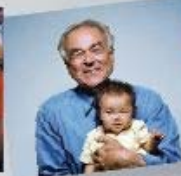




ASSOCIATION OF
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eNEWS

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President's Message

Annette T. Burns, JD

I spend a lot of time thinking about self-esteem. Whether it's part of representing a client in a divorce, or acting as mediator, it occurs to me that the self-esteem of the people I'm working with is crucial to the outcome. Parties with higher self-esteem appear to be less likely to take advantage or try to prove a point with a settlement. They are less likely to be paranoid that they're being taken advantage of. People with lower self-esteem seem either largely helpless in trying to resolve a dispute, or they seem to feel they need to finally assert themselves, sometimes overly so, to avoid getting the short end of things once again.

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AFCC 55th Annual Conference

April 2018

**MONTHLY
E-NEWSLETTER**
VOL. 13 NO. 4



AFCC Annual Conference

Compassionate Family Court Systems: The Role of Trauma-Informed Jurisprudence
June 6-9, 2018
Washington Hilton
Washington, DC

Compassionate Family Court Systems: The Role of Trauma-Informed Jurisprudence

June 6-9, 2018, Washington Hilton Hotel

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- **Judge Dan Michael** discusses trauma-informed practice, and
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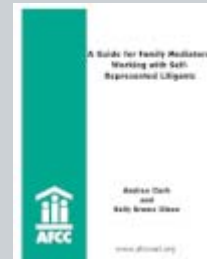
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Letter to the Editor

patti cross, JD and Tami Moscoe, JD

Dr. Bernie Mayer in his article, Can We Talk? What we have learned about how to have productive conflicts about family policy and family law, in the January 2018 Family Court Review states:



EDITOR:

[Leslye Hunter](#)

**ASSOCIATE
EDITOR:**

[Corinne Bennett](#)



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"...but the more essential challenge is to establish durable and productive channels of communication...."

[Read more](#)

Response to cross and Moscoe

Bernie Mayer, PhD

Thanks for the opportunity to respond to the letter from patti cross and Tammy Moscoe, which called into question some of the observations that I made in my address to the AFCC annual conference in 2017 which were reprinted in the last issue of the FCR.

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Ask the Experts: 10 Things to Know About Step-Up Planning: When and How to Determine the Right Time

Leslie Drozd, PhD and Marsha Kline Pruett, PhD, ABPP

In the child custody field, we know that children do best when they have a relationship with parents that are reasonably able to take care of them and keep their interests in mind. We know that families change, developmentally and systemically, due to normative growth and unexpected events. We don't know how to come up with a parenting plan for 2 and 4-year old children that will for sure work ten years later. We can, though, come up with a framework to help us better know what we don't know. That framework is what we are calling a Step-Up Plan.

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AFCC Webinar Corner



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Loretta Frederick, JD

May 15, 2018, 2018 1:00-2:00pm Eastern time USA

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Publishing in the *Family Court Review*

Barbara Babb, Robert E. Emery, PhD, Matthew G. Kiernan

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eNEWS

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President's Message

*Annette T. Burns, JD
Phoenix, Arizona*

I spend a lot of time thinking about self-esteem. Whether it's part of representing a client in a divorce, or acting as mediator, it occurs to me that the self-esteem of the people I'm working with is crucial to the outcome. Parties with higher self-esteem appear to be less likely to take advantage or try to prove a point with a settlement. They are less likely to be paranoid that they're being taken advantage of. People with lower self-esteem seem either largely helpless in trying to resolve a dispute, or they seem to feel they need to finally assert themselves, sometimes overly so, to avoid getting the short end of things once again.

To me, the most telltale self-esteem issue seems to be parenting time. Parents with high self-esteem do not seem to be as afraid that their relationship with their children will be harmed by giving up too much time to the other parent. They feel secure enough in their relationship with the children that they know it will survive a few days apart. They appreciate that their own relationship with the children can be strengthened by the children having good relationships with others --- including the other parent.

Back when my kids were young and we all had to worry about good child care, I heard of people complaining that their kids were getting too close to their nanny, or the babysitter was exerting a little too much authority around the house. This made them nervous (or perhaps threatened their self-esteem?). It never occurred to me that if my kids cared about their nanny, their relationship with me would in any way be diminished. Similarly, parenting time after separation or divorce doesn't have to be a zero-sum game. Arizona's public policy statute says that each parent's time with the children should be substantial, frequent, meaningful and continuing. It's really hard to argue with that! Neither Arizona's policy statement nor its statute says parents should have exactly 50% of a child's time, which we all know is hard to do. Kids are not time-shares, and they tend to spend time doing things that are not under the direct supervision of either parent. That makes it really hard to divide up a child's time exactly equally (although I've seen people try to do it with an Excel spreadsheet). The most wonderful cases for me as a practitioner (and probably for judges as well) are those where one or both parents

stand up and say “I respect the other parent’s time and want to maximize it” and then their actions and proposals do just that. I remind myself every day that those cases do exist, and in fact are still the majority of cases.

At AFCC we tend to focus on the most difficult cases, the most challenging questions, and the most divisive conflicts. We work with the 10% of the cases that take up 90% of the time and try to find ways to help the most difficult parents support the needs of their children. So sometimes we can forget that most parents are in it for the right reasons. This is especially the case in a year in which I have served as AFCC President and have focused on bigger picture issues, beyond the clients I represent or the parents I work with as a parenting coordinator. So it is important to remember that AFCC will always strive to educate parents, judges and practitioners about how to best serve children’s interests. Sometimes we can best serve them by looking at, and working on, ourselves.



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10 Things to Know About Step-Up Planning: When and How to Determine the Right Time

Leslie Drozd & Marsha Kline Pruett

Kline-Pruett, M., Deutsch, R. & Drozd, L. (2016). *Step-up Parenting Plans: Grounded in Research. Parenting Plan Evaluations: Applied Research for the Family Court*, editors Leslie Drozd, Michael Saini, & Nancy Olesen. Oxford University Press, 2nd edition.

I cannot say whether things will get better if we change; what I can say is they must change if they are to get better. —G. C. Lichtenberg

In the child custody field, we know that children do best when they have a relationship with parents that are reasonably able to take care of them and keep their interests in mind. We know that families change, developmentally and systemically, due to normative growth and unexpected events. We don't know how to come up with a parenting plan for 2 and 4-year old children that will for sure work ten years later. We can, though, come up with a framework to help us better know what we don't know. That framework is what we are calling a Step-Up Plan. A step-up plan involves increasing one parent's access to a child, from nothing to something, from daytimes to overnights, from supervised to unrestricted access, from less to more contact in a week. With such a plan we can help parents, counsel, and the court making an educated guess as to "when and how to determine the right time" in a manner that is similar to other decisions the family must make as the child grows up – for example, when a child is ready to cross the street herself, when it is safe for her to ride her bike to school on her own, to be dropped off at the movie theater with friends, or to drive a long distance alone on the highway.

Here are 10 things to bear in mind that we know or come close to knowing about stepping-up a child's time with a parent.

- 1. A step-up plan comes into play when one parent, usually the less-seen or nonresidential parent, requests a change in parenting access, time, and/or decision making.** The process that ensues of sorting out whether the request is in the child's best interests—and is posed at an opportune time in the child's developmental trajectory—can be difficult even when parents agree on the situation or when one parent defers to the other's wish or decision.
- 2. A request for step-up becomes a problem when parents actively disagree.** There is nothing fair about the process when one parent slows down a step-up process that is the other parent's deepest desire, and potentially in the child's best interests, but the parent resists the process. The parent's reasons may be based on real concerns for a child's safety or well-being; personal feelings and concerns that are more imagined than real; rooted in old wounds rather than recent ones; spilling from fears or anxieties rather than observations and understanding of the child. The major work for the clinician in these cases is to figure out how much the resisting parent can tolerate and support without bringing about the collapse of the family peace or developmental scaffolding that has been painstakingly erected.
- 3. In general, if the parents are healthy and the timing is right, step-ups are good for children.** Toward this goal, we formulated questions to ask to carefully and thoughtfully obtain clear information about child, parental, and coparental domains. This is in order to help the decision maker(s) contemplate the unique family situation under consideration.
- 4. The ultimate concern when first considering a step-up plan is whether the child and all family members are safe if the step-up is to be attempted.** Four areas of major concern are situations of intimate partner violence, child abuse or neglect, parental substance abuse, and parental mental health issues. In addition, we advise canvassing the broader context of the family and social world surrounding the child to determine if there are other serious problems in those contexts that could cause safety concerns leading to greater caution about step-ups. Examples of these types of issues might include the presence of a substance-using new boyfriend/girlfriend in the home, a life-threatening illness the child that requires vigilant physical care and medication monitoring, a volatile neighborhood, or ongoing school bullying occurrences. The presence of any of these areas—when they interfere with the child's safety, consistent and sensitive parenting, and adequate coparenting—raise a red flag. It says, "Not so fast!"
- 5. The next consideration in creating a step-up is the stability surrounding the child's life when the step-up is being considered.** We designate two months as a cautious but reasonable period of time from which to examine whether the child's daycare or schooling and activities have been stable, for example, to avoid adding additional stress to the beginning of a new school year or change in day care. Also, significant events within the family and changes in family composition such as new partners, new children, or the loss of a beloved grandparent. When these changes

are occurring, it is impossible to tell whether a step-up that is not successful was the problem, or whether other life events interfered with the child's ability to cope at that time. Positive adaptation requires time, energy, and focus. A calm period of two months or more optimizes the chances of a step-up becoming a welcomed and resilience-building context for children undergoing changes, often in a condensed period of time.

6. **Once the decision to do a Step-up is made after questions about safety and stability are confirmed, an analysis of the origins of the request for a step-up will help determine the possibility of the parents making a decision together with or without the support of professionals.** Documenting who is making the request, the other parent's reaction, and support or resistance coming from other professionals (e.g., therapists, lawyers), as well as the type and level of resistance expressed, provides the basis for the next step in decision making. If there is resistance on the part of a parent, understanding what the resistance is about enables an analysis of resources that need to be put into place to support the parent, allaying realistic fears and concerns and bolstering the parent's ability to cope with unfounded concerns or plaguing uncertainty.
7. **When parents split on the decision, one focal point for scrutiny is the child's behavior.**
 - What are parents and professionals seeing that is developmentally appropriate?
 - What is concerning?
 - How long have the concerning behaviors lasted?
 - When (In what contexts) are the behaviors occurring?
 - What is the child saying about his thoughts and feelings to parents as well as other adults involved in his care and education?

Symptoms that have lasted more than two weeks, spanning major areas of functioning—cognitive, physical, emotional, and social, provide reason for concern. The child's comfort with and ability to make transitions commensurate with the frequency and spacing at which they are scheduled is a pivotal sign that the child may be ready to cope with a change.

8. **Each parent's parenting is a second focus of inquiry.** Parental symptoms such as depression, anxiety, or impulsivity are central concerns. Substance abuse is considered on its own merits, as such risks are of a high order of magnitude. Harsh disciplinary styles indicate a parenting style that is related to poor child outcomes and parental conflict. Role reversal, characterized as inappropriate use of the child for support by a parent, manifests as a parental vulnerability that pressures the child to take care of the parent and resist change and may make it difficult for that parent to allow the child more time away from him or her. A parent's denial of the child's

participation in activities or support for homework has serious consequences for the child's social relationships and school achievement and is an indicator that parenting is either a low priority or an ineffectual area of competence. Finally, parents with widely divergent parenting styles pose risks for a step-up into a higher level of shared parenting, with younger children and special needs often requiring the most collaboration for care.

9. The coparental relationship is a third area of focus crucial to child development and the potential success of a step-up plan. Children's direct exposure to parental conflict is the most obvious barrier to a step-up. More subtle forms of coparental conflict must also be considered: Inability or unwillingness to communicate about the child; the parents' flexibility with, versus rigid adherence to, the schedule; interference with the quantity or quality of the other parent's time with the child; disavowal of the shared parenting experience by downplaying or prohibiting the child's acknowledgment of her experience with the other parent; or interference with extended family

10. The goal of using a framework like the Step-Up Plan is for parents and professionals to distinguish between changes that are likely to harm a child from changes that are not desirable but aren't truly harmful. Resources that shore up behavioral or familial weaknesses are critical. The book chapter provided at the beginning of this short article provides types of resources that are likely to be most helpful with each type of question or concern enumerated. We encourage coordination with pediatricians and school counselors, coparent counseling or consultation, mediation, therapy for individual or subgroups within the family, high conflict groups. Other interventions may be appropriate such as parenting coordination. In the best outcome, each parent maintains a vigilant, protective stance while getting the personal or therapeutic supports necessary to allow forgiving past affronts and more positive attitudes and behaviors. Such would exude from a coparenting position of strength and generosity, when appropriate.

This framework is best used as a guide and not a formula. Some factors should be given more weight than other factors in any particular case, dependent upon individual factors about the child or one or both of the parents. While safety always comes first, we believe step-up plans should be given serious consideration when risk factors are absent or controlled and the plan does not seem to pose undue risk to the child.

Once a step-up is put into place, follow-up should be scheduled. If the concern is low, scheduling the follow-up one month out for children under two years, two months out for children under 3 years, and three to four months out for older children offers a rule of thumb. However, if the level of concern about the step-up's feasibility or suitability is high, shorter follow-up times may be desirable.

There is nothing permanent except change.

—Heraclitus

Marsha Kline Pruett, PhD, ABPP is the Maconda Brown O'Connor Professor and Associate Dean of Academic Affairs at Smith College School for Social Work. She has a Ph.D. in Clinical/Community Psychology from University of California, Berkeley and a master's degree in legal studies from the Yale School of Law. She also has a master's degree in Psychological Services in Education. She has been in practice for over 25 years and has published numerous articles, books, and curricula on topics pertaining to couple relationships before and after divorce, father involvement, ADR programs and interventions, young children and overnights, and child outcomes. Her books include *Your Divorce Advisor: A Psychologist and Attorney Lead You through the Legal and Emotional Landscape of Divorce* (Fireside) and *Partnership Parenting* (Perseus). She provides training nationally and abroad to mental health and legal professionals. She is the immediate Past President of the Association of Family and Conciliation Courts.

Leslie Drozd, Ph.D. practices in Newport Beach, California in clinical and forensic psychology with expertise in family violence, alienation, gate-keeping, resist-refuse dynamics, child abuse, and substance abuse. She was been the founding editor of the *Journal of Child Custody*, is on the editorial board for *Family Court Review*, and AFCC task forces that created the *Model Standards of Practice* for conducting child custody evaluations and evaluations with intimate partner violence. She is an editor of *Parenting Plan and Child Custody Evaluations: Applied Research for Family Court*, that reviews the current research in fields related to family law. She has received AFCC's John E. Van Duzer Distinguished Service Award for her outstanding contributions and achievements.



ASSOCIATION OF
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eNEWS

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Letter to the Editor

patti cross, JD and Tami Moscoe, JD

Dr. Bernie Mayer in his article, *Can We Talk? What we have learned about how to have productive conflicts about family policy and family law*, in the January 2018 Family Court Review states:

“...but the more essential challenge is to establish durable and productive channels of communication....”

Also,

“Perhaps we start by connecting to those with whom we disagree but who are not diametrically opposite from us in values or beliefs. In doing so, however, we should reach out to those with views, beliefs and backgrounds that lie outside our comfort zone or experience and that force us to grow our circles and stretch our capacity to be compassionate.”

And, yet, in the same speech, Dr. Mayer refers to “a service monopoly – the legal profession”. He asks if the legal profession is too powerful in the divorce system. He alleges that the legal profession has been “defensive and disheartening” when approached about legal reforms. He concludes that we, as legal professionals are “more focused on protecting professional self-interest” and that we “protect our own turf”.

With these statements, Dr. Mayer is ignoring his own advice about opening channels of productive communication to facilitate progress on difficult issues, without an awareness of what it is that family lawyers and judges actually do.

Simply by way of example, in recent years in Ontario, family lawyers have worked extensively on expanding the public’s access to unbundled legal services, we have made several proposals for process improvements both to the Family Rules Committee and to the Attorney General, we have worked incredibly hard to support Unified Family Court expansion, we have welcomed family mediators at every court site in Ontario and

worked to ensure their success, we have contributed to various reports on how to ensure access to justice, and we have attended endless access to justice meetings to develop and implement concrete improvements. In doing so, we have volunteered our skills, knowledge and time on too many occasions to count. And, we continue to do so.

Our colleagues in the private family bar are no different. Moreover, it is not only family lawyers who do this. Judges in Ontario work incredibly hard to case manage difficult family cases. They help unrepresented litigants manoeuvre their way through the court process with limited and, at times, no access to legal advice. They refer litigants to mediators when they believe that they could be better served by them. They, too, have volunteered their time and expertise, at each and every opportunity, to improve the family justice system.

Dr. Mayer - there are specific and solid reasons why we and our colleagues in the private family law bar do not agree with portions of the Family Legal Services Review that was completed by Justice Bonkalo. But, you have not asked us why. Instead, you allege that we are self-interested and protecting our turf. Perhaps, you may want to actually listen to us and invite us to engage in the respectful dialogue that you advocate for before jumping to such disparaging conclusions.

By way of example, here are just a few problematic aspects of the Family Legal Services Review. To start, the Review relies on “data” to establish that unrepresented litigants always do worse than represented parties. However, this conclusion is based on artificial intelligence from civil and not family cases. Further, it is based on an assessment of whether or not the litigants received all the relief that they had sought, regardless of whether the relief was grounded in law or reasonable. Any assessment of the appropriateness of outcomes for self-represented litigants needs to be both more accurate and more nuanced than this piece of limited information.

Further, there is an incorrect assumption that high-priced lawyers are people’s only avenue of recourse when they are involved in a family matter. There are a number of front-end legal services that are provided to litigants in Ontario’s courthouses, many of them at no cost. There are Legal Aid Ontario (LAO) duty counsel, LAO advice counsel, Pro Bono Law Students, Community Legal Clinics, onsite mediation, information sessions and a myriad of other services available to assist people who don’t have a lawyer. (We can assure you that the lawyers and mediators who volunteer for these positions are not doing it for the money.)

These are just a smattering of examples of what goes on in Ontario’s family courts in order to assist people. Although the Review touched on these services and explained the number of people who had been served by them, it failed to consider the significant opportunity for improvement from a modest increase in funding to support these services.

Similarly, the Review incorrectly assumed that the only reason that people are unrepresented is because they cannot afford a lawyer. Research demonstrates that

while limited finances are important, litigants represent themselves for myriad reasons, including increases in “do it yourself” attitudes¹ and litigants who believe that their position should govern despite what the law provides.

And, as a last example, the Review assumed that paralegals will be cheaper than lawyers. We would like to know where we can find any evidence to support this conclusion.

Dr. Mayer - many, if not most, family litigants who appear in court are vulnerable and face complex legal issues. We understand that. Our colleagues understand that. And, judges also understand that. To impose, as the Family Legal Services Review advocates, a “social experiment²” on these families through the use of paralegals as a substitute for proper legal advice is not an appropriate solution to this complex societal problem.

We look forward to your reply.

Yours truly,

patti cross and Tami Moscoe
Family Lawyers
Ontario

Please note that this response reflects the personal views of the authors.

¹ Judith G. McMullen and Debra Oswald “Why Do We Need a Lawyer?: An Empirical Study of Divorce Cases” (2010) 12 JL & Fam Stud 57; See also: Nicholas Bala, Rachel Birnbaum and Lorne Bertrand “The Rise of Self-Representation in Canada’s Family Courts: The Complex Picture Revealed in Surveys of Judges, Lawyers & Litigants, May 2013

² Thank you to AFCC-O for this thought.



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Response to letter from Tammy Moscoe and patti cross

Bernie Mayer, PhD

Thanks for the opportunity to respond to the letter from patti cross and Tammy Moscoe, which called into question some of the observations that I made in my address to the AFCC Annual Conference in 2017 which were reprinted in the last issue of the FCR.

Of course I appreciate all the good work that their organizations and others have done to improve services to family litigants, both inside and outside the courts. But their argument misses the point. We are facing a massive problem in the US and Canada (and the UK, Australia, New Zealand, and elsewhere) that is far beyond what the well-intended but small scale initiatives they describe can address. Across Canada and the US, 50% plus of people appearing on family matters represent themselves. This number is upwards of 80% in some urban locations, such as the Jarvis Street Family Court in Toronto. This means that on any single day there will be hundreds of unrepresented people in the courthouse, far more than Duty Counsel can possibly assist. Family legal aid eligibility for a single person is set at a threshold of just over \$13,000 per annum in Ontario. Who making \$14,000 – or \$50,000, or even \$75,000 – can afford a family lawyer at upwards of \$450 an hour?

Study after study (for example, [Cases Without Counsel](#) in the US (2016), the [Lord Chancellor's Report in England and Wales](#) (2011) and the [National Self-Represented Litigants Study in](#) Canada (2013 and in subsequent annual reporting) has indicated that by far the most important reason for this is that people cannot afford lawyers. Many in these studies start out with lawyers, but run out of money. Among those who have conducted credible empirical research on this phenomenon rather than relying on anecdote, this fact is no longer in any doubt.

In the words of Gillian Hadfield, a Professor of Law at the University of Southern California, "(I)t is time to admit that we have allowed tremendously complex legal processes to develop that exploit the fact that the vast majority of people cannot manage tremendously complex legal processes" (from @ghadfield on January 29, 2018).

I do not believe that anyone is suggesting that allowing paralegals to work on family cases is a panacea for the access to justice crisis. The problem requires a multi-faceted solution – but the key point here is that it is a massive problem that no amount of pro bono or public assistance can solve (see Hadfield, a leading legal economist, [on this point also](#)). The reflexive resistance by the family bar in Ontario, as well as by some alternative dispute resolution groups, to even considering the idea of some services being offered more affordably by trained licensed professionals who are not lawyers is a symptom of the denial of the legal profession of the profound and systemic nature of this problem which is undermining the trust of the public in our justice system.

Moscoe and Cross suggest, for reasons unclear to me, that I am not really interested in genuine dialogue nor am I properly informed about what actually happens in the family justice system. As many of your readers may know, in addition to my own work as a mediator, I have worked with family lawyers, family mediators, court administrators, and judges for over 35 years and have participated in numerous meetings, policy dialogues, and conferences about problem of access to justice and services to divorcing families.

Let me reaffirm: I am interested in engaging in dialogues – and open to any ideas – that seek to address the scale of the problems that we face in providing genuine access to justice for family litigants. As I said in [previous comments](#) addressed to O-AFCC in July, 2017: “I would welcome further discussions, dialogue or interchange about this. I think we could use our very disagreements as a basis on which to engage the membership in a serious discussion of the systemic problems we face in providing services to Ontario’s families.” I continue to be open to such a conversation and look forward to participating in a panel with others from Ontario on this very topic at the Annual Conference of the AFCC in Washington, D.C., in June.

Bernie Mayer, PhD
Professor of Conflict Studies
Creighton University



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Meet Rebecca Smith, President of the Texas Chapter

Rebecca Smith is a Licensed Professional Counselor and Supervisor. She is also trained as a Parent Facilitator/Parent Coordinator and Mediator. Rebecca facilitates workshops and training programs on various topics related to high conflict divorce and custody modification across the nation. Rebecca graduated with Honors from Southwest Texas State University with a major in Psychology and minor in Sociology. After her Bachelor's, Rebecca moved to Huntsville and graduated with Honors from Sam Houston State University with a Masters of Arts in Counseling. Immediately following her Master's program, Rebecca attended the PhD program for Counseling for five semesters. Work experience includes Nonprofit MHMRA facilities in Montgomery County, Harris County, Liberty County, and Walker County. Working for the MHMRAs provided opportunities for Rebecca to work with diverse populations within various programs for adults and children. She also worked in the Harris County Jail as a supervisor for the mental health Case Managers. Rebecca has been working with children since 1995 and has been in the mental health field since 2003. She began her private practice in 2006 and is the founder of the Counseling Center of Montgomery County. Her group practice currently spans across five locations within three counties. As a clinician, Rebecca specializes in working with children and teens, learning disabilities, couples, and high conflict situations. Rebecca works closely with the court systems for the DWI and Drug Court Treatment programs and with the family courts. Rebecca has also developed a comprehensive internship program for aspiring counselors.