

## McClellan County GAL training

navigating complicated family dynamics and recommendations on handling cases where there have been allegations of domestic violence. Within that framework, it would be extremely helpful if you could touch on ways that attorneys can (perhaps unwittingly) become part of the problem with clients becoming further entrenched in their positions – particularly when clients pathologize the opposing party. Knowing the right questions to ask to get at the root of the issue and how to avoid getting distracted from the main focus of the children’s best interests when there are allegations of DV or various personality disorders would really help a lot of us.

### An Attorney’s Guide to Working with Complex Family Issues in Divorce Court

- I. Marriage isn’t for everyone
  - a. Cite divorce stats
  - b. Find a stat of number of divorces that resolve amicably (or without litigation)
  - c. Most divorcing parents will settle on joint allocations and split parenting time.
- II. Divorces aren’t for everyone either
  - a. Some spouses are hurt/angry
    - i. Kubler-Ross stages of grief
    - ii. Usually one has decided to divorce and the other is shocked
      1. How does the “shocked” spouse handle that?
      2. What are their role models for relationships and conflict resolution?
      3. Are they able to own up to their role?
        - a. If so they might have noticed some earlier warning signs and wouldn’t be so shocked.
        - b. Is there Domestic Violence
          - i. Minimization
          - ii. Denial
          - iii. Blame
          - iv. More on DV to come
- III. Some divorcing parents are healthy individuals and good parents
  - a. Healthy and good is not synonymous with perfect
  - b. These parents generally speaking do not have trouble with 750 ILCS 5/602.7 12 or 13 (facil relat and putting the children’s needs ahead of their own)
    - i. Not having a problem does not mean perfect...just not oblivious either (maybe talk about dad from current case – “validating” the children
- IV. Some children have parents with serious dysfunction
- V. Domestic Violence
  - i. What kind of DV is present?
    1. Typologies of DV
    2. DV vs. DB
    3. How does it effect the children?

- a. Coercive-controlling – use of children, finances, etc. as a means of continuing to exercise control over the other parent.
    - 4. How to Assess DV
      - a. Find someone competent
      - b. It's not about the violence – it's about the control
      - c. Gathering “evidence”
        - i. Police reports and arrests are uncommon
        - ii. Independent reports (i.e. medical) are uncommon
        - iii. Children's reports can be unreliable.
          - 1. Excited utterances?
        - iv. No arrest does not equal no violence.
        - v. Plea bargains
        - vi. EOP petitions, findings, adjudications?
      - d. Not blaming the victim
        - i. She stayed
        - ii. She didn't call the police
        - iii. She never complained
        - iv. She didn't get the OP
        - v. She switched lawyers
    - 5. Risk of utilizing child's reports
      - a. How do you know if wishes are reasoned and independent?
      - b. Children can align with an aggressor more easily than supporting the victim.
    - 6. Acceptable intervention
      - a. PAIP
      - b. NOT couples therapy, anger management, individual counseling, medication, stress mgmt., etc.
- VI. Parental Alienation (often alleged in tandem with DV)
  - a. Drodz – Is it abuse or Alienation article
  - b. How is alienation being defined
    - i. Kelly and Johnson – The Alienated Child
    - ii. Continuum of alienation (review)
    - iii. Not getting caught up in semantics
      - 1. Does a child resist or refuse contact with a parent?
      - 2. Why or why not?
      - 3. Realistic estrangement vs. pathological parental alienation
        - a. Maybe talk about dad from CA case?
        - b. Counterproductive protective parenting?
          - i. Talk about the “normal” case
    - iv. Why younger children are insulated from being “alienated” and won't appear “alienated” (talk about validating dad who doesn't make the kids go with mom)

- v. Gatekeeping
      - 1. Cite Austin articles, benchbook
      - 2. Gate opening vs. Gate closing
        - a. Restrictive vs. facilitative continuum
      - 3. How gatekeeping can morph into alienation
    - vi. The importance of rapid assessment and intervention.
    - vii. Thank G-d for the new and improved 607.6
- VII. Recap
  - a. Grieving the loss of the marriage
  - b. Allegations of DV
  - c. Allegations of Parental Alienation
  - d. Gatekeeping Behaviors
- VIII. Value of a 604.10b
  - a. With a competent evaluator – can be a useful settlement tool, will also do what it’s supposed to: Assist the trier of fact.
  - b. With an incompetent evaluator – worthless
    - i. Incompetent – not experienced, not abreast of current literature, not a member of AFCC, not rec’g ongoing training, trying to make everyone happy, trying to get more business, etc.
- IX. Break
- X. How can an attorney handle these complex cases?
  - a. If nothing else, set a good example
    - i. Be polite, courteous, respectful
  - b. Control your client
    - i. Be clear and straightforward with advice
    - ii. The court cannot solve all of their problems
    - iii. Sometimes your client is hurting their child and it would help if you didn’t pretend they’re not.
    - iv. Don’t overpromise
    - v. You can remind the client that mothers and fathers are important and the children need and deserve a relationship with the other.
    - vi. Are you willing to fire a problem client?
    - vii. What kind of referrals are you aiming for?
    - viii. What type of outcome are you promising?
      - 1. Getting them divorced vs. getting them their children.
- XI. GAL Specific
  - a. Know your biases
    - i. Confirmation Bias
      - 1. “My father was a narcissistic jerk and I would have been ok if I didn’t have to see him too.”
    - ii. Anchoring Bias
    - iii. Primacy and Recency Bias
      - 1. Be ok with accepting that we all have biases
      - 2. Recognize and don’t misuse those biases.

- b. Don't get married to a position
    - i. Keep an open mind
    - ii. New facts = new conclusions (talk about reversal of 604 recommendations when report was updated)
    - iii. Don't be afraid to admit you've changed your opinion.
  - c. Don't position yourself for business.
    - i. If some atty or firm no longer recommends you for cases because of your position in a case, so be it.
  - d. Know when to ask for a 604.10
    - i. Talk about timeline of the evolution of a problem even prior to filing.
    - ii. Don't delay putting necessary evaluative services into place.
  - e. Therapy
    - i. Do you vet the therapist?
      - 1. Is the therapist objective?
      - 2. Do their notes reflect a clear understanding of the problem with corresponding intervention?
        - a. I.e. resist – refuse problems don't benefit from validation of the rejection assuming there are not verifiable safety issues.
      - 3. There are plenty of therapists...ditch the bad ones ASAP before they can do too much damage.
- XII. It's about the Children
- a. This isn't your father's DUI
  - b. A "good" outcome benefits the family (not the individual litigants)
  - c. Children benefit from safe and healthy relationships with both parents with opportunities for healing, resolving conflict, etc.
  - d.