of this petition is a statement of facts indicating that the respondent has engaged in or threatened to engage in child abuse. (State when, where, what happened, and who did what to whom:)
   ☐ See attached.

________________________________________________________
________________________________________________________
________________________________________________________
________________________________________________________
________________________________________________________
I REQUEST THAT THE COURT (Mark any of the following boxes that apply):

☐ 1. Immediately issue a temporary restraining order and set a time for a hearing on a final injunction requiring the respondent to:
   ☐ a. avoid the residence of the child and any premises temporarily occupied by him or her.
   ☐ b. avoid contacting the child and causing any other person to have contact with him or her in any way unless the court agrees such contact is in the best interests of the child.
   ☐ c. other:

☐ 2. Appoint a guardian ad litem for the child.
☐ 3. Set reasonable or necessary child support.
☐ 4. Grant an award in a reasonable amount for the costs of maintaining this action and attorney fees, if deemed appropriate, and such other relief as may be just and equitable.
☐ 5. Direct the sheriff to assist in executing or serving this temporary restraining order and injunction.

Subscribed and sworn to before me
on ________________________________

____________________________________
Notary Public, State of Wisconsin

My commission expires: _______________

____________________________________
Signature of Petitioner

____________________________________
Date

Distribution:
1. Original - Court
2. Petitioner
3. Respondent
4. Law Enforcement
5. Other: ________________________________

JC-1690, 06/01 Petition in Juvenile Court for Temporary Restraining Order and/or Injunction (Child Abuse)  §§48.25(6) and 813.122, Wisconsin Statutes.
This form shall not be modified. It may be supplemented with additional material.
Page 2 of 2
The Rainbow Project Child and Family Counseling and Resource Clinic is a non-profit agency serving families of diverse cultural, economic, traditional and nontraditional backgrounds. We serve families with young children, primarily ages 10 and under, in Dane County and the surrounding areas. Rainbow Project provides client centered and responsive services within a variety of settings. These services include long and short term counseling, early intervention, education and prevention services to children, adults, families and the community. These services are intended to: a) help break the often generational cycle of child abuse, neglect and domestic violence, including services to families with patterns which put members at risk for abuse or future mental health problems; b) promote positive change and mental health within families including building, strengthening and supporting healthy parent/child relationships; and c) advocate for the mental health needs and support of families and children in the community.

CHILDREN AND FAMILIES SERVED: Project staff provide services to young children and their families. Children eligible for Rainbow services have been involved in one or more of the following: 1) victim of child abuse, neglect or sexual abuse; 2) witness to domestic violence; 3) presenting problems in social/emotional development and behavior (many children referred to us exhibit aggressive, violent behavior towards others or to themselves, or may often appear very passive and withdrawn from social contacts; many of these children have difficulty adjusting in day care or school settings); 4) identified "at risk," coming from families where stress factors in the home environment indicate there is high potential for abuse, neglect or domestic violence to occur (i.e., presence of alcohol/drug abuse, family history of abuse, neglect or domestic violence; financial crisis; unemployment; mental or physical illness; separation of parent and child; divorce; death in the family, etc.); and 5) serious problems in the relationship between parent and child.

Children and families are referred to us from many sources, including Dane County Human Services, family, civil and criminal courts, self referrals, day care centers, schools, hospitals, law enforcement agencies, Domestic Abuse Intervention Services, mental health specialists, alcohol/drug abuse treatment programs and other community support agencies.

TREATMENT PROGRAM: The Rainbow Project staff includes the Project Director, Child and Family Therapists and Adult and Family Therapists providing:
- Comprehensive assessment of family members and parent-child interaction
- Individual treatment plans for each child and parent, focusing on social-emotional development and behavior changes within the family system
- In home treatment combined with individual, family and group treatment at Rainbow Project
- Field sessions in day care or school programs and foster homes to help children through transitions, to ensure successful integration of children into new settings and to provide consistency and alternatives in permanency planning for young children
- Parent education provided in both individual and group sessions, to help parents learn positive child management skills, to provide child development information and to improve the parent-child relationship
- Advocacy, referral, and follow-up services for waiting list families and for enrolled multi-problem families requiring more than one agency's services
- Follow-up and evaluation services for past clients

PREVENTION PROGRAM
- Consultations in day care, school or hospital programs
- Community education and interagency coordination to promote awareness, information and training on the effects and treatment of child abuse, neglect and domestic violence; also in the areas of discipline, parent education and social-emotional development.
Facts About Child Abuse and Neglect

Defining Child Abuse and Neglect
Child abuse is any mistreatment of a child that results in harm or injury and that has no "reasonable" explanation. Child abuse is generally divided into several categories including physical, sexual, emotional, and neglect.

Physical Abuse includes hitting, shaking, beating, burning, and strangling a child.

Neglect is failing to provide for a child's wellbeing and not meeting a child's needs for things like proper food, medical care, hygiene, shelter, education, love and attention, and supervision.

Sexual Abuse includes allowing children to witness sexual acts, involving a child in pornography, touching/fondling, or rape.

Emotional Abuse includes criticizing, belittling, insulting, rejecting, and withholding love, support or guidance.

Children who are abused may:
★ have unexplained injuries
★ be frightened of parents and afraid to go home
★ be either overly compliant or demanding
★ be tired a lot, or complain of nightmares and not sleeping well
★ have poor hygiene
★ act overly mature or immature
★ have knowledge about sexual activity that is beyond what is normal for their age
★ have poor peer relationships
★ show a drastic change in school achievement or overall behavior patterns
★ miss school a lot
(These signs don't prove that a child is being abused, but they might be a sign that the child or family needs help.)

Adults who abuse may:
★ have conflicting, unconvincing, or no explanation for the child's injury
★ seem unconcerned about the child's wellbeing
★ describe the child in a negative way
★ use harsh physical discipline with the child
★ be overly protective of the child or severely limit the child's contact with other children
★ depend on the child for emotional support
★ be secretive and isolated
★ seem apathetic or depressed
★ abuse alcohol or drugs
(These signs don't prove that an adult is abusing a child, but they might be a sign that the child or family needs help.)

If you suspect abuse, report it—it's the right thing to do.
Whether or not you are a legally mandated reporter, we all have the moral mandate to protect children. ANY person may report if there is reason to believe a child has been abused or neglected or has been threatened with abuse or neglect. If you suspect that child abuse or neglect is happening to a child, contact your local child protective services agency. If you believe a child is in immediate danger, contact your local police department.

For more information on specific signs and symptoms of abuse and how to find your local child protection services agency see Prevent Child Abuse Wisconsin's website at: www.preventchildabusewi.org.
Child Abuse and Neglect Statistics

It is difficult to determine exactly how many children are abused and neglected each year. Several national and state studies have been conducted, but because they use different data collection methods it is not easy to decipher and compare results. The following are some specific findings from several studies and contact information to enable you to locate these resources and research these findings in greater depth.

National Child Abuse and Neglect Statistics

- In 2000 there were estimated to be 879,000 victims of child abuse and neglect in the U.S.
- 62.8% of victims suffered from neglect, 19.3% from physical abuse, 10.1% from sexual abuse, and 7.7% were emotionally or psychologically maltreated. 16.6% of cases fell under “other” types of maltreatment which were not coded as one of the main types of maltreatment.
- 51.9% of victims were female and 48.1% were male.
- Children ages 0-3 had the highest rate of victimization and the rate declined as victims’ ages increased.
- Over half of victims were White, 24.7% were African American, 14.2% were Hispanic, 1.6 were American Indian/Alaska Natives and 1.4 percent were Asian-Pacific Islanders.
- In 2000, younger children were more likely to be the victim of abuse that was fatal—children younger than a year old accounted for 43.7% of fatalities and 85.1% were children younger than 6 years old.
- 83.7% of child victims were maltreated by one or more of their parents.


Additional data may be found by contacting the National Clearinghouse on Child Abuse and Neglect Information, 1-800-FYI-3366, or on the internet at: http://www.calib.com/nccanch or http://www.acf.dhhs.gov/programs/cb.

Wisconsin Child Abuse and Neglect Statistics

- In 2001 there were 38,672 reported cases of child abuse and neglect in Wisconsin.
- Specifically, there were:
  - 1,844 substantiated cases of physical abuse
  - 4,606 substantiated cases of sexual abuse
  - 77 substantiated cases of emotional abuse
  - 3,628 substantiated cases of child neglect
- 17 child deaths were due to substantiated child abuse or neglect
- Parents or step-parents were 64% of abusers.


For county specific data go to: www.dhfs.state.wi.us, click on "programs and services," “youth services" then “child protective services,” and then "2000-2001 Child Abuse and Neglect Report."
Moments in Wisconsin in 2001

Every 21 days a child died from abuse or neglect.

Every 2 hours and 20 minutes a child under the age of 5 was abused or neglected.

Every 52 minutes a child was sexually abused.

Every 13 minutes a child was reported abused or neglected.

Every 33 minutes a child was neglected.

Every 42 minutes a child was physically abused.

40,215 children were reported abused and neglected in 2001 in Wisconsin

That's about the same as the population of Brookfield, Wausau, or Fond du Lac and would fill more than half of the seats in Camp Randall Stadium.

- About 1/4 of the reported allegations were substantiated that children were maltreated.
- More than 1/3 (38%) of the substantiated abuse and neglect cases are for children 5 years of age and younger.
- More than 3/4 (77.34%) of the substantiated cases for children are abused or neglected by their own parent, caretaker, relative, or other household member.

Most experts agree child abuse and neglect are greatly under reported.


The Children's Trust Fund, Child Abuse Prevention Fund and Prevent Child Abuse Wisconsin sponsor Blue Ribbons for KIDS to educate Wisconsin children, families and communities about the need for child abuse and neglect prevention.
INDICATORS of SEXUAL ABUSE: Preschool age

A. Physical Indicators

1. difficulty urinating or having bowel movements
2. blood on child’s underpants
3. genital or anal bruises, fissures and lacerations
4. frequent vaginal infections
5. sexually transmitted diseases
6. under 5% of all sexually abused children show physical indicators of victimization
   - the preschool child exhibits a very fast rate of physical healing
   - an adult male penis can penetrate a young child’s anus with lubrication, without physical injury to the child
   - a young female child’s hymen is pliable and able to stretch, intercourse does not necessarily mean that the hymen is torn

B. Behavioral Indicators

1. acting out or passive withdrawal
2. persistent and inappropriate sexual play with toys, animals, or peers
3. detailed and unexplained sexual knowledge beyond age expectations
4. seductive, precocious sexual behavior or gender confusion
5. aggressive sexual behavior, especially with boy victims
6. excessive, persistent, public masturbation
7. disturbances in eating patterns, ie binge eating, loss of appetite, gagging, hoarding food
8. disturbances in toileting patterns, ie wetting/soiling themselves
9. disturbances in sleeping patterns, ie nightmares, night terrors, fear of the dark, fear of being alone in bedroom, wanting to sleep with a parent
10. extraordinary fear of the same sex adults, babysitters, etc.
11. unexplained and unusually intensive guardedness, mistrust, clinginess and watchfulness
12. verbal statements by the child

Resources:
Kuehnle, Kathryn, Ph.D., Evidence of Sexual Abuse

Helping Young Children and Families in Stress
Member of Community Shares of Wisconsin

LN-5/93
Sexual Abuse is hard to talk about. It is a subject surrounded by secrecy and taboos. Some misconceptions which prevent dealing effectively with the problem include the following myths:

<table>
<thead>
<tr>
<th>Myth</th>
<th>Fact</th>
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<tbody>
<tr>
<td>The abuser is a weird or dangerous stranger.</td>
<td>In 85% of cases, the abuser is a person the child knows, often a relative or family friend.</td>
</tr>
<tr>
<td>Children may lie or fantasize about sexual activity.</td>
<td>Children usually do not have sexual information unless they have been exposed to it.</td>
</tr>
<tr>
<td>Children provoke sexual abuse by their seductive behavior.</td>
<td>Seductive behavior is not the cause. Responsibility lies with the abuser.</td>
</tr>
<tr>
<td>If the child did not want it, he/she could say &quot;stop.&quot;</td>
<td>Children are taught not to question the behavior of adults. The abuser uses a position of authority and power to bribe, coerce, or threaten the child.</td>
</tr>
<tr>
<td>Nonviolent sexual behavior between a child and an adult is not harmful to the child.</td>
<td>All victims experience feelings of shame, guilt, and anger, even if there are no obvious outward signs.</td>
</tr>
<tr>
<td>Discussing sexual abuse will frighten or upset children.</td>
<td>Having information can influence a child’s response to the initial approach of a sexual abuser. A child who has some awareness is better able to protect him/herself and an assault may be prevented.</td>
</tr>
</tbody>
</table>

Source: City-County Committee on Sexual Assault
HOW CHILDREN ARE AFFECTED BY DOMESTIC VIOLENCE
Adapted from Sojourner Truth House

THE RAINBOW PROJECT, INC.
831 EAST WASHINGTON AVENUE; MADISON, WI 53703

CURRENT RESEARCH INDICATES THAT DOMESTIC VIOLENCE IMPACTS CHILDREN IN A VARIETY OF WAYS.

THE NATURE & EXTENT OF THE IMPACT WILL VARY DEPENDING ON SEVERAL FACTORS

- The duration, severity, & frequency of domestic situations
- History & status of parent/family mental health, emotional needs, & parent education needs
- The history & current stability of the parent/child relationship (e.g. whether or not other problems of child abuse, neglect, alcohol/drug abuse, separation, or other risk factors have occurred)
- The age, gender, & developmental stage of the child

Studies clearly indicate that we can no longer presume that children free of physical injuries are not injured psychologically, developmentally, & emotionally by domestic violence.

SOME BATTERERS PHYSICALLY INJURE CHILDREN DURING THEIR ATTACKS ON THE ADULT VICTIM.

- Sometimes children are used as a weapon by the abuser against the victim. A child may be physically injured when thrown at the victim, or abused for the purpose of coercing the adult victim.
- Sometimes children are accidentally injured during the batterer’s assault on the victim. A child may be injured while being held by the adult victim, or injured while trying to stop the batterer’s attack.

SOME BATTERERS ASSAULT THE ADULT VICTIM IN FRONT OF THE CHILDREN.

- Despite what abusers may believe or say, children often either directly witness the assaults, or indirectly witness the violence by overhearing the episodes, or by viewing the aftermath—the injuries & property damage.
- Research reveals that children who witness domestic violence are affected in much the same way as children who are physically & sexually abused.

SOME BATTERERS USE THE CHILDREN TO COERCIVELY CONTROL THE ADULT VICTIM.

- Like the adult victim, children may also be isolated & not allowed to participate in peer activities or friendships.
- The abuser may engage the children in the abuse of the adult victim by encouraging or forcing the child to participate in the physical or emotional assaults.
HOW CHILDREN ARE AFFECTED BY DOMESTIC VIOLENCE
Adapted from Sojourner Truth House

THE RAINBOW PROJECT, INC.
831 EAST WASHINGTON AVENUE; MADISON, WI 53703

- Threats of violence may be used against children, pets, or other loved objects. Attacks against pets or loved objects are particularly traumatic for young children, who often do not make a distinction between themselves & the pet or object. Consequently, the abuser's attack against the pet is experienced by the child as an attack against the child.
- The abuser may interrogate the children about the adult victim's activities, force the victim to always be accompanied by a child or children, or take the child away after each violent episode to ensure that the victim will not leave.
- Sometimes children are forced to watch the abuse against the adult victim.

- SOME BATTERERS USE THE CHILDREN AS "PAWNS" TO CONTINUE CONTROLLING THE ADULT VICTIM AFTER SHE HAS LEFT THE ABUSER.
  - The batterer's intent is to control the victim using any means possible with little regard for the damaging effects on children.
  - Lengthy custody battles may be used as a way to continue the abuse & control of the victim.
  - Children may be held hostage or abducted to punish the victim.
  - Visitation periods may become uncomfortable for the children; either because of physical abuse, or constant interrogation about the activities of the adult victim. Some abusers may go into long tirades about the victim's behaviors, or break into tears; blaming the victim for "causing" the separation.

- The negative effects of domestic violence in interrupting childhood development can be seen in cognitive, psychological, & physical symptoms. Some behaviors have frequently been observed as characteristic of children who have witnessed domestic violence. It is important to remember that a child may be presenting all the following behavioral characteristics & not have witnessed domestic violence. The high frequency & severity of behavioral problems exhibited by children, however, are important signals indicating delays in social & emotional development, lowered self concept, & an inability to control their own behavior.

  CHARACTERISTIC BEHAVIORS FALL WITHIN A WIDE RANGE, & INCLUDE:
  - Eating/sleeping disorders
  - Mood related disorders (such as depression, or emotional neediness)
  - Over-compliance, clinginess, withdrawal
  - Rigid & controlling of self & others
  - Ritualistic or regressive behaviors
  - Developmental delays in speech, cognitive, & physical motor skills
  - Over-dependence on adults

THE RAINBOW PROJECT, INC.
831 EAST WASHINGTON AVENUE; MADISON, WI 53703

PAGE 2 OF 3
How Children are Affected by Domestic Violence
Adapted from Sojourner Truth House

The Rainbow Project, Inc.
831 East Washington Avenue; Madison, WI 53703

- Easily distracted (unable to focus attention)
- Difficulty controlling their behavior in large groups
- Difficulty with transitions (between places or activities)
- Dramatic play with dolls, puppets, or peers involving significant, repeated violence towards others (especially when this is the exclusive content of the play)
- Aggressive acting out, destructive rages
- Detachment, avoidance, a fantasy family life
- Somatic complaints (fingernail biting, restlessness, shaking, stuttering)
- School problems
- Suicidal ideation

Children’s experience with domestic violence can also affect perceptions & problem-solving skills.

- Young children often see themselves as the cause of the abuser’s violence.
- Children may experience feelings such as shame, guilt, anger, anxiety, fear, low self-esteem, depression, mistrust, & conflicted loyalties.
- Children use either passive behaviors (such as withdrawal or compliance), or aggressive behaviors (such as verbal or physical attacks), rather than assertive problem-solving skills.

There are also long-term effects as these children become adults.

- Since important developmental tasks are interrupted, children can carry these deficits into adulthood. They may never recover from falling behind in certain academic tasks or interpersonal skills. These deficits can affect their abilities to maintain jobs & relationships.
- Male children, in particular, are affected & are more likely to use violence in their dating & marital relationships.

Protecting Children

- Often, the most effective way to protect children from experiencing the effects of domestic violence, is to protect & support the victim. Holding the perpetrator, rather than the victim, accountable for the abuse is critical in protecting both the victim & the child.
In homes where domestic violence occurs, young children are often overlooked, particularly if they show no direct physical signs of harm. Research indicates, however, that children are significantly affected by witnessing domestic violence, calling its effect “similar to the reactions of children who have been physically abused” (Edington & Last). Statistics also show that children from violent homes are victims of abuse or neglect at a rate 1500% higher than that of the general population. They can either be direct victims of abuse, or suffer indirectly while trying to protect a non-offending parent. Unfortunately, it is these indirect victims who often suffer in silence.

**Variables**

Characteristics of young children affected by witnessing domestic abuse vary with each child.

**The degree to which young children are affected, the nature of these effects, & the long-term implications for the child depend on a number of the following variables**

- Child’s age and gender (boys tend to externalize, while girls internalize)
- Child’s own developmental strengths (e.g. child’s understanding of what is happening when their parents argue and their ability to cope with what they see and feel)
- History & current status/stability of the parent-child relationship (e.g., whether or not other problems of child abuse, neglect, alcohol/drug abuse, separation, or other risk factors have occurred/are occurring)
- Quantity & quality of alternative role models & support resources available for the child
- Duration, severity, & frequency of domestic abuse situations witnessed
- History & current status of parent/family mental health, emotional needs, & parent education needs

**Indications**

There are some behaviors that have frequently & commonly been observed as characteristic of children who have witnessed domestic abuse. It is important to remember that a child may present all of the following characteristics & not have witnessed domestic violence. The high frequency & severity of behavior problems exhibited by a child are, however, important signals indicating that the child’s emotional needs are not likely being met, & that stress (e.g., anxiety, fears) is affecting the child’s social & emotional development, self-concept, & ability to control their own behaviors.
Acute Stress Period - Four Weeks

The time when most individuals will experience acute stress reactions is within the first four weeks following a critical incident. It is during this time that debriefing is used to prevent the onset of posttraumatic stress disorder (PTSD).

PTSD Period - Four Weeks After

Posttraumatic Stress reactions are the same as acute stress reactions. The only difference is that once acute stress reactions continue beyond the initial four week period, or additional reactions emerge beyond that four week period (delayed response), the diagnosis of PTSD is likely. Once an individual moves to PTSD additional trauma specific intervention is critical. Debriefing is the process that many believe can help prevent PTSD from taking hold.

<table>
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<tr>
<th>REEXPERIENCING</th>
<th>PERSISTENT AVOIDANCE</th>
<th>INCREASED AROUSAL</th>
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<tbody>
<tr>
<td>Intrusive thoughts, feelings</td>
<td>Of thoughts, feelings, talking of activities, places, people associated with trauma</td>
<td>Sleep difficulty</td>
</tr>
<tr>
<td>Traumatic dreams</td>
<td>Inability to Recall</td>
<td>Irritability, assaultive behavior</td>
</tr>
<tr>
<td>Flashbacks</td>
<td>Numbing, detachment, estrangement</td>
<td>Difficulty concentrating</td>
</tr>
<tr>
<td>Intense Psychological Distress triggered by reminders</td>
<td>Restricted affect</td>
<td>Difficulty remembering</td>
</tr>
<tr>
<td>Physiological Reactivity</td>
<td>Foreshortened future</td>
<td>Hypervigilance</td>
</tr>
</tbody>
</table>

PTSD is the diagnosis when these reactions persist or develop four weeks beyond the initial incident and when there exists one or more reexperiencing reactions; three or more avoidance reactions and two or more arousal reactions.


PTSD Reactions in Children

* **Cognitive dysfunction involving memory and learning.** “A” students become “C” students; severe reactions cause others to fail altogether.

* **Inability to concentrate.** Children who once could complete two and three different tasks now have difficulty with a single task. Parents and educators often react negatively to this behavior because they simply do not understand its cause.
Behaviorally children may exhibit the following:

* Trouble sleeping, being afraid to sleep alone even for short periods of time

* Be easily startled (terrorized) by sounds, sights, smells similar to those that existed at the time of the event - a car backfiring may sound like the gun shot that killed someone; for one child, his dog pouncing down the stairs brought back the sound of his father falling down the stairs and dying

* Become hypervigilant - forever watching out for and anticipating that they are about to be or are in danger

* Seek safety "spots" in their environment, in whatever room they may be in at the time. Children who sleep on the floor instead of their bed after a trauma do so because they fear the comfort of a bed will let them sleep so hard that they won't hear danger coming

* Become irritable, aggressive, act tough, provoke fights

* Verbalize a desire for revenge

* Act as if they are no longer afraid of anything or anyone verbalizing that nothing ever scares them anymore. (in the face of danger, respond inappropriately)

* Forget recently acquired skills

* Return to behaviors they had previously stopped, i.e. bed wetting, nail biting, or developing disturbing behaviors such as stuttering

* Withdraw and want to do less with their friends

* Develop physical complaints: headaches, stomach problems, fatigue, and other ailments not previously present

* Become accident prone, taking risks they had previously avoided, putting themselves in life threatening situations, reenacting the event as a victim or a hero

* Developing a pessimistic view of the future, losing their resilience to overcome additional difficulties, losing hope, losing their passion to survive, play, and enjoy life
INTRODUCTION TO TRAUMA AND ITS IMPACT ON CHILDREN

I. Threats to resiliency:

1) Resiliency is a complex developmental process, like "intelligence" or "creativity". Like other traits, it has both a biological and an acquired component.

2) Its function is to protect the child (or adult) from the detrimental effects of overwhelming stress (trauma). Put simply, it either reduces the intensity of the stressful event as its perceived, increases the child’s ability to cope afterward, or both. Like “shock absorbers” which soften an impact, without consistent nurturing and support through the normal stressful events of life (ex: going to school for the first time, or other normal but scary experiences), the event may have more of a negative impact. Further, if the problem is chronic, children can become more vulnerable later in life to developing mental illness.

3) Understandably trauma, in the form of child abuse (sexual, physical, or emotional), neglect, and witnessing domestic violence, directly threatens a child’s resiliency.

4) In the aftermath of trauma, it is the job of those who work with children to provide the safety needed to learn new ways of coping. In other words, we assist the parents in developing the child’s resiliency.

II. Observable Symptoms in Response to Trauma:

While fully appreciating a child’s responses to traumatic events takes time, certain useful information about the coping strategies the child employs and the support the child is receiving in the wake trauma can be observed in a relatively brief time period (such as during visitation). This information can be used to fine tune the kinds of interventions that may best help the child cope in that specific setting.

While this is a very complex topic, for the purposes of being useful for supervising visitation, it can be said that there are three main response styles children exercise in the wake of trauma. These can be seen as children interact with their primary caregiver(s): Self Engaged / Self Aware Responses, Self Protective Responses, Disorganized Responses.

1). Self Engaged or Self Aware Response

Children who have not suffered unusual stress and at the same time have parents who have given consistent support through the “everyday emergencies”, typically have fairly well developed resiliency resources. In other words, they typically don’t have the added stress of being either ignored or over reacted to when they express their upset feelings. As a result they are actively engaged or dealing with the experience, are fully aware of how it feels to them, and aren’t afraid to say so.

Example: During a visit with his mother, a child who has been sexually molested by his mother’s ex-boyfriend tells her “I’m mad that you let Gary into the house!” The mother responds with feeling “I am so sorry! He will never hurt you again!”
2. **Self Protective Responses**

The main issue leading to these type of responses is that for whatever reason, the children aren’t safe enough to express their feelings. Out of past rejection experiences or intense fear of reprisals, they can not be explicit. Alternatively, their present living environment may not yet be safe. With no one to help them, they protect themselves from dealing with the experience. The specific ways they keep themselves safe can be observed to take three generally different forms: Avoidance behaviors, Caretaking behaviors, and Controlling behaviors.

A). **Avoidance Behaviors.**

The child won’t talk about, acknowledge, or behave as if the traumatic event had a serious impact or even happened. In some rare & extreme circumstances, the child may genuinely not remember the event. More frequently however, avoidance behaviors reflect a child who is fully aware, but just not ready to deal with the experience. This may have more to do with the severity of the event itself or the child’s worries about it rather than the child’s history with his/her parents. This may or may not be determined. However, clarity may be gained by observing the parent with the child. If the parent does not appear to respect the child’s need to avoid, it is likely that the child is already well aware of it and protecting him/herself.

Example: During a visit, a father tries to get the child to talk about what happened to her despite the supervisor’s requests for him not to. The quiet child breaks away from her father and anxiously jumps around on the furniture.

B). **Caretaking Behaviors.**

Frequently through approval or pressure from the parents, a child may be “trained” to deal with problems by taking care of others. This conveniently prevents the child from having to deal with them him/herself. This avoidance style often develops when parents have a history of untreated trauma themselves. When a parent has deficient resiliency resources of their own, the may rely on the children’s support as their own self protective strategy. This is the “parentified child” who feels responsible for caring for his/her parent and younger siblings.

Example: In the middle of a visit, a seven year old girl nervously asks the supervisor if she can take her 6 month old baby sister to the bathroom to change her diaper. The mother exhaustedly says “Thank you honey! I’m so tired this morning!”

C). **Controlling Behaviors.**

In the context of a traumatic event, some parents may be traumatized themselves and may be unable to adequately take charge of protecting and responding to the needs of the child. Over compensating for the loss of control in their family, some children “take matters in their own hands”. In other words, the child responds by ensuring his needs get met by himself. This strategy can “protect” the child from the initial trauma by giving him more important things to worry about, particularly his own safety.
At a child's level there is little they actually have control over, however abused children are often observed trying to establish their own little dictatorships with playmates (and sometimes parents). The thinking is that if they can control their environment, they can keep themselves safe. Then, what hurt them in the past can never happen again.

In less problematic forms, this may merely reflect a determinedly independent child who is quite challenging with adults who do not establish their authority. However, at its worst, this indicates a child who is extremely afraid that if he gives up control he will be exploited. Often this is the situation where "instrumental aggression" is used. The child uses violence to teach other children to do things his way. In this situation, the child is constantly protecting himself from unknown but perceived threats.

In some situations the problem is made worse when parents have "control issues" of their own. The child's need to control his environment is perceived as a threat to the adult's own independence. These parents really have a hard time with the "terrible two's".

Example: Fifteen minutes into the visit, a boy hits his sister when she continually refuses to play their game by his own rules. His dad tries to make him do a "time out" on his knees in the corner. When asked, the dad tells the supervisor he will be in time out until the end of the visit. The supervisor intervenes.

3. The Disorganized Pattern.

Of the three response styles discussed so far, this is the most primitive, and in many cases the hardest to rectify. A complex combination of factors can combine making this response pattern a deeply ingrained one: The occurrence of an incident or series of incidents of lengthy duration beginning at a very young age, neglect, and particularly, the lack of solid attachment between parent and child. In other words, the child is developmentally impoverished in profound ways. The integrity of a child's developing identity and resiliency resources are threatened far beyond the "typical" impact of the traumatic events themselves. In other words the trauma may essentially be irrelevant compared to the child's other problems. Sometimes these are referred to as "lost children".

This response style is referred to as "disorganized" because the child's behavior is so primitive at times that there seems to be no pattern or "sense" to it. Sometimes it is referred to as infantile as well. The child's chronological age may be much older, but patterns of eye contact, language use, play, etc., are random, immature and brief.

Another possibility regarding this style is that is that the problems associated with poor attachment (lack of trust in the parent, lack of reciprocity, where the child learns her behavior has an impact on the parent's behavior and vice versa, lack of or inconsistency of nurturing, etc.) can far overshadow the impact of a traumatic event.

Example: During a visit, the mother seems to stare blankly for periods as her 5 year old boy occupies himself with a block while babbling to himself. When the parent engages the child, there is little eye contact sought or feeling expressed by the mom, but the boy does respond and they connect briefly. After a few moments however, the boy slips into a blank stare of his own. The mother doesn't notice.
Stress and Trauma in Children

By Naomi Drew
Author of Hope and Healing: Peaceful Parenting in an Uncertain World

Don't think that just because your children aren't talking about their fears they don't. Even children who have been shielded from the news can't help but pick up things on the playground or even passing a newsstand. Sometimes between children’s TV shows, news flashes that sound terrifying: "Shopping mall bombed in Israel," "Chances of a terrorist attack in the United States," "Can we survive bioterrorism?" All of these ideas have made their way into the national consciousness, and our children are absorbing them. Listen to some of their words:

“Sometimes I'm scared,” confided 13-year-old Frank. “My dad was going to go to France, but I didn't want him to go on the plane. I was so relieved when he canceled the trip.”

Five-year-old Hannah expressed feelings of fear also. “When you do a war, what if one side wins? What would happen to us?”

Eight-year-old Ben said, “It’s not a very good time. There’s war in Afghanistan and in the world. I don’t like the bombings.”

Fifteen-year-old Amy said: “I feel unsafe to know that people are dying all over the world, and it is frightening to think about.”

Nine-year-old Tess gets upset every time she sees reports of war on television. “It feels like the world will never be peaceful again. I’m worried the world may come to an end.”

Young people of all ages are more vulnerable than ever to the effects of stress. If you think your child might be suffering from reactions to stress or trauma of any kind, there are some signs to be aware of:

Ages 3 - 5
- physical complaints like stomach aches and headaches
- fearfulness and feelings of not being safe
- stranger or separation anxiety
- compulsively “playing out” the source of trauma; e.g. building towers with blocks and crashing them down.
- avoidance of situations that may or may not be related to the trauma
- sleep disturbances
- loss of acquired developmental skills (like dressing oneself)
- frequent crying

Ages 6 - 10
- physical complaints and concerns about their health
- anxiety and fearfulness
- compulsive re-enactment of the trauma through play or drawing
- "omen formation" - believing that warning signs predicted the trauma, and a tendency to be hyper-alert in order to recognize new warning signs.
- preoccupation with how the crisis could have been solved or averted
- sleep problems

Pre-adolescence and Adolescence
- nightmares and flashbacks, difficulty sleeping, and feeling detached or estranged
- impulsive and aggressive behaviors.
- over-preoccupation with other concerns unrelated to the trauma
- rebelliousness and anti-social behaviors
- risk-taking behaviors

Teens can normally be rebellious, even a little aggressive, but if this becomes excessive, it may be time to seek professional intervention. If your teen starts engaging in promiscuous behavior, starts dabbling in drugs, or using alcohol, all these are danger signals. Also, any changes in behavior -- eating, sleeping, recreation, homework, or activities with friends -- can be very concerning.

There are lots of things you can do in your own home to help your child calm, cope, and feel better. Now let's take a look at what they are.

Helping Children Cope With Stress

Here's a general break-down of age-related strategies for helping children cope.

Ages 3 - 5
- Children of this age need plenty of reassurance that they are safe, but make sure the reassurance is authentic. Avoid statements like, "We will never have another terrorist attack again," and say, "I am here for you and I'll always protect you in every way I can. And when school (or day-care) your teachers are keeping you safe." Taking your children to visit local police and fire department so they can talk directly with the people who work there can be very reassuring too.

For young children, Dr. Perri Klass, pediatrician and author of Love and Modern Medicine, says, "It's alright to make the promise you can't keep for sure: 'I'll be here to take care of you and every day.' She says, "Even 5 year-olds understand that everyone dies sometime and will be comforted if you simply say, 'I have every intention of being here. I'm going to be very careful about what I do.'" (Parenting, Dec./Jan. 2005)

- Let your children know it's okay to feel afraid or sad if that's how they are feeling. Validate their feelings during these times rather than trying to talk them out of their feelings. Validating your child feels is essential. Initiate discussion, but don't push. Open the door gently to encourage your child without being intrusive.

Try sitting down on the edge of your child's bed at night before she goes to sleep. Cuddle together and then say something like, "I'm just wondering how you've been feeling; the stuff that's been going on in the world lately." Or, "I'm just checking in. Anything to talk about?" Let your child take the lead from there.

- Encourage play that allows your child to act out some of the things he's afraid of. A fireman or police officer is a healthy way to do this. This is how young children try to make sense of what we've lived through. As long as this type of play doesn't become obsessive, it can be a good outlet.

- Like we talked about earlier, encouraging your child to draw or paint whatever is on their mind is very healing. You'll find lots of way to help her do this later in the chapter.
- Listen and reflect back whatever your child has to say. Sometimes this can be hard because, as parents, we often want to fix the problem. But by listening and empathizing, allow our child a safe space to reveal what he really feels. When 5 year-old Tad told he was afraid to fly, she encouraged him to talk about it. Here's their conversation:

Tad: I don't want to go to Disney World for vacation.
Mom: Why not?
Tad: I'm afraid bad people will come on the plane and hurt us.
Mom: So you're afraid that we'll get hurt if we fly.
Tad: Look what happened to all those people who were on the planes the hijackers.
Mom: You're afraid hijackers might come on our plane?
Tad: Yes. I don't want us to die.

By just plain listening Mom allowed Tad to get his fears out on the table. Then she can give reassurances like, “I know how scary it is to fly right now. I was a little nervous then I thought about all the planes that fly safely every day, and all the people travel them. In fact our neighbor Tom flies several times a month for his job, and he's got it safely every time. I know the airlines are taking extra measures keep all their passengers safe.”

Mom didn't try to talk Tad out of his feelings. Instead, she listened, reflected back, and gave assurances that were authentic. After that, Tad wasn't as nervous about their trip.

Ages 6 - 10
- Children this age may avoid discussing painful feelings. Be open and encourage them open up to you. Dr. Janine S. Shelby of UCLA Medical Center developed this wonderful activity to help children express feelings—make a personalized book with your child on the cover. On each of four pages write the following:

~ Page 1 - This is Sara. Something happened that was very scary.
(Sara draws her picture on this page.)
~ Page 2 - Sara doesn't want to talk about it. Here's what would happen if she did. (Child writes or draws a related picture.)
~ Page 3 - If Sara starts talking about how she feels, this could happen too.
_ She would feel worse.
_ Mom and Dad wouldn't like hearing how she's really feeling.
_ Something else might happen.
(Child checks off the appropriate choice and write about it further.)
~ Page 4 - If Sara decides to talk about what's on her mind, I wonder how she might feel?
(Here draw a happy face and a sad face. Have your child circle one. Then she can write why she feels the way she does.)
(Adapted from the article “Brief Therapy with Traumatized Children” by Janine S. S)

Other things that help children of this age are:
- Deep breathing and visualization
- Positive self-statements like, “I am safe and well and so is my family.”
- Altruism, reaching out to help others. Guidance counselor Jane Mangino says: “After children have expressed their feelings, the thing that helps them the most is taking action.” When children help others it removes their own feelings of helplessness.

I have used each of these for years with children of all ages and they are extremely effective. Take the time to teach your child these techniques and you will be giving them a life for calming and de-stressing. The younger you start the better. You can actually start this as part of a bedtime ritual with children as young as four.

Pre-adolescents and Adolescents
- Discussing fears openly with an empathetic listener
- Deep breathing
- Visualization and relaxation techniques
- Positive self-statements like, “I am safe and well.”

- Altruism, reaching out to help others. This is particularly helpful for kids of this age them to translate fears into positive action gives them a healthy vehicle for healing. wonderful website you can go to for ideas on how your teen can help. It's called Teen hoopla/activism.html. Their website is: http://ala8.alaa.org/teenhoopla/activism.html. Here your teen can access a wide range of helping activities from homelessness to rainforest. If you child expresses feelings of hopelessness about the world, have him here. It will show him that people really can make a difference, especially people his

Sometimes just being there with your teen in a safe and loving setting, is enough to open up. Or by gently asking questions about other parts of his life and listening with judgment. Our intent listening is the best way to get our teens to talk more. When we listen with authentic interest, and validate what they say, they usually end up sharing more.

Physical affection also opens channels to communication. Many kids in their teens be cuddled when they're alone with us. The kind of closeness that cuddling brings can help a teen feel safe to open up.

For kids of all ages, know that your loving presence is the most soothing thing of all more time to listen. It will be the best investment of time you've ever made.

Naomi Drew is recognized around the world as an expert on conflict resolution and peacemaking in schools and homes. Hailed as visionary, her work has enabled edu parents, and people of all ages to live together more cooperatively.

Her work has been recognized by educational leaders throughout the country. Peo ages have attested to durable changes in their relationships after applying the prin outlines. Her work has been featured in magazines, newspapers, radio, and TV an currently serves as a parenting expert for “Classroom Close-ups,” a public television

She is the author of four books, serves as a consultant to school districts, leads sen runs parenting courses. You can read more on Naomi Drew's work at her website LearningPeace.com.