

# Working with Complex Family Issues in Family Court

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LICENSED CLINICAL PSYCHOLOGIST

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## Are you really there?



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## Brief Advertisement

- ▶ Therapy practice in Northwest Suburban Chicago area
- ▶ 604 (.10b and .10c) and 215 evaluations since 2000.
- ▶ Over 800 total evaluations in all Chicago collar counties plus McClean and Champaign Counties
- ▶ Specializing in domestic violence assessment, parental alienation, and relocation.
- ▶ Evaluations up to 100% virtual.
- ▶ (when not retained for a .10c) I also conduct work product review, expert testimony and attorney consultation in contested custody matters.

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## Another Brief Advertisement

Association of Family and Conciliation Courts

AFCNet.org

This is the premier international organization for training and resources for judges, attorneys and mental health professionals involved in high conflict family law.

Annual Conference  
Bi-Annual Custody Evaluation Symposium  
AFCC-AAML Joint Conferences

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## Disclaimer

- ▶ Stream of consciousness
- ▶ Poor sense of humor except I don't realize it.
- ▶ I use the "C" word a lot

## Custody

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## Agenda

- ▶ General comments on marriage and divorce
- ▶ Perfect vs Good Enough
- ▶ Domestic Violence
- ▶ Parental Alienation
- ▶ Gatekeeping
- ▶ When to seek a 604.10b (or c)
- ▶ How to handle these complex cases
- ▶ Bias
- ▶ Focus on Children

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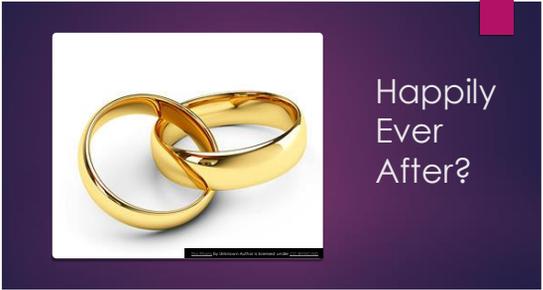
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Marriage isn't for everyone...

- ▶ According to the US Census...34% of women and 33% of men have been divorced.
- ▶ 42% to 45% of first marriages end in divorce (percentage is higher for subsequent marriages)
- ▶ I believe most divorces resolve amicably (without extended litigation)
- ▶ Most divorcing parents will settle on a joint allocation and equitable parenting time plan.

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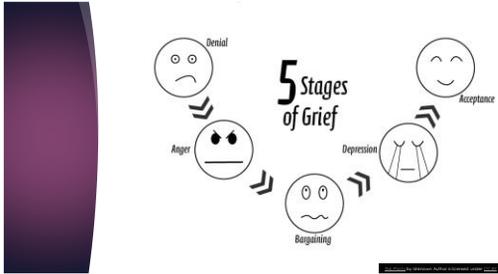
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**It takes two...**

*"I came to you, Doc, so I could learn to take responsibility for my own actions. So far, you haven't helped a bit!"*

K.Spear

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**Good enough parenting is key**

- ▶ Good parents are not perfect parents.
- ▶ Perfect parents are not good parents.
- ▶ Good parents are sensitive to their children's needs (with sensitivity being a better measure than "attachment" during a divorce)
- ▶ A good parent (who is sensitive to their children's needs) generally doesn't have difficulty putting the children's needs first or facilitating the relationship with the other parent (FSO LCS 3/6/22:7 (12), (13))

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Putting  
the child's  
needs  
first...

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### Psychologically Unhealthy Parents

- ▶ Domestic Violence
- ▶ Parental Alienation
- ▶ Gatekeeping

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### Domestic Violence

- ▶ All violence is bad...not all domestic violence is the same.
- ▶ Separation-Instigated Violence
- ▶ Situational Couples Violence
- ▶ Violent Resistance
- ▶ Coercive-Controling Violence

Johnson and Kelly 2008 Differentiation of Domestic Violence

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## Corroborating Coercive-Controlling Domestic Violence

- ▶ Can be difficult
- ▶ He-said, she-said
- ▶ Control exists in the absence of violence
  - ▶ The "typical" data we would look for (police response, arrests, hospital records, etc.) is anything but "typical" in a domestic violence case.
- ▶ Requires a skilled interviewer

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Domestic violence is to Domestic Battery like a snowstorm is to winter

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## Effect on Children

- ▶ 3.2 million children witness violence each year
- ▶ Cognitive, behavioral and emotional effects
- ▶ Greater risk for anxiety and depression (internalized behaviors)
- ▶ Greater risk for fighting, bullying, lying or cheating (externalized)
- ▶ Social problems and difficulty in relationships.
- ▶ Children who witness violence may view violence as an acceptable means for resolving conflict

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## Effects on Children

- ▶ 45% to 60% chance of co-occurring child abuse (15x higher than average)
- ▶ Even when they are not a physical target, children witness 68% to 80% of domestic assaults.
- ▶ "The children had no idea...they were asleep." Really?????
- ▶ Caregiver's limitations in being responsive
- ▶ Fear of harm or abandonment, excessive sadness, worry or guilt ("they were fighting because I didn't clean my room...")

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## Coercive-Controlling Violence

- ▶ Using the children to exercise control of the other parent.
- ▶ See segues for parental alienation...
- ▶ Even if no PA exists, look at marginalization of parents, empowering children to choose whether or not to spend time with a parent, etc....

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### From the mouths of babes...

"our mom has lied about stuff in the past. I can't say it in front of Johnny because he's in the room." / **Is that something your dad wanted you to remind me?** / "Yeah, I can say it in front of him. She lies about, she's been lying about lots of stuff the last two years since the divorce has been going on. She also tried to sell the dog when we weren't at the house, when we were with our dad for the weekend, and um, she had someone come over and they ended up not buying the dog because the dog bit them." / **Are these things your dad wanted you to remember to tell me?** / yes, "and she killed the dog because of it and she lied and said the dog was sick and the whole thing was on Facebook. Daddy has FB and daddy showed me one night when I was staying up. He thought it was important for me to see. I'd rather have us live with our dad because mommy has lied about a lot of stuff over the past two years."

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### ...and parents

"I have told the kids I don't approve. I said that game makes me feel uncomfortable, can you please stop playing?" (the Lobster game)

"I would validate them, I would say, 'yeah, that's an ok thing to want'. I would say, 'I want to spend time with you too.'"

"I validated the kids. I said, 'yeah, the kids are going to stay here today'. They want to stay here."

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### How to assess Domestic Violence

- ▶ Find someone competent and qualified
- ▶ Don't get sucked into looking for violence...coercive-controlling is about control (not violence)
- ▶ False allegations vs false denials

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## Difficulty in assessing for DV

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## "Evidence"

- ▶ Police and other independent reports are uncommon
- ▶ Independent reports may not reflect the actual circumstances – be a curious reader.
- ▶ Children's reports can be influenced, memories are fallible.
- ▶ Are there "excited utterances" ...what did a victim say to family, friends, etc. contemporaneous to the alleged instances?
- ▶ No arrest ➕ no violence
- ▶ Plea bargains, findings, adjudication in DV court

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## Victim blaming...don't do this!

- ▶ Why didn't you leave?
- ▶ Why didn't you call the police?
- ▶ Why didn't you ever complain to anyone?
- ▶ Why didn't you get an OP?

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### Risk of utilizing children's reports and assessing children's wishes

- ▶ "hearing" and "relying upon" are not synonymous
- ▶ How do you know if children's wishes are reasoned and independent?
- ▶ Children may align with the aggressor and blame the victim.

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### Interventions for Domestic Violence

- ▶ State of Illinois (protocol-compliant) Partner Abuse Intervention Program (check Department of Human Services for compliant programs)

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### Contra-indicated Interventions

- ▶ Couples therapy
- ▶ Anger management
- ▶ Individual counseling\*
- ▶ Medication management
- ▶ Stress Management
- ▶ Mediation may be dangerous
- ▶ Joint interviewing may result in inaccurate impressions/observations
- ▶ Who is sitting with these individuals when the attorneys are in chambers?

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### Parental Alienation

- ▶ Can be alleged in tandem with Domestic Violence
- ▶ Both can be true
- ▶ Don't get caught up in semantics
- ▶ There is NO "Parental Alienation Syndrome"
- ▶ There IS Parental Alienation (and there is practically no controversy as to whether or not it exists in the mainstream professional community)
- ▶ See Kelly and Johnson ([The Alienated Child](#), Family Court Review 2001)

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### Parental alienation is nuanced

- ▶ Not a "one size fits all"
- ▶ Alienation exists on a continuum  
Positive relationships, affinity, alliance, estrangement, alienation

A diagram illustrating a continuum of parental alienation. On the left is a happy face icon with sunglasses. A red arrow points from this icon to a sad face icon on the right. Below the icons, the text reads: "Positive relationships, affinity, alliance, estrangement, alienation".

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## Realistic Estrangement v Pathological Alienation

- ▶ Did a (target) parent's conduct result in the estrangement?
- ▶ Think "good enough" vs. not so great
  - ▶ Naked hot tub
  - ▶ Not allowing use of native language
  - ▶ Encouraging/forcing view of semi-nude photos
  - ▶ Referring to the child as a "bitch"
  - ▶ Making negative statements about the mom...

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## Counterproductive Protective Parenting

- ▶ The "Normal" case...

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## Age as an insulating factor

- ▶ Younger children may be exposed to alienating behaviors (PAB's) but will not appear to be "alienate" (i.e. rejecting contact with the target parent)
- ▶ This doesn't suggest anything benign about the PAB's (see earlier example of marginalization and "validation")

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### Developmental Perspective

- ▶ Young children are for the most part developmentally shielded from being "alienated".
- ▶ As children get older, they gain the cognitive flexibility to take sides, feel bad for a parent, become protective, etc.
- ▶ It takes an incredibly psychologically healthy parent to shield a child from their grievances. Even under ideal circumstances it is not perfect.

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### Parental Alienation: It isn't always what meets the eye

- ▶ Why is this mother harping about alienation? These kids seem fine with her.
- ▶ The kids are clear why they don't want to see their dad, and it makes sense. Plus, it's no use to force them and even their therapist says they should wait until they're ready.
  - ▶ NEWS FLASH: THEY'LL NEVER BE READY
- ▶ See the *entire* text of the statutory factor regarding children's wishes (yes the "reasoned and independent" part).

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"Before you decide which parent to live with, look who's hanging out on my street, Bobby."

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### Gatekeeping

- ▶ See William Austin (including Gatekeeping Benchbook)
- ▶ Attitudes, beliefs and behaviors of a parent that either facilitate or interfere with the other parent's involvement.
- ▶ Gate opening v Gate closing
- ▶ Is it restrictive or facilitative?
- ▶ If restrictive, is it protective?

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### Is it protective?

- ▶ Mom has 3 DUI's in the past year and lost her license...she still has been driving. Dad tells the young children (6 and 8) she shouldn't be drinking or driving. He asks the children if mom has been drinking when they return from time with her. If she smells like alcohol when he brings the children for the transition he doesn't leave them.

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### Or restrictive...

- ▶ Dad thinks mom drinks too much (no objective evidence exists to support his concerns)...and won't let the children see her if he suspects she's been drinking at the transition. He's also instructed the school that the children can only be released to him (mom is not on the 'approved' list). The children "know" dad is trying to protect them because he loves them.

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### Holy crap!

- ▶ Picture this...young female child (3 years old), gets along great (because of course dad can't possibly be "mean" because he's nice to her), with a mom who is trying her best to keep dad on the sidelines as much as possible...Mom is a nurse and knows what is "best" for this child, who has some mild medical issues not requiring any intervention that any parent can't give. What's the big deal?

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### And the survey says...

- ▶ Dad and mom live pretty far apart so dad ends up with about 30% of the time with the child (every other weekend)

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### Fast forwarding...

- ▶ Now the little girl is 12 years old and really worries dad isn't able to take care of her. She doesn't like seeing her dad. She resists contact and eventually starts refusing. Mom does nothing much to discourage this. She still has symptoms and now her doctor and therapist (local to mom) are recommending she stays close to mom (i.e. don't increase time with dad or "force" her to see him). The girl ends up being "sick" a lot on dad's weekends and those visits don't happen. Even when dad suggests coming to where the girl lives and staying in a hotel.

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### Fast forward to post decree filing...

- ▶ And now you meet with the girl
- ▶ And it just doesn't seem like this is going to work
- ▶ The doctor and therapist said not to push it.
- ▶ Maybe some reunification therapy?
- ▶ Maybe another year or two until trial?

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### How?

- ▶ It's ok to be bold
- ▶ You'll never make everyone happy
- ▶ Intervene early and often
- ▶ Don't delay a 604.10 process if you think it is necessary..."time is the enemy of children..."
- ▶ Find experienced, competent evaluators (AFCC?)
- ▶ Set short status dates and keep people accountable.

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### How?

- ▶ Include referral questions in Orders (Especially 215 examinations)
  - ▶ What does the Court need to know from the expert?
- ▶ Have clear consequences for non-compliance (don't participate in a parent 'running out the clock')
- ▶ One judge = one family

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### Value of a 604.10 evaluation

- ▶ Sure, it's expensive, but what is the cost of unresolved problems for children?
- ▶ A competent evaluation can serve as a good settlement tool and, more importantly, will assist the Court.
- ▶ An incompetent evaluator/evaluation is worthless
  - ▶ Incompetent evaluators may (or may not) be novices.
  - ▶ An incompetent evaluator is one who is not receiving ongoing training, not a member of AFCC, not abreast of the current literature, trying to make everyone happy, trying to get more business, etc., etc...

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How is a GAL to handle these complex cases?

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Do this...

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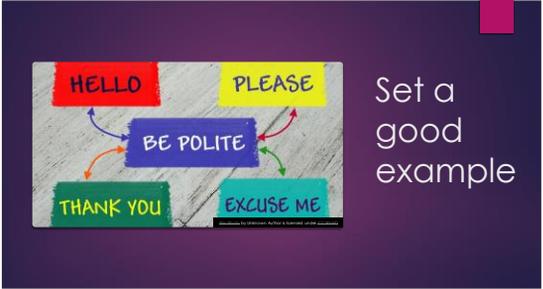
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### Client control

- ▶ Be clear and straightforward with (legal) advice (not, "your ex is a narcissist. I should know. So is mine...")
- ▶ The Court cannot solve all of your client's problems.
- ▶ Allocation of decision-making and parenting time has its limits. If your ex spouse happens to approach those limits you shouldn't be celebrating...you should feel real bad for your kids.
- ▶ Sometimes your client is hurting their child and it would help if you didn't pretend they're not.
- ▶ Don't overpromise

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## Client control

- ▶ You can remind the client that two parents are important and that their children need and deserve a relationship with the other parent.
- ▶ Are you willing to fire a problem client?
- ▶ What kind of referrals and reputation do you want?
- ▶ What type of outcome are you promising?
  - ▶ Getting them divorced or getting them their children?

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## Additional Guardian Ad Litem Considerations

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we don't see things as they are  
we see them as we are  
andré rijn

## KNOW YOUR BIASES



[www.imagequotes.com](http://www.imagequotes.com)

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## Biases

- ▶ Confirmation Bias
  - ▶ "My father was a narcissistic jerk, and I would have been ok if I didn't have to see him too."
- ▶ Anchoring Bias
  - ▶ What information do you have and how does it "anchor" your mindset?
  - ▶ Can anyone say "DUI?", Psychiatric hospitalization? Indicated DCFS?
- ▶ Primacy and Recency Bias

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## Biases

- ▶ We all have biases...it's important to know and accept that.
- ▶ Recognize your biases so that you don't misuse them.
- ▶ Don't get married (no pun intended) to a position
- ▶ New facts (may) = new conclusions
- ▶ Don't be afraid to admit you changed your opinion, you aren't sure, etc., etc.
- ▶ Keep an open mind and constantly test and re-test hypotheses. Always consider that the opposite of what you think might be true.

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## Does this really need to be said????

- ▶ Don't position yourself for business. If someone won't agree to your appointment because you've gone "against" them before, they've done you a favor.

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Know when to ask for an expert

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Don't be afraid to put them in the naughty corner

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## Therapists

- ▶ Do you vet the therapist (you should)
- ▶ How do you know?
  - ▶ Are they known for being objective?
  - ▶ Do they differentiate what they know from what their client tells them?
  - ▶ Do they belong to any professional organizations specific to high conflict divorce litigation (AFCC)?
- ▶ Are their treatment notes reflective of a clear understanding of the problem with corresponding intervention?
- ▶ Validating a client's unproductive beliefs is a sure route to making things worse (i.e. "I believe her child was abused because she [said so, drew a picture, sneezed, etc.])

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Therapy does not have to be geographically limited

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## Relationships and trust

- ▶ Children have more than
  - ▶ One parent
  - ▶ One caregiver
  - ▶ One babysitter
  - ▶ One coach
  - ▶ One teacher
- ▶ A child can get used to more than one therapist, too.

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## It's all about the child

- ▶ A "good" outcome benefits the family (not the individual litigant)
- ▶ Children benefit from safe and healthy relationships with both parents with opportunities for healing and resolving conflict.
- ▶ You are part of a certain moment in time. Understand there is a lot that led up to this moment, and a lot that will follow it.
- ▶ You are part of this family's life for a reason. Treat them as you would hope someone in your role would treat you, your family, your children.
- ▶ Everyone gets one chance to get this right.

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