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President's Message - by Lesley Goldsmith

Welcome to our summer newsletter! I would like to tell you about AFCC's exciting spring and our plans for the upcoming year. As the incoming President, I was honored to succeed former President, David Medoff, at our Annual Chapter Conference on April 15th at Regis College in Weston. I am pleased to report we have received positive feedback on that "sell out" conference that entertained and educated participants on the critical issue of parental alienation. Many thanks to the Conference Committee (of which, I admit I am one) for their efforts to once again present a cutting edge confer-

ence that combined a national keynote speaker, Richard Warshak, PhD., and the best of our local experts. Special thanks to Judge Gail Pearlman (Ret.) of the Hampshire Division of the Probate and Family Court, who led the afternoon commentary, and the discussion of the issues raised. In May,

Judge Pearlman retired from the bench, but I am pleased to report, not from AFCC. Gail plans to continue sharing her positive and infectious energy with AFCC with her service on our Massachusetts Chapter Board. I want to take this opportunity to wish her well in her retirement, and to thank her *Cont'd on pg 3*



Charlemont, MA

Photo by Hon. Geoffrey Wilson

AFCC Conference Recap: What's Gender Got to Do with It?

by Linda Fidnick

The theme of this, the 48th Annual AFCC Conference, was "Research, Policy, and Practice in Family Court: What's Gender Got to Do with It?" This was not the first time that gender has been the focus for an AFCC conference.

In 1993, 18 years ago, the theme of the 30th Annual AFCC Conference was also the role of gender in the world of family law.

As a point of reference, at the 48th conference plenary, the speakers began by discussing changes that

they perceived in role of gender in family law over the past two decades from the vantage of their particular areas of expertise.

First, Attorney Jana Singer, a law professor, gave an overview of ongoing eco- *Cont'd on pg 4*



Bernardston, MA

Photo by Hon. Geoffrey Wilson

“...presenting the best legal case possible while maneuvering the nuances of client psychopathology.”

AFCC Conference Recap: Managing Litigant Liabilities

by David Medoff, Ph.D.

Massachusetts Chapter AFCC members the Hon. Edward Donnelly, Mary Margaret Ferriter, Kelly Leighton, and David Medoff presented a workshop entitled “The Interplay of Zealous Advocacy and the Best Interests of the Child: Managing Litigant Liabilities” at the Annual National AFCC Conference in Orlando on June 2, 2011.

The field of disputed high conflict child custody involves the interface of legal and mental health professionals with a broad range of diverse training, education and experience. The very cultures and perspectives of these professions are also quite diverse, as are the roles and responsibilities ascribed to the individuals involved. It is in this context that these professionals are routinely required to work together in addressing some of the most important decisions that affect the lives and well being of children, and their professional responsibilities are often complicated and intensified by the problematic mental health and behaviors of the parents involved.

By examining the com-

plexities of flawed parenting and the ways in which legal and mental health professionals must consider these factors in assisting the court, this workshop enhanced the required knowledge base and skill sets of professionals who do this work.

Factors that are directly relevant to the work of the Probate and Family Court, by definition, include the subtleties and conflicts that arise in the integration of varying

professional responsibilities, the impact of impaired parenting on the lives of children, and the processes through which judicial decisions are made. This workshop addressed a host of these issues by identifying a variety of the potential roles often involved in this type of work, how these roles affect litigation, the areas in which the legal and mental health professions clash, ele-

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Massachusetts AFCC Chapter's

Fall Symposium and Dinner

Surviving Loss in High Conflict Divorce: Legal and Psychological Protection

with
David Medoff, Ph.D
Nancy Rappaport, M.D.
and
William Levine, J.D.

Thursday, September 22, 2011
2:30-5:30 p.m.

Henderson House, Weston, MA

Cocktail reception and dinner follow
www.maafcc.org

Kelly's Korner - by Kelly A. Leighton

Beacon Hill was quite busy this summer with a piece of legislation of interest to the family law community: a bill to reform and improve alimony, known as the *Alimony Reform Act of 2010*.

A public hearing was held on the bill by the Joint Committee on the Judiciary on May 18, 2011. The co-chairs of the committee, Sen. Cynthia Creem and Rep. Eugene L. O'Flaherty, as well as members of their committee, listened to hours of testimony on this proposed legislation, as well as a long list other family law-related bills. Shortly after the hearing, the Committee reported the bill favorably out of its committee, allowing it to clear a necessary hurdle in order for it to move forward in the process. And it did.

On Wednesday, July 20th, the House passed the bill unanimously,

without amendments. It then was sent to the Senate, which considered the proposed legislation on July 28th. Like the House, the Senate passed the bill unanimously. On the Senate side, some technical language changes to the bill triggered an additional process, in which the Senate version will have to be reconciled with the House version. At this time, it is unclear how long that process will take. Supporters had hoped the bill would land on Governor Patrick's desk by September 1st. At this time, that appears highly unlikely. Many interested in the bill are now in a holding pattern, but hopefully that activity does not involve the holding of their breath. In the meantime, many are wondering if and when the proposed reform will take effect, in order to prepare for its

impact on clients going forward. We may wonder for a bit longer.

Mediation matters

Another bill introduced this session is HO2851, *A Bill Relative to Mediation of Divorce Cases Involving Children*. The proposed legislation piqued the interest of many. It aims to give a judge the authority to order parties to mediation in all divorce litigation involving children. According to the bill, the purpose is to "manage conflict and decrease acrimony between parties in a dispute concerning parental rights and responsibilities; promote the best interest of children; improve parties' satisfaction with the outcome of disputes concerning parental rights and responsibilities; increase the parties' participa-

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President's Message, Cont'd from pg 1

for continued efforts with AFCC.

In June, many of the Massachusetts Board and Chapter members participated in and attended the 48th Annual AFCC Conference in Orlando, Florida. By all accounts, it was, as usual, a great conference.

Having attended these national conferences in the past, I urge members to attend one if you have the opportunity to do so. It is an easy way to learn from the best, and to motivate yourself for the

challenging work we all do with families.

I am looking forward to our Fall Symposium/ Dinner, to be held on September 22, 2011, at the Henderson House in Weston. Be prepared to be engaged in an afternoon workshop titled, *Surviving Loss in High Conflict Divorce: Legal and Psychological Protections*. The presenters are David Medoff, Ph.D, William Levine, J.D., and Nancy Rapport, M.D. Following the presentation, there will be a social hour and dinner

to enjoy the company of fellow members. I hope to meet many of you there. Keep posted to our website and AFCC's website for news regarding additional upcoming events. Our Chapter Conference Committee is hard at work for the 2012 Conference scheduled to take place in April at Regis College.

For new professionals, the cost of the conferences may be a concern. Now is my chance to inform you that MA AFCC has a long history

of providing scholarships to members for both local and national conferences. I think you will find, as I have in my own membership, that not only are our local and national conferences fascinating, but they are also wonderful opportunities to share experiences and build professional enthusiasm. Check our website, www.maafcc.org, and the AFCC national website, for scholarship opportunities. Please use them to start your own "AFCC experience."

Looking forward to seeing you soon! ■

What's Gender Got to Do with It? *Cont'd from pg 1*

conomic disparity between men and women, although admittedly the gap has narrowed since 1993. Today, women earn approximately 80% of the wages of their male counterparts, compared to 77% in 1993 and 62% in 1979. Women now receive a majority of college degrees, and nearly half of all professional and graduate degrees. For the past 10 years, at most U.S. law schools, the gender bal-

that only 35%-40% of mothers are employed full time, a minority, compared to a majority of married fathers. When the amounts that married men and women earn are compared, only 20% of married women out-earn their husbands. Husbands earn almost three quarters of family income, which is a gender difference that has a significant impact on post-divorce finances of men and women.

narrowed only slightly.

Her conclusion is that within families, mothers and fathers still lead gendered lives. This results in the experience of divorce having a disparate impact on both spouses. Aspirations? That we acknowledge the continuing relevance of gender and, in light of this reality, craft rules that best serve children and treat both men and women fairly.

Dr. David DeGarmo, a research social scientist, was the second speaker. He reported that although single-mother families still outnumber single-father families nearly five to one, the number of children in single father families grew by 55% during the 1990s.

The first statutes creating a presumption of post-divorce joint legal custody were enacted in 1979 in Kansas and Oregon, and since that time a majority of states have passed similar legislation.

Dr. DeGarmo concurred with Attorney Singer's observation that the amount of time that fathers are spending with their children has increased. Further, studies show that adolescent and young adult children express a strong desire to stay involved with their non-residential fathers.

Research on the health of both adults and children in post-divorce families has consistently shown that the trauma of family dissolution affects all members negatively. However, if the children's experience of the loss associated with divorce is mediated by ongoing quality involvement with their fathers, the result is that the children are better adjusted. This in turn is helpful to the mothers, and ultimately the level of conflict within the family is reduced. As would be expected, the caveat to this is that if the father demonstrates anti-social behaviors and/or substance abuse, the risk to the children is increased.

Although many fathers want to be more involved, young men and boys are not offered sufficient opportunities to learn parenting skills, and this later can translate into reticence about hands-on parenting tasks. Unfortunately, there is a scarcity of fathering programs, and for those that exist, evaluations are lacking. The Department of Health and Human Services Fatherhood Initiative has aided in

Research on the health of both adults and children in post-divorce families has consistently shown that the trauma of family dissolution affects all members negatively.

ance has been nearly equal.

Nevertheless, in the context of families, Attorney Singer reported that married mothers are much less likely than married fathers to be in the paid labor force. According to recent Census Bureau figures, approximately 25% of married mothers with children under age 15 do not work outside the home. This figure, interestingly, has remained constant since 1989. An additional 35%-40% of married mothers work less than 35 hours per week, which means

In addition, overwhelming social science evidence indicates that women continue to perform anywhere from two to three times more housework and childcare than their male counterparts. She qualified this by stating that undoubtedly fathers have substantially increased the absolute number of hours that they spend taking care of children, but so have mothers.

As a result, although fathers are more involved in childcare, the gap between time spent caring for children between mothers and fathers has

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Managing Litigant Liabilities, *Cont'd from pg 2*



Bernardston, MA

Photo by Hon. Geoffrey Wilson



Bernardston, MA

Photo by Hon. Geoffrey Wilson



Bernardston, MA

Photo by Hon. Geoffrey Wilson

ments of “best practice” for both lawyers and mental health practitioners, and the benefits and liabilities of various professional services that may or not be advantageous to either the litigation and/or the best interests of the children involved.

The workshop began with a discussion of the range of the complex and problematic mental health, interpersonal, behavioral, and emotional challenges seen in child custody litigants. Panelists provided examples of the impact of these factors on the well being of the children involved in these families, as well as the complications and dilemmas they present for attorneys and mental health professionals working with flawed parents in

custody litigation. The panel also explored the roles of various professionals and how variance within these roles can affect litigation. In addition, the potential impact of flawed parenting on judicial decision making was discussed, as was the manner in which these factors might present in the courtroom, and how a judge might observe, interpret and make decisions about these problematic behaviors.

Panelists also reviewed strategies for presenting the best legal case possible while maneuvering the nuances of client psychopathology and ultimately providing damage control when necessary. Key relevant factors were considered, including the potential benefits and pit-

falls in attempting to manage unfavorable circumstances for a litigant, when to seek and when to avoid court appointed child custody evaluations, conditions under which mental health consultation might be useful and when they might be hurtful to your client, the use of testimonial and/or non-testimonial experts, how such evidence is viewed from the bench, and the ethical implications for the mental health and legal professionals involved with the Probate and Family Court. The panel also discussed the inherent friction between the roles of attorneys and mental health professionals in various phases of the child custody conflict and within varying professional roles. ■

Kelly's Korner, *cont'd from pg 3*

tion in making decisions for themselves and their children; increase compliance with court orders; reduce the number and frequency of cases returning to court; and improve court efficiency.”

After word of the bill's filing got out, a flurry of support was met with the some skepticism. There was broad support for expansion of mediation services, and an agreement as

to the benefits of mediation to families entering the divorce process.

However, some questioned the practice of ordering parties to mediation if it is not voluntary, expressed concern about inappropriate cases being sent to mediation, such as those involving domestic violence, and raised doubt about the ability of indigent or low-income parties to pay for mediation.

As a result, Representative Alice Peisch, of Wellesley, the sponsor of the bill, convened a working group to study the bill and suggest possible revisions. The diverse group of mediators, lawyers, and others interested in the bill met once over the summer, and plans to reconvene in September to continue its work. As of now, the bill is still being considered by the Joint Judiciary Committee. ■

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What's Gender Got To Do With It? *Cont'd from Pg 4*

the proliferation of fathering programs, but the programs must be evaluated, and the most successful ones replicated.

Allan Barsky, J.D., Ph.D., who teaches social work and works as a mediator, highlighted the changes over the past 20 years by challenging the audience's awareness of the nuances in definitions of gender and sex. Must gender be limited to male and female? Isn't it really a continuum, on which there are those who identify as male or female, but also as transgender, intersex, and queer? Even having this conversation at the AFCC plenary in 2011 was light years from the 1990s programming, when there might have been one workshop on gay families.

The legal system has changed remarkably for LGBT families in certain ways: in some states and many other countries same sex couples are permitted to marry. Resistance to the acceptance of non-heterosexual marriage remains in many states, and the federal government refuses to recognize those marriages. Privatization of dispute resolution for those families whose protection by

the legal system is uncertain has become a necessity.

In general, mediation as a dispute resolution tool has grown in popularity nation-wide, and the reservations that were articulated in the past about the effectiveness of ADR have diminished as the effectiveness of resolving conflict outside of the court system has been demonstrated in both the short and long term.

Dr. Barsky touched on the "approximation rule" propounded by the ALI Principles of the Law of Family Dissolution, indicating that in general the ALI principles were proving to be relatively uninfluential in many states. He challenged the concept of stability for children being embodied by an approximation of what the parenting arrangements were prior to the divorce. If the family was dysfunctional enough to result in separation and divorce, why continue those parenting pat-

terns afterwards? If one parent, usually the father, has had less hands-on parenting time because he was working to support the family's economic structure while the mother stayed at home, should he be permanently deprived of time with the children in accordance with that pre-divorce arrangement? And if stability of the children post-separation deserves prime consideration, shouldn't removal be extremely difficult?

As can be imagined, these speakers provoked strong responses from the audience. Questions were submitted in writing to runners who brought them to the stage, and at least 60 people wrote comments and questions to the speakers during the course of the 90 minute presentation. The range of philosophies, disciplines, and international demographics of the audience was evident. ■

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