#16

AFCC-CA NEWSLETTER

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California Newsletter

AFCC-CA President's Message

Michele Brown, CFLS
President of AFCC-CA

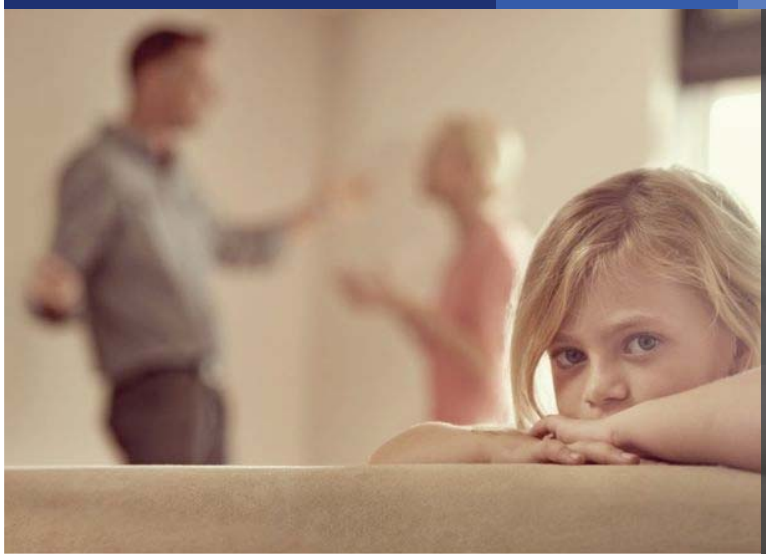
Fellow AFCC- CA members.

It is a great honor for me to be elected as President of the California Chapter of AFCC. We have an exciting two years ahead of us and I want to give you a glimpse of some of the coming attractions, introduce you to the fantastic board members that AFCC-CA members have supporting us in creating a dynamic Chapter, and congratulate the AFCC-CA 2018 conference committee for a conference that was second to none.

It is a privilege for me to introduce you to your 2018-2019 Board of Directors and Officers for AFCC-CA. We have a well-rounded board comprised of Judicial Officers, Mental Health professionals and lawyers.

The Officers of the Board have already demonstrated great leadership skills and I am proud to introduce you to them. We are extremely fortunate to have the Honorable Mark A. Juhas, Family Law Judge in Los Angeles Superior Court and a frequent speaker at AFCC-CA and AFCC- National conferences, ACFLS Spring Seminar and the Family Law Section of the CLA, as President Elect. Judge Juhas takes ideas and turns them into action. He is also an active member of the legislation committee. Frank Davis, Ph.D., a dedicated child custody evaluator from Berkeley, is our energetic Vice-President, full of ideas to bring AFCC-CA into the 21st century and has been leading our mentor committee. Our new Secretary, Shane Ford, is a well-respected Certified Family Law Specialist and fellow in the American Academy of Matrimonial Lawyers, from the San Francisco Bay area, who did a phenomenal job as co-chair of the AFCC-CA 2018 conference. Check out Shane's impeccable minutes on our website to see what projects your Board members are working on this year. Diane Wasznicky, past president of AFCC-CA and past president of the Association of Certified Family Law Specialists (ACFLS), is a well-respected Certified Family Law Specialist from the Sacramento area, and she is our Treasurer and chair of the Legislation committee. Immediate Past President, Mike Kretzmer, Certified Family Law Specialist and fellow in the American Academy of Matrimonial Lawyers from the Los Angeles area, has been a great source of answers to my myriad of questions—and I know he will continue to be a sounding board for me for the next two years. This group of amazing individuals rounds out the Officers for AFCC-CA.

The Officers rely heavily on the incredibly talented and hard-working board members of AFCC-CA. The Honorable Harvey A.



Managing Special Needs Issues in Child Custody Disputes Practical Strategies in Changing Times

Lyn R. Greenberg, Ph.D., ABPP
Hon. Robert Schnider (Ret.)

Disputes regarding children with special needs are becoming increasingly common in child custody cases. Disagreements about the child's care and needs may be presented to the court as urgent matters or in fragmented form, with the suggestion that one parent must be marginalized in order for the child to receive necessary services. In other cases, parental conflict may risk harming the child by delaying services that are time sensitive or urgently needed. External providers unfamiliar with the court may become aligned with one parent based on partial information, complicating attempts to understand the problem and reach decisions.

At the height of conflict, decisions are often presented in simplistic terms. One parent is presented as advocating for the child's needs, while the other is presented as being "in denial." When a child has a heart condition or a severe developmental disorder, issues may be clearer and easier to resolve. When diagnoses are less clear and symptoms more subject to interpretation, differences between parents are often more complex. Given court's limited resources and time stressors, it is frequently tempting for the court to give one parent full or primary authority over selecting and arranging services for the child. Such arrangements can have the appeal of simplicity, efficiency, and apparent reduction of conflict, but create risks of marginalizing a parent, reducing consistency in the child's environment and treatment, increasing resentment and denying the child of emotional and parenting resources that both parents can provide. In some cases, conflict is simply relocated to other venues or to the family's daily life.

We propose here some methods for management of these cases that may promote parental cooperation and more prompt intervention for the child, manage conflict, or help differentiate between cases in which coparenting is possible and situations in which one parent must be given authority. This information may be useful for selecting professionals and services and/or presenting to the court indications that shared decision making isn't possible.

Defining Terms and Categories.
Children with special needs include those with developmental, medical, social, psychological, and behavioral issues which require special services or adaptations in the child's family, social, or educational life. These comprise a dizzying array of conditions with a wide range of severity and impact on the child. Children with more serious problems may require intensive, costly interventions, advocacy for services, and other attention from parents that increase family stress and lead to an increased risk of family disruption and divorce. Children with milder conditions may function fairly well until the stress of the parents' separation, at which time the child's symptoms, or parental reports of symptoms, may increase. Some parents are relatively united about care for the child until they separate, while in other families, disputes about the child's condition and needs predate or even precipitate the divorce. All of these dynamics exist against the common background of mistrust and conflict that characterize separating families.

Special needs children may receive services from a variety of other professionals who are often unfamiliar with the dynamics of divorce. Impressions about the child may be formed based on incomplete or one-sided information from parents who race one another to be the first to talk with the professional. Parents may label one another as overreacting, infantilizing the child, using the child's alleged diagnosis to marginalize the other parent, incompetence, denial of the child's needs, or co-opting professionals before the other parent can have input. Language used by external professionals may translate poorly to the family court. For example, a teacher's recommendation that a child "have consistency" may be presented to the court as a recommendation that the

Special Needs cont. from page 4)

child reside in only one home, when what the child actually needs is consistent rules or homework procedures. Sometimes that requires a single home during the school week, while in other cases consistency is enhanced by giving each parent a break from parenting demands.

Similarly, orders that give one parent primary authority, with a requirement that the other parent be consulted, do not always work out as intended by the Court – particularly if there is no one to enforce the requirement of consultation or to ensure that it is meaningful. The result may be poorer quality decisions, marginalization of a parent, poor cooperation with treatment plans, and placing the child at the center of conflict.

How Much Do They Need to Agree? Pickar and Kaufman (2015) have developed a risk assessment model for determining parenting plans, particularly when the child's special needs are severe or create acute risks to the child's safety. They have also discussed how the dynamics of parental gatekeeping may manifest in these families *(Kaufman & Pickar, 2017)*. In their work and that of others, it is often suggested that parents must reach a "functional level of agreement" about the child's diagnosis and needs (*Kaufman and Pickar,* 2015, p. 196) in order for coparenting to be possible, and that this should indeed be a primary goal in early coparenting efforts. This may be a high hurdle for parents to overcome in the early stages of the divorce, when they agree on little and mistrust is high. If disagreement exists, a critical decision must be made as to whether to focus on an evaluation to establish a diagnosis that then guides treatment planning, or whether a focus on areas of agreement and functional cooperation may be more productive.

Certainly we agree that where safety risks are high (a child who runs away, engages in self-injuries behavior, or is at risk of suicide), a high degree of parental cooperation may be necessary. Many special needs children, however, exhibit milder behaviors subject to a variety of interpretations. In these cases, prioritizing one parent's perspective over the other may not be helpful to the child. The areas and criteria for agreement deserve closer scrutiny. Some of the strategies listed below are best implemented by a parenting coordinator, but the combination of a skilled family therapist and a supportive minor's counsel may also allow for either improvement for the child or clarified information to present to the court.

"Diagnosis" vs. Behavior. Some of the conditions that are the subject of the most parental controversy raise diagnostic disagreement outside of the family court as well. It is important to recognize that from the perspective of managing the child's problems, precise agreement on diagnosis isn't always possible or necessary. In exploring these issues, behavioral descriptions are more useful and more understandable to both parents and the court. For example, a child who is exhibiting hyperactivity, learning and behavioral challenges may have been impacted by a biological condition, an increase in school demands, distress about the parental separation, or all of these issues. Parents may be in dispute as to whether the child has Attention-Deficit-Hyperactivity-Disorder (ADHD), and whether the child could benefit from medication, but may be able to agree that the child is exhibiting learning difficulties, poor social skills, poor compliance with rules, or other problems. With help, they may be able to agree on initial behavior management strategies, such as procedures suggested by a teacher, as a way of both assisting the child and clarifying treatment needs. Similarly, parents who agree (or have been told) that their child is medically obese may disagree about the cause of the problem but be willing to follow a physician's or therapist's initial guidance for managing the condition. The same may be true of children who appear to fall somewhere on the autism spectrum, as parents may be able to initially commit to specific behavioral plans while discussion of the "labeling dispute" continues.

Parents may need professional assistance in disengaging from the diagnostic dispute, at least temporarily, to focus on problem behaviors. A family therapist consulting with the child's pediatrician can be effective in this area. It has been our experience that when parents are able to cooperate with early interventions, disagreements on other issues may narrow. For example, if both parents follow a behavioral plan but the child continues to struggle, parents may be more accepting of considering other interventions, such as medication or therapy. Experiencing success through cooperation may help parents be more open to considering one another's opinions about the child's diagnosis and treatment needs.

Selection of Treatment Providers, Assessment Processes. Few actions generate more suspicion in a parent than being excluded from consultation with a treatment provider. In some families, one parent may have assumed the primary role in such appointments before the separation and seeks services more out of habit than a desire to exclude. Some parents have historically been unavailable or passive about obtaining services. Some parents have personal issues that lead them to resist services for the child, including a personal history of the same problems that have been identified in the child. When these are issues in dispute, it is often critical to establish a structure for dealing with doctors, therapists, teachers and other professionals. Court orders requiring consultation between parents may be insufficient to promote both parents' information reaching the professionals. It may be necessary to establish a precise structure for consulting other professionals that

Special Needs cont. from page 4)

includes both parents' input and observations, with the parents bringing their perceptions back to a coparenting counselor, family therapist or parenting coordinator, who would also be able to contact the physician, teacher or other providers directly. A reality of these children's lives is that many providers may be involved, so the central mental health professional may need the ability to establish a collaborative team. In some cases, minor's counsel may be necessary to seek orders that will direct an evenhanded and orderly process and document parental communication through venues such as Our Family Wizard. Much information may also be gained by observing what happens when the structure is established. Do both parents attend meetings at the school? Do they follow through on speaking with doctors, attending parenting classes, communicating with one another, or participating in other interventions for the child?

Enhancing Parenting Abilities, Providing for Respite. In some families, one parent is clearly more knowledgeable and adept than the other parent in working with the special needs child. Kaufman and Pickar (2017)provide an excellent description of how these differences may impact on coparenting. Some of these differences reflect marked differences in parenting abilities, while a closer look at other families may reveal parents who each have attributes to offer the child but react in unproductive ways to their different orientations and knowledge. One parent may need to learn specific skills for managing the child's behavior, while the other may need to support independence and avoid micromanaging.

In many cases both parents are struggling, more than they are willing to admit to themselves or each other. Even children with less severe special needs may place high demands on parents' energy and emotional resources. (Pickar and Kaufman, in process.) Exhausted parents are rarely consistent or effective. Many providers and experts, outside of the family law system, strongly suggest that parents take opportunities for rest and respite while the child is in an organized activity or in someone else's care.

When parents are overwhelmed, it is easy to become consumed with managing therapeutic appointments and not consider the child's needs or abilities in terms of social and recreational development. Many special needs children, especially those with mild or moderate impairments, are fully capable of participating in structured peer activities and recreation. They may find strengths in some activities that bolster self-esteem and help the child establish critical and social abilities. Moreover, while one parent may have strengths in communicating with medical personnel, the other may have, or be able to develop, skills in finding recreation programs that will adapt to the child's needs and support the child's overall goals. While such activities may be of critical importance, they are easy to overlook when parents are fighting over other services. In addition to providing important resources for the child, these activities may provide important opportunities for respite and coparenting, or to address subtle "gatekeeping" issues that may impact the child. (Pickar and Kaufman, 2017; Austin and Greenberg, in process.)

The "art" for the parenting coordinator, coparenting counselor or family therapist is to encourage parents to develop a partnership and schedule that allows them to provide respite for one another and cooperate on issues such as taking children to therapy, activities or other appointments. Establishing a structure that involves each parent in the therapeutic regime, such as alternating in taking the child to appointments, may allow the therapist to have a more realistic appraisal of the family situation and help each parent to be more effective with the child. When conflict emerges that cannot be resolved without the court's assistance, it becomes important to clearly convey to the parents, and perhaps ultimately the court, the connection between the disputed issues and the child's developmental needs. The parenting coordinator or family therapist may also serve a critical function in ensuring the providers communicate and are not working at cross purposes. If sufficiently qualified minor's counsel are available, they may be helpful in bringing information to the court and promoting accountability.

How Much Can We Lead Them to Water? It is well established in psychology that experience with positive change can lead to changes in one's beliefs, which in turn can lead to more positive change. Even if parents do not change their beliefs, there are beneficial effects to reducing the child's exposure to conflict. But many conflicting parents will not take the first steps toward positive change, or place themselves in the position to experience what can work, without the external motivations associated with a legal process.

While parents must stipulate to a parenting coordinator, judges and jurisdictions differ widely on their interpretation of what other services the court can order. There is general agreement that the court can order counseling under Cal Fam Code §3190 for the purpose of improving communication and reducing conflict. Judges differ widely in their interpretation of that language, although in the second author's experience, most take an expansive view of the types of counseling they may order. They may also differ in their understanding of the scope of professionals' roles. This creates some hazards for MHPs, underscoring the importance of a careful informed consent process. MHPs must determine the scope of services and cooperation necessary to be effective. MHPs can articulate those expectations in draft

Special Needs cont. from page 4)

order or informed consent documents, which they should request be incorporated into any order regarding their services. While a full discussion of informed consent is beyond the scope of this article, it is useful to consider the provision of consent documents as a "conversation" between the potential provider, counsel and the court. Parties (or the court) can reject part of the language requested by the MHP, who must then determine whether he/she can ethically provide services within the scope of the modified document. This can seem a tedious and time consuming process, but is essential risk management. In addition, progress is more likely if everyone is clear on the terms of engagement and expectations. Sample order language is appended to the *AFCC Guidelines for Court Involved Therapy* (Association of Family and Conciliation Courts, 2010).

Judges can, of course, also motivate change through various formal and informal methods. More informally a judge can use the "bully pulpit" admonishing the parties of the negative consequences of their behavior, e.g. "If you continue this way you are going to destroy this child and bankrupt yourselves." While this can occasionally produce the desired results, more direct methods are more effective.

The court can establish goals for the child, setting expectations that the parents should meet when the case returns for a review. An example would be the completion and turning in of all homework assignments, by the child. Even more powerful is establishing expectations for parental behavior. The court can find that the time share or legal custody orders are specifically based on the court's expectation that each party will, for example, consult with the other prior to medical appointments or administering medication or enrolling in a group. Putting that finding on the record makes it clear that the failure to comply could be seen as a change of circumstances justifying a modification of the orders to the detriment of the party who did not comply.

Finally there are financial levers. A court can order that the parties split the AGREED costs of certain expenses, but if one party incurs the expense without obtaining agreement they would be fully responsible for that cost.

The recently concluded AFCC California Chapter Conference featured a Special Institute on this topic, *"Managing Special Needs Issues in the Context of Child Custody Disputes: Practical Strategies, Early Intervention" (Greenberg, Lopez, Gould-Saltman, 2018).* The interdisciplinary panel provided therapeutic and case management strategies, as well as suggestions for stipulations and orders governing services. Judges, attorneys, and mental health professionals in attendance discussed both the potential of this approach and difficulties that may be encountered in our current legal climate. In particularly high conflict cases, it may be difficult to find providers willing to care for these vulnerable children. Methods for reducing chaos, structuring information gathering, and maintaining community care and involvement for children were also discussed. Conditions in which minor's counsel may be helpful were also discussed.

While obstacles may be encountered to this or any other intervention, the potential for benefit is particularly high for children with special needs. These children may need prompt services and experience immediate benefit if parents can learn to cooperate with medical, educational and therapeutic professionals and engage logical decision-making to steps to help their child. Additional therapeutic applications can be found in Greenberg, Doi Fick and Schnider (2012, 2016).

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AFCC Guidelines for Court-Involved Therapy. (2010).

Retrieved from http://www.afccnet.org/Portals/0/PublicDocuments/CEFCP/Guidelines%20for%20Court%20Involved%20Therapy%20AFCC.pdf

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