



ASSOCIATION OF
FAMILY AND
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eNEWS

Register Before March 7 for the BEST Rates AFCC 53rd Annual Conference

Modern Families: New Challenges, New Solutions June 1-4, 2016, Sheraton Seattle Hotel

Now is the time to make your plans to attend this year's annual conference. Register and make sure your payment is received by March 7 to take advantage of early registration discounts. AFCC members can save up to \$175 by registering early. Not yet an AFCC member? Join with your registration—save \$10 on your first year's membership AND register at the discounted member rate!

[Register online.](#)

Make the Most of Your Trip—Attend a Pre-Conference Institute

Earn 6 hours continuing education when you attend a full-day pre-conference institute on Wednesday, June 1. With eight to choose from there is certain to be one of interest. Call the AFCC office to add an institute to your existing registration or include it with your initial online registration. [See the program brochure for more information.](#)

Apply for a Conference Scholarship by March 1

Scholarships cover registration for a pre-conference institute, the

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**Upcoming Conferences and
Trainings**

conference, attendee meals, networking functions, and a certificate of attendance. A limited number of stipends will be awarded. The deadline to apply is March 1, 2016. [Apply for a scholarship.](#)

Submit Poster Proposals by March 1

Students, lawyers, mental health professionals, academics and court services personnel are invited to propose posters concerning innovative interventions, initiatives, new programs, legal or policy changes, and/or research. The deadline to submit a proposal for a poster is March 1, 2016. Only a proposal is needed at this time—completed posters will be displayed onsite in Seattle and shared in the *AFCC eNEWS*. [Submit a poster proposal.](#)

Reservations at the Sheraton Seattle Hotel

The Sheraton Seattle Hotel is located in the heart of the city, a short walk from prime attractions like the Seattle Art Museum and Pike Place Market. The rate for participants is \$189/night. Make your reservation now; rooms frequently sell out early. [Book online](#) or call 888-627-7056.

Things to Do in Seattle

Your free time will fill up quickly. Visit www.visitseattle.org to research what to do and where to eat. You will also find helpful maps, guides and an events calendar.

Donate to the Silent Auction

The AFCC Silent Auction is a fun opportunity to support the organization's special projects and initiatives, held Friday evening at the annual conference. Donate an item and attend the auction to bid! You do not need to attend the conference to donate. Past auction items include vacations, jewelry, sports memorabilia, fashion accessories, electronics, collectibles, books and much more. It's a fun time to relax and socialize before the annual banquet. [Donate an item.](#)

Exhibit Onsite in Seattle

Exhibit space is filling up fast. If you would like to have an onsite presence at the 53rd Annual Conference in Seattle—act now. Space is limited. [Read more](#) about the opportunities and contact Erin Sommerfeld, esommerfeld@afccnet.org or 608-664-3750.

AFCC Appoints New Editor of Family Court Review

Barbara Babb, MS, JD, has been selected as the new editor of *Family Court Review*, replacing Andrew I. Shepherd who will step down after holding the post since 1997. Professor Babb is an associate professor of law and director of the [Sayra and Neil Meyerhoff Center for Families, Children and the Courts](#) at the University of Baltimore School of Law. She has served on the Review Editorial Board since 1999, written numerous articles



AFCC 53rd Annual Conference

Modern Families:

New Challenges, New Solutions

June 1–4, 2016

Sheraton Seattle Hotel

Seattle, Washington

[Registration and program brochure](#)

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AFCC 12th Symposium on Child Custody Evaluations

Abuse, Alienation and Gatekeeping: Critical Issues for Family Court Professionals

November 3–5, 2016

Sheraton Atlanta Hotel

Atlanta, Georgia

[Call for Proposals](#)

published in the Review and guest edited three special issues. An AFCC member since the 1990s, she served as Chair of the AFCC Court Services Task Force. [California Chapter Conference](#) participants can attend a plenary session presented by Professor Babb, *Therapeutic Jurisprudence and Unified Family Courts: A Bright Light for Family Reorganization*, Friday evening, February 19.

AFCC in Atlanta! Call for Proposals and Save the Date 12th Symposium on Child Custody Evaluations Abuse, Alienation and Gatekeeping: Critical Issues for Family Court Professionals

November 3-5, 2016, Sheraton Atlanta Hotel

AFCC is accepting proposals for 90-minute workshops addressing practice skills, professional issues and advanced theoretical applications. The symposium is designed for custody evaluators, judges, lawyers, mediators and any professional who works with separating and divorcing families. All proposals must be submitted by May 6, 2016, using the [online form](#). The program brochure will be available in July. [More information including a list of suggested topics](#).

Ten Legal Issues Facing LGBT Parents Despite Legal Recognition of Same-Sex Marriage (aka What Family Law Professionals Need to Know in the Post-Obergefell Era)

Allan E. Barsky, MSW, PhD, JD, Florida Atlantic University, Lauderdale by the Sea, Florida

In *Obergefell v. Hodges* (2015), the Supreme Court of the United States recognized the legal right of same-sex couples to marry, putting the final nail in the coffin of those state laws and constitutional provisions that sought to deny such rights. The Supreme Court held that state laws attempting to ban same-sex marriage violated both the “due process” and “equal rights” clauses of the US Constitution. Unfortunately, *Obergefell* has not resolved all the legal and social problems that LGBT parents have experienced. The following highlights ten areas where LGBTs continue to experience discrimination and do not necessarily have access to legal protection. [Read more](#).

Still Time to Register—PC and Child Custody Trainings Chicago

AFCC is offering two training programs in collaboration with Loyola University Chicago School of Law’s Civitas ChildLaw Center. Learn the fundamentals and solidify your practice in *Parenting Coordination: Practice Foundations*, with Matthew J. Sullivan, PhD, March 7-8, 2016. Learn skills to manage the most difficult, complicated issues in child custody cases in *Intractable Issues in*



In collaboration with
Loyola University Chicago School of Law’s
Civitas ChildLaw Center

Parenting Coordination: Practice Foundations

A two-day training program for parenting coordinators, mediators, custody evaluators, judges, lawyers, parents, educators, and other professionals who work with high conflict families.

Matthew J. Sullivan, PhD
March 7-8, 2016

Intractable Issues in Child Custody Cases

A two-day advanced training program for parenting coordinators, mediators, custody evaluators, judges, lawyers and other professionals who work with high conflict parents.

Mindy F. Mitnick, EdM, MA
March 9-10, 2016

Loyola University Chicago
Philip H. Corboy Law Center
Chicago, Illinois

AFCC is an interdisciplinary and international association of professionals dedicated to improving the lives of children and families through the resolution of family conflict.

Parenting Coordination: Practice Foundations

Matthew J. Sullivan, PhD
March 7 –8, 2016

Loyola University Chicago
Chicago, Illinois

[More information, online registration](#)

Intractable Issues in Child Custody Cases

Mindy F. Mitnick, EdM, MA
March 9– 10, 2016

Loyola University Chicago
Chicago, Illinois

[More information, online registration](#)

AFCC Chapter Annual Conferences

California Chapter Annual Conference

February 19–21, 2016
InterContinental Mark Hopkins
San Francisco, California
[More information](#)

Missouri Chapter Annual Conference

March 31–April 1, 2016
St. Louis City Center Hotel
St. Louis, Missouri
[More information](#)

Massachusetts Chapter Annual Conference

April 1, 2016
Conference Center at Waltham

Child Custody Cases, with Mindy F. Mitnick, EdM, MA, March 9-10, 2016. Continuing education credit is available. AFCC members receive a substantially reduced registration rate. Save even more when you register for both trainings. [Register today.](#)

In Memoriam—Lynelle C. Yingling, PhD, LMFT

Lynelle C. Yingling, Rockwall, Texas, passed away on February 8, 2016, at the age of 72. She earned her doctorate from Texas Woman's University, was a tenured professor at Illinois State University and Texas A&M at Commerce, participated actively influencing legislation in the field of dispute resolution, and helped hundreds of children and families as a licensed marriage and family therapist. She was a long time member of AFCC who presented at conferences, authored *Family Court Review* articles, and was active in the AFCC Texas Chapter where she served on the board of directors in the 2000s and as chapter president in 2004.

[Read more.](#)

AFCC Scholarship Fund Helps Colleagues

Every \$600 raised gives a colleague the opportunity to attend the annual conference. Your gift—combined with the support of other generous and dedicated AFCC members—helps more professionals benefit from attending an AFCC conference. If you have not already given this year, [please give your gift today.](#) Thank you to the [AFCC members who have donated thus far.](#)

Member News

David Hoffman, Esq., Boston, Massachusetts, was recently honored as the 2016 Boston Attorney of the Year in Mediation by Best Lawyers Magazine and US News & World Report. In addition to his practice, he is a founding member of [Boston Law Collaborative, LLC](#), and will teach courses on mediation and collaborative law at Harvard Law School this year.

Benjamin Garber, PhD, Nashua, New Hampshire, has written a new book, [Holding Tight, Letting Go: Raising Healthy Children in Anxious Times](#), which offers insight into troubled family dynamics between parent and child where psychological and emotional growth can be stunted or damaged due to family history of blended or broken parent-child roles. Dr. Graber will present a pre-conference institute, *Broken Triangles: Understanding, Assessing and Responding to the Needs of the Conflicted, Court-Involved Family System* in Seattle.

Where is AFCC Going? Future Conference Dates and Locations

[Check out the AFCC website](#) for newly added conference dates

Woods
Waltham, Massachusetts
[More information](#)

Ohio Chapter Annual Conference

April 6, 2016
Quest Conference Center
Columbus, Ohio
[More information](#)

Oregon Chapter Annual Conference

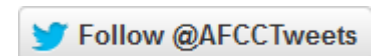
April 8, 2016
Oregon State Bar
Tigard, Oregon
[More information](#)

Are you an AFCC member? [Join](#) or [Renew](#)

The opinions expressed in articles published or linked to in the *AFCC eNEWS* are those of the authors and do not necessarily reflect the positions of the Association of Family and Conciliation Courts.

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Erin Sommerfeld
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and locations through 2019. This fall AFCC heads to Atlanta, then on to Boston, San Diego, Milwaukee, Washington DC, and Toronto.

Nominations for AFCC Awards are Due March 15

AFCC awards acknowledge the many important contributions made by individuals and organizations to enhance the lives of children and parents involved in family courts. Your nominations help recognize and bring attention to these accomplishments. Even if your nominee is not selected this year, the act of nominating a colleague helps to highlight the broad range of achievements in the field and helps to cultivate a culture where individuals and organizations are acknowledged for their contributions.

Nominations will be accepted through March 15, 2016. [Submit a quick online nomination](#) for the following awards, to be presented at the AFCC Annual Conference in Seattle:

- **John E. VanDuzer Distinguished Service Award** recognizes outstanding contributions and/or achievements by AFCC members;
- **Stanley Cohen Research Award**, sponsored by the Oregon Family Institute, recognizes outstanding research and/or achievements in the field of family and divorce; and
- **Irwin Cantor Innovative Program Award** recognizes innovation in court-connected or court-related programs created by AFCC members.



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Ten Legal Issues Facing LGBT Parents Despite Legal Recognition of Same-Sex Marriage (aka What Family Law Professionals Need to Know in the Post-*Obergefell* Era)

Allan E. Barsky, MSW, PhD, JD, Florida Atlantic University, Lauderdale by the Sea, Florida

In 2015, advocates of equal rights for lesbians, gay men, bisexuals, and transgender people (LGBTs) achieved what some considered the Holy Grail of civil rights for these groups. In *Obergefell v. Hodges* (2015), the Supreme Court of the United States recognized the legal right of same-sex couples to marry, putting the final nail in the coffin of those state laws and constitutional provisions that sought to deny such rights. The Supreme Court held that state laws attempting to ban same-sex marriage violated both the “due process” and “equal rights” clauses of the U.S. Constitution. *Obergefell* was preceded by another Supreme Court decision, *United States v. Windsor* (2013), which overturned federal laws that banned same-sex marriage. From a legal perspective, *Obergefell* ensures that same-sex couples in all 50 states have access to the same marital rights and privileges as different-sex couples. These rights range from the right to a spouse’s social security benefits and estate upon death, to the right to visit and make health care decisions for an incapacitated spouse in a hospital, to the right to share a spouse’s health care policies, to equitable division of marital property upon divorce. Goods and services such as fishing licenses and car rentals may also be cheaper for married spouses than for unmarried couples. There are over 1,500 federal and state rights and benefits that couples accrue based on their marital status (Freedom to Marry, n.d.).

Obergefell was not just a legal victory, but also a momentous social achievement, helping same-sex couples feel like first-class citizens, letting LGBT youth know that they have many of the same opportunities as their heterosexual counterparts, and shifting attitudes of many Americans who questioned whether LGBT individuals were deserving of the same rights as others. Just weeks after the *Obergefell* decision, Boy Scouts of America reversed its ban on gay scout leaders.

Unfortunately, *Obergefell* has not resolved all the legal and social problems that LGBT parents have experienced. Homophobia, heterosexism, and social stigma still exist (Frost, 2015). There has been a backlash against LGBTs, particularly among certain conservative religious groups (Americans United for Separation of Church and State, 2015). States such as Florida have seen an increase in anti-LGBT bills coming before their legislatures. And many LGBTs remain closeted

for fear of losing family, friends, jobs, and community acceptance. Rates of parental abandonment and suicide attempts are higher for LGBT youth than for other youth (American Association of Suicidology, 2014). Further, *Obergefell* has not resolved all legal issues facing LGBTs, including issues related to family law, divorce, and child welfare. The following sections highlight ten areas where LGBTs continue to experience discrimination and do not necessarily have access to legal protection: (1) workplace discrimination and harassment, (2) housing discrimination, (3) biases favoring biological parents in custody cases, (4) denial of adoption, (5) restrictions on access to assisted reproduction, (6) restrictions within particular houses of worship, (7) access to services from people who claim religious objections, (8) discrimination in education, (9) discrimination in government identification documents, and (10) limited protection for couples with civil unions or domestic partnerships. Although some states, counties, and cities offer legal protections for LGBTs, access to legal protections should not depend on where one lives...or happens to be visiting on a particular day.

1. Workplace Discrimination and Harassment

Since *Obergefell*, a same-sex couple may get married on a Saturday or Sunday, and then be fired on Monday when their employer discovers their sexual orientation (Zarembka, 2015). As suggested above, some states have laws protecting LGBTs from workplace discrimination in the private and, or public sectors. Twenty-nine states provide no such protection (Human Rights Campaign, n.d.), although some counties and municipalities in those states offer certain protections. Some same-sex couples, knowing they can get fired from their jobs may remain in the closet (discreet about their sexual orientation), so as not to put their careers at risk. Thus, family law professionals will continue to see cases where same-sex couples are living as a married couple, but are not legally married and do not enjoy the rights and privileges of married couples. Thus, upon separation, they are not entitled to equitable distribution of their property unless they have a cohabitation agreement that is enforceable in the particular state. Upon death, the surviving partner would not be entitled to inheritance (unless there is a will providing specific bequests).

2. Housing Discrimination

As with workplace discrimination, many states do not provide protection against discrimination in housing (US Department of Housing and Urban Development, 2013). Imagine a couple that separates, and then one or both clients has difficulty finding housing because homophobic homeowners or landlords refuse to sell or rent to them. To avoid this and related housing discrimination problems, we need a national or 50-state solution to ban discrimination on the basis of sexual orientation, gender identity, or expression. Note that some states have laws protecting gays, lesbians, and bisexuals, but not transgender people.

3. Biases Favoring Biological Parents in Custody Cases

The primary standard for making decisions about child custody and visitation is “the best interests of the child.” Unfortunately, some judges and some states continue to discriminate against *de facto* or psychological parents (i.e., people who assume the role of parents but are not biologically connected to the child).

Consider a same-sex couple that marries in 2015, has a child in 2016, and divorces in 2017. Some state laws do not even allow the nonbiological parent to apply for custody or visitation—even if that parent has been the primary caretaker and has the closest bond with the child. The nonbiological parent’s best hope for a reasonable solution may be informal negotiation or mediation; however, the couple is bargaining in the shadow of a law that allows the biological parent to disregard the child’s interests, let alone the other parent’s interests. Even in states that recognize a nonbiological parent’s rights to custody and access (or more importantly, a child’s right to maintain appropriate relationships with both parents), some judges may allow assumptions about biological connections to bias their decisions (Holtzman, 2013).

4. Denial of Adoption (including second-parent adoption)

Mississippi and Nebraska have laws that discriminate against LGBTs in adoption (Human Rights Campaign, n.d.). In some states, couples are only permitted to adopt a child if they are legally married. Now that same-sex couples are allowed to marry, they are also allowed to adopt. However, some states do not allow a second-parent adoption in the case of same-sex couples (Bardzell & Bernard, 2015). That is, if one parent adopts a child and the other parent is of the same sex, the state will not allow the other parent to jointly adopt. Further, if one person has a child from a prior marriage, the new same-sex partner is not permitted to adopt the child. Even in states that permit LGBTs to adopt, some LGBT individuals and couples may still face discrimination, for instance, religious-based adoption agencies that refuse to serve them, or judges who question whether a child should be parented by an LGBT individual or couple (Holtzman, 2013). Given the rationale in the *Obergefell* decision (which noted that gay and lesbian parents are just as capable at parenting as heterosexual parents), discrimination in adoption cases may be ripe for litigation. In response, some religiously affiliated adoption agencies may claim religious freedom as grounds for refusing to allow LGBTs to adopt through their agencies.

The biggest impact of blocking same-sex couples from having a second-parent adoption is not on the parents, but on the child. Note that when a biological parent dies, the property passes to the nonbiological parent (as a spouse); however, when the nonbiological parent dies, the child would not inherit property, because that parent is not recognized as a “true” parent for legal purposes. Further, if the biological parent dies, the court may award custody to a biological relative who has been much less involved in the child’s life than the nonbiological parent.

5. Restrictions on Assisted Reproduction

Some states have established legal barriers preventing LGBTs from accessing services for assisted reproduction, for instance, donor insemination, in vitro fertilization, surrogacy, and fertility preservation (for transgender people considering sex-reassignment surgery) (De Wert et al., 2014; Holtzman, 2013). Given these barriers, some LGBTs seek assisted reproduction services out-of-state or out-of-country. To complicate matters, some jurisdictions do not have laws protecting the intended parents in situations where the surrogate mother

changes her mind and wants to keep the child. Further, some assisted reproduction service providers refuse to serve LGBT parents on the basis of religious objections (De Wert et al., 2014). Unfortunately, these structural and attitudinal challenges sometimes force LGBT individuals and couples to seek assisted reproduction services in jurisdictions and from providers where legal protections are limited or nonexistent. Although many of these arrangements work out (on the basis of trust and good faith), the intended parents may have no reasonable avenues of legal redress on occasions when sperm donors, egg donors, or gestational surrogates claim custodial rights.

6. Restrictions within Particular Houses of Worship

Although *Obergefell* allows same-sex couples to enjoy the civil rights of marriage, it does not require particular churches, synagogues, mosques, or other houses of worship to perform religious marriages. It may seem logical that each religious institution is permitted to determine its own beliefs and laws about who may marry—and whether LGBTs should be able to participate in other sacraments or roles within the religion. Still, it is important to recognize the discriminatory effects when a particular house of worship rejects a same-sex couple (psychologically and socially). Would modern American society condone religions that refused to allow African Americans to be priests or ministers, or that denied blind people the sacraments of marriage? Within most religions, there are branches that do support same-sex marriage, so LGBTs do have opportunities for religious, as well as civil marriages. The impact of being rejected by the religious institution in which one was raised, however, should be considered by family law professionals working with such families.

7. Access to Services from Companies Claiming Religious Objections

There have been various lawsuits involving businesses and other organizations claiming that religious freedom permits them to refuse services or employment to LGBT customers or members of the community (Zarembka, 2015). In *Burwell v. Hobby Lobby*, for instance, the court decided the company had the same rights as a person, including religious freedom and the right not to be complicit in actions that violated their religious beliefs. Note that expressions of religious freedom by businesses or other organizations can have significant discriminatory impacts on LGBTs, as well as their children. Note also, that allowing companies to discriminate based on religious freedom could open up other groups to discrimination from businesses or organizations claiming religious freedom. Some states are passing laws to specifically give primacy to religious freedom (Nejaime & Siegal, 2015). Do these laws mean that a Muslim florist can refuse to sell flowers to Christians, or that a Catholic restaurateur could refuse to serve people who are divorced?

8. Discrimination in Education

Although some jurisdictions offer LGBTs protection against discrimination in education, others do not. This means that LGBT students—or children of LGBT parents—may not have legal recourse for various forms of school-based discrimination (e.g., dismissal of a child who identifies as bisexual, harassment by other students for being gay, or inability to use gender-appropriate bathrooms

by a transgender student). As with other contexts listed above, some LGBT exclusion or discrimination could be based on arguments of religious freedom (e.g., a private religious school that says it has the right to teach students that homosexuality is an abomination, as per Leviticus 18:22). For family law professionals working with LGBT families, it is important to understand the challenges that parents may be experiencing in finding appropriate school environments for their children. Some might argue that it is ok for private schools to exclude students based on religious convictions, since LGBT students still have access to public schools. Consider, however, a family living in an area with low-performing public schools and the only private school options are ones that discriminate on the basis of sexual orientation. Advocates for federal protections from discrimination and harassment against LGBT students have presented a bill to Congress, though passage seems unlikely at the present time (Human Rights Campaign, 2015).

9. Discrimination in Government Identification Documents

When transgender people decide to express themselves in the gender of their social identity, they may wish to have their government identity documents changed to reflect their gender. Although some states allow transgender people to change their gender identifications on birth certificates, driver's licenses, and other official documents, other states do not (Human Rights Campaign, n.d.). The refusal to allow transgender people to change their gender identification is not only demeaning, but it can create additional confusion and discrimination in the community. If a police officer, store clerk, bartender, school registrar, or other person asks a transgender person for identification, the identification on the card will not reflect how they are presenting themselves. The importance of having gender-appropriate identification documents should not be trivialized nor underestimated.

10. Limited Protections for Civil Unions and Domestic Partnerships

Prior to recognition of same-sex marriages, some states and counties established the designation of civil union or domestic partnership to provide couples with some of the rights and responsibilities of marriage, without calling them marriages. Although same-sex marriage has been recognized on a nationwide scale, some jurisdictions are maintaining these designations, while others are doing away with them (Beitch, 2015). Note that these designations could apply to both same-sex and different-sex couples, depending on the laws of the particular jurisdiction. Further, some same-sex couples may prefer these designations to marriage, even though they now have access to civil marriages. Thus, family law professionals need to be aware of the current status of these designations in their jurisdictions, and what types of rights and protections they continue to provide (if any). For instance, a couple with a domestic partnership registered in a particular county may have rights to make healthcare decisions for one another in the event of mental incapacity; however, the domestic partnership laws may not provide a mechanism for division of property or spousal support upon separation. Civil union laws (in the US and abroad) tend to have rights and responsibilities more akin to marriage laws, including spousal support obligations. In jurisdictions with common law marriage, practitioners should also

be aware that same-sex couples may have unknowingly established common law marriage (and separation) responsibilities even though they have never entered into a domestic partnership, civil union, or contractual relationship.

Conclusion

While the *Obergefell* decision has had a momentous impact on the rights and lives of LGBTs in the United States, the path toward full equality for LGBTs is not complete. Now that same-sex marriage has been legally recognized, divorce lawyers, mediators, and other professionals may see more same-sex couples in their offices. As professionals assist LGBT individuals and families with separation, divorce, death, and other life transitions, they should be attuned to areas in which their clients still face discrimination. At the same time, they should not assume discrimination is an issue in all cases. In many ways and in many parts of the United States, LGBT individuals and families are enjoying the rights, freedoms, and support that others have long taken for granted.

Allan E. Barsky, JD, MSW, PhD, is professor of social work at Florida Atlantic University, a Supreme Court of Florida Accredited Family Mediator, and a former president of Ontario Association for Family Mediation. His book credits include Conflict Resolution for the Helping Professions (Oxford University Press), Ethics and Values in Social Work (Oxford University Press), and Clinicians in Court (Guilford Press). He received the Excellence in Ethics Award from National Association of Social Workers in 2015.

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An interdisciplinary and international association of professionals dedicated to improving the lives of children and families through the resolution of family conflict.

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