



Improving the lives of children and families  
through the resolution of family conflict



**August 2019**  
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### President's Message

*Matthew Sullivan, PhD, AFCC President*

#### Gun Violence is a Public Health Crisis in America

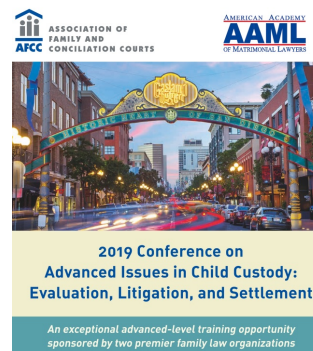
About a week ago, as I held my first granddaughter in my arms for the first time, my stream of thoughts, mostly blissful, touched for a terrifying moment on the possibility that some day in the future she could be shot and killed for no other reason than being in the "wrong" place—a shopping mall or a kindergarten classroom—at the wrong time. It was the first time I had ever had that horrific realization about a loved one and with it, my personal sense of safety from gun violence was shattered. I also realized that many less privileged Americans live with this threat to them and their loved ones *every moment of every day*.



[Read More](#)

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### AFCC-AAML 2019 Conference



**September 19-21, 2019**  
San Diego, California

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### AFCC Fall Conference

## AFCC-AAML Conference Registration

*Advanced Issues in Child Custody:  
Evaluation, Litigation, and Settlement*

**September 19-21, 2019**  
**Westin San Diego Hotel**  
**San Diego, California**

Join AFCC and the American Academy of Matrimonial Lawyers (AAML) for the fifth biennial Conference on *Advanced Issues in Child Custody: Evaluation, Litigation, Settlement*. [Register now!](#)

### Keynote Speaker

*What's Sex Got to Do With It? Negotiation Skills for Family Law Professionals*

Professor Andrea Kupfer Schneider, Esq.  
Marquette University Law School, Milwaukee, Wisconsin

### Reserve your hotel room

The hotel block is nearly sold out! [Book online](#) at the special AFCC-AAML attendee rate of \$245 per night for single or double occupancy. If you aren't able to book the nights you want, email AFCC's Meeting Manager, Nicole Ellickson, at [nellickson@afccnet.org](mailto:nellickson@afccnet.org), to be added to the waiting list.

### Exhibit and sponsorship opportunities available

Exhibitor space is still available, but it's filling up fast. Don't miss your chance to share your products and services with an interdisciplinary community of dedicated family law and matrimonial professionals. [Read the prospectus](#) and contact Gina Wentling at [gwentling@afccnet.org](mailto:gwentling@afccnet.org) or 608-664-3750 for more information.

[Learn More](#)

## Ask the Experts

**A Game Theory Perspective: Three major weaknesses in the traditional family law system and ten tricks that promote divorce conflict**

*Kenneth Waldron, PhD and Allan Koritzinsky, JD*

Game Theory is a branch of mathematics and science that analyzes people's choices. A Game Theory analysis of traditional family law yields the surprising findings regarding flaws in the System:

[Read More](#)

**Integrating Research into  
Practice and Policy:**  
The Impact on Families and Children



October 31 - November 9, 2019  
Omni William Penn Hotel  
Pittsburgh, Pennsylvania

**Oct 31 - Nov 2, 2019**  
Pittsburgh, Pennsylvania

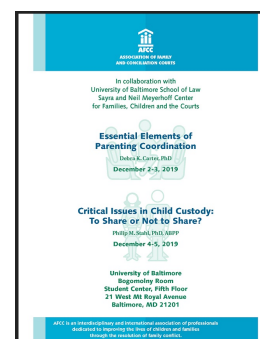
## AFCC 57th Annual Conference



**Submit your proposal by  
October 2, 2019.**

## AFCC Training Programs

*University of Baltimore  
Baltimore, Maryland*



### Essential Elements of Parenting Coordination

Debra Carter, PhD  
December 2-3, 2019

### Critical Issues in Child Custody

Philip Stahl, PhD, ABPP  
December 4-5, 2019

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## Register for the AFCC Fall Conference! Integrating Research into Practice and Policy: The Impact on Families and Children

October 31-November 2, 2019  
Omni William Penn Hotel  
Pittsburgh, Pennsylvania

### Apply for a Conference Scholarship

Thanks to generous donations from AFCC members, AFCC is able to provide a limited number of scholarships. Scholarships include registration for a pre-conference institute, the conference, and a certificate of attendance. The application deadline is September 5, 2019. [Apply online.](#)

### Make your hotel reservation today!

The Omni William Penn is offering AFCC attendees a special rate of \$155 per night for single or double occupancy. **Rooms frequently sell out before the room block is released. We encourage you to make your reservation early!** Make your reservation by calling 800-843-6664 and mentioning the group code AFCC or [reserve online.](#)

### Exhibit and Advertise at the Conference

Exhibiting with AFCC is a great way to share your products and services with an interdisciplinary community of dedicated family law professionals. Exhibit space is limited and beginning to fill up. [Read the prospectus](#) and reserve your space today by contacting Gina Wentling at [gwentling@afccnet.org](mailto:gwentling@afccnet.org) or at 608-664-3750.

[Register Today!](#)

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## Submit a Proposal to Present at the AFCC 57th Annual Conference in New Orleans, Louisiana

### When a Child Rejects a Parent: Are We Part of the Problem or the Solution?

May 27-30, 2020  
Marriott New Orleans

AFCC is accepting proposals for 90-minute workshop sessions. Proposals must be submitted using the [online form](#). **Proposals are due no later than Wednesday, October 2, 2019.**

All proposals must describe any limitations of the proposed content, present contradictory evidence, and discuss both sides of controversial topics. AFCC strongly

## AFCC Chapter Conferences

### Florida Chapter Annual Conference

September 26-27, 2019  
Orlando, Florida

### Maryland Chapter Annual Conference

September 27, 2019  
Hyattsville, Maryland

### Indiana Chapter Annual Conference

October 4, 2019  
Indianapolis, Indiana

### Wisconsin 2019 Annual Conference

October 4, 2019  
Pewaukee, Wisconsin

### Colorado Chapter Annual Conference

October 11-13, 2019  
Breckenridge, Colorado

### Illinois Chapter Annual Conference

October 11, 2019  
Chicago, Illinois

### Ontario Chapter Annual Conference

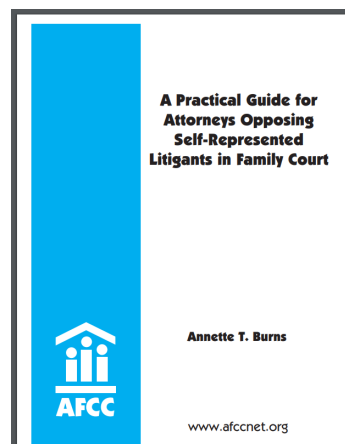
October 18, 2019  
Hamilton, ON, Canada

### Arizona Chapter Annual Conference

January 24-26, 2020  
Sedona, Arizona

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## Resource of the Month



encourages including presenters representing diverse perspectives.

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[Learn More](#)

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## AFCC Webinar Corner

Registration is now open for the September webinar with Sol R. Rappaport, PhD, ABPP.

### Psychological Testing in Family Law Matters

Sol R. Rappaport, PhD, ABPP

September 11, 2019

1:00-2:00pm Eastern Time US



*Registration closes on Tuesday, September 10, 2019 at 9:00am Eastern Time.*

This webinar will address when psychological testing should be conducted in family law matters, as well as when it does not need to be used. The webinar will also address what type of questions psychological testing can answer, and the use and misuse of psychological testing in custody cases. The webinar will review various psychological tests and their use in custody related matters, including the MMPI-2, MMPI-2-RF, MCMI-IV, PAI, 16PF, and the R-PAS. The use of other tests/questionnaires will also be addressed, including those designed to assess parent related issues.

**Sol R. Rappaport, PhD, ABPP** is Board Certified in Clinical and Clinical Child & Adolescent Psychology. Dr. Rappaport specializes in Forensic Psychology evaluations and consultations. He has been appointed in over 800 custody evaluations nationally and consults to attorneys on all aspects of family law litigation. He has trained both attorneys and mental health professionals on the use of psychological testing in custody evaluations. He consults with and trains attorneys in cross-examination techniques. Dr. Rappaport has numerous publications, having published in *Family Law Quarterly*, *Family Court Review*, and the journal *Child Abuse and Neglect*.

#### Registration

Members: \$15

Non-Members: \$50

#### Certificate of Attendance

Members: \$15

Non-Members: \$20

Attendees may purchase a certificate of attendance along with their registration. No refunds or credits will be issued for webinar cancellations.

Webinars will be archived as a member benefit, for personal use only. These can be found in the Member Center on our website. If you are not currently a member, join when you register to get \$10 off your annual membership as well as webinar registration at the member price.

Read more about continuing education credit for lawyers, judges, social workers, counselors, and other professionals [here](#).

[Register today!](#)

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# Training Programs on Parenting Coordination and Critical Issues in Child Custody

University of Baltimore  
Baltimore, Maryland

## Essential Elements of Parenting Coordination

Debra Carter, PhD  
December 2-3, 2019

This training program presents a comprehensive overview of the definition, role, responsibilities, and function of the parenting coordinator. Parenting coordination is an out-of-court dispute resolution process designed to assist coparents in managing parenting disputes, minimizing litigation, and shielding the children from harmful interparental conflict. The integrated model of parenting coordination highlights factors leading to entrenched child-related disputes, the pathways and personalities that lead parents to enduring conflict, and specialized interventions to address intractable conflict.

## Critical Issues in Child Custody

Philip Stahl, PhD, ABPP  
December 4-5, 2019

Developing parenting plans for separating and divorcing parents has become increasingly complex in recent years as new statutes, court rules, programs, practices, and research come to light. Is shared parenting always best for children? What about 50/50 presumptions? What is the impact of domestic violence or high conflict? What happens when one parent relocates or when special needs children are involved?

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## Member News

**Judge Ramona A. Gonzalez**, AFCC member in LaCrosse, Wisconsin, has been elected as president of the National Council of Juvenile and Family Court Judges (NCJFCJ). Born in the Dominican Republic, Judge Gonzales becomes the first foreign-born NCJFCJ president. She was first elected as a circuit judge in 1995. She is a leading expert on family law issues, specializing in national and international matters relating to child abduction, unaccompanied minors and immigration, LGBTQ+ youth, and domestic violence. Earlier this year, Judge Gonzalez testified before the House Judiciary Subcommittee on Crime, Terrorism, and Homeland Security on the Reauthorization of the Violence Against Women Act (VAWA). Among her many awards and honors, Judge Gonzalez has received the President's Award from the State Bar of Wisconsin. Congratulations, Ramona!



**The Honorable Emile R. Kruzick**, AFCC member in Toronto, Ontario and former AFCC President (2009-2010), upon his recent retirement from the bench, has joined Amicus Chambers as an arbitrator and mediator. Amicus Chambers, located in Toronto, provides a comprehensive approach to arbitration, mediation, and case management with full professional services. Emile was appointed to the Superior Court of Justice in 1996, while attending an AFCC conference in San Antonio, TX. With a dedication to family law in his 23-year judicial career, he has presided over cases in all areas of the law including hearing civil, criminal, family law, and administrative law appeals. Prior to his judicial career he was known as a leader in family law where he practiced as a barrister and mediator. He was a founding member of the AFCC Ontario Chapter, served on the AFCC board, and held numerous executive



positions with other professional associations. Congratulations, Emile!

**Jeffrey A. Soilson**, AFCC member in Boston, Massachusetts, has been appointed President of the American Academy of Matrimonial Lawyers (AAML) – Massachusetts Chapter. Mr. Soilson is a Fellow of the AAML and previously held treasurer and president-elect positions within the organization. Mr. Soilson will continue to serve on the AAML/AFCC Joint Committee, which is responsible for creating and producing the joint national conference with AFCC on custody and child-related issues, and the AAML Webinar Committee, which is responsible for producing continuing education programs on a wide range of divorce and family law topics, including divorce taxation, prenuptial and postnuptial agreements, dividing pensions, and business valuations. Congratulations, Jeff!



**Do you have a professional achievement to share?** Email Gina Wentling at [gwentling@afccnet.org](mailto:gwentling@afccnet.org) with your story and a picture (JPEG or PNG preferred) to be featured in next month's Member News!

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## Chapter News

### Meet Referee James Street, Minnesota Chapter President

James Street serves as a family court referee in Ramsey County, Minnesota, where he has worked since January 2011. He handles primarily family law cases and orders for protection as well as CHIPS cases under Ramsey County's one judicial officer for family policy. He served on Minnesota's Statewide Advisory Committee for Early Case Management and Court's Statewide Committee to develop standards for supervised parenting time. Referee Street co-chairs Ramsey County's Early Case Management Advisory Committee. He is currently on the ADR Ethics Board of Minnesota.



[Read More](#)

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## Where in the World is AFCC?

AFCC's hats can be found in all corners of the globe! Are you traveling this summer? Post your picture in an AFCC hat (any version is fine). Please post your photo on social media using [#AFCCChats](#) [#whereintheworldisAFCC](#).

If you email your photo to AFCC, you will be entered into next year's contest and we will add the photo to AFCC social media posts and our Facebook album. Just email your photo to [afcc@afccnet.org](mailto:afcc@afccnet.org) with a subject line "AFCC hats."

Qualifying photos must include at least one AFCC member along with a visible AFCC hat. The contest winner will be chosen at AFCC's next annual conference in New Orleans, Louisiana, which will take place May 27-30, 2020. We hope to see you there!

See examples from AFCC members below!



Philip Stahl at  
Stonehenge in England



Marsha Pruett in  
Paris, France



Matthew Sullivan, Len  
Edwards, Ramona  
Gonzalez, and Peter Salem  
at the NCJFCJ Annual  
Conference

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## AFCC eNEWS

The *AFCC eNEWS* is the monthly e-newsletter of the Association of Family and Conciliation Courts. The *eNEWS* provides up-to-date information for professionals including practice tips, case law and research updates, international news, and the latest initiatives in family law and conflict resolution. The *AFCC eNEWS* is free and you do not need to be a member of AFCC to subscribe. [Subscribe here.](#)

*AFCC members are free to share eNEWS content.*

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[Leslye Hunter](#)

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[Gina Wentling](#)





ASSOCIATION OF  
FAMILY AND  
CONCILIATION COURTS



eNEWS

August 2019  
VOL. 14 No. 8

## President's Message

*Matthew Sullivan, PhD, AFCC President*

### Gun Violence is a Public Health Crisis in America

About a week ago, as I held my first granddaughter in my arms for the first time, my stream of thoughts, mostly blissful, touched for a terrifying moment on the possibility that some day in the future she could be shot and killed for no other reason than being in the “wrong” place—a shopping mall or a kindergarten classroom—at the wrong time. It was the first time I had ever had that horrific realization about a loved one and with it, my personal sense of safety from gun violence was shattered. I also realized that many less privileged Americans live with this threat to them and their loved ones *every moment of every day*.



I understand that this is not an issue for AFCC members outside the US, and that some of our members may take issue with my stance. I also recognize that this is not typical subject matter for the *AFCC eNEWS*. As an organization, we don't wade into public policy issues. But this one is important enough to me that I feel the need to personally weigh in.

This experience with my granddaughter was, no doubt, influenced by my involvement last week at the American Psychological Association annual convention where I attended a town hall plenary on gun violence. In the wake of the 250<sup>th</sup> and 251<sup>st</sup> mass shootings in our country *this year*, APA leadership provided its membership with several statements based on scientific evidence, that I encourage AFCC members to consider and *act on*:

- Gun violence is not linked to mental illness or video games; it is linked to access to guns and also to domestic violence.



- Quoting APA president Rosie Philipps, “One critical factor is access to, and the lethality of, weapons that are being used in these crimes. Adding racism, intolerance, and bigotry to the mix is a recipe for disaster.”
- Gun violence in America is a public health crisis.
- Restricting access to guns is an evidence-based intervention.
- Read [5 Things You Can Do Now to Stop Gun Violence](#).

There are few issues with as much current broad support as universal background checks, with 89% of Americans in support of more restrictive gun laws in our country. The US House of Representatives has already passed a bill to mandate universal background checks. How is it that the combination of overwhelming scientific and public support has not resulted in our government enacting laws that will provide more protection for us, our children and our grandchildren, from the public health crisis our country faces? As members of an organization that focuses on the well-being of children and families, I hope that we are all asking ourselves this question.



ASSOCIATION OF  
FAMILY AND  
CONCILIATION COURTS



eNEWS

August 2019  
VOL. 14 No. 8

## ASK THE EXPERTS

### **A Game Theory Perspective: Three major weaknesses in the traditional family law system and ten tricks that promote divorce conflict**

Kenneth Waldron, PhD and Allan R. Koritzinsky, JD

Game Theory is a branch of mathematics and science that analyzes people's choices. A Game Theory analysis of traditional family law yields the surprising findings regarding flaws in the system:

- The most rational strategy for parties going through the family law system ("the system") is to engage in the competitive behavior that leads to escalating conflict.
- Parties who have an amicable divorce are behaving irrationally by resisting the gravitational pull to end up in intractable conflict.
- The people working in the system find high conflict parties to be the most time- and resource-consuming and the most distasteful of situations, while at the same time operating in a system that inadvertently promotes that same conflict. The paradox is striking.

You might find some (perhaps all) of these findings surprising and even questionable. In this article, we use Game Theory principles to analyze how this happens. We learn that there are three major weaknesses and flaws in the system and ten specific tricks that promote divorce conflict. Although many attorneys and mediators profess a belief in integrative bargaining (value added, win-win), the divorce game is set up so that when the feet hit the ground in a specific case, most revert to distributive bargaining (competitive), establishing an "us-them/win-lose" conflict, damaging the relationship between parties going forward in their lives.

#### **Three Major Weaknesses and Flaws in the System: Strategic Intention, Value Proposition, and Standards**

**Strategic Intention** is the fundamental goal of any organization. In restaurants, for example, the strategic intention is to provide a dining experience worth the money spent. Notice that this is customer-based. In most businesses and service organizations, the Strategic Intent focuses on the outcome for the customer. Only by focusing on the customer can the business or organization hope to thrive, or at least survive.

The Strategic Intention of the system appears to have more to do with the goals of the professionals and the court, namely the identification of legal outcomes for the day of the final Judgment of Divorce. The system has a captive audience and therefore does not have to focus on a customer-based Strategic Intention, much like a prison cafeteria, which does not focus on the dining experience of the prisoners. The payoff structure of the divorce game is chiefly for the professionals and the court. The only payoff that the parties receive is the final judgment. For the professionals, the game is over, but for the parties, their lives as divorced spouses are just beginning, especially if they have children.

How many people finish their divorces and feel that the experience was worth the money? They have divided property, income, and children, but do they have a good plan for their lives? For example, one Strategic Intent that is customer-based could be that divorced parents will have a better co-parenting relationship per the Judgment of Divorce, compared to what they had when they entered the system.

**The Value Proposition** comprises all details of how the organization plans to achieve the strategic intention. Returning to our restaurant example, the value proposition will focus on the customer's experience from the time of a dinner reservation and parking, through seating, staff service, menu presentation, timing of courses, and so on. Lawyers might have thought through the value proposition for their services, but what is the value proposition of the system? Once a client has signed on with an attorney, how much time is spent on the experience of the client in the system, versus getting information about desired legal outcomes and planning strategy to reach the client's desired legal outcomes? The steps through the system are likely those required by law or strategic steps to obtain desired legal outcomes, not steps to reach long-term life goals. To returned to our example of an improvement in the co-parenting relationship, aside from court-mandated parent education classes (often a short-term, one-time class), no programs are readily available to train people in co-parenting skills and procedures. It is often only when people have already gotten mired down in divorce conflict that they are encouraged to go to co-parenting counseling. By then, the focus is often on managing the conflict, rather than more proactive skill building.

**Outcome Standards** in the system are vague and ambiguous. In our restaurant example, the standard is whether the dining experience was worth the money. Many restaurants have formula standards (chains) where research on this standard is done early. Non-formula restaurants usually open by inviting restaurant critics to measure the standard. In the system, the measures are based on the legal outcomes with the vague and ambiguous standards of "equitable" and "best interests of the child." In addition to being vague and ambiguous, the standards are meaningless in terms of long-term financial and family goals. A physical custody schedule at the time of a divorce has almost no long-term effect on real outcomes for children. Social science research tells us that the co-parenting relationship, the quality of parenting in each home, the socio-educational status, the presence or absence of mental health problems, and support systems for children and parents all have **more** impact on the short- and long-term outcomes for children than the schedule. An "equitable" division of property and income might or might not help the parties reach long-term financial goals. A better financial standard might be to have a plan that will help each party reach ten-year financial goals.

In the context of these three major weaknesses and flaws, in addition, the system "tricks" parties into making self-defeating choices.<sup>1</sup> In the following, your authors briefly describe the ten tricks embedded in the system.<sup>2</sup>

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<sup>1</sup> The System is in Game Theory a "game," in which law and practice establish the rules and payoffs of the game and influence the choices and strategies of the players (parties and their attorneys).

<sup>2</sup> These "Ten Tricks" are detailed in our publications, *Game Theory and the Transformation of Family Law: Change the Rules and Change the Game* and *Winning Strategies in Divorce: The Art and Science of Using Game Theory Principles and Skills in Negotiation and Mediation*. Both books are available at Unhooked Books, Scottsdale, AZ. ([www.unhookedmedia.com](http://www.unhookedmedia.com)). See [www.thedivorcedoctor.net](http://www.thedivorcedoctor.net), where The Tricks are also discussed.

## The Ten Tricks Causing Parties to Make Self-Defeating Choices

- 1. The parties are directed to, and often pressured to, focus on legal outcomes, not life goals.** Short-term thinking, such as equitable division of property and income and a schedule for children, makes sense if the goal is legal outcomes, but legal outcomes are not goals: they are **tools** for reaching long-term life goals. From that perspective, short-term thinking makes no sense. Tricking divorcing spouses into focusing on legal outcomes distracts them from their long-term goals and leads them to make self-defeating choices. For example, when a distribution of physical custody time is the focus, competitive behavior is the rational strategy. However, if parents want their children to have a low probability of delinquency, mental health problems, suicidal ideation, and a disastrous marriage, a physical custody schedule might only be marginally relevant.<sup>3</sup>
- 2. The system turns non-zero-sum games (financial planning and raising children) into zero-sum games (dividing property, income, and children's time).** Zero-sum games promote competition, dirty tricks, and dishonesty and an us-them/win-lose mentality, often causing irreparable damage to the co-parenting relationship. Non-zero-sum games promote communication and cooperation as winning strategies. Financial planning looks at the current situation, the goals, and how to go from now to then. Distribution of resources is part of a plan to reach goals, not a competition over dollars. Likewise, raising children looks at how to get children to a certain point by the time they are adults, not a competition over who gets which overnights.
- 3. The system assumes that disputes exist and that the interests of the parties are in conflict.** This unquestioned assumption pervades nearly every aspect of the system. The paperwork reflects this assumption (so and so vs. so and so); the language (opposing counsel, the other side, dispute resolution, settlement negotiations, and so on). Every question the attorneys ask their client reflects this assumption. Even the requirement for each party to be represented, by their own attorney or by themselves, rather than one attorney representing both parties, reflects this assumption. This trick is fundamental to the training and mindset of attorneys. Parties soon learn to make the same assumption, even though they might have very similar, if not the same, long-term goals. In other words, there might be no dispute about their goals, but parties may find themselves in major disputes over legal outcomes.
- 4. Children are treated as property in the system.** Only in the late 19<sup>th</sup> and early 20<sup>th</sup> centuries were children treated as a class of citizens with legal protections. However, despite some progress in the system, children are still awarded like property. The difference is that instead of awarding the child, time with the child is awarded on a schedule. It is no accident that parents begin thinking of parenting in terms of "my time" and "your time." Parenting is no longer a joint effort, it is parallel efforts conducted on the basis of ownership of time. This inadvertently triggers conflict from millions of years of evolution: humans evolved to care for, protect, and control children's experience because children are not born independently able to survive. Dividing children's time as an ownership concept directly places parents out of control of blocks of time when the child is with the other parent, stimulating conflict resulting from base instincts. Divorce conflict is rife with complaints about the care of children in the "other home."
- 5. Selfish strategies permeate the system.** Petitions and affidavits focus on what parties want for themselves, not what might be good for everyone, including the other party. Lawyers see their task as getting their clients what they say that they want. Having already been tricked into focusing on legal outcomes and believing there is a dispute, "winning" is often self-defeating. Paradoxically, Game Theory

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<sup>3</sup> Schedules for infants and toddlers are relevant to these problematic outcomes, but not for children over 5 years old.

research repeatedly has found that cooperating with a balance of selfishness and altruism produces the best results. In other words, the best way to be selfish is to have a balance between selfishness and altruism. However, the system promotes selfishness only.

- 6. Winning on legal outcomes is most important.** Playing a game can be fun and interesting, but it is more fun to win than lose. Evolution selected humans who liked to prevail. Interestingly, research informs us that the feeling of losing is substantially more intense than the feeling of winning. Gambling research, for example, tells us that the experience of losing \$100 is about five times as intense as the experience of winning \$100. Thus, while divorcing parties might start out trying to prevail on a certain legal outcome, the competition can become very emotionally intense and perhaps more about not losing than winning. Unwanted compromises (losses) in settlement negotiations and trial outcomes might lead both parties to feel that they lost and lay the groundwork for future conflict and efforts at “getting even.”
- 7. Escalating anger and blame rather than resolving sadness permeates the system.** A divorce is mostly sad because it mostly involves loss, including loss of the happy dreams of a successful marriage and a family experience for children. As spouses move through the last stages of a failing marriage, they tend to blame one another for the failure, rather than focus on the impending loss. They carry this forward into their divorce, sometimes to defend against the shame and guilt they are experiencing. In a healthy situation, spouses get increasingly objective about the reasons for the divorce, resolve guilt and shame, and focus on the loss. However, the system tends to promote the anger and blame and avoid the sadness of the loss. Blame might even be seen as an effective strategy to achieve desired legal outcomes; paperwork and arguments are often filled with blame. This can often set the stage for continuing anger and blame between the divorced parties as a way to maintain a sense of wellness and avoid resolving the sadness.
- 8. Deductive decision-making is encouraged in the system.** The process of establishing positions is often based on big picture decisions and then drilling down to the details, often with little thought. For example, parties might begin with positions on physical custody, such as “primary parent” or “50/50.” Once resolved, or litigated, parties might then begin planning vacations and holidays, many times simply getting templates (e.g., every other holiday rotated every other year), with very little thought put into the goals the parties have for the many parts of a physical custody schedule. This is a foolhardy way to make a plan. A good plan is built inductively, thinking through each part of the plan and developing plans for each part. To return to our example, one might start with making a plan for Mother’s Day, based on the goals of the parties for those holidays, and then move on to Father’s Day all the way through Christmas and birthdays. They might then plan vacations, summer weekends, summer weekdays, or perhaps even parts of days. They might then move through school year weekends, school days, school breaks and days off, and so on. By building a schedule inductively, based on goals for each part of the schedule, parties can substantially increase the value of the plan. Legal outcomes are no longer goals; they are tools to reach goals.
- 9. The day of the final Judgment of the Divorce is the end of the case for the parties as well as for the attorneys and other professionals involved.** This creates an illusion that the suffering is over and when divorcing parties find that, in fact, their divorce has only just begun and will last the rest of their lives, they find themselves unprepared for what follows. Even parties who have no children and no continuing financial ties to one another are in danger of taking their bitterness and unresolved sadness into new relationships. A divorce is more like a marriage: the wedding is the day of the legal event, but the marriage is everything that follows the wedding; a divorce is everything that follows the judgment of divorce. Preparing for that should be the focus.

**10. The attribution of fault<sup>4</sup> and blame permeates the system.** In fairness, the attribution of fault and blame is a key element to most aspects of the legal systems that deal of injury, contracts, criminal, and so on, and was a key element in the family law system prior to no-fault divorce. There is historical momentum behind this aspect of the System. Attorneys are sometimes called professional blamers, and this can fit hand-in-glove with divorcing spouses who are blaming one another for the demise of their marriage. However, to become preoccupied with fault and blame interferes with good planning. Good planning has nothing to do with fault and blame. Planning is focused on the future whereas fault and blame are focused on the past. In a sense, everyone is facing the wrong direction. A financial planner does not focus on blaming people for getting into financial trouble; the planner focuses on how to reach goals.

## **The Exciting News!**

Correcting the three major weaknesses and flaws in the system and the antidotes for the Ten Tricks do not require any major changes in law. They only require a substantial change in the mindset of family law attorneys. The change in mindset involves developing a customer-based Strategic Intent, a Value Proposition to accomplish that intent, and Standards to measure the success of those efforts.

In our various publications, we discuss the change of mindset in detail. As for the antidotes to each of the tricks, they are, in fact, relatively obvious, but require controlling the process:

- When a client says, “I want primary custody,” for example, the attorney should redirect the client to his or her long-term goals for their child.
- This takes skill and patience, especially when the attorney should state: “... We need to find out your spouse’s long-term goals for the children, so we can develop a good plan...”
- The attorney continues: “...The schedule will be part of that plan, but not central to accomplishing your goals...”
- Skill is required to prevent the client running out to a “fighter” to reach his/her position, rather than moving slowly to making a plan that involves the goals of both parties.

This is the challenge for the family law attorney!

We hope we have prompted some thought about the uphill challenge of a divorce in the system—one that results in a good experience for the parties and a good plan for their futures.

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<sup>4</sup> While No Fault Divorce is the law in many/most jurisdictions, here we are talking about the relationship of the parties to the divorce, and how they communicate with each other. Unavoidably, the parties make fault relevant, wherever and whenever they can.

## About the Authors

**Kenneth H. Waldron, PhD**, is licensed psychologist and a member in the firm of Monona Mediation and Counseling LLC, Monona, Wisconsin. His practice has been devoted to providing services to divorced/separated parents for over 35 years. He has served as court appointed expert, performing custody studies and testifying to social science research in jurisdictions throughout the United States and in Canada. Ken has done research and has published broadly on topics related to children of divorce. His latest books, co-authored with Allan Koritzinsky, Esq., is *Game Theory and the Transformation of Family Law*, in which the authors analyze traditional family law using game theory principles to help understand and explain why traditional family law often promotes rather than relieves family conflict, and *Winning Strategies in Divorce*, which teaches the reader how to apply game theory principles in cases. Ken has trained professionals across the country in Structured Coparenting Counseling and Structured Coparenting Training Classes, a specialized program for reducing parenting conflict and increasing effective communication and cooperation between separated parents. Ken has also published numerous articles, chiefly in legal journals, on general divorce related topics but also special topics such as post-divorce relocation.

**Allan R. Koritzinsky, JD**, retired as a partner with Foley & Lardner LLP in 2009 and is currently employed by Allan R. Koritzinsky, LLC, where he does family law, business consulting, and mediation and arbitration, and acts as a co-trustee for a Generation-skipping Trust. While at Foley, he was Chair of the law firm's Family Law Team. He was the 2011 recipient of the State Bar of Wisconsin Senior Lawyers Division Leonard L. Loeb Award. He was a Lecturer at the UW Law School, teaching Evidence, Civil Procedure, Alternative Dispute Resolution, and Real Estate. He has co-authored *Game Theory and the Transformation of Family Law: Change the Rules- Change the Game; A New Bargaining Model for Attorneys and Mediators to Optimize Outcomes for Divorcing Parties* (Unhooked Books. Scottsdale, AZ 2015); *Winning Strategies in Divorce: The Art and Science of Using Game Theory Principles and Skills in Negotiation and Mediation* (available in digital form only at [www.unhookedmedia.com](http://www.unhookedmedia.com)); *Tax Strategies in Divorce* (Professional Education Systems, Inc.); and *Family Law Casenotes & Quotes* (State Bar of Wisconsin).



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## Meet Referee James Street, Minnesota Chapter President

James Street serves as a family court referee in Ramsey County, Minnesota, where he has worked since January 2011. He handles primarily family law cases and orders for protection as well as CHIPS cases under Ramsey County's one judicial officer for family policy. He served on Minnesota's Statewide Advisory Committee for Early Case Management and Court's Statewide Committee to develop standards for supervised parenting time. Referee Street co-chairs Ramsey County's Early Case Management Advisory Committee. He is currently on the ADR Ethics Board of Minnesota.



Prior to his appointment to the Bench, James Street led the St. Paul SMRLS (legal aid) family law unit from 1995-2010 which prioritized contested custody cases involving domestic violence. He also represented parents in Juvenile Court when the Indian Child Welfare Act applied. He has worked in legal programs from 1986-2010 in Denver, Colorado; Queens, New York; and Prior Lake, Minnesota. He practiced in most areas of poverty law and always represented clients with low incomes and from various cultures. He has been or is admitted to practice in Colorado, New York, Minnesota, the Mdewakanton Sioux Tribal Court, and the Winnebago Tribal Court. In 2010, he served on the statewide "Study Group" appointed by the Minnesota Supreme Court and authorized by the State Legislature to study and report back to the legislature about the merits of a presumption for joint physical custody.

Referee Street is a frequent speaker on a variety of legal topics and was an adjunct professor at the University of St. Thomas Law School, co-teaching a class on domestic violence. He is a co-author of a chapter on *Preparing, Settling, and Trying a Custody Case* of the Minnesota Child Custody Deskbook.

He is an avid birdwatcher and actively forages for mushrooms and other edibles.