



AFCC eNEWS

MONTHLY E-NEWSLETTER
VOL. 5 NO. 9
SEPTEMBER 2010

AFCC Ninth Symposium on Child Custody Evaluations

October 28–30, 2010 — Cambridge/Boston, Massachusetts

If you are a family law professional who works with families in custody, parenting and access disputes, you will not want to miss this outstanding program. An interdisciplinary faculty will present four pre-symposium institutes and 30 workshops. Registration rates increase after October 1, 2010.

[Click here to register...](#)

[Click here for the conference program...](#)

[Reserve your hotel room before October 5 to guarantee the lower rate...](#)

ASK THE EXPERTS

Ten Tips for Cross-Examining a Child Custody Evaluator and Ten Tips for Surviving Cross-Examination

By Timothy M. Tippins, J.D., Albany, New York

Cross-examinations can be harrowing experiences, for both the examiner and the expert witness being cross-examined. Family law attorney Timothy Tippins gives both sides tips to help them perform better and to survive.

Timothy Tippins is teaching an Institute, Evidence and Testimony in Child Custody Evaluations, at the Ninth Symposium on Child Custody Evaluations, October 28, 2010, in Cambridge, Massachusetts.

[Read more about cross-examining...](#)

[Read more about surviving cross-examination...](#)

AFCC's 48th Annual Conference Call for Presenters

June 1–4, 2011 — Orlando, Florida

Deadline to submit proposals: October 6

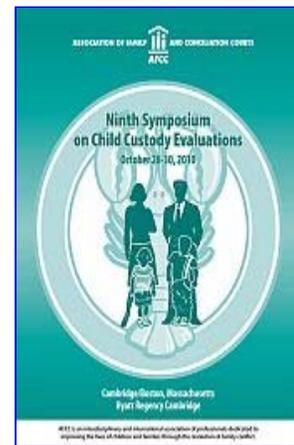
Research, Policy and Practice in Family Courts: What's Gender Got to do with it?

[Click here for Call for Presenters...](#)

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Family Law Writing Competition Co-sponsored by

UPCOMING CONFERENCES



AFCC Ninth Symposium on Child Custody Evaluations

October 28–30, 2010
Hyatt Regency Cambridge
Cambridge/Boston, MA

AFCC 48th Annual Conference

June 1–4, 2011
Research, Policy and Practice in Family Courts: What's Gender Got to do with it?
Hilton Orlando Bonnet Creek Resort
Orlando, Florida

AFCC Regional Training Conference

October 27–29, 2011
Hyatt Regency Indianapolis
Indianapolis, Indiana

Ontario Chapter Annual Conference

Hofstra Law School and AFCC

Hofstra Law School and the Association of Family and Conciliation Courts are sponsoring the annual Family Law Writing Competition to celebrate the establishment of Hofstra's LL.M. program in Family Law. The competition is run in cooperation with the editorial staff of *Family Court Review*, which is the academic and research journal of AFCC. *Family Court Review* is an interdisciplinary and international journal published quarterly by Wiley-Blackwell Publishing and in cooperation with The Center for Children, Families and the Law at Hofstra Law School. *Family Court Review* contributes to and facilitates discourse among the judicial, legal, mediation, mental health and social services communities.

[Read more...](#)

Domestic Violence Screening Protocols

Courts around the world are recognizing that cases need to be screened for family violence to determine their suitability for mediation and other forms of alternative dispute resolution. Here are the screening tools that have been developed by the Office of Dispute Resolution, State Court Administrative Office of the Michigan Supreme Court and the Maryland Circuit Court.

[Click here for the Michigan Supreme Court's screening tool...](#)

[Click here for the Maryland Circuit Court's screening tool...](#)

If you would like your court's screening tool to be shared with approximately 17,000 eNEWS readers, please send it electronically to LHunter@afccnet.org.

Wiley Online Library

On August 9, 2010, *Family Court Review* publisher, Wiley-Blackwell, launched its new online content platform, [Wiley Online Library](#). You will notice a very new design and layout. Wiley Online Library was developed to provide a richer and more efficient user experience.

[Read more...](#)

FCR Issues Available Online

The *Family Court Review* July 2010 Special Issue, *The Fifth World Congress on Family Law and The Rights of Children and Youth*, is available online for free, thanks to FCR publisher Wiley-Blackwell. In addition, the October 2010 issue of FCR is now available online for AFCC members, who can log in to the member center of the AFCC website and read the entire journal, a special issue on the topic *Ensuring Access to Justice for Self-Represented Litigants*.

[Read the July 2010 issue...](#)

[AFCC members log in to read the October 2010 FCR...](#)

Advanced Issues in Child Custody: The Child's Perspective

September 30–October 1, 2010 — Kansas City, Missouri

AFCC, in collaboration with the Missouri Chapter of AFCC and the University of Missouri at Kansas City School of Law, is presenting a two-day advanced training program on child custody. Mindy F. Mitnick, Ed.M., M.A. will focus on strategies for improving your

October 14–15, 2010
The Future of Family Law
University of Toronto
Residences
Toronto, Canada
[More information...](#)

Texas Chapter Annual Conference

October 15–16, 2010
Children Caught in the Conflict: A Multidisciplinary Perspective
Houston, Texas
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UPCOMING AFCC TRAININGS

Advanced Issues in Child Custody: The Child's Perspective

Mindy F. Mitnick, Ed.M., M.A.
Sept. 30–Oct. 1, 2010
Kansas City, Missouri
[More information...](#)

Parenting Coordination: Working with High Conflict Families

Robin M. Deutsch, Ph.D.
December 6–7, 2010
Baltimore, Maryland

Parenting Coordination: Advanced Practice Issues

Matthew J. Sullivan, Ph.D.
December 8–9, 2010
Baltimore, Maryland

Advanced Parenting Coordination Practice: Working with Parents and Children

Joan B. Kelly, Ph.D.
February 1–2, 2011
Tampa, Florida

Intractable Issues in Child Custody Disputes

Mindy F. Mitnick, Ed.M., M.A.
February 3–4, 2011
Tampa, Florida



ability to understand and present the voice of the child to parents and to professionals working with families living apart. [More information...](#)

Treasures on the AFCC Website

It's back to school time for educators having to deal with many children from separated and divorced homes. Friends and colleagues who are educators, or work with educators, should know about *An Educator's Guide: Interacting with Separating, Divorcing, Never-Married Parents and Their Children*. Educators are in a unique position to help the children navigate and deal with some of the challenges these situations engender, and this guide can help them do just that. [Read more...](#)

AFCC Member News

Tobias Desjardins, AFCC member from Hemet, California, has written a book: *A New Way to Win: How to Resolve Your Child Custody Dispute Without Giving Up, Giving In or Going Broke* and has launched a website www.peacefulsharedcustody.com.

Perri E. Mayes, AFCC member from Milwaukee, Wisconsin, has been elected President-elect of the Association for Conflict Resolution (ACR), an international professional association.

Phil Stahl, AFCC member from Queen Creek, Arizona, has written a new book: *Conducting Child Custody Evaluations—From Basic to Complex Issues*.

Janet Walker, AFCC member from Newcastle Upon Tyne, United Kingdom, was awarded an OBE (Officer of the Order of the British Empire) by the Queen in the New Year Honours list last January and went to Buckingham Palace to be invested by Prince Charles on July 9.

[Read more about these AFCC members...](#)

Drops From Down Under

Tidbits of family law news from Australia about physical punishment, same-sex adoption and early intervention with dysfunctional parents. [Read more...](#)

Family Law in the News

Boseman Custody Case Could Set Same-sex Adoption Precedent

Courtesy of Joe Mauceri, wwaytv3.com

A state senator's custody battle could decide the future of same-sex adoption in North Carolina. In 2002, Sen. Julia Boseman's then partner Melissa Jarrell gave birth to a son. Three years later Boseman became the boy's second legal parent. [Read more...](#)

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ABOUT AFCC eNEWS

AFCC eNEWS is a monthly e-newsletter published by the Association of Family and Conciliation Courts (AFCC). *AFCC eNEWS* provides professionals with time sensitive and up-to-date topics including practice tips, research innovations and international news. Readers are welcome to forward this e-newsletter to interested colleagues. [AFCC eNEWS archive...](#)

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Professionals dedicated to improving the lives of children and families through the resolution of family conflict



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Wiley Online Library has a new design and layout and was developed to provide a richer and more efficient user experience. Readers can navigate tables of contents via dropdown menus (jumping from Review Essays to Student Notes, for example) and view articles in either PDF or HTML formats. Full author information, links to articles citing articles in *FCR*, and links to other articles published by *FCR* authors are also available. Additionally, *FCR* will have the option to include datasets, links to podcasts and audio files, and other types of supporting article information.

AFCC members are encouraged to sign up for *FCR* tables of contents alerts using the "Get New Content Alerts" link on the *FCR* page. Those previously signed up for alerts via Wiley InterScience will have them carried over to the new platform. Please visit <http://olabout.wiley.com/WileyCDA/Section/id-390001.html> for additional information about Wiley Online Library.



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AFCC Member News

Tobias Desjardins, AFCC member from Hemet, California, has written a book: *A New Way to Win: How to Resolve Your Child Custody Dispute Without Giving Up, Giving In or Going Broke*, designed to help parents who want to avoid getting into a custody dispute. He has also launched a website, www.peacefulsharedcustody.com, described as a comprehensive site that leads parents who are struggling through separation and divorce to new, peaceful solutions.

Perri E. Mayes, AFCC member from Milwaukee, Wisconsin, has been elected President-elect of the Association for Conflict Resolution (ACR), an international professional association. Ms. Mayes mediates in a variety of arenas including divorce and parenting plans, domestic partnership dissolutions, elder issues, workplace disputes, juvenile cases, civil court matters and community conflicts. She is a former mediation program coordinator in family and juvenile courts, and is a past president of the Wisconsin Association of Mediators.

Phil Stahl, AFCC member from Queen Creek, Arizona and former AFCC Board member, has written a new book: *Conducting Child Custody Evaluations—From Basic to Complex Issues*. This is Dr. Stahl's fourth book in the field of custody and divorce and reflects the latest practical and ethical information and recent changes in the field.



Janet Walker, AFCC member from Newcastle Upon Tyne, United Kingdom and former AFCC Board member, was awarded an OBE (Officer of the Order of the British Empire) by the Queen in the New Year Honours list last January and went to Buckingham Palace to be invested by Prince Charles on July 9. The OBE was awarded for Professor Walker's work as a member and Deputy Chair of the Social Security Advisory Commission.



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Drops from Down Under

By Hon. Graham Mullane (ret.), LL.M., MJS, Newcastle, NSW, Australia

Physical Punishment

A book titled *Physical Punishment in Childhood: the Rights of the Child*, published by Wiley-Blackwell, was launched in May by Hon. Alastair Nicholson, former AFCC President and former Chief Justice of the Family Court of Australia. It was written by Dr. Bernadette Saunders and Prof. Chris Goddard of Child Abuse Prevention Research Australia at Monash University. The book reviews the wide spectrum of views on the topic and advocates that children should have the same legal protections from assaults as do adults. In launching the book, Alastair Nicholson called for such a law reform in Australia and said it has been very successful in New Zealand and many other countries.

Same-Sex Adoption

The Greens introduced legislation in the South Australian Parliament in June to bring the State into line with other states by permitting same-sex couples to adopt and prohibiting discrimination against such couples. A week later the NSW Premier announced that a bill introduced by an independent Member of Parliament will be debated in August. The bill will make same-sex couples eligible to adopt. The Premier said that it will be a "conscience vote," i.e., members will not be required to adhere to any party policy in the debate and vote.

Dysfunctional Parenting

In the federal election campaign in August, the Attorney General (AG) announced that, if re-elected, the Labor Government will introduce legislation to deal with dysfunctional parents much earlier than at present. The proposal is to give Family Relationship Centres power to require parents with serious personal problems such as addictions, mental illness, behavioural problems or personality disorders to undergo treatment. He referred to the Family Court's extensive use of orders for such parents to participate in programs and other treatment and said that such steps should occur much earlier in the process. The AG said that the Government sees the changes as part of a plan intended to "gear the whole system up to look at the opportunity for positive intervention in the parent's life." He said that otherwise the children would be destined to "a pretty dysfunctional relationship" with one or both parents.



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ASK THE EXPERTS

Ten Tips for Surviving Cross-Examination

By Timothy M. Tippins, Albany, New York

1. Do a good job—right from the start

Contrary to what many seem to think, effective cross-examination has nothing to do with “trick” questions. An effective cross capitalizes on mistakes that the expert has made long before coming to court. Failure to conform methodology to professional guidelines, failure to anchor inferences in the published research, and failure to safeguard against bias through exploration of multiple hypotheses are just a few of the recurring weaknesses observed in the evaluation and report process. These are deficiencies that need to be avoided as part of the evaluation process. Once they have occurred, the “facts are frozen,” the witness is vulnerable, and embarrassment is likely. Therefore, your most important safeguard against embarrassment begins long before you ever go to court by avoiding such mistakes. Start thinking about cross-examination at the very outset of your evaluation process and keep thinking about it with every step you take. “How can I defend this if challenged?” is a question you should ask yourself at every turn in the process.

2. Tell the truth

Obviously and thankfully, outright perjury by custody evaluators is relatively rare. But there is more to “telling the whole truth” than simply not lying outright. This can include overreaching the data, trying to evade direct questions, rather than acknowledging weaknesses and, perhaps most prevalent, refusing to utter the three most dreaded words of all: “I don’t know.” There ought to be no embarrassment in saying those words, particularly when you can honestly say: “I don’t know because the empirical research of my discipline does not have the answer to that question.”

3. Be open to new information

Cross-examiners are entitled to ask you to assume certain facts hypothetically. So long as the premises are taken from record evidence, such questions are proper. It may be that you never heard these assumed facts before. Even if that is the case, do not fight the premises in the hypothetical. Assuming that no objection to the question has been made and sustained, you are required to answer. Quarreling with the premises of the question is beyond your role as a witness; doing so makes you appear argumentative or evasive and it detracts from your credibility. Importantly, don’t be so wedded to your conclusions that you refuse to consider new facts that logically would or could change your conclusion.

4. Know the weaknesses in your analysis

Few evaluations are “perfect,” assuming we could even define what “perfect” means. It is not unusual that the information supporting the conclusions is weak or that the research supporting the inference is controversial. Thinking through these problems, recognizing them in advance, avoiding the overreach in the first instances, and knowing the contrary literature are essential if you are to be ready and able to confront these challenges under cross-examination.

5. Anchor your inferences

Given what has been said above, probably the most valuable step an evaluator can take to survive cross-examination—and the step that in the writer's experience is most often overlooked—is to read and apply the empirical research of the behavioral science discipline. If the evaluator wants to say that parenting behavior A causes child behavior B, he or she should be able to point to the empirical research that demonstrates that to be true demonstrable knowledge, as opposed to untested theory or subjective belief. In sum, before forming your conclusions and putting them in your report, go to the library.

6. Bring your entire file to court

Whether or not you receive a *Subpoena Duces Tecum*, bring your entire file to court. Be sure to bring all notes, testing materials, drawings that may have been made, tapes, transcripts, and anything else that you received in the course of your evaluation. Remember, you must preserve everything precisely so they can be made available at the time of testimony. Also bring all of your time sheets and invoices to support whatever you have charged for your services in the event that becomes an issue.

7. Organize everything in your file

If you have to fumble around every time a document is requested you will be perceived as disorganized and less than careful. The argument can be made that you were no more careful in forming your conclusions. Review your file and organize it in a way that allows you to retrieve what you need with dispatch.

8. Approach the task with humility

Understand that every word that you utter—in your report or in your testimony—has the potential to alter the lives of the litigants profoundly. Any error that may underlie your conclusions is one that you may soon forget but which may alter the trajectory of the lives of those you are evaluating.

9. Don't fight the process

Experienced cross-examiners will largely hold you to “yes” or “no” answers. They are entitled to do so under the rules. Don't fight the process. If you can't answer yes or no then simply say that. Don't try to evade or avoid the question, or sneak in damaging speeches that are not responsive. Such tactics only make you appear to be a partisan and detract from your credibility.

10. Protect your credibility

The best way to do this is to protect your integrity right from the jump. This may be more of a challenge when you are functioning in the role of testimonial expert for one side rather than as a court-appointed evaluator. Not all attorneys are as scrupulous as they should be and may want you to “stretch” to give them what they feel they need in the case. Don't. Also, make sure your fees are reasonable relative to the time required by your assignment. If the payments you have received are inordinate to the task, it may appear that you are selling something more than your time.



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ASK THE EXPERTS

Ten Tips for Cross-Examining a Child Custody Evaluator*

By Timothy M. Tippins, Albany, New York

1. Ask only leading questions

By using leading questions—and only leading questions—you can limit the possible answers to "yes" or "no" (or "I can't answer") and thereby limit the witness's ability to deflect or divert or, worse yet, give a speech that hurts your case. You limit the damage the witness can do with the answer. Leave "who," "what," "when," "where" and "how" questions to your direct examinations.

2. Never allow the witness to explain

This limits the witness's ability to volunteer damaging information or opinions.

3. Use "tie-down" questions to close all the doors before asking the payoff question

Your objective is to "force" the witness to answer the ultimate question in your sequence in a particular way. You need to close off all avenues of escape or diversion before reaching the payoff.

4. Know as much or more than the expert

Do not attempt to cross-examine an expert witness unless you know as much as or more about the witness's discipline than does the witness—or at least the slice of that discipline that is relevant to the case. How do you do this? The same way you (presumably) got through law school: study, study, study. You must read the literature of the expert's discipline. Where resources permit, engage an expert as a trial consultant to give you a crash course on what you need to know and to help you construct your cross-examination.

5. Educate and persuade

You must keep in mind that the overall purpose of your cross-examination is to educate the fact-finder as to those elements that are favorable to your side of the case and to persuade the fact-finder that those elements compel the conclusion that your client should prevail. Thus, if a question or a line of questioning does not contribute to these objectives, then you must ask yourself whether you really want to use that particular material.

6. Keep your eye on the fact-finder

In the communications field there is a concept known as audience analysis. You need to keep your eye on the fact-finder as you cross-examine to gauge the impact. Be prepared to abandon a line of questioning if it is not having the desired effect on the court. Remember, as they say in show business, "If they ain't laughing, it ain't funny!"

7. Start strong, end strong

There are a couple of more well-entrenched principles of communication that the cross-examiner should keep in mind. These are the principles of primacy and recency. Research suggests that when the mind is exposed to a sequence of data, greatest weight is placed on what is heard first and what is heard last. So, decide which of your points are the strongest and position them first and last in your cross, sandwiching less important lines of questions in between.

8. Use repetition

With attribution to Thomas Aquinas as well as to the Apache tribe, it has been said that “repetition is the mother of learning.” Use repetition to make your point as strongly as possible. Obviously, you can’t just keep repeating the same question to get the repetition you want but you can build it into related questions, using it as an anchor, so the fact-finder hears the damning statement several times.

9. Be aggressive—not obnoxious

Pursue the content of your cross-examination aggressively but do not be obnoxious. If you have carefully designed each question, the witness will pretty much be held to “yes” or “no” responses. You must deal with witness resistance aggressively, moving to strike and even cutting off the witness when it is obvious that something other than “yes” or “no” is at hand, and by seeking admonitions from the bench that the witness must be responsive. But this does not mean that you go out of your way to demean the witness. Treat witnesses with respect and courtesy unless they prove themselves undeserving of same. Let them be the ones who jump ugly.

10. Keep your ego out of it

Difficult though it may be, you need to keep your ego out of the process. If the witness gets snarky, do not respond in kind. In fact, be glad when you encounter such boorishness as it only detracts from the witness’s credibility.

*Excerpted with permission from Tippins, T.M., *Cross-Examination: A Trial Prep Checklist - 37 Principles of Cross-Examination*, published by MatLaw Systems Corp. 138 LeBarron Road, Hoosick Falls, NY 12090 (1-800-416-8477)

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