



Achieving Better Custody Outcomes

April 27, 2016

6:00 p.m. - 8:00 p.m.

CBA Law Center

New Britain, CT

CT Bar Institute, Inc.

CLE Credit 2.0 Hours

As a lawyer I must strive to make our system of justice work fairly and efficiently. In order to carry out that responsibility, not only will I comply with the letter and spirit of the disciplinary standards applicable to all lawyers, but I will also conduct myself in accordance with the following Principles of Professionalism when dealing with my client, opposing parties, their counsel, the courts and the general public.

Civility and courtesy are the hallmarks of professionalism and should not be equated with weakness;

I will endeavor to be courteous and civil, both in oral and in written communications;

I will not knowingly make statements of fact or of law that are untrue;

I will agree to reasonable requests for extensions of time or for waiver of procedural formalities when the legitimate interests of my client will not be adversely affected;

I will refrain from causing unreasonable delays;

I will endeavor to consult with opposing counsel before scheduling depositions and meetings and before rescheduling hearings, and I will cooperate with opposing counsel when scheduling changes are requested;

When scheduled hearings or depositions have to be canceled, I will notify opposing counsel, and if appropriate, the court (or other tribunal) as early as possible;

Before dates for hearings or trials are set, or if that is not feasible, immediately after such dates have been set, I will attempt to verify the availability of key participants and witnesses so that I can promptly notify the court (or other tribunal) and opposing counsel of any likely problem in that regard;

I will refrain from utilizing litigation or any other course of conduct to harass the opposing party;

I will refrain from engaging in excessive and abusive discovery, and I will comply with all reasonable discovery requests;

In depositions and other proceedings, and in negotiations, I will conduct myself with dignity, avoid making groundless objections and refrain from engaging in acts of rudeness or disrespect;

I will not serve motions and pleadings on the other party or counsel at such time or in such manner as will unfairly limit the other party's opportunity to respond;

In business transactions I will not quarrel over matters of form or style, but will concentrate on matters of substance and content;

I will be a vigorous and zealous advocate on behalf of my client, while recognizing, as an officer of the court, that excessive zeal may be detrimental to my client's interests as well as to the proper functioning of our system of justice;

While I must consider my client's decision concerning the objectives of the representation, I nevertheless will counsel my client that a willingness to initiate or engage in settlement discussions is consistent with zealous and effective representation;

Where consistent with my client's interests, I will communicate with opposing counsel in an effort to avoid litigation and to resolve litigation that has actually commenced;

I will withdraw voluntarily claims or defense when it becomes apparent that they do not have merit or are superfluous;

I will not file frivolous motions;

I will make every effort to agree with other counsel, as early as possible, on a voluntary exchange of information and on a plan for discovery;

I will attempt to resolve, by agreement, my objections to matters contained in my opponent's pleadings and discovery requests;

In civil matters, I will stipulate to facts as to which there is no genuine dispute;

I will endeavor to be punctual in attending court hearings, conferences, meetings and depositions;

I will at all times be candid with the court and its personnel;

I will remember that, in addition to commitment to my client's cause, my responsibilities as a lawyer include a devotion to the public good;

I will endeavor to keep myself current in the areas in which I practice and when necessary, will associate with, or refer my client to, counsel knowledgeable in another field of practice;

I will be mindful of the fact that, as a member of a self-regulating profession, it is incumbent on me to report violations by fellow lawyers as required by the Rules of Professional Conduct;

I will be mindful of the need to protect the image of the legal profession in the eyes of the public and will be so guided when considering methods and content of advertising;

I will be mindful that the law is a learned profession and that among its desirable goals are devotion to public service, improvement of administration of justice, and the contribution of uncompensated time and civic influence on behalf of those persons who cannot afford adequate legal assistance;

I will endeavor to ensure that all persons, regardless of race, age, gender, disability, national origin, religion, sexual orientation, color, or creed receive fair and equal treatment under the law, and will always conduct myself in such a way as to promote equality and justice for all.

It is understood that nothing in these Principles shall be deemed to supersede, supplement or in any way amend the Rules of Professional Conduct, alter existing standards of conduct against which lawyer conduct might be judged or become a basis for the imposition of civil liability of any kind.

--Adopted by the Connecticut Bar Association House of Delegates on June 6, 1994

Faculty Biographies

Drs. Eric Frazer and Linda Smith are forensic psychologists with more than two decades of expertise in child custody matters. Through past and current academic appointments at Harvard Medical School, Tufts University Medical Center, and Yale University School of Medicine, we understand the important contributions psychological research brings to family law practices. Drs. Frazer and Smith have been invited as national and local speakers for their child custody expertise. Audiences have included family lawyers, AAML fellows, ABA Family Law Section, family court judges, and divorcing parents. As consulting and testimonial experts, they have been retained to assist with international and U.S. based contested custody cases on matters involving relocation, Hague Convention, parental alienation, addiction, and many more psychological topics.

Samuel V. Schoonmaker, IV is the founding member of The Schoonmaker Legal Group, LLC in Stamford, Connecticut, a law firm dedicated to the practice of appellate and family law. From 1996 through March 2007 he worked at Schoonmaker, George & Colin in Greenwich, where he was a partner handling complex financial, custody and appellate matters. Before then he was a litigation associate at Day, Berry & Howard.

Sam developed the CBA's multimedia legal education programs known as *Practice Tips* and *Case Flash*. He created and serves as editor-in-chief of *Appellate Preview* and *Family Law Alert*. He is the CLE chair the CBA Family Law Section, served on the faculty of the CBA's Appellate Advocacy Institute in 2012 and 2016, and is on the adjunct faculty at UConn. He has published many articles.

He has served as CLE co-chair for the ABA Family Law Section, as its financial officer, as the ABA liaison to the Uniform Law Commission's JEB on Uniform Family Laws, and on the board of editors of the *Family Law Quarterly*. Sam graduated from Yale College, Cambridge University, and Columbia University School of Law.



CHILD CUSTODY ANALYTICS

TOP PSYCHOLOGICAL RESEARCH TRENDS: STAYING AHEAD, BETTER OUTCOMES IN FAMILY LAW CASES

PREPARED FOR CBA-YOUNG LAWYER SECTION
APRIL 27, 2016

Time Magazine's August 3, 2015 article titled "The Good Divorce" summed up the trend in our country's thinking regarding how today's divorcing parents want their divorce managed. There is an emphasis on preserving parental relationships and avoiding the time, cost, and emotional wear of litigation on themselves and their children. In the triad of divorce expertise: law, finance, and psychology, this is a call to action to be more responsive to the 'family' aspects of family law.

Even though each family is unique, there are ubiquitous virtues that each family is seeking from the professionals who shepherd them through their "good divorce". One quality they are seeking is that family law professionals are informed about psychological issues. In the Information Age in which everyone is an expert, clients will do their own research and challenge information presented to them. Therefore, the information you present needs to be up to date and it needs to be right. Clients want to be assured that the guidance they are receiving on overnights, relocation, addiction concerns, special needs children, etc. is truly expert information. Providing solutions and answers to your clients will strengthen trust and will enhance your value as not only a family law service business, but also as a knowledge business.

In order for professional services to survive in this knowledge economy, they must stay ahead by offering tangible value to the client with case-specific, high quality information. This keeps clients happy and builds one's reputation as a thought leader. With fewer cases litigating and

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even less going to trial, there is a new approach to using expert psychological information proactively. With few exceptions, gone are the days of litigation preparation with experts. With today's technology, you have your own expert at your fingertips. This leveraging of expert information allows family lawyers to create a "good divorce" workflow seeded with high quality psychological information for client intake, pendente lite agreements, client education, and case management. For those fewer 'bad divorces', you will already be substantially prepared on the psychological issues for trial.

Domestic Violence & Case Management

Finding: The neuroscience research points to early trauma impact on the brain, including deficits in regions, structures, and neurotransmitters. These vulnerabilities carry through the life-span and later manifest as emotional regulation deficits, personality dysfunction, and elevated risk for behavioral dyscontrol. These attributes are all associated with IPV perpetration.

Application: For an attorney involved in a case with domestic violence allegations, a practical application of this science includes referring the alleged perpetrator to a standard IPV program **AND** also referring them to individual psychotherapy with a therapist who specializes in emotional regulation treatment. This additional therapist *may not specialize in domestic violence treatment*. This supplementary treatment will then address some of the core issues of domestic violence: 1) trauma exposure; 2) emotional dysregulation; 3) personality and interpersonal deficits.

Treatment Planning/Case Management: To ensure that the client is properly routed into an appropriate treatment, the following treatment parameters should be considered:

- The client will engage in IPV or Batterer treatment at _____. S/he will complete the entire program.

- The client will also engage in individual therapy with a therapist who will work on the following treatment goals:
 - A) Review client's own trauma history.
 - B) Improve emotional regulation, with a focus on cognitive and behavioral strategies.
 - C) Treat any personality features that contribute to perpetration of intimate partner violence.
 - D) Increase interpersonal skills, with a focus on improved empathy and sensitivity, resolution of conflict, and improved decision making and judgment.

Citation: An Expanded Approach to Batterer Intervention Programs Incorporating Neuroscience Research; Siegel, J. in Trauma, Violence, & Abuse, December 2013 Publisher: Sage Publications

Substance Abuse & Client Intake

Finding: The frequency of drinking larger-than-usual quantities in a day (e.g., binge drinking, getting intoxicated) was a distinguishing risk factor for an Alcohol Use Disorder (AUD) across all levels of drinking (i.e., low, moderate, and high).

Finding: For women, when drinking did not exceed an average of 1 drink/day and 3 drinks in a single session over a year, the associated 12 month risk for an AUD was less than 10%. For men, when drinking did not exceed an average of 1 drink/day and the quantities never exceeded 4 drinks in a single session over a year, the associated 12 month risk for an AUD was less than 10%.

Application: When interviewing a client around their alcohol intake and their partner's alcohol intake, it is important to ask not only about the average daily intake, but also about any heavy drinking episodes—this is a critical question to ask.

Client Intake: To gather more valuable information about substance use/misuse by your client, the following questions may be helpful:

- 1) When did you start drinking alcohol? [Earlier start date for drinking is a high risk factor.]
- 2) Is there any type of alcohol abuse in your family (e.g., excessive drinking, alcohol treatment, family member in recovery)? [Family history of alcohol abuse/alcoholism is a high risk factor.]
- 3) In a typical week how much alcohol do you consume daily? Weekly? [If the number of drinks exceeds 7 for women or 14 for men, this is a high risk factor]
- 4) Have you hidden alcohol around the home or in your car? [Concealing alcohol is a symptom of alcohol abuse].
- 5) Has anyone else ever voiced concern about your drinking? [An individual expressing concern about their alcohol use is a symptom. If the only individual to express concern is their spouse, review when this concern arose. If it occurred significantly prior to separation, then this is a risk].
- 6) Have there been any times when you drank a lot in one day/night, more than you typically do? How often did that happen? [If your client reports any “binge drinking”, this is a high risk factor.]
- 7) Have you ever driven while intoxicated? [This is a symptom/risk factor associated with alcohol abuse.]
 - If yes, were the children ever in the vehicle?
 - If yes, was there ever an arrest for a DUI?

- 8) Have you ever been arrested while under the influence of alcohol? [This is a symptom/risk factor associated with alcohol abuse.]
- 9) Have you ever “blacked out” (i.e., not remembered what happened when they were dinking)? [This is a symptom of alcohol abuse.]
- 10) Have you made any attempts to quit or cut down using alcohol in the past? What happened? Did you return to drinking? [Unsuccessful attempts to cut down or quit drinking are symptoms of alcohol abuse.]

Citation: Risks of Alcohol Use Disorders Related to Drinking Patterns in the U.S. General Population, Thomas K. Greenfield; Yu Ye; Jason Bond; William C. Kerr; Madhabika B. Nayak; Lee Ann Kaskutas; Raymond F. Anton; Raye Z. Litten; Henry R. Kranzler in Journal of Studies on Alcohol and Drugs, May 2014 Publisher: Alcohol Research Documentation

Child Sexual Abuse Allegations & Discovery

Findings: When children provided information about a sexual abuse allegation, it mostly came from parents’ leading and suggestive questions. Parents did not realize they used suggestive questions in recorded interviews with children. In 70% of the cases, event related information came from the parents, not the children.

Application: As an attorney representing either client in a sexual abuse/custody matter, one should be cautious about how much a parent may have unknowingly influenced the child’s report. This influence also may occur due to malicious intent. The questions below provide strategic guidance around this inquiry. A forensic evaluation of the child/family is often used when these allegations emerge, and specific referral questions should be drafted to bring resolution to the matter if possible.

Discovery: Here's a procedural guide to review any recordings, police/social service reports, affidavits, etc. to quantify recorded interview information:

- How did the child first present the information to the parent?
- How many times has the parent interviewed (with and without recording) the child about the event? (The greater the number of discussions/interviews, the greater the likelihood of contamination.)
- Does the parent provide positive or negative feedback to the child's statements? "I'm glad you told me that," or "You told me more information about what ____ did to you earlier."
- How many times (what percentage of total questions) did the parent use open-ended questions?
- How many times (what percentage of total questions) is the parent's question leading or suggestive?
- How many times does the child offer spontaneous new information?
- How many times does the parent present new information to the child?

Citation: Who Made The Disclosure? Recorded Discussions Between Children And Caretakers Suspecting Child Abuse; Korkman, Julia; Juusola, Aino; Santtila, Pekka in Psychology, Crime & Law, November 2014 Publisher: Taylor & Francis

Co-Parenting & Client Education

Finding: Mothers perceive themselves as "captains" and decision makers of the co-parenting team regarding inclusion or exclusion of stepparents.

Application: When clients present to their family attorney with blended family concerns, this study offers several insights to assist your client. Educating your client about what they can do proactively is a key opportunity to guide your client and manage a favorable outcome for your

clients' transition into a blended family. Whether you represent the mother or father, here is a checklist to orient the conversation about what “works best”.

Client Education: Parents struggle with the decision of introducing and involving new partners. Several client tips can be derived from this study to help families transition into blended family systems with stepparents:

1. The parents should agree that they, not the stepparent, will be the decision maker and active parent during parenting time.
2. Acceptance and involvement of stepparents is a gradual process that can improve over time. This can likely take years, not months. Parents should be guided with realistic expectations about this transition.
3. If there is poor co-parenting, the parents should engage in co-parenting therapy to establish a healthy and more trustful co-parenting relationship.
4. One potential bias is that mothers may be more rigid and non-accepting with stepmothers, and be more relaxed and inclusive with stepfathers. Disagreements, specifically over discipline and child rearing, are recommended to remain exclusively managed by the parents.
5. Fathers introducing a new “stepmother” can facilitate a better outcome by being involved, maintaining a prominent role as decision maker, and by keeping his new partner as a “secondary support.” Fathers should know that trust of the stepmother will be earned gradually by the mother, and the children’s perceptions of their stepmother will be listened to consistently.
6. When there is doubt about the very first step of new partner introduction, the parents can be referred to a co-parenting therapist to decide the pragmatics (e.g., how it will be done, how the children will be informed, what the children will call the new step-parent, etc.)

Citation: Divorced Mothers’ Coparental Boundary Maintenance After Parents Repartner
 Ganong L.; Coleman M.; Jamison T.; Feistman R. in *Journal of Family Psychology*, June 2015
 Publisher: American Psychological Association

Visitation Refusal & Case Management

Finding: Cognitive-Behavioral Therapy may be a helpful treatment approach for parent-child reunification cases. This article describes the techniques that can be helpful to identify a proper treatment and therapist.

Application: Visitation/access refusal is one of the most difficult family court issues to address legally and therapeutically. If you have a case where a child is refusing access with a parent, it is critical that the family be routed into an optimal treatment intervention with an experienced therapist. These families often do not have multiple chances to get it right. This article provides solid guidelines to help make the proper referral.

Case Management: Visitation refusal can emanate from legitimate reasons (e.g., being abused by a parent, not having had contact with a parent in a very long time). However, visitation refusal can also be an outcome of parental alienation. Here are several checklist items that could suggest the presence of parental alienation:

In Court

- Allegations of abuse or domestic violence
- Motions to restrict or limit access
- Previous or current police involvement at transitions

Contextual Factors

- Betrayal or infidelity in the marriage
- High conflict
- Allegations of domestic violence or psychological [emotional] control

Alienating Parent

- Defends the child's negative perceptions of the rejected parent
- Acts in an inflexible and rigid manner
- Believes the child should be in charge of decisions about access

Rejected Parent

- Complains the child is resisting parenting time/communication
- Complains the child is being “turned/brainwashed” against them
- Complains the child has excessive adult/court information

Alienated Child

- Child has “All Good” and “All Bad” thinking about their parents
- Child has no legitimate reason to reject parenting time
- Child’s reactions to the situation are disproportionate

Citation: Cognitive-Behavioral Methods In High Conflict Divorce: Systematic Desensitization Adapted To Parent-Child Reunification Interventions, Garber, Benjamin D. in Family Court Review, January 2015 Publisher: Wiley

The New Era of Family Law



On January 8, 2016, the ABA Law Journal featured an article titled, "100 Innovations in Law". The article began with 3 words:

Law Is Change.

Do you remember the childhood game, "Take two giant steps"? If you play along now and take two giant steps away from your daily practice of family law, you will see serious change happening in every industry.

Why is this change happening?

How will this change happen?

The answer to both of these questions is technology.

Technology is putting pressure on every industry and every business to change. The way they will change is by incorporating technology.

Technology is the problem, but it is also the solution.

Your competitors, local attorneys and online legal businesses are investing in technology and using it every day. If you are not using technology to advance your firm, you are falling behind much quicker than you think.

Why?

Because technology power doubles every two years [Moore's Law]. That is a huge increase in power. At this rate, flying vehicles really may be in our future very soon.

Technology creates efficiency, opportunity, and revenue. It is probably one of the only costs in your budget that both expands profits and saves costs. This is why most lawyers are expanding their technology budget every year.



Your Clients & Technology

Client expectations
and client control will
continue to be the most
significant challenge
for family lawyers in the
next decade.

It's normal not to like all of this technology change. The Internet has really only been around 15 years. Social media, websites, e-mail, etc. have been around much less. At a recent family law conference we heard a seasoned successful lawyer tell someone, "I don't ping!" But what do you do if your customers do "ping" and expect you to "ping"? Every day we hear clients telling us how they incessantly try calling, e-mailing, and texting their attorneys with various problems and questions. We hear attorneys asking how they can gain better control over that behavior since it makes their job as a family lawyer even more difficult. Being pinged is not enjoyable.

The Internet has changed everything, and that includes family law. Before the Internet, family lawyers had all of the authority, expertise, and information. However, now clients have the Internet. We are now living and working in a new era. You can call it, "The do it yourself era" or the "Everyone is an expert" era. Regardless of what title you choose, you can easily see the point.

Clients now go to the Internet for everything. This even includes a medical diagnosis. Nothing is beyond the Internet. So now clients come in with a much greater knowledgebase than clients of years past. They have usable information, or at least they think they do. This information then guides their decision making in their legal matter. Somehow, the Internet became the expert.

The problem is that many clients generally have inaccurate or outdated information, but they don't know that. They found it on the Internet, so it is placed on your desk and they expect you to consider it authoritative. That's a frustrating and largely unproductive experience. Someone has to be in charge and be the legitimate authority.

Technology As A Virtual Psychological Expert



So what do you do when your clients have financial or child custody questions or problems? How can you be an authority in those areas when you don't have a Finance degree and you don't have a Ph.D. in Psychology. No one on your staff does either.

What are your options?

When it comes to finance, that is easy. Most lawyers use financial software to answer their client's financial questions and to create a financial framework for the family. Financial experts are brought onto a case when there are highly complex issues.

However, what are your options with child custody and ever-present psychological issues?

In the past, there really weren't any options. The only cases that benefited from psychological expertise were the complex ones that could afford an expert. However, even on those cases, most of the expertise came at the end of the case, much later than it was needed for the lawyer and for the lawyer's client.

Given that every divorce with children has psychological issues, attorneys need to be able to provide solutions and answer questions regarding children and families, psychological issues, and child custody. If family lawyers don't have these answers, then clients will search for answers on the Internet. Unfortunately, the Internet is not the one who ultimately needs to stand in Court with the client or is the one ultimately responsible for the client's case.

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Litigants want their lawyers to be experts in everything, but this is especially true in finance and child custody.

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This is what clients care most about, their money and their children.

Use technology to be the expert, the counselor at law, they want you to be. This is the one major advantage that family lawyers have over the burgeoning online legal businesses that are everywhere. If you want to keep your market share of family law cases, use technology as a collaborator. Otherwise, Google, IBM, Rocket Lawyer and all the other technology businesses out there will gladly come in as a competitor and take over. Some already have a big head start.

Child Custody Analytics is your online child custody solution.



We are here to collaborate with you as a technology partner. We can help on all of your family law cases that include children. This doesn't just mean the complex, contested ones when you need an expert. Through technology, we can be with you every step of the way from intake to case closure on every case that includes children. You will finally have the experience of feeling like you have a Ph.D. "on staff", even if that means virtual.

When it comes to child custody, we will:

- Save you time.
- Make you efficient.
- Increase your revenue.
- Improve your client control.
- Expand your knowledgebase.
- Be available 24/7

"Law is Change."

The time to take action is now.