



2006 NEWSLETTER

Issue #1

Notes from the Chapter President

Laurie Nowlin, Texas Chapter President

Items of Interest:

Reminder: The 43rd Annual International Conference is May 31 – June 1 in Tampa Bay Florida. It's still not too late to cash in those frequent flier miles!

Texas State Conference September 22nd & 23rd Info in the President's column to the right. Registration info available soon at www.texasafcc.org

Have an item or announcement for the newsletter? Send it to: arobb@texasounseling.org

Membership of the Texas Chapter of AFCC,

I would like to thank everyone involved with the Texas Chapter of AFCC for the honor of representing the group as President this year. I became a member of the International AFCC organization and the Texas Chapter because of my involvement in high conflict family law case situations as a family law attorney and as a social worker in over 26 years of practice. I can genuinely tell you our organization is unique. It is the only

interdisciplinary group of professionals that looks at family law as a process and seeks to educate and improve the outcome of the process so that children and families obtain the best possible resources and assistance in resolving their disputes. I am proud to be a member of this group and even prouder to serve as your president.

We have an exciting year ahead of us and I want to let all of you know that we have set up our statewide conference to be held on September 22nd and 23rd of this year

at the Crown Plaza in Addison, Texas. The conference will feature two speakers I think everyone will enjoy and who are extremely knowledgeable. These professionals have terrific wisdom that everybody will be able to take back to their clients and families. The two main speakers will be Dr. Joan Kelly, psychologist, researcher, mediator and parent coordinator who was the director of the Northern California Mediation Center for 20 years. Her research, clinical and

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The Indefensible Position: The Long Custody Evaluation Report

Steven E. "Jake" Jacobson, Chapter Member

Esquire magazine used to have a column called the "Indefensible Position" which each month advocated on behalf of otherwise unpopular positions/activities including talking loudly on cell phones and smoking. A hospitality suite discussion at the Texas AFCC conference inspired the author to attempt to defend this, at least that night, unpopular position.

The reader should assume a humorous or compassionate motive anytime that arrogance or sexism is suspected. [© -ed.]

There are a number of reasons why custody evaluators think we should write a short report, and most of them, I believe, are faulty. As a cognitive therapist, it is my ethical obligation to point that out and offer a more functional belief system [reader-

remember your instructions]. There also are a number of things that one must do differently to write a long report that is also a good report. I will offer my suggestions at each turn.

The first myth to debunk is that a report has the singular function of advising the court. There are rare instances where that is true, and those evaluators, confident in their reader's background,

knowledge base, and preferences (or pessimistic about their caseload or budget) should continue to write brief reports. For the rest of us, reports serve multiple functions, in addition to advising the court.

One of the assumed goals of this evaluator is to increase the likelihood that the two parties are going to once

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teaching career for three decades have focused on child and family adjustment to divorce, custody and access issues, child development, divorce and custody mediation and parenting coordination. She has published 75 articles and chapters in these areas of interest and is the co-author of Surviving the Breakup: How Children and Parents Cope with Divorce. Dr. Kelly has been honored for her work with many awards including the distinguished mediator award from the academy of family mediators, fellow of the American Psychological Association and the Stanley Cohen Distinguished Research and Meyer Elkin awards from AFCC.

Dr. Chet Muklewicz is a psychologist from Pennsylvania who maintains a private practice providing couples with counseling, family therapy for divorcing families, divorce adjustment therapy for children and adults, child custody mediation, custody evaluation and post divorce co-parent coordination. Dr. Muklewicz provides training to legal and mental health professional throughout the United States. Over 10,000 parents have attended his educational program which he developed for divorcing families called “kid’s First” and he is the author of “Kids First: Children Coping with Divorce and Family Conflict”. He is also the co-author of the “Parenting Plan” workbook called “Kid’s First Parenting Plan: A Child Care Planning Guide for Separating and Divorcing Families”. Dr. Muklewicz established and has maintained the “Kid’s First” program in Pennsylvania for over 10 years which provides mandated training to divorcing families. He is an excellent speaker and has wonderful ideas on how to reduce conflict.

I hope all of you will mark your calendars and plan to attend. We have obtained a very low cost rate at the Crown Plaza hotel in the amount of \$88.00 per night and the conference itself will be at a reasonable rate as compared to other continuing education programs. Please feel free to call or email me for more information.

On another matter regarding the statewide AFCC chapter, we have successfully defended criticism on the parenting coordination statute, which AFCC assisted in formulating last year that was passed by the Texas Legislature. The Family Law section of the State Bar wanted to either do away with the statute or significantly neutralize the intent of the statute. We have been successful as an organization in speaking to the section members in obtaining their cooperation and support for the concept of parenting coordination which will only improve the statute. The statute will be moved to a different section of the Family Code that provides for remedies for high conflict families and will be presented as an alternate dispute resolution procedure. The parenting coordinator role will continue to have immunity from testimony. Again, please feel free to call or email me with questions about this legislation.

Sincerely,

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again (or for the first time) take control of their own lives, their own parenting and their family’s future. How could my report help them, or at least not hinder them from doing that?

To begin with, the parent would have to feel like they were heard. The written description of their account must be detailed enough that when they read it, they will feel like they “had their day in court.” Someone involved in the court system understood what they said. [Brief myth-busting: except for rare circumstances, the parent is going to read the report.]

In order to accomplish this, evaluators may have to change the way they write reports. One can’t sit down the night before and write it all, like a high school report on James Buchanan. It must be written as you go. After the first

interview with Mr. Smith, sit down with your interview notes and write up what Mr. Smith told you. Write Mr. Smith’s section in a way that makes Mr. Smith look his very best, but still presents him accurately. Next, let Mr. Smith proofread “his” section and make corrections and suggestions. The corollary benefit to this is Mr. Smith knows you got “all” of the story. If it’s not mentioned in your report, he thinks you just forgot, or worse, didn’t care about the time she smashed the window. In the end, regardless of your recommendation, Mr. Smith knows you heard him. He feels like he “had his day in court.”

Which probably points out another change in the report. Not only will the report be well organized, as it is now [*remember*], there will also be a section that is purely Mr.

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Smith’s section and has no data from other sources. That “mean old” Mrs. Smith’s views (according to Mr. Smith) will be in her section, in which Mr. Smith will probably be characterized in similarly complimentary terms. Collaterals, witnesses, testing and other data will not intrude on Mr. Smith’s reality. Most importantly, the opinion and commentary of the wise evaluator will be withheld, banned to the final pages of the report.

The advantage of separating evaluator opinion and recommendations from the data, and including all the data, is that we don’t have to pretend to be “all wise,” on days when we don’t feel omniscient. In essence, we are saying, “Your honor, here is everything I saw and heard. Based on that, and based on this research over here, and unless you have a better idea, I would recommend...” We’re giving everyone the opportunity to look over our shoulder and proofread our work. That’s important. Frankly, we’re discussing rearranging a child’s family and “the more eyes, the better.”

Writing the report “as you go” also offers the advantage of a product that is more neutral in tone. There are some cases that are “slam-dunk” obvious. But most of them really hinge on much finer and nuanced issues. If I wait until I have my recommendations in mind to write my report, I am going to shade my report toward my recommendations, because I prefer certainty when making recommendations that will forever impact a child’s life. The problem with this “shading” is that it is relatively invisible when we are writing, but much more obvious when read by another party. Writing as you go renders the data sections, such as what Mrs. Smith said, relatively neutral which leaves the evaluator, appropriately, with the often anxious task of having to thoroughly explain the basis of any recommendations made, which may rest on minor distinctions.

Another audience for your report is each party’s attorney. I think we sometimes forget how little they may know about the case. Their client doesn’t objectively report to them, so their view of the case, upon which they are advising their client, is largely the client’s view of the case. There are so many cases where in the initial interview I believe I have met a highly functioning parent - until I interview the other parent and hear the rest of the story (and see the pictures). I think that’s sometimes the experience of attorneys. Our reports need to include all the data so that attorneys can adequately advise their clients about both their legal options and the temperament of the court.

The evaluator’s analysis, opinion and recommendations should appear at the end of the report. This is our section and there are a number of things we want to accomplish. Some of those things, I will argue, are even more important than the recommendations.

These parents, with the exception of termination cases, are

going to be the parents of these children for the rest of their lives. This is the most important document they may ever read. Take the opportunity to educate them. Help them prioritize their children’s needs above their own. Help them to see that a meaningful relationship with the other parent is more important than the quality of the flooring in that parent’s home. To accomplish this, the final section of the report will identify important issues and explain why other issues are weighed so little by the evaluator.

To further assist the parents, this section has to address their perspectives as compassionately as possible: “The evaluator sympathizes that Dad has to use bleach in the laundry, but dirty socks are a low cost for frequent contact with Mom.” This compassion is not just sugar to make the medicine go down. We are also role modeling to these conflict ridden people how to respectfully disagree, how to take perspective, and how to act with compassion.

Since this is our section, it also gives us the opportunity to clearly connect our recommendations to: a) each of the important issues related to the child’s well-being, b) the data contained in our report, and c) the related research. We are role modeling to the parents that their parental decisions should be based on some semblance of rational thought, and not on emotional marital baggage.

When crafting recommendations, the evaluator should explain what they hope that those specific recommendations will accomplish. We should also take the time to explain that since the licensing board banned the use of crystal balls, our recommendation is just one possible way to attempt to accomplish those goals. Implicitly or explicitly, we are expressing hope that the parents might generate a better solution, without the assistance of the court. This paves the way for agreed parenting plans that are supported by both parties, which are more likely to endure than those imposed by the courts. It is only when the parents fail at this final task that our stated reason, “to advise the court” even comes into play.

We are also sometimes educating the court and counsel, for that dark day when these parents abdicate their responsibility and ask the court to decide. Particularly in counties without specialized family courts (which is the case where I practice), keeping up with the latest child custody research can’t be a high priority. At least it wouldn’t be for me if I knew I had to hear a death sentence capital murder trial next week.

Finally, implicit in all of this is that evaluators need to add to their long list of qualifications (knowledge of the research, knowledge of the law, investigative procedures, interview techniques, etc, ad naseum) the ability to write well, to tell the story and keep the readers reading. Anyone remember how to conjugate a hanging participle? Me neither.

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FAQs

They don't want to read a long report.

That's not a question, but I'll guess at your concern. The faulty thinking is that all of the report is for all of the people. Different people will need different parts of the report at different times. A Table of Contents will help each find their way. While the parents and the attorneys will be interested in reading what you saw and heard, the judge can simply turn to the last ten pages, which basically contain all of what used to be in your old short reports.

Better, now if they have questions about your opinion, they can easily turn to the body of the report and review the data themselves. When people complain about long reports, I suspect their true complaint is that it took a long time to find the important information. Within each section we can also use headers so that everyone can quickly find the information they are seeking. [This article was so rambling, I couldn't figure out where to put headers.]

How can I afford to spend that much time on a case?

You'll have to either bill by the hour or raise your standard fee. In perspective, however, this long report is less likely

to lead to litigation, which will cost the family more money than I'll earn in ten reports. If, after a short misunderstood report, they have to pay the evaluator to testify, the family will likely end up paying what they would have for a long report.

Why do grade-schoolers have to diagram sentences?

To make them better report writers when they become evaluators.

Can a report be too long?

Probably. A report is too long if there is information in it that no reader is interested in and relates in no way to the best interest of the children, both of which are really content, not length, issues. But those two characteristics can exist in a seven page report as well. Lengthy reports that are poorly organized are often mis-characterized as "too long."

What's a long report?

39 pages. Exactly.

Jake Jacobson, LCSW writes his indefensible positions from Denton County, Texas.

Have an opinion or practice insight that you would like to share with your fellow Family Law professionals? Something going on in your neck of the woods that you want to share with the rest of us?

Please let us know! Email us at:

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