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Family Law Section of The Florida Bar

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DONNA RICHARDSON, TALLAHASSEE — Design & Layout

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Articles and cover photos to be considered for publication may be submitted to
Anya Cintron Stern, Esq. (anya@anyacintronstern.legal), or Anastasia Garcia, Esq. (agarcia@anastasialaw.com), Co-Chairs of the Commentator.
MS Word format is preferred for documents, and jpeg images for photos.

ON THE COVER: Photograph courtesy Heather Apicella

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Message from the Chair

Abigail M. Beebe
2018-2019 Section Chair

Happy almost summer! As the Bar year comes to an end, this, my last Chair’s message for the Commentator, is to remind all members of the Family Law Section to focus on their health and wellness. With the Florida Bar’s initiative, this movement toward a healthier and more well-balanced lawyer is at the forefront of issues facing members of our profession and we need to be mindful of taking care of ourselves. Since the winter edition of the Commentator, the Section has enjoyed our In-State retreat at the beautiful Ocean Reef Club in Key Largo, Florida. Thank you to Co-Chairs Trish Armstrong, Heather Apicella and Michelle Klinger-Smith. This event was beyond amazing and all who attended agree!

As this year closes and I prepare to pass the Chair’s gavel to Chair-Elect Amy Hamlin, I want to share some thoughts, which I was lucky enough to hear raised and shared by Judge Krista Marx at the annual installation of the FAWL Palm Beach County board just recently in May 2019. Over the last several months in my Chair Messages in FAMSEG, some of these same thoughts, not quite as succinctly as Judge Marx, were discussed by me too. Judge Marx’s words have stayed with me since this luncheon and considering this edition of the Commentator rose out of the commitment of The Florida Bar and the Section to embrace Health and Wellness, it seemed ripe to share.

Looking back and reading some of the Chair’s messages shared in the Section’s electronic newsletter, FAMSEG, it dawned on me that essentially each message I share includes some hint of this concept of balancing health and wellness for ourselves, especially in this practice of “Marital and Family Law.” Judge Marx really hit it home when she spoke about “being ok with being Ordinary versus Extraordinary.” These words, for me, seemed to truly hit home across the board. I heard, loudly, a message that said “Stop trying to be perfect or do everything perfectly.” So many of us are type A personalities, over achievers and really bad at properly balancing or delegating things in our lives.

Have you ever strived for Bronze instead of Gold? Instead of taking on an all or nothing approach, strive for a realistic, balanced approach. Pressure today to do our best at everything can be paralyzing, and perfectionism is deadly to balanced living. Having a plan B and even C is ok. You can actually have some alternative ideas as a secondary plan of action and still get it done. This lesson is not only for us, individually, but it is also for our children, friends and family members. It is ok to teach our children that participation is not award worthy and that you know you do not look amazing, that you are not always amazing and that you understand that sometimes you look bad, feel bad or did a bad job! Find friends that tell you the truth and not give you an award every time you see them. It is not reality.

This lesson is critical. Show your children that Instagram is NOT reality and that all people do not look super models or super star athletes. Let them learn, in a healthy and thoughtful way, continued. next page
Chair’s Message  
CONTINUED, FROM PAGE 3

that everyone cannot be extraordinary. Being  
ordinary is OK. In fact, I urge you to think about  
this and tell me if you agree that being good  
rather than PERFECT is likely healthier and likely  
to lead to a more balanced life for most of us.  
Trust me that Super Sally Smith next door is  
NOT a super model, mother of the year, Super  
Lawyer who has never lost even a motion  
hearing and made partner in three years after  
graduating law school, number 1 in two years,  
who also married her high school sweetheart  
and never had a wrinkle appear on her face, let  
alone Botox to stay looking younger! It is NOT  
possible nor is it true even though she posted  
basically just that for her birthday last year.  

We should be taking this advice as we share it  
too. Living with this vague, pressured sense that  
we need to be extraordinary is a mistake. a trap,  
a lie, and a dead end. Extraordinary defined  
means more than ordinary. Synonyms such as  
remarkable, exceptional, amazing, astonishing,  
incredible and unbelievably should tell us that  
this is not a realistic way to live trying to achieve  
this status for every single thing we do. The  
pursuit of becoming extraordinary is preventing  
us from experiencing the ordinary. This chase  
leaves us feeling exhausted, empty and  
completely unfulfilled for one simple reason:  
Our role as humans is not to be extraordinary!  
This never-ending pressure on us individually,  
as lawyers and as parents raising children  
today’s society to be amazing is just too much.  
Not everyone is amazing, nor would anyone  
ever be considered amazing if everyone else  
was exactly as amazing as well. The more we  
define perfect, amazing or whatever, the less  
likely anyone will ever be content, fulfilled or  
truly extraordinary.

We need to stop focusing on keeping up with  
the Joneses and live our life, in a healthy and  
balanced way. We need to help our children  
and associates understand that mistakes  
happen and that everyone is NOT a gold  
medal winner and that is OK. We need to stop  
giving trophies because you showed up. We  
need to let our friends, family and colleagues  
understand that sometimes we lose. We may  
lose a big case. We may lose a little hearing, or  
we may even lose a client and that is OK. It is  
part of the process called life, and we need to  
start accepting that sometimes we may get a B-  
and that is OK too!

In January I talked about having realistic  
expectations of ourselves. In February I  
discussed defining your personal meaning  
of “success” and in March I raised the  
ever-ending struggle of the juggle and making  
work-life balance a verb rather than a noun. In  
April, my message focused again on balancing  
my passion for this practice with the difficult  
nature of what we do and how much that  
impacts us. Last month, in May, I shared some  
of my thoughts on having a “terrible, horrible, no  
good, very bad day” and am still recalling why  
it is we became the type of lawyers we did. I  
make an effort to revisit that initial decision and  
remember why I chose this profession, focusing  
on the positive, which is the actual impact that  
you can have as a family lawyer. What becomes  
paramount are the long-term effects of hard  
work, dedication and commitment which have  
a positive impact even if it is not always gold-  
medal worthy.

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Family Law Commentator Spring 2019

Message from the Co-Chairs of the Publications Committee

May is Mental Health Month, and it is with great pleasure that we, Publications Co-Chairs Sonja A. Jean and Laura Davis Smith, present to you this spring issue of The Commentator, dedicated to topics related to mental health. Our guest editor for this issue is the incredible Dr. Deborah Day, whom we often see present on issues of mental health at Section events and know to be an expert in her field.

National Alliance on Mental Illness (NAMI) reports that one of every five Americans is affected by the issue of mental health. That means that in a meeting of 30 people, six of those attendees are in some way affected by mental health issues. We will have clients so affected; we will have opposing counsel dealing with those issues, and we will see judicial officers struggling with mental health in some way. Some of us are fighting the hard fight against depression, anxiety, and other mental health diagnoses ourselves.

There is no shame in admitting that we need help. Just like we would seek out an oncologist if we were stricken with cancer, so should we seek help from mental health professionals. As a profession, we suffer from alcohol and substance abuse in far greater numbers. In fact, in an article published in the July 2017 online edition of Psychology Today, “per a 2016 study more than 1 in 5 lawyers reported that they felt that their use of alcohol or other drugs was problematic at some point in their lives, and, of these, nearly 3 of 4 reported that their problematic use started after they joined law school.” Self-medicating is dangerous, and proper care is necessary — from appropriate professionals — to address the issues of mental illness within our profession.

It is time we do away with the stigma attached to mental illness, and respond to those affected with compassion, empathy and understanding. Enjoy this spring edition of The Commentator, and reach out if you or someone you know is battling with mental health issues, in whatever form they take.

THE NAMI HELPLINE
800-950-NAMI
info@nami.org
M-F, 10 AM - 6 PM ET
FIND HELP IN A CRISIS OR TEXT “NAMI” TO 741741
Other resources:
SAMSHA — Substance Abuse and Mental Health Services Administration (SAMHSA’s National Helpline, 1-800-662-HELP (4357). (also known as the Treatment Referral Routing Service) or TTY: 1-800-487-4889 is a confidential, free, 24-hour-a-day, 365-day-a-year, information service, in English and Spanish, for individuals and family members facing mental and/or substance use disorders. This service provides referrals to local treatment facilities, support groups, and community-based organizations. Callers can also order free publications and other information.)
Message from the Co-Chairs of the Commentator

Mental Health Issue

How many attorneys recall the first day of law school? You were told to first look to your left. Then look to your right. You were likely told that one of those individuals would not graduate from law school with you.

From the YLD study recently conducted in partnership with the Florida Bar to mark May as “Health and Wellness Month for Florida Lawyers,” legal professionals must remain mindful of the alarming percentage of alcohol abuse, substance abuse and mental health issues that exists in the community. More than half, 58 percent, of Florida lawyers cite “student debt, punishing hours and ‘toxic’ work environments” as grounds for the legal profession’s waning desirability.

Perhaps that question posed on the first day of law school should now be: which one of the individuals alongside you will suffer from any of the three ailments just listed?

From domestic violence, depression and anxiety amongst children, substance abuse, and clients going through the emotional rollercoaster of separation, family law practitioners handle complicated and serious matters on a daily basis. The amazing caliber of mental health professionals in our community are here to help.

We are proud to present a collection of articles focused on mental health matters for family law professionals, the clients and the children entangled in family disputes. Dr. Deborah Day, our Guest Editor this edition, was instrumental in bringing together the talented crew of mental health professionals published herein.

These professionals have kindly dedicated their time and shared their specialized knowledge—concisely packaged for your eagerly receptive minds. It is our absolute pleasure to present this special mental health and wellness edition of the Commentator.

SECTION CALENDAR

Look for information on the Family Law Section’s website: www.familylawfla.org/event/

June 26 - 29
Annual Awards & Installation Luncheon
Committee Meetings & Executive Council Meeting
Boca Raton, FL

July 25 - 28
2019 Trial Advocacy Workshop
Tampa, FL
This edition of the Commentator rose out of the exciting commitment the Florida Bar and The Family Law Section has made to embracing health and wellness. Whether you practice law or practice psychology, the issue of our own well-being, as well as our client’s well-being often finds itself at odds with each. To take care of ourselves, we might not meet the needs of a client. To take care of a client, we may forego our own well-being by missing family events, eating poorly, and skipping our workouts. All of that takes a toll on our capacity to meet our needs, our family needs, and those of our clients. To assist lawyers with this very important topic of health and wellness, I asked an informative and articulate group of psychologists and family lawyers to assist with this topic. We begin with Dr. Shelia Furr, a noted psychologist, who provides insight into stress, well-being, and alternative practice models that decrease the stress of litigation. You will next read an article by distinguished Family Law Section member, John Foster, who shares his very touching and personal story about addiction. He promises two additional articles in future Commentators. Please read on as noted child psychologist, Dr. Mercedes McGowan, helps us understand the struggles practitioners have with understanding very young children’s best interest for timesharing. This is followed by Winter Park forensic psychologist, Dr. Kyle Goodwin, who tackles the topic of domestic violence and the impact on all of our lives. Dr. Alan Grieco, a successful and knowledgeable psychologist, tackles sexual offenses in our family law cases. These are some of the most difficult cases to navigate in our practice. Retired Judge William Palmer and his wife, retired family lawyer, Nancy Palmer, write a compelling article on the challenges we face as we contemplate the end of our careers. Judge Palmer has recently faced this challenge as he retired from the Fifth District Court of Appeals. His wife, Nancy, faced retirement well before she anticipated. These articles are personal, thoughtful, and hopefully adds increased health and wellness to each of your lives.

My deepest thanks to all of the authors of these tremendous articles, to the Commentator Co-Chairs and Editors, and Lisa Tipton, who makes sure all of the deadlines are met.

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• Receive the Family Law Section’s Commentator, a quarterly publication containing all of the latest news involving the Family Law Section and Florida family lawyers.
• Receive the Family Law Section’s e-Newsletter, FAMSEG.
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- Guardian Ad Litems
- Business Evaluators
- Paralegals
- Expert Witnesses
- Appraisers
- Actuaries

Please visit the Family Law Section of the Florida Bar website to register as a member at familylawfla.org.

Membership is only $65.00.
Over a glass of wine the other evening, a few colleagues and I, attorneys and financial professionals discussed why we had developed our professional lives in the practice area of family law. The responses were predictable: concern for families, having been exposed to divorce in personal lives, wanting to help others, and the like. The conversation eventually moved to a discussion of the work stress associated with this area of practice, with the concomitant concern about the impact of this on a practitioner’s health, quality of life, and longevity.

All of us expressed interest in supporting families, were intrigued by family dynamics at their best and what happens when they become dysfunctional and were seeking an intellectually and financially rewarding career. Despite our good intentions and sense of responsibility to families, we all felt somewhat battered by years in the adversarial arena and increasingly dismayed by the rubble so often left behind in the families to whom we were so committed in our litigation-based practices. Disheartened by the effects of litigation on the families we were dedicated to, we had all found our way to collaborative practice through different paths, many of us to the benefits for our clients, only to realize the unexpected benefits to ourselves. As we sipped on our wine, feeling vindicated that we were managing stress in a much healthier way, the conversation evolved into a discussion of why, as of late, we had become increasingly invested in collaborative practice.

The Relationship Between Stress And Chronic Illness

The relationship between stress and vulnerability to disease has been long understood. According to the Mayo Clinic, there is a biological fight-or-flight response in humans which is an adaptive reaction to a perceived threat, real or imagined, whereby hormones become activated to mobilize the body to respond to protect itself. Adrenaline increases your heart rate, elevates your blood pressure and boosts energy supplies. Cortisol, the primary stress hormone, increases sugars (glucose) in the bloodstream, enhances your brain’s use of glucose and increases the availability of substances that repair tissues. Cortisol also curbs functions that would be nonessential or detrimental in a fight-or-flight situation. It alters immune system responses and suppresses the digestive system, the reproductive system and growth processes.

2 Id.
3 Id.
4 Id.
5 Id.

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This complex natural alarm system also communicates with regions of your brain that control mood, motivation and fear.6

After a threat is removed, hormones return to homeostasis, or their normal levels. However, chronic stress, or a state of prolonged vigilance, can put health at risk, mentally and physically, as the fight-or-flight response stays turned on. The long-term activation of the stress-response system - and the subsequent overexposure to cortisol and other stress hormones - can disrupt almost all your body’s processes. This puts you at increased risk of numerous health problems, including:

• Anxiety;
• Depression;
• Digestive problems;
• Headaches;
• Heart disease;
• Sleep problems;
• Weight gain; and,
• Memory and concentration impairment.7

As Dr. Robert Sapolsky, an expert on stress-related illnesses warns, “if stress is chronic, repeated challenges may demand repeated bursts of vigilance.”8 Dr. Robert Sapolsky is the author of Why Zebras Don’t Get Ulcers:

An Updated Guide to Stress, Stress Related Diseases and Coping. In his book, Dr. Sapolsky writes, “At some point, vigilance becomes over-generalized, leading us to conclude that we must always be on guard - even in the absence of stress. And thus the realm of anxiety is entered.”9

Stress from dealing with difficult clients, concern about billable hours or making payroll, fear of malpractice, and bearing the burden of client’s grievances all are part of the practice of law. About 20% of the population will experience some form of anxiety disorder at least once in their lifetime. Studies show that law students and lawyers struggle with anxiety at twice that rate. (Sapolsky)

One attorney has described their relationship with their profession and stress:

“Stress went on too long in my life as a litigator. I had, indeed, entered the realm of anxiety. I felt like I had a coffee pot brewing 24/7 in my stomach. I became hypervigilant; each file on my desk was like a ticking time bomb about to go off. At some point, the anxiety made me dysfunctional, and I was unable to do as much as I had before. I felt ashamed of this. I denied it to myself and hid it from others, but the litigation mountain became harder and harder to climb as the anxiety persisted over a period of years.”1

1 (www.Lawyers with Depression.com; Dan Lukasik)

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1 (www.Lawyers with Depression.com; Dan Lukasik)
Sapolsky further writes, “If the chronic stress is insurmountable, it gives rise to helplessness. This response, like anxiety, can become generalized: A person can feel ... at a loss, even in circumstances that [he or] she can actually master.” Helplessness is one pillar of a depressive disorder that becomes a major issue for lawyers because we think of ourselves as invulnerable superheroes who are the helpers, not the ones in need of help. Lawyers often don’t get help for their depression and feel ashamed if they do.11

Many lawyers do not appreciate the connection between their stress, anxiety and risk for developing clinical depression, but the occurrence of anxiety disorder with major depression is frequent. In fact it has been estimated that 60 percent of people with depression are also suffering from an anxiety disorder.12 Maybe this connection helps explain studies that find such high rates of both anxiety and depression in the legal profession.

Michael Cohen, Executive Director of Florida Lawyers Assistance, presented unsettling statistics concerning attorney stress and depression at his seminar “Practicing with Professionalism”.

- 15-18% of attorneys will have substance abuse problem vs. 10% of general population.
- Over 1/3 of attorneys say they are dissatisfied and would choose another profession if they could.


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• Attorneys have the highest rates of depression and suicide of any profession. www.stress-relief-resources.com

Collaborative Practice

Collaborative Law has been practiced since the mid-1990s. It has been touted as a way for clients to take control of their separation and divorce and resolve issues with dignity and respect. It has been described as a client-focused process and its numerous benefits for clients engaged in the Collaborative Law process include:
• Lowered immediate and ongoing conflict;
• Shared solutions;
• Protection of children;
• Increased confidence in the outcome;
• Minimized damage to relationships;
• Financial benefits;
• Respect and peaceful resolution of disputes which benefit the family and community;
• enhanced control of the separation process;
• maintained level of dignity, respect and privacy;
• avoidance of court proceedings;
• children's needs are given priority;
• solutions are tailored to the individual family: it is not one size fits all;
• more likely to have a better long-term relationship;
• fairer settlement, incorporating where possible, each partner’s needs, interests and objectives; and,
• an alternative to litigation without the associated costs, delays and emotional hardship.

Those client benefits are real and true. Oftentimes overlooked is that the above-mentioned advantages do not extend far beyond our client’s lives to the practitioners of collaborative practice, the focus of this article.

Collaborative practice is practiced worldwide. The Queensland Association of Collaborative Practitioners (QACP) succinctly recognizes the benefits for professionals: “A fresh approach to divorce and separation and a genuine alternative to litigation, collaborative practice is a rewarding and sustainable way to practise (practice) family law.”

As discussed on the Collaborative Practice California website: “the Collaborative Process, (is) an approach to solving problems by reaching mutually agreeable solutions. Clients and professionals work together, respectfully and in good faith, to gather the information needed to reach an agreement. The goal is a win/win situation for all participants.” And that is the take home message: a win/win solution for all participants, clients and professionals alike.

Collaborative practice is not for the faint of heart. The problems associated with family law cases remain the same whether the matter is litigated, only the methodology for handling them is different. Collaborative practice is a sustainable way to enjoy a long and gratifying professional career with less activation of the unhealthy, protracted fight-or-flight reaction. As one self-identified former pitbull litigator once expressed to me, “I will live 10 years longer,” after transitioning to collaborative practice and adopting a peace-making mindset. Benefits to professionals include:
• Reduced bum-out and professional fatigue;

• enhanced sense of professional accomplishment associated with increased client satisfaction;
• reduced stress from conversing rather than fighting;
• reduced stress associated with preparation for litigation;
• reduced cortisol levels from less time spent in the fight-or-flight mode of adversarial proceedings;
• reduced litigation fatigue;
• inherent satisfaction from participating in a win-win resolution where clients are better served and happier with the attorney and the process;
• financial benefits from markedly reduced accounts receivables and bad debt;
• given usual and customary fees are charged, income can be controlled by number of billable hours the attorney chooses for lifestyle balance without loss of income;
• support staff such as paralegals and associate lawyers can be utilized; and,
• reduction of the chronic stress which puts your health at risk.

Returning to our reasons for developing our professional lives around the area of family law, you can choose to practice in a manner that enhances client satisfaction and results in less stress and risk for mental and physical health issues. Many of us have spent years in litigation-based practices and go home at the end of the day emotionally spent and questioning if we are really helping people and what we are doing to ourselves and our own families. Collaborative practice is an alternative approach to handling the same complex issues, but with the family more likely to be functional after the professionals are finished and the families left to pick up the pieces of their fractured family. The unanticipated, but real benefit, is it promotes a better sense of wellbeing and better emotional and physical health.

Biblography


Sheila Cohen Furr, Ph.D., A.B.N., has been in clinical practice since 1978 working with children and families. She is a Licensed Psychologist and is Board Certified in Clinical Neuropsychology by the American Board of Professional Neuropsychology. Dr. Furr has a Bachelor of Science degree in Human Development and Family Studies from Cornell University, a Master of Education in School Psychology from Boston University, and a Ph.D. in Clinical Psychology from the University of Rhode Island where she trained at the Brown University Medical School affiliated hospitals. Dr. Furr conducts social investigations, psychological evaluations, psychoeducational testing, neuropsychological testing and psychotherapy with children, adults, couples and families. She has extensive experience evaluating and counseling families in distress before, during and after the divorce process. Dr. Furr has been a member of the Medical Staff of the Boca Raton Regional Hospital for over 25 years and is listed continued, next page
in The National Register of Health Care Providers in psychology.

Dr. Furr is certified by the Supreme Court of Florida as a Family Mediator and is qualified as a Parenting Coordinator under statutory guidelines. She is trained as a Guardian Ad Litem by the Florida Bar Family Law Section and as a mental health neutral in collaborative law proceedings. She is the founding and current President of the South Palm Beach County Collaborative Law Group and oversees their Pro Bono/Low Bono project. She currently serves on the Board of the Florida Academy of Collaborative Professionals as Vice-President. She is a member of the Association of Family and Conciliation Courts, The International Academy of Collaborative Professionals, and the Florida Psychological Association. She is an affiliate member of the South Palm Beach County Bar Association, and an associate member of the Florida Bar Association Family Law Section where she is Past-Chair of the Litigation Support Committee. She participated in writing the training program for the Family Law Section Guardian Ad Litem project and regularly lectures in this program. She has served on the Ad Hoc Guardian Ad Litem and Adoption, Paternity, Dependency and Children’s Issues Committees. She has assisted on the editorial staff of the Family Law Section publication, the Commentator, where she has also published articles related to psychology and family law. Dr. Furr has lectured and testified frequently in family law and personal injury litigation. She is on the Board of the Norman and Ruth Rales Jewish Family Services serving on the Clinical Services Committee where she assisted in the development of a sliding scale Parenting Coordination program.
Addiction And Its Impact On Our Cases And Our Profession: First Article Of Three

By John Foster and Alessandra Manes

Introduction

I have been asked to author three articles discussing addiction and its impact on our cases and our fellow lawyers. This is the first of the three articles.

The reality of our world is that virtually everyone is, at some point, impacted by addiction. We either suffer with our own addiction or know a loved one, friend or colleague who suffers with addiction. In our family law cases, especially those dealing with parenting issues, we invariably and consistently handle cases in which a parent’s ability to effectively parent his or her children may be detrimentally impacted by addiction.

My personal struggles with the Beast of Addiction came through my son, John Wayne. I discussed these struggles in an interview that was published in FAMSEG, the monthly newsletter of The Florida Bar Family Law Section, in which I stated, in pertinent part:

My son, John Wayne, Jr., became addicted to drugs and alcohol when in his teens. After several years of in-patient facilities, out-patient services, counseling and other efforts, my son finally became serious about his recovery in December 2011. I supported his recovery. For instance, I attended his Narcotics Anonymous ("NA") meetings and was fortunate to become friends with many of his friends in recovery and to observe first-hand the unbelievably strong network and support group that NA has to offer folks wanting to recapture their lives from the Beast of Addiction. It was at my son’s NA meeting in December 2012 that I, as a proud father, was honored to give my son his one-year medallion for having been clean for one year; however, I learned the hard way that, although an addict may find, his or her way to recovery, the Beast of Addiction lies in wait for some momentary resurfacing of the addict’s powerlessness over his or her addiction. Indeed, in July 2013, my son relapsed from his recovery, he overdosed, and he died. The Beast of Addiction had taken my son from his family and friends.

An Interview of Two Members: John Foster and Anthony Genova Addiction & Recovery: It’s a Matter of Life or Death, The Florida Bar Family Law Section FAMSEG (April 2018).1

I restate this here to emphasize the significance of the issue.

This first article will discuss some principles that apply to parenting cases that involve addiction.

The second article will discuss the use of safety-focused parenting plans to address addiction issues that may surface in our cases.

1 An Interview of Two Members: John Foster and Anthony Genova Addiction & Recovery: It’s a Matter of Life or Death, The Florida Bar Family Law Section FAMSEG (April 2018); https://myemail.constantcontact.com/Section-News---CLE---Upcoming-Events---April-2018- FAMSEG.html?oid=1101406933607 &aid=80HffsLgKsg.
Addiction And Its Impact
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And, the third article will discuss the reality that a significant percentage of the Florida Bar’s active members have struggled, or will struggle, with addiction. The third article will identify some of the resources that are available to our members who struggle with addiction. And, interestingly, the third article will be co-written by my good friend, Dr. Don Kennedy, D.O., Ph.D., MBA, who is a physician, the author of The Surfer’s Journey (2017) and 5 A.M & Already Behind (2012), and a speaker on burn-out among professionals.

Before proceeding further, allow me to note two things. First, the word “addiction” is meant to include the use and abuse of drugs, alcohol, gambling or other substances or activities with which a person remains repeatedly involved despite the substantial harm that it causes. Second, in that there is often a close connection between addiction and mental health issues, some of the concepts discussed in these articles may apply likewise to mental health issues. In fact, Dr. Kennedy and much of the third article will specifically discuss “burn-out” among professionals and its relationship with addiction.

With all of this said, let’s now focus on addiction issues in our cases.

Addiction in Our Cases

Unless there are significant issues mandating otherwise, there are two relevant premises that typically apply to our family cases involving children, to wit:

(1) The court shall order that the parental responsibility for a minor child be shared by both parties; and,

(2) the minor child shall have frequent and continuing contact with both parents after the parents separate or the marriage is dissolved.

Addiction is a potential ground for the termination of parental rights. More specifically, § 39.806(1), Florida Statutes, provides, in pertinent part, that a court may terminate the parental rights of a parent or parents who “have a history of extensive, abusive, and chronic use of alcohol or a controlled substance which renders them incapable of caring for the child, and have refused or failed to complete available treatment for such use during the 3-year period immediately preceding the filing of the petition for termination of parental rights.” § 39.806(1)(o), Florida Statutes.

In the event that a parent’s addiction is proven to be detrimental to the child (and assuming that the addiction does not rise to the level permitting a termination of parental rights), the court may temporarily award sole parental responsibility to the other parent or suspend or otherwise restrict the addicted parent’s timesharing, or do both, if doing so is in the child’s best interests. Indeed, Chapter 61 specifically mandates that the court “shall order sole parental responsibility for a minor child to one parent, with or without timesharing with the other parent if it is in the best interests of the minor child.” § 61.13(c)(2), Florida Statutes.

For a Florida court to order sole parental responsibility rather than shared parental responsibility, or to restrict or suspend contact, there must be some conduct or behavior on the part of a parent that is detrimental to the child. Addiction may constitute this level of detrimental conduct. See e.g., Virant v. Bunce, 899 So.2d 1157 (Fla. 5th DCA 2005) (trial court properly suspended father’s visitation rights because of his abuse of alcohol which included two DUl’s).
or her parental responsibilities, contact or timesharing. See Witt-Bahls v. Bahls, 193 So.3d 35 (Fla. 4th DCA 2016), in which the Court stated:

The failure to “set forth any specific requirements or standards” for the alleviation of timesharing restrictions is error. This applies to both the prevention of timesharing altogether and to restrictions. “Essentially, the court must give the parent the key to reconnecting with his or her children. An order that does not set forth the specific steps a parent must take to reestablish time-sharing, thus depriving the parent of that key, is deficient...” (quoting Grigsby in holding judgment was deficient in not setting forth the steps father needed to take in order to establish time sharing).

Id. at 38 (citations omitted).

In conclusion, in a case where a parent’s impairments due to addiction or mental health issues or other behaviors are detrimental to the interests of the child, the court may suspend or restrict timesharing provided that specific steps are expressly set forth by the court for the reestablishment of timesharing. One of the tools available for expressing such steps is the Safety Focused Parenting Plan, which will be the focus of the second article to be published in the next issue of The Commentator. Until then, here’s hoping that we all stay healthy and well!

John Foster has been a Florida attorney since 1981. John is active in the Family Law Section, currently serves on the Executive Council and the Legislation Committee, and currently co-chairs the Parentage Committee and the Health & Wellness Committee. He has been named as one of America’s Best Lawyers, as Florida Legal Elite for Marital and Family law by Florida Trend, as a Florida “Super Lawyer”, as one of Orlando’s Best Lawyers by Orlando Magazine and as a top Orlando lawyer by the Orlando Home and Leisure Magazine.

Alessandra Manes was admitted to the Florida Bar in 2015 and became trained in Collaborative Law in 2017. She is an active member of the Family Law Section and the OCBA Young Lawyers Section. Alessandra focuses her practice primarily on family law matters and also handles immigration matters. As a native of Brazil she is fluent in Portuguese.

Contact Information:
Family Complex Litigation & Collaborative Group (“FCLC Group”)
618 E. South Street
Suite 110
Orlando, FL 32801
Phone: 407-757-2877

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The Family Law Section of The Florida Bar
Presents
Navigating Turbulent Waters: Dealing with Domestic Violence in a Divorce

By: Kyle J. Goodwin, Licensed Psychologist

The dissolution of marriage can be a highly stressful experience. For the parties going through a divorce, it marks the end of a relationship and a significantly life changing event. For some, the dissolution is a positive life change but for others, it can be emotionally traumatic. There are a number of factors that can influence one’s adjustment while going through a divorce as well as how smooth the divorce process can be. The level of conflict, anger, and animosity between the divorcing parties; the financial resources of the couple; the presence of a support system; and, the prognosis for post-divorce stability, are all factors that can either positively or negatively impact the divorce process. Additionally, when children are involved in a divorce, there is another level of complexity transitioning into a post-divorce, co-parenting relationship.

Of all the factors that an individual and their legal counsel must contend with when going through a divorce, one of the most difficult and challenging issues is domestic violence. As an attorney, you may be faced with a client who is the victim of domestic violence or the perpetrator. Such cases are often difficult and can pose distinct challenges. You may not know what to do or how to handle such cases when they come through your door. The literature on this topic is immense. This article is not intended to be an exhaustive account of the literature. Rather, this article is meant to provide key issues to consider when you are faced with a case involving domestic violence. Resources are also provided that can be useful and provide direction.

**What is domestic violence?**

The definition of domestic violence varies, depending on the source. Florida Statute §741.28 defines domestic violence as “any assault, aggravated assault, battery, aggravated battery, sexual assault, sexual battery, stalking, aggravated stalking, kidnapping, false imprisonment, or any criminal offense resulting in physical injury or death of one family or household member by another family or household member.” Of note, this definition of domestic violence is predicated on an incident “resulting in physical injury or death.” This definition is limited in that it fails to account for other dynamics of domestically violent relationships that do not result in physical injury or death.

One of the more comprehensive definitions of domestic violence was incorporated by the Association of Family and Conciliation Courts (AFCC). Their definition, which refers to domestic violence as “intimate partner violence” includes a broad view that includes physically, sexually, economically, psychologically, and

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1 Florida Statute §741.28 (2018).
2 See Florida Statute §741.28 (2018).

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coercively controlling aggressive behaviors.3 Specifically, AFCC (2016) identifies the following as behaviors indicative of intimate partner violence:

- **Physically aggressive behaviors** involve the intentional use of physical force with the potential for causing injury, harm, disability, or death;
- **Sexually aggressive behaviors** involve the unwanted sexual activity that occurs without consent through the use of force, threats, deception, or exploitation;
- **Economically aggressive behaviors** involve the use of financial means to intentionally diminish or deprive another of economic security, stability, standing, or self-sufficiency;
- **Psychologically aggressive behaviors** involve intentional harm to emotional safety, security, or wellbeing; and,
- **Coercively controlling behaviors** involve harmful conduct that subordinates the will of another through violence, intimidation, intrusiveness, isolation, and/or control.

From a family law attorney’s perspective, the AFCC’s conceptualization of intimate partner violence is one for which you should be familiar. Discussion of a client’s relationship with their spouse may reveal elements of domestic violence that may otherwise not have been reported or readily seen by others.

Current Trends with Domestic Violence

The Florida Coalition Against Domestic Violence (FCADV) issues annual reports providing the Florida legislature with important information related to domestic violence within the State of Florida. In the State of Florida alone and between January and December of 2016, there were 105,668 domestic violence offenses reported to law enforcement and 193 deaths related to domestic violence homicide in the state of Florida.4 Within the fiscal year 2016-2017, over 14,000 individuals received emergency shelter at a certified domestic violence center.5 Additionally, there were over 145,000 safety plans completed with survivors.6 A comparison of the services sought and implemented and the reports to law enforcement shows not all incidents of domestic violence result in law enforcement involvement or official reports being made.7 Additionally, individuals who are in a relationship where there is not overt violence or aggression, such as with an economically abusive or coercive controlling spouse, may be less likely to make a formal report to law enforcement. However, these issues can be quite prevalent. For example, financial abuse has been found to occur in 98 percent of all domestic violence cases.8

In Florida, there are 42 certified domestic violence centers.9 Those centers, along with the Florida Coalition Against Domestic Violence (FCADV), provide an array of services to victims of domestic violence and their families. Services include emergency shelter, counseling, case management, child assessment, legal services, and other supplementary services.10 Having knowledge of the services and resources

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5 Id.
6 Id.
7 See id.
8 Id.
9 Id.
10 Id.
available in your area can be essential for clients that are in need.

**Domestic Violence and Divorce**

If you work in the family law field, you will eventually encounter a case that involves domestic violence. The literature suggests between one third and one half of persons involved in divorce litigation reported domestic violence in their relationship. Research with evaluators who conduct social investigations/custody evaluations indicate that roughly half of the cases involving intimate partner violence were separation associated, occurring within the context of the relationship dissolving, which is often a time of heightened anger and emotion. 29 percent of cases involved episodic incidents of intimate partner violence and 24 percent involved enduring, chronic intimate partner violence. Overall, the most common type of domestic violence encountered in divorce litigation has been found to be conflict-instigated, situation-specific violence, where the level of severity and injury is usually minor or not at all.

The consideration of domestic violence/intimate partner violence in a divorce involving children is critical and has significant implications for the development of a parenting plan and co-parenting relationship. The vast majority of states require the consideration of domestic violence during a relationship as part of best interest determinations for child contact, either as a statutory best interest factor or by other statutory provision. In Florida, this is identified under statute 61.13(3)(m), which states, “Evidence of domestic violence, sexual violence, child abuse, child abandonment, or child neglect, regardless of whether a prior or pending action relating to those issues has been brought. If the court accepts evidence of prior or pending actions regarding domestic violence, sexual violence, child abuse, child abandonment, or child neglect, the court must specifically acknowledge in writing that such evidence was considered when evaluating the best interests of the child.”

**Issues to Consider with Victims**

Encountering a client who alleges to be the victim of domestic violence can be a troubling experience. Obtaining information regarding the recency, severity, and frequency of the alleged violence can help guide you in moving forward. For females, the time of separation has been found to be the most dangerous time and, as indicated above, conflict-instigated and separation associated violence is the most common intimate partner violence seen in divorcing litigants. If you do encounter a client, either male or female, who is reporting to be the victim of domestic violence, the following are issues that should be considered.

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12 Id.

13 Id.

14 Id


16 Fla. Stat. §61.13(3)(m).

17 Id.


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• **Safety first.** First and foremost is the safety of your client. If there is indication of recent domestic violence and/or a history of frequent or severe incidents of domestic violence, the risk to the individual is elevated. Consideration needs to be given to whether a client needs immediate support services or legal intervention to protect them during the separation. You should be familiar with the services in your area that can help a client with emergency shelter, legal aid (i.e. if an injunction is needed), and financial assistance.

• **Contact with the other party.** Remember that domestic violence does not only include physical assault on a person. The dynamic of a domestically violent relationship, as well as various forms of abuse, can continue to occur post-separation. For example, if there has been a pattern of coercive control in a relationship, the victim may still be in fear of the former partner and there may need to be safeguards in terms of contact between them. Additionally, it is not uncommon to see continued abuse or controlling behaviors post-separation in the form of harassing emails or text messages, intrusive phone calling, menacing stares or physical intimidation during contact, such as at a time sharing exchange.19

With these concerns in mind, an attorney should be cognizant of the position they put their client in, if they have been the victim of domestic violence. For example, a recommendation for divorce counseling or a service that requires the parties to be together in the same room may be inappropriate. The need for a Parenting Coordinator or trusted therapist to monitor communication may be necessary to protect the client. Keep in mind a client can still be controlled or intimidated into agreement with various decisions, including co-parenting decisions, even after they are separated.

• **Financial concerns.** One aspect of domestic violence that can continue post-separation is financial abuse. Survivors of domestic violence often report their abusers used economically-related tactics to maintain power and control over them, such as creating large amounts of debt in joint accounts, withholding funds from the survivor or children to obtain basic needs.

19[id]
prohibiting the individual from working during the relationship, and not allowing access to bank accounts or credit cards.20

Victims of domestic violence can leave relationships under significant financial hardship. As an attorney, you should be aware of resources that can assist your clients financially. Additionally, court intervention may be needed to ensure financial support to a client while going through the process of divorce.

• **Parenting plan issues.** The safety of the children involved in a divorce is paramount. Divorce alone is a risk factor for child maladjustment. The added component of domestic violence between parents increases the risk to a child and can create a tenuous co-parenting relationship. A primary concern is that abuse can be redirected from the parent victim to a child. This concern is exacerbated when there are other factors contributing to the abusive dynamic, such as mental illness or substance abuse of the abusive parent.

When children are involved in a divorce with domestic violence, the attorney needs to consider the need for court involvement to limit or restrict access to the child by the abusive parent (i.e. no-contact or supervised visitation). In such cases, when there is concern about an appropriate parenting plan or timesharing arrangement, a referral for a social investigation is warranted. Having an objective evaluator assess the family dynamic and offer recommendations is often the best way to ensure the protection and well-being of a child and parent.

• **Guard against cynicism.** Assessing the credibility of an allegation is a natural course of action for anyone. Particularly when an allegation is made in the context of a divorce, it raises the question as to whether the allegation is false or exaggerated for some form of secondary gain. Having a healthy degree of skepticism is appropriate; however, one should guard against becoming overly cynical in assuming all allegations are made to solely disparage the other parent. In cases where there are concerns about the credibility of an allegation, a referral for an objective evaluation may be the best action to take, as having an accurate assessment of the family dynamic is ultimately best for all parties.

### Issues to Consider with Perpetrators

Representing a perpetrator of domestic violence can be equally as challenging for an attorney as representing a victim. Particularly when there is clear evidence of the perpetration of violence, an attorney must contend with providing good representation to the client while dealing with their own personal emotions. When working with victims, one can feel compassion and empathy, whereas feelings of anger or dislike can emerge when working with a perpetrator. The following issues should be considered when faced with a client who has been alleged (or proven) to be the perpetrator of domestic violence.

• **Understand the risks.** If you are presented with a client where there have been allegations of domestic violence, it is important to understand the extent of the allegations and the level of risk your client poses. This is particularly true in divorce involving children, as domestic violence can have a direct impact on issues related to shared parenting and co-parenting. According to the *Judge’s Bench Book for Application of the Integrated* continued, page 28

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Framework for Assessment of Intimate Partner Violence in Child Custody Disputes, shared parenting and “joint custody” is not recommended when there has been high conflict and domestic violence with a primary instigator. More importantly, understanding a client’s level of risk, as well as factors contributing to their risk (such as mental illness, substance abuse, current destabilizing factors, etc.) can help you guide a client towards appropriate treatment or intervention services, if needed. For example, a recommendation for a Batterer’s Intervention Program (BIP), individual therapy, anger management, or substance abuse counseling can not only help improve the life and prognosis for your client, it may help with a smoother transition throughout the divorce.

One way of understanding the risks for your client is to refer them for an independent evaluation/risk assessment. These evaluations can help provide an understanding into the various etiologies of abusive behavior and they can also yield appropriate recommendations. While an independent evaluation of a single individual cannot produce specific timesharing recommendations, for cases involving child-contact issues, understanding the level of risk for a client can be useful in negotiating such issues.

- **Guard against defensiveness and cynicism.** Similar to the feelings of cynicism that can occur when questioning the credibility of allegations from a victim, one must guard against initial feelings of defensiveness and cynicism for clients who claim allegations against them are false. While some allegations are false, this assumption should not be the first consideration. Obtaining a good understanding of the allegations and the corroborating evidence can help

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guide an attorney in the right direction. If the data supports that the allegations are not credible, an attorney may wish to implement safeguards to reduce the potential for further allegations. If the data supports that the allegations are credible, an attorney should obtain a better understanding of their client’s overall risk level, as discussed above.

- **Minimize conflict and risk for further incidents/allegations.** Regardless of whether the credibility of domestic violence allegations have been determined, an attorney should try to minimize the risk to their client for further hardship. The time period surrounding separation and divorce can be highly emotional. If you have a client who has already had allegations made against them, or if there has already been a documented incident of violence, reducing the potential for additional conflict or altercation is important. This may include instructing clients to minimize communication with their estranged spouse, avoiding contact with the spouse when there is potential for conflict or arguments, or involving a professional third party to monitor the dynamic, such as a Guardian Ad Litem.

**Recommendations and Resources**

If you work in the family law field long enough, you will eventually encounter cases involving domestic violence. These cases add a level of complexity to divorce that make them difficult. This difficulty can become exponentially greater when there are children involved. The more prepared you are for a case, the smoother it will be for you and your client. There are a multitude of professional trainings that deal with domestic violence. For mental health professionals, training in this area and continuing education is a requirement for licensure and license renewal in Florida. This type of requirement exemplifies the importance of having appropriate knowledge and understanding in this area. In some cases, it can literally involve life or death.

As stated previously, this article is not intended to be an all-encompassing review of the literature in this field. Rather, it highlights key points identified in the literature and from this author’s experience of working in the field and dealing with cases involving domestic violence. Below is a list of resources and recommendations every family law professional should have regarding domestic violence.

**Florida Coalition Against Domestic Violence:** [www.fcadv.org](http://www.fcadv.org)

- This site offers an array of resources and referrals for victims of domestic violence, including information regarding emergency shelters, case management, legal aid, financial aid, and child assessment.

**Association of Family and Conciliation Courts (AFCC):** [www.afccnet.org](http://www.afccnet.org)

- AFCC has published Guidelines for Examining Intimate Partner Violence, which is a supplement to their Model Standards of Practice for Child Custody Evaluation.

**Judge’s Checklist for Custody Report Rating for Cases with Allegations of IPV (Intimate Partner Violence):** Published by William G. Austin and Leslie M. Drozd (see referenced article for citation).

- This checklist provides a framework for appropriate issues to consider for evaluators conducting social investigations or evaluations involving domestic violence.

**Barterer’s Intervention Programs:** [www.myflfamilies.com/service-pror,>rams/domestic-violence/batterer-intervention-program](http://www.myflfamilies.com/service-pror,>rams/domestic-violence/batterer-intervention-program)

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Experienced Professionals

It is important to know of the experienced evaluators in your area who can complete independent risk assessments and/or social investigations that involve allegations of domestic violence. Additionally, other experienced professionals, such as Guardian Ad Litems, parent coordinators, substance abuse evaluators, and therapists who have worked with cases involving domestic violence are an invaluable resource.

References


Kyle J. Goodwin, Psy.D. - Dr. Goodwin is a Licensed Psychologist who has worked at Psychological Affiliates, Inc., since 2009. He is licensed in Florida and North Carolina. He holds a Bachelor’s degree in psychology and sociology, a Master’s degree in clinical psychology, and Doctorate degree in clinical psychology. He also completed a forensic psychology concentration during his doctorate program and a forensic internship placement at Atascadero State Hospital in Atascadero, California.

Dr. Goodwin’s primary area of focus is forensic assessment. He conducts court-appointed and private evaluations for family court, dependency court, criminal court, and civil court. He is also a consultant for the Orange County Child Protection Team. He has testified as an expert witness in ten different counties in Florida and in the state of North Carolina. Dr. Goodwin is a member of the American Psychological Association (APA) and the Association of Family and Conciliation Courts (AFCC). He has participated in numerous trainings involving family law matters, domestic violence, and child abuse.
I am frequently asked to work with separating and divorcing families who have very young children. Many lawyers are aware of the extreme stresses which occur when working with cases that involve delicate situations which are outside of their proficiency and comfort zone. Recognition of the pressure and stress generated by working out of their element leads them to seek input and guidance from mental health professionals with specific expertise in child development. Utilizing the guidance and support of a mental health professional relieves some of their stress and allows them to better meet the needs of the separating family. Lawyers seek my guidance in the hopes of developing a way to mindfully separate families, while at the same time, meet the needs of the infants, toddlers and parents. There are unique challenges to developing parenting plans for young children because of their particular needs, which rapidly evolve in the first few years.

Working out a time-sharing solution for a family is a matter of balance. The child’s need for stability and predictability of schedule must at times be balanced against the overriding necessity for a resolution of parental conflict. The need for frequent and continuing contact with both parents may have to be balanced against the complexities and demands of everyone’s schedules. Therefore, a creative and developmentally informed approach is uniquely suited to meet the needs of these families. It is important to consider their unique family situation, their children’s needs and their goals to craft an appropriate parenting plan. Unnecessary loss or disruption of parental relationships, especially early in childhood can have a significant impact on the developing mind of an infant and toddler.

**Early infancy - birth to six months:**

It was previously believed that infants formed a singular and exclusive attachment to one primary caregiver during their first year of life.\(^1\) Mental health professionals cautioned parents that disrupting this exclusive caregiver-child bond during the infancy period could cause lifelong adjustment problems.\(^2\) With this in mind, the notion of infant overnights away from the primary caregiver was rejected without considering individual situations.\(^3\)

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\(^2\) Id.

\(^3\) Id.

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Parenting Plans for Infants and Toddlers!
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We now know that during this developmental period, infants form multiple and simultaneous attachments as they develop an internal map for relationships and the world.4 Infant’s experiences with caregivers should ideally create a sense of predictability, security and safety, to set the children up to have healthy interpersonal relationships and good emotional regulation later in life.5 In situations where both parents have been regularly involved with all aspects of caregiving and the child has formed an attachment to both parents, the previous restrictions on overnights should be reconsidered.6 One objective of any parenting plan should be to help infants forge a meaningful relationship with both parents.

For children between the ages of birth to six months, the recommended time-sharing pattern centers on predictability and frequency.7 The research has shown that there are potential long-term negative effects from disrupted attachments.8 There is also risk associated with fathers playing a diminished role or dropping out of their children’s lives as a result of a disrupted attachment.9 Time sharing arrangements for children ages birth to 6 months should focus on both parents being given the opportunity to form meaningful attachments and relationship with the infant.10 In these cases, more frequent transitions, rather than fewer, ensures continuity of both relationships. The ideal situation is one in which infants have opportunities to interact with both parents every day or every couple of days in a variety of functional settings.11

If one parent has not been involved in caregiving previously, short visits consisting of several hours, every couple of days, will help to develop a mutually secure relationship, allowing the parent to master the tasks and sensitivity required to care for an infant.12 As the caregiving skills are mastered and the parent-child bond strengthens the plan may include longer days.13

Parents of infants who have been active, involved caregivers, may begin overnight time sharing, preferably in familiar surroundings. Overnights are more likely to be successful when parents have shared parental tasks prior to separation and communicate effectively about their baby.

To develop a healthy attachment to both parents, an infant should ideally not be away from either parent for more than a few days.14 However, the realities of each family may make this difficult to juggle. Many infants demonstrate a caregiver preference.15 Extended separation from that preferred caregiver should be avoided.16 Optimally, seeing each family system as unique requires a schedule that is workable and makes sense for them while being aware of the developmental needs of the children.

Communication between the parents about the baby is essential for good infant

4 Id.
5 Id.
6 Id.
7 Id. See Arizona Supreme Court, Court Services Division, Court Programs Unit, Planning for Parenting Time: Arizona’s Guide for Parents Living Apart (2009).
9 Id.
10 Arizona Supreme Court, Court Services Division, Court Programs Unit, Planning for Parenting Time: Arizona’s Guide for Parents Living Apart (2009).
11 See id.
12 See id.
13 See id. See also Siegal, J., The Developing Mind: How Relationships and the Brain Interact to Shape Who We Are, Guilford Press (2015).
14 See Arizona Supreme Court, Court Services Division, Court Programs Unit, Planning for Parenting Time: Arizona’s Guide for Parents Living Apart (2009).
16 Id. See also Arizona Supreme Court, Court Services Division, Court Programs Unit, Planning for Parenting Time: Arizona’s Guide for Parents Living Apart (2009).
adjustment. A daily communication log should be maintained and exchanged between the parents noting eating, sleeping, diapering and any new developments observed. This communication log could also include upcoming appointments for their child.

Later infancy- six months to eighteen months:

Between the ages of six months to eighteen months, the transition from infant to toddler gradually takes place. There is a great deal of rapid skill development, including motor accomplishments, communication from sounds and smiles to simple words, and the beginning expressions of simple emotions.

Predictability and consistency remain important. Babies can respond to multiple nurturing caregivers if there is sensitivity to their cues and needs and regularity in their waking, eating and sleeping schedules. Babies this age may express fear and anxiety if a familiar caregiver is not there to comfort them.

At this age it is important for each parent to have the opportunity to:

- Participate in daily routines such as feeding, bathing, napping, and playing;
- Have frequent contact with the child. Consistent or ongoing separations of more than three or four days from either parent will interfere with a healthy attachment to that parent; and,
- Establish similar routines in each home by creating a communication log to be shared between parents.

If a parent has not been involved in caregiving previously, frequent short visits several times weekly will help to develop a mutually secure relationship and allow the parent to master the tasks required in caring for a baby. The parent who is catching up might consider attending

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an infant-toddler parenting class. Daytime visits may be lengthened gradually, and overnights added as the parent and child develop a stronger bond and the parent is comfortably able to attend to feeding, bathing, diapering, soothing and bedtime needs.

When both parents are working outside the home and a child is with a third-party caregiver during the work day, many parents split the weekend and consider an additional one or two overnights with the non-majority time-sharing parent during the week.23

Toddlers- eighteen to thirty-six months:
The period of eighteen months to thirty-six

months is one of rapid physical, emotional and social change.24 They may have formed attachments to many caregivers (i.e., parents, grandparents, daycare providers, close family friends).25 They are beginning to trust that caregivers will meet their physical and emotional needs.26 Toddlers can respond to different styles. They are becoming more independent and are developing the ability to comfort themselves.27

Predictability in the schedules and supporting the relationship with the other parent can make exchanges easier28.

23 Arizona Supreme Court, Court Services Division, Court Programs Unit. Planning for Parenting Time: Arizona’s Guide for Parents Living Apart (2009).


25 Id. See also Arizona Supreme Court, Court Services Division, Court Programs Unit. Planning for Parenting Time: Arizona’s Guide for Parents Living Apart (2009).

26 Id.

27 Id.

Toddlers are particularly sensitive to tension, anger and violence in parental relationships.29 If a parent was not regularly involved in caregiving, two to three daytime contacts weekly with the non-majority time-sharing parent allows the parent-child bond to develop and strengthen as caregiving skills are mastered. The addition of overnights can be planned after a short transition time if the child does not show signs of undue stress.

It is preferable to begin with overnights spaced throughout the week particularly if dealing with an only child.30 If both parents were involved in every aspect of childcare before the separation, the child should be able to be away from either parent for multiple days at a time.31 Depending on the child’s temperament, parenting may be shared up to a reasonably equal basis. Daily telephone contact at a regular hour may help and if available, facetime calls are a supplement to contact.32

Following these general guidelines when crafting a parenting plan for families with very young children can help to strengthen these families and support the developmental needs of the children at the same time. This is crucial for the healthy emotional development of infants and toddlers. The positive, stable early interpersonal relationships they have with parents can provide experiences that allow healthy functioning throughout life.

References


Siegel, D. J. (2015). The developing mind: How relationships and the brain interact to shape who we are. New York: Guilford Press.

Mercedes O. McGowan, Ph.D., Licensed Psychologist - Mercedes McGowan received her B.A. in Psychology with honors from Emory University in 1984 and her Masters degree in Developmental Psychology in 1986 from Columbia University. She received a second Masters degree in Clinical Psychology from the University of Michigan in 1988 and a Ph.D. in Child Clinical Psychology from the University of Michigan in 1995. Dr. McGowan is a Licensed Psychologist in a private practice setting in Jacksonville Beach, Florida. Her specialties include dealing with early childhood, child abuse, trauma recovery, custody/divorce, women’s issues and Munchausen by Proxy Syndrome. Dr. McGowan also specializes in early childhood issues, including the evaluation and treatment of young children. She was a member of the board of Directors for United Cerebral Palsy of Central Florida and a member of the Advisory Board for the J.D. Holloway Early Intervention Clinic. Dr. McGowan was also appointed by Governor Lawton Chiles to the Health and Human Services Board of District 7 in 1993. She has served as a consultant to the Child Protection Teams of Orange and Seminole Counties. Dr. McGowan served on the Board of Directors of the Florida Chapter of the Association of Family and Conciliation Courts as both secretary and vice president.She was on the Board of Directors for Art With A Heart, based out of Wolfson’s Children’s Hospital and the Board of Directors of the Child Guidance Center. Currently, she serves on the Development Council of Beaches Baptist Hospital in Jacksonville Beach, FL, the Board of Directors of the Bridge of North East Florida and The Florida Academy of Collaborative Professionals and is the president of the Collaborative Family Law Group of North East Florida.

29 Arizona Supreme Court, Court Services Division, Court Programs Unit. Planning for Parenting Time: Arizona’s Guide for Parents Living Apart (2009).
30 Id.
31 Id.
32 Id.
Psychosexual Evaluations In Family Law

Alan Grieco, Ph.D., Licensed Psychologist, Psychological Affiliates, Inc.

Stress can be contagious. Simply put, clients’ emotions directly impact the professionals working with them. When, for example, family law practitioners assist families in which one spouse accuses the other of being an unsafe parent because of an alleged sexual impropriety, emotions can readily go to fever pitch. As in most of life’s challenges, having the correct tool is key to efficient resolution. A psychosexual evaluation is sometimes the appropriate tool in bringing objectivity and balance to an often highly charged situation.

This article is offered as a primer on psychosexual evaluations for family law practitioners. It is based upon a literature review and my thirty years’ experience providing clinical and forensic services to sex offenders and those so accused. These specialized evaluations are most commonly used in criminal law contexts. From this article, the family law practitioner may better appreciate the value of psychosexual evaluations and be able to critically assess them when encountered in proceedings.

Psychosexual evaluations are a specialized type of psychological evaluation which focuses on sexual adjustment issues. One unvarying aim of psychosexual evaluations is to render a professional opinion about whether a psychosexual diagnosis is or is not present. Toward that end, the Association for the Treatment of Sex Offenders offers guidelines for such evaluations emphasizing 1) the value of multiple data sources and 2) use of an objective measure that does not depend on the testee’s self-report. These two guidelines constitute a standard of practice and are strongly recommended regardless of legal context. Beyond that, other goals of psychosexual evaluations depend upon the referral issues. In criminal law situations, additional goals typically include treatment recommendations and estimation of sexual recidivism risk. Over the past two decades, sentencing trends with regard to sexual offenses have gradually become more complex in terms of specific stipulations. Residential and employment restrictions as well as internet limitations are examples of probation stipulations seldom seen outside of sex offender probation. Additional sex offender restrictions are also common among many diverse offender populations including GPS monitoring, curfew, driving log, and limitation of contact with minors. Such sentencing trends have made psychosexual evaluations a common procedure for defense, prosecution and sentencing authorities, where such restrictions may be challenged. In sum, the familiarity, utility, and probative value of psychosexual evaluations in criminal law appears rather well established.

An additional ongoing and highly relevant societal trend has been the lack of any reduction in online sex offenses. By contrast over the past twenty-five years, there has been widespread decline in most crime, including most sex offenses, including child molestation and rape. Internet sexual offenses, however, such as child pornography possession, use of
the Internet to solicit a minor and traveling to
meet a minor, have not declined. Proportionally
therefore, such offenses are commanding
increased resources from the justice system
and from professionals working within it.
Similarly, in family court, allegations or concerns
often arise which involve digital or Internet
use issues that are not of clearly criminal
proportions or severity. In my experience, a
properly conducted psychosexual evaluation
can bring desirable objectivity to what is often
a sensitive and complex situation within family
courts.

Applications To Family Law:

Family law attorneys now increasingly
recognize the value of psychosexual
evaluations. In such contexts, evaluation of a
parent’s capacity to provide safe parenting from
the psychosexual perspective is a common
objective. Associated with that broad goal
are secondary issues such as the advisability
of supervised versus unsupervised parental
visitation and suggested safety measures,
such as opining on the advisability of overnight
timesharing. Some limitations of psychosexual
evaluations, regardless of context, include
the following: it cannot determine guilt or
innocence, in terms of whether a specific
act took place; it cannot be used to make
recommendations for others not seen as part of
the psychosexual evaluation process.

A properly conducted psychosexual
evaluation can, however, accomplish many of
the following goals:

• Diagnose psychopathology, especially
  addressing whether any psychosexual
diagnosis is warranted;
• Clarify specifically whether pedophilic or
deviant sexual interests are present;
• With sufficient documentation the
evaluator can opine about whether certain
behavioral patterns appear to be present
(e.g., grooming, emotional or physical
abuse, sexual preoccupation, predation)
and their relevance or danger to children;
• Clarify the level of risk or danger to others,
especially children, e.g., supervised versus
unsupervised timesharing;
• Identify the presence of thinking
patterns such as cognitive distortions
and justifications commonly used by
known child molesters;
• Suggest a safety plan, safety measures,
or make referral or treatment
recommendations as needed; and,
• Suggest treatment goals, foci, and
accountability measures for the subject
of the evaluation.

Sexual Paraphilias:

Many times, a parent, often the mother,
is disconcerted or panicked over discovery
that her husband (usually the child’s father
or stepfather) has sexual interests that are
quite different from or in excess of what he
has represented to her. Unexplained use of
adult pornography websites, e.g., discovered
by review of history files or of a browser
inadvertently left open, is a classic example.
Bisexual, transsexual, or swinging interests can
be alarming as well. Unexpectedly finding a
spouse’s clandestine smart phone with contact
information, typically indicating extramarital
liaisons, may well be alarming and devastating.
Discovery or a revelation of these or similar
indicators about a spouse or life partner who
shares parental responsibility is typically
both disorienting and deeply hurtful. Angry
reactions are therefore common. Anger and
a sincere desire to ensure the safety of one’s
children may lead a spouse to overreact to or
misrepresent the actual danger to a child.

Unusual or paraphilic sexual interests, per
se, are not necessarily indicators of impaired
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parenting ability. According to DSM-5, paraphilic interests and behaviors do not warrant a diagnosis unless they become problematic in one's life and cause distress. For example, dressing in the clothing of the opposite gender for sexual arousal in private is unlikely to be problematic to safe parenting. If children become aware of their father's or both parents' interest in transvestitism, such as through disclosure by a hurt and angry wife, it would unlikely constitute a threat to the children's safety or welfare.

On the other hand, a parent who was indiscreet with their sexual practices, e.g., resulting in young children being exposed to adult pornography, may indicate impaired judgment and unhealthy interpersonal boundaries. As a point of reference, however, please note that children typically first encounter adult Internet pornography on their own at approximately 11 years old. Where confusion or alarm persists, a psychosexual evaluation may clarify any sexual threat to the children or dependents of those with atypical sexual interests.

Digital Frontiers:
By checking a lover's browser (or other digital history) modern couples are confronting at a personal level new information about their partner's sexual fantasies, fears, and behaviors. Large volumes of data pertaining to search queries, pornography, searches, etc., when aggregated and refined, produce "big data," a profoundly new way of understanding the human experience. At a societal level, this type of big sexuality data is evermore enlightening to us all. As one Google scientist explained, "In the pre-digital age, people hid their embarrassing thoughts from other people. In the digital age, they still hide them from other people, but not from the Internet and in particular sites such as Google and pornhub, which protect their anonymity. These sites function as a sort of digital truth serum...", (Stephens-Davidowitz, 2017, page 54). Big sexuality data is categorically and methodologically distinct from prior standard research tools such as surveys or laboratory experiments. The resulting insights may be unsettling. Among porn searches, incest themes account for 16 out of the top 100 searches by men on pornhub. "Fully 25% of female searches for straight porn emphasize the pain and/or humiliation of the woman and 5% look for non-consensual sex, rape or forced sex, although these videos are banned on pornhub" (Page 121). The moral? Snoop at your own peril and bring an open mind. Also, fantasies and behavior are two separate, sometimes overlapping domains. Finally, note well, those who snoop may be snooped upon.

Critical Elements:
A quality psychosexual evaluation has several features now regarded as a standard of practice. Utilizing multiple data sources is paramount. Records review, forensic and collateral interviews, psychological testing,
and use of an objective measure are all considered to be key elements. In addition, for complex cases such as those with prior or concurrent criminal sexual charges, an estimate of sexual recidivism risk, and treatment recommendations may also be warranted.

RECORDS REVIEW – This is likely the most straightforward element. Whatever relevant records are available should be reviewed. These often include depositions, witness statements, affidavits, motions and court rulings, etc. Also, it is desirable to include any related criminal documents such as victim statements and law enforcement reports, as well as any recorded interviews. Especially desirable are results of DCF investigations, specialized interviews, e.g., by Child Protection Team and specialized medical exams. All of these documents should be annotated with sources and dates.

Especially helpful is use of a timeline to clarify when allegations occurred, especially regarding other key events, such as filings for divorce, discovery of an affair, sudden changes in financial status, residence, or employment. A timeline can assist the report writer in 1) discerning possible motives and 2) showing whether there is consistency and logical coherence to both allegations or to alternative explanations of events. It is inadvisable to make direct conclusions of cause and effect based only on temporal order or coincidence. A psychosexual evaluation using a timeline should highlight data that supports logical inferences and acknowledge any data that does not.

Based upon a records review and/or timeline along with all other data, a report writer is typically in a position to make objective recommendations in the best interest of a family, such as the advisability of unsupervised parental timesharing and the level of safety versus risk from the psychosexual perspective. In addition, elements of a suggested safety plan, e.g., restricting overnight timesharing or types of shared recreation, can often be offered based upon these data.

Finally it is often highly advisable to make efforts to obtain any earlier records such as prior psychosexual, psychological, or neuropsychological evaluations or of academic records when cognitive status is at issue.

FORENSIC INTERVIEW – A forensic interview typically lasts one to three hours. Often the client is eager to give their account and address allegations. Even when a psychosexual evaluation is stipulated by a court and the client may be less eager or trusting of both the evaluator and the process, adequate cooperation may be obtained by giving fully informed consent. I typically explain that my neutral role dictates that I objectively consider both (or all) sides of any allegations or concerns. That entails anticipating and forthrightly addressing any questions or concerns of all parties, such as any lack of logical cohesion, implausibility, conflicting evidence, or discontinuity in the event timeline. I then reassure the client that while this type of questioning may give the appearance of doubting their veracity, my goal is only to objectively address all matters at issue. Most clients accept this orientation and proceed with the interview with minimal defensiveness.

The client is then invited to provide as much information as possible in their own words, especially regarding any specific allegations. Antecedents, contexts, and sequelae are questioned. If the client denies or appears to minimize, they may be invited to speculate or opine why false allegations or exaggerations were made.

Throughout the forensic interview as well as any other incidental contact such as continued, next page
as during testing, the examiner is attuned to the client’s mental status. This includes their physical presentation (e.g., grooming, attire) cooperation, orientation, mood, affect, ideation, attention, recall, and mannerisms. Occasionally a structured, formal mental status exam is advisable, such as when any abnormality of mental status is apparent during the forensic interview, when the client complains of significant memory or cognitive difficulties, or when there is reason to believe compromise of cognitive function is likely. Results of a formal mental status exam indicating significant deficits may then warrant referral for a formal neuropsychological evaluation.

The rest of the forensic interview is intended to obtain information about the client’s family history, medical history, mental health/substance use history, education and employment history, legal history, and sexual history.

Obtaining a reasonably accurate sexual history requires some clinical acumen. It is often helpful to matter-of-factly inform the client that this is a standard part of a psychosexual evaluation, given its focus on sexual adjustment issues. I then begin by asking if the client was ever sexually victimized. If so, the relevant details are included, along with the client’s perception of any sequelae or effect on their recent or adult sexual interests or sexual behavior. Subsequent lines of inquiry may include:

- Diagnose psychopathology, especially how one learned the mechanics of reproductive sex and masturbation;
- earliest foreplay and earliest intercourse;
- lifetime total number of sexual partners, their genders and ages;
- any history of paying for (or selling) sex;
- sexual uses of the Internet;
- presence of sexual dysfunctions in one’s self or current or recent partner;
- details of all serious, love relationships; and
- the quality of current or recent communication and sexual adjustment, including shared sex and masturbatory practices.

Questioning about sexual compulsivity is recommended. Also, some exploring for the presence of common paraphilias such as exhibitionism and voyeurism is advisable, although psychosexual testing will likely address these in detail.

COLLATERAL INTERVIEWS – A collateral interview, especially of the person making or reporting the allegations, generally helps that person to feel heard. Necessity or convenience sometimes dictates these be by telephone. The evaluator should reach a decision on conducting the collateral interview in consultation with the referring attorney. It may be counterproductive to do so without that prior consultation. I estimate that in approximately half of the psychosexual evaluations in family law that I have conducted, the person making or reporting the allegations is sufficiently on record with their observations and concerns, rendering a collateral interview of them unnecessary.

If the evaluatee has available a recent or current lover or partner (other than the one making or reporting allegations), a collateral interview would usually be highly relevant. That collateral interviewee is considered to be an independent data source for verifying the client’s sexual tastes, habits, boundaries, and any demonstrated safety around children.

SELF-REPORT MEASURES – At their base, psychosexual evaluations are psychological
evaluations where self-report psychological tests are standard fare. The Multiphasic Sex Inventory, Second Edition (MSI-II) is specifically designed to address this need. It is a lengthy true/false and multiple choice test covering various domains relevant to sexuality and to sexual offending. It includes a measure of “social desirability” or the tendency to place oneself in an unrealistically favorable light, or to fake good. This test’s main drawback is that it requires approximately two hours to administer. Also, if the Abel Assessment of Sexual Interest-3rd Edition (AASI-3) is also administered, it provides minimal new information. The MSI-II may be particularly helpful when an AASI-3 is not feasible. It can in no way however, replace the need for an objective measure. In sum, the MSI-II is time consuming and offers limited additional data to that provided by the AASI-3. Therefore it may have limited utility, especially in family law contexts where allegations often are less extreme or substantial than in criminal law contexts.

Apart from the MSI-II, most other tests relevant to this discussion are measures of personality. Prominent examples are the Minnesota Multiphasic Personality Inventory-Second Edition (MMPI-2) and the Millon Clinical Multiaxial Inventory-Fourth Edition (MCMI-IV). Both of these tests are well-validated and widely accepted. Moreover, they seek to address highly relevant issues in psychosexual evaluations, such as indications of any pronounced mental illness, indications of antisocial or aggressive behavioral tendencies, and whether the test taker is extroverted or introverted. These tests have built-in measures of social desirability or validity of the self-report. They require approximately sixty to ninety minutes to administer. Such a test is highly recommended for any psychosexual evaluation regardless of the law context.

Intelligence testing is rarely included in a psychosexual evaluation. If such questions are relevant, a separate intellectual evaluation is preferable.

OBJECTIVE MEASURES – Including an objective measure as one component of a psychosexual evaluation is widely considered to be the current standard of practice and is highly recommended by the Association of Treatment for Sexual Abusers (ATSA). Three distinct types of objective testing are currently recognized as potentially fulfilling this standard. Polygraphs, penile plethysmography (PPG), and visual reaction time (VR) testing. Annual polygraphs are currently stipulated as part of all sex offender probation in Florida, so long as they remain in their mandated sex offender-specific therapy. Including polygraphs in psychosexual evaluations is occasionally helpful, especially when allegations do not involve children or minors. When allegations do involve minors, the other objective measures are preferable. The accuracy and validity of polygraphs, however, remains problematic. For example, the 2003 book entitled The Polygraph and Lie Detection, authored by the Committee to Review the Scientific Evidence on the Polygraph of the National Research Council, recommends that polygraphs not be used in any employment or promotion-related decisions. Research at the Abel Screening, Inc. indicates that polygraph testing accurately identifies approximately 75% of guilty testees but only approximately 62% of innocent testees. Most of the lack of validity with polygraphs is attributable to the lack of standardized administration.

Please note that a polygraph provides qualitatively distinct data from VR or penile plethysmography (PPG) measures since it generally seeks to answer categorically different kinds of questions. Whereas VR and
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PPG measures seek to address the likelihood of presence of deviant, especially pedophilic sexual interests, the polygraph typically seeks likelihood of veracity in response to questions of fact. Examples are “Were you present at this date and time?” and “Have you ever touched a child (or a particular child) for sexual arousal?” Questions that have no external reference point, e.g., “Do you sexually fantasize about youths 6-10 years old?” are generally discouraged among polygraphers adequately trained in sex offender protocols. A more appropriate and potentially verifiable question might be “Have you ever masturbated to any images of youths 6-10 years old, clothed or unclothed?” A forensic computer analysis, for example, may assist in supporting or refuting such a concern.

In some cases, both a VR measure and polygraph may be helpful to a psychosexual evaluation. Whether in family law or criminal law context, polygraphs may be especially helpful when VR results indicate the presence of deviant sexual interest but there is uncertainty about whether the testee has acted on those interests and is being challenged.

Penile plethysmographs (PPG) have a history nearly as long as polygraphs and are better supported by published, peer-reviewed research. This procedure has sensors attached to client’s genitals during presentation of deviant material either in visual or auditory format. Laws prohibiting possession of child pornography images, possibly even for PPG administrators, constitute one drawback, along with the obvious intrusiveness. Use of this measure has declined markedly over the last thirty years, likely for those reasons. Still, PPG may at times be useful when a second independent test is desired.

VR measures are widely considered to be a proxy for PPG inquiries. VR measures have several distinct advantages over PPG. VR measures are all based upon the observation dating from the 1940s that subject’s gaze tends to linger slightly longer on sexually desirable images than on undesirable ones and such tendencies correlate well with sexual interests (Rosenzweig, 1942).

In the 1990’s Gene Abel, M.D., working through National Institute of Mental Health grants, developed and standardized VRT™ measures. Abel employed a set of 160 non-nude stimulus slides, to which clients respond using a 7-point scale from “highly sexually disgusting” to “highly sexually arousing.” Clients are instructed to think of sexually interacting with the individuals depicted in each slide. AASI-3 also includes a lengthy self-report questionnaire regarding sexual attitudes, fantasies, and behaviors. Clients sign informed consent allowing an additional measure to be taken beyond their awareness. Through Dr. Abel’s research program, proprietary algorithms were developed to analyze whether average viewing time to prepubescent slides were sufficiently longer than average viewing time to adult slides, indicating likely pedophilic sexual interests.

The advantages of VRT™, and AASI-3 in particular, include the obvious lack of intrusiveness along with applicability to females and to minors at least 13 years old. Possession of potentially unlawful child pornography is obviated. Critically, test procedures are highly standardized, in contrast to less standardization with both polygraphs and PPG. In sum, the standardized test stimuli and procedures confer a pronounced methodological advantage over less standardized testing. At this time, over 200,000 AASI-3 test protocols have been collected by the Behavioral
Medicine Institute, providing an incomparable database of psychosexual data. Authorized AASI-3 testing sites are now in all 50 states.

Peer reviewed research is considered to be the foundation of scientific knowledge. Publication in a peer reviewed journal shows that the research withstood the critical scrutiny of multiple experts who are the author’s equals in their respective domains. When such research is original, it often contributes to the accumulation of scientific knowledge. Replication of findings, especially by independent researchers, brings scientific acceptance. With regard to the domains addressed by the AASI-3, an additional, practical benefit may accrue: justice may ultimately be better served through improved measures of attraction and risk.

The AASI-3, in peer reviewed research detailed below, has demonstrated acceptable reliability and validity. Measures of reliability include internal consistency and test-retest stability, both of which are considered to be acceptable. Reliability is a prerequisite for a test’s validity. Concurrent validity of AASI-3 is demonstrated by moderate correlations with PPG testing.

Predictive validity is more challenging to demonstrate, and the AASI-3 has done so. For example, in a recent longitudinal study (Gray, et al, 2015) 621 adult males on parole or probation for acting on a range of paraphilias were followed-up for 7-15 years. They all completed AASI-3 testing and any recommended psychotherapy. When their VRT™ scores were sorted into high, medium, and low relative viewing time regarding prepubescent children, none in the lowest VRT™ group sexually reoffended after 15 years. Of those in the medium VRT™ group, 7% recidivated after 15 years. Of those in the highest VRT™ group, the observed rate of sexual recidivism was 27% after 15 years. No other objective sexual interest measure has demonstrated such robust predictive validity, especially impressive in a 15-year follow-up. As a result, AASI-3 test result protocols now routinely include an actuarial estimation of sexual recidivism risk for 15 years post-release, provided that the client completes any recommended psychotherapy.

Finally, AASI-3 has withstood the majority of Daubert court challenges. Instances when the AASI-3 did not pass a Daubert challenge include those from over ten years ago, before more substantiating research evidence supporting AASI-3 became available. Most instances of more recently failed Daubert defenses, however, appear attributable to inadequate knowledge base or inadequate presentation in court by the individual tester.

To review, the two main parts of the Daubert standard are 1) does the test pass the four criteria for scientific information presented in court and 2) is this information relevant to the specific case at hand. The four criteria for scientific information presented in court along with a partial list of supporting peer reviewed and other research pertaining to the AASI-3 are as follows:

- **Is the underlying theory or technique (methodology or reasoning) at issue empirically testable and has it been tested?** (Abel and Wiegel, 2009; Harris, et. al 1996; Letourneau, 2002; Grey and Plaud, 2005) These studies support an affirmative response.

- **Has the theory or technique been subjected to peer review and publication?** (Abel et al 1998; Abel et al 2001; Kalmus and Beech, 2005; Grey, et al, 2015). These and other studies support an affirmative response.

- **What is the known or potential error rate of the technique in question and are there standards and safeguards**

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controlling the operation of the technique or device? (Abel et al, 1998; Abel et al 2001). These studies found a Cronbach’s alpha reliability of .8 to .9 and a sensitivity of 66% to 91%. These findings compare favorably with commonly used medical tests (e.g., blood or urine screens for diabetes. Galen & Gambino, 1975). Also standards and safeguards include specific training workshops, video and webinar training, and telephone consultation with Dr. Abel and associates. Test materials are standardized, including software, data processing, and reports.

• General acceptance by the scientific community (Rosenzweig, 1942; Quinsey et al 1996). These and other published studies and commentary show that VRT™ is an accepted indicator of sexual interest and has been since the 1940s. The AASI-3 has been used with over 200,000 clients in over 800 locations by over 5000 mental health providers. AASI-3 is one of the two instruments, along with PPG, that should be used to corroborate the presence or absence of sexual interest in children, according to ATSA (Practice Standards and Guidelines, 2005). These and other published studies show widespread acceptance by the scientific community of both the underlying principle (VR as indicator of sexual interest) and of the AASI-3 itself, including its patented and standardized VR measure, VRT™.

The second major part of the Daubert standard is relevance. Allegations of sexual impropriety with a minor clearly make the AASI-3 relevant. Even when the allegations concern post-pubescent minors, it is potentially helpful to provide indicators of presence versus absence of pedophilia. Other, less clear-cut allegations or concerns require use of clinical and forensic judgment. Allegations of “sexual or pornography addiction,” sexual preoccupation, paraphilic or “kinky” lifestyle or sexual interests, e.g., nudism, adult bondage and discipline practices are such examples. In sum, while no test is perfect, the AASI-3 is peerless among measures of sexual interest in its record of having withstood the majority of Daubert challenges. A complete list of Daubert court challenges and their outcomes regarding AASI-3 is available at Abel Screening, Inc. (abelscreening.com; phone number: 404-874-4772).

CRITIQUES OF AASI-3 – Some reasonable concerns about use of AASI-3 have arisen in the professional literature. One is that the VRT™ test results could easily be manipulated if the client had prior knowledge of what was being surreptitiously measured. In response, Dr. Abel has made strong efforts to protect the security of the test materials and procedures. Simply knowing that the specific demographic groups “should” be viewed for longer or shorter intervals would be unlikely to confer any significant advantage since 1) slides, though standardized and presented in a set order, are not ordered with respect to any demographic category. That is, although the slides are presented in the same sequence for all clients and for those taking multiple AASI-3’s (such as a pre-test and post-test), the order appears to be randomized to testees, hindering any set manner of intentional responding. Also, not all slides are used in VRT™ data analyses.

Moreover, Dr. Abel (G. Abel, personal communication, October 5, 2018) reported on a small study in which known child molesters were told in effect, “We are measuring how long
you look at the slides. Go ahead, try to conceal your true sexual interest.” Results indicated that VRT™ profiles were not materially changed by this knowledge.

Some writers have criticized that the majority of AASI-3 research has been conducted only by Abel & Associates. These critics may be referred to Letourneau (2002), who independently verified acceptable convergent validity of Viewing Time (VT) scores with PPG scores. In addition, two other peer review studies by authors unaffiliated with Abel’s staff (Gray & Plaud, 2005; Miner, et. al., 1995) found significant correlations between PPG and VRT™ scores, using results scored by AASI-3, based on their private and proprietary algorithms. Please note here that the Letourneau (2002) study provided her own independent analysis of the raw VT data, not using Abel’s proprietary algorithms (VRT™). Her analysis confirmed that VT shows convergent validity for PPG and that VT is an acceptable proxy for PPG data.

While researchers themselves have legitimate interests in the algorithms and their application, undoubtedly a tight rein over their disclosure is necessary for test security. If that opaqueness is sufficiently disquieting, then my advice is do not use the AASI-3. On the other hand, it is hard to argue with success, e.g., AASI-3’s research record and Daubert credentials. In my view, the Letourneau (2002) study demonstrated independent proof of concept, while Gene Abel, M.D. indeed brought the much needed standardization to its measurement. Like every digital or Internet-related program or product, AASI-3 is at some security risk, one that is constantly evolving. The response to that security risk should likewise be evolving and anticipate future threats as well. In that light, and considering its advantages, the opaqueness of scoring algorithms seems a small concession and not a major limitation, as some have contended (Wilson & Miner, 2016).

In sum, the AASI-3 is a leader in addressing the need for an objective measure in psychosexual testing, one that does not depend only on the client’s self-report. The massive amount of normative VRT™ data that has been collected, along with the careful fifteen-year follow-ups of clients make the AASI-3 nearly indispensable for psychosexual evaluations of those facing allegations of impropriety with a minor. Finally, the AASI-3’s record of withstanding the majority of Daubert court challenges is unmatched by any other tests using VR techniques.

Family law practitioners who are conversant with the diverse sexual issues couples often confront in the digital age can better recognize when a psychosexual evaluation may be relevant. This article sought to clarify key elements of a quality psychosexual evaluation. The aim was to assist attorney’s abilities to (1) critically review such evaluations and (2) make informed referral decisions when the need arises.

BIBLIOGRAPHY

Association for the Treatment of Sexual Abusers. (2014). Practice standards and guidelines for members of the association of for the treatment of sexual abusers. Beaverton, OR.


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Dr. Grieco is a Licensed Psychologist and Certified as a Sex Therapist by the American Association of Sexuality Educators, Counselors, and Therapists. He earned his his B.A. from the University of Miami, and his Ph.D. in Clinical Psychology from the University of Memphis. His Postdoctoral Clinical Fellowship in 1986 was at the Masters & Johnson Institute in St. Louis. He has served on the Board of Directors of the Florida Psychological Association. He has taught courses in Sexual Behavior and Sex Therapy at Rollins College and at the University of Central Florida (UCF) at both the undergraduate and graduate level. He has been in private practice since 1986, and since 2006, on staff with Psychological Affiliates, Inc., Winter Park, Florida.
Shifting Gears: Making The Most Of Life’s Not-So-Little Changes

By William D. Palmer and Nancy S. Palmer

Whether we plan for them or they catch us by surprise, major changes will face most of us at some point (or points) in our professional lives. In some cases, drastic changes can end one’s legal career entirely. In other cases, less drastic (but still major) changes require a subtler response. Over the last forty or so years, we have experienced both. For Nancy, her drastic change at age 47 was an unexpected disability that ended her career as a family attorney, guardian ad litem, mediator, and mediation trainer. For Bill, his major change at age 66 was a planned retirement from the bench that guided him toward new opportunities in private practice and legal education. For both of us, each of these “gear shifts” brought life lessons that helped us embrace changes that otherwise could have overwhelmed us. The purpose of this article is to share some of those insights, in hopes that readers can transition through their own changes with equal success.

Remember that life after the law is not only possible, but full of possibility.

First things first: No matter how invested you are in your legal career, and no matter how much you love what you are doing, neither your life nor your happiness should depend on it. We have known many lawyers (especially men) who avoided retirement for fear that they would have nothing to occupy their time. As an initial matter, that perception is inaccurate, because lots of ways exist to productively use your time outside of the law. Moreover, avoiding retirement because you are afraid of having “nothing to do” can be detrimental not just to you, but also to your clients. We have known too many people, both in the law and otherwise, who continued in their profession longer than they should have, and ruined an otherwise stellar reputation by a late-career misstep. Of course, there are exceptions to every rule, and some people remain sharp and effective in their work at any age. But no one should ignore time’s potential to diminish certain abilities, and no one should let fear of the unknown prevent honest reflection as to whether it might be time to move on to a new phase in life. The strains and stresses of legal practice may increase with time and age, and the unhappiness many attorneys experience practicing law can be replaced by the happiness of doing something different and less stressful. And while you might feel comfortable doing what you know, you should not let that comfort rob you of the confidence gained from overcoming the challenge of learning something new.

Consider every change an opportunity, not an obstacle.

Any change large enough to close doors inevitably opens others. Keep your eyes open for them. If the change is planned, you may have a good idea what opportunities lie ahead. continued, next page
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Even when the change is unplanned, however, celebrate the opportunities that open up ahead of you, rather than mourning the doors that have been shut behind you. In Nancy’s case, for example, her doctors recommended that she work on developing the other side of her brain, previously dedicated to the “left brain” logical and analytical skills so valued by the law. Thereafter, she shifted her focus to “right brain” creative and artistic endeavors, like glass art, knitting, pottery, and painting. The joy and satisfaction she derived from these new endeavors quickly rivalled – and perhaps even exceeded – the sense of accomplishment she once derived from her practice. And in Bill’s case, because he had plenty of time to plan ahead, opportunities for travel, mission work, volunteering, and new contributions to the legal community were just waiting for him upon retirement from the bench. In planning for that transition, Bill experienced two joys: the excitement of charting new adventures, and the fulfillment of reaping long-anticipated rewards.

Recognize that your identity does not depend on your profession.

Lawyers are usually specialists, but people are necessarily generalists. In other words, you are much more than your job. You are your character, your values, your passions, and more. Family, friends, faith, work, and other aspects of your life all contribute to your identity, but none define it. Think about when you introduce yourself. Do you focus on what you do, who you know, or what you believe? In our case, we can say that we are a couple of strong faith who have been happily married for 33 years and are blessed with five children, three grandchildren, and many friends. And, importantly, those things were never affected (at least, not negatively) by the changes in our professional lives. If your identity is totally dependent on your profession, the loss of that profession (which most people will experience at some point or another) can leave you rudderless and depressed. But if your identity is based on considerations beyond your profession, its loss is merely a refocusing of time, and energy, on those other, equally important aspects of you. Your career is not your only success in life, and ending it will not hinder your successes to come. Even more telling than how you introduce yourself is what you will leave behind. When you leave the room, what do you want people to say? When you are eulogized (hopefully many, many years from now), what – or rather, who – will they remember?

Be mindful of the present.

Mindfulness, much in the news of late, is the practice of focusing one’s awareness on the present moment. If you are depressed, you may be focusing on the past, which you cannot change. If you are anxious, you may be focusing on the future, which you cannot always predict or control. If you are focusing on the present, you can make the most of your current situation. Longing for “the good old days” does nothing to promote your happiness in the present, and may prevent you from realizing that “the good new days” may be even better. Since you cannot change what has already happened, worrying about it accomplishes nothing. Since you cannot control everything that is yet to be, being anxious about it does no good. You have some control over the present, so that is a good place to place your energies. So if you find yourself no longer in the professional position you once were, make the most of it by focusing on what is happening in the present and how to best achieve happiness where you are, here and now.

Seek the wise counsel of others.

As legal practitioners, we are used to advising people in need to “get a lawyer” or “talk to an
expert.” We need to take our own advice. No matter what circumstances you find yourself in, chances are you are not the first to arrive. Take advantage of others’ life experiences and hard-earned wisdom. Whether you seek advice informally, through family and friends, or formally through professional counselors or mentors, obtaining that input can bring ease and peace to any transition. As the Book of Proverbs notes: “The way of fools seems right to them, but the wise will listen to advice” (Proverbs 12:15) and “Plans fail for lack of counsel, but with many advisers they succeed” (Proverbs 15:22).

**Stay active, engaged, and open to growth.**

Just because you are no longer going to the office and seeing the same people every day does not mean you cannot find new places to be and new friends to meet, or even new ways to appreciate the places and people you have always loved. Isolation is a leading contributor to dementia, along with lack of activity and stimulation, so to increase your chances of a happy retirement, keep recharging your brain, body, and soul. Opportunities abound to do things you are passionate about or to discover new passions. To avoid isolation, choose activities that give you the chance to connect with other people, such as sports, games, parties, or other social activities. Finding opportunities to connect to animals, nature, and travel can have a similarly beneficial effect. Like many of our friends, we quickly discovered there was no need to worry about having nothing to do in retirement, or as we call it, “engagement.” In fact, we quickly started to wonder how we ever fit any time for work into our busy schedules. For so many years, we have said, “If only we had the time…” Now we have it, and we plan to make the most of it.

**Keep giving.**

Many of us came to the law because of the opportunity it provided to advocate for others, to help people in times of need, or to promote change beyond a single case, client, or career. That is what drew you to the law, but it is not what binds you to it. Wherever you go in the law, and wherever you go beyond it, keep giving. Give of your time, your enthusiasm, and your experiences (legal or otherwise). Find ways for all the parts of you – old, new, and still developing – to contribute to the world around you.

William D. Palmer now mentors a seven-year-old child in foster care, leads mission activities at his church (including an upcoming service trip to Kenya), and volunteers as a moot court and mock trial judge at various law schools. A longtime racquetball player, he has recently taken up weight training and swimming. He traded in the courtroom for more time on the racquetball court in 2018, after serving 18 years as a judge on the Fifth District Court of Appeal. Before his service on the bench, he practiced family law, commercial litigation, arbitration, and mediation, at firms both big and small.

Nancy S. Palmer now mentors young people, participates in bible studies and book clubs, and continues to create art. A longtime game player, she has recently discovered the magic of mahjong. She retired from the active practice of law in 2000, before which she practiced family law, adoption, mediation, and mediation training. From 1993 to 1994, she served as chairman of the Family Law Section of the Florida Bar. She enjoys writing articles with her husband Bill.

*Special thanks to our daughter, part-time legal writing professor and full-time “edit murderess,” A. Carley Palmer.*
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