

**FLORIDA CHAPTER - AFCC**  
**Regional Training Tallahassee**  
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**Quality of Life-Fast Facts about Stress, Conflict and Safety**

Mayo Clinic researchers determined that constant stress puts your health at risk:

- Cortisol levels increase, suppressing immune system.
- Adrenaline levels increase elevating heart rate and blood pressure.
- The less perceived control over potentially stress-inducing wife events, the more uncertainty created, the more one will feel stressed.
- Long-term activation of the stress response system increases risk for: heart disease, sleep problems, depression, obesity, memory impairments and worsening of skin conditions.
- Children exposed to stress tend to be particularly vulnerable to stress as adults.

Rockefeller University researcher Bruce McEwen discovered:

- Stress can cause neurons to shrink or retract their connections

Yale University researcher Tibor Hajszan and colleagues determined:

- Stress-related reductions in synapses in the hippocampus are directly related to the emergence of depression-like behavior.

Health Sciences Center researchers at Louisiana State University, Iaroslav Savtchouk and S. June Liu, Ph.D. found in January 12, 2011:

- A single exposure to acute stress affected information processing of the cerebellum, which is involved in learning and memory formation.

University of Toronto researchers found in an article from January 19, 2011:

- Adult children of divorce are more likely to have seriously considered suicide than their peers from intact families

Researchers Edward Christophersen, PhD, ABPP and Susan VanScoyoc, PhD, ABPP conclude in a scholarly literature review completed on March 8, 2010:

- Children usually are aggressive because they experience and witness aggression in their environment, with perhaps the most influential source of modeling aggression for the child being the parent.

Researchers from Arizona State University, Weber, Robinson and Kurpius, studied the importance of self-beliefs on relational aggression of college students and determined:

- Perpetration of relational aggression was negatively related to mattering to friends and self-esteem.

Texas Tech University Researchers, Mason and Smithey, report on their study published October 10, 2011:

- Results show that general stress and cumulative intimate partner strain increase violence among college students.

Common lore:

- Criminal court is where bad people are on their best behavior, while family court is where good people are at their worst.

An ABA survey found that 60 percent of family lawyers had been threatened by clients of opposing counsel and 17 percent by their own clients. There are many documented incidents of violence against lawyers in family law matters such as the following more recent tragedies:

- June 2006, a Nevada family court judge was fatally shot by a man he had dealt with in a divorce case.
- February 2005, two people were killed in a shooting at the county courthouse in Tyler, Texas, by a man upset about his divorce.
- 1997, a Sacramento family law attorney who was shot and killed by the husband of a woman he was representing.
- Also in 1997, a divorce attorney was fatally shot in his Tustin, California, law office.
- 1992, two lawyers were killed and another lawyer and two judges were wounded when a non-practicing attorney shot up an appeal court in Fort Worth, Texas, after losing custody of his son.
- June 2, 2011 Carey Hal Dyess walked into the converted single-story house that served as Jerrold Shelley's law office in Yuma, Arizona. Dyess, 73, instructed an office administrator to move out of the way and then shot and killed the 62-year-old lawyer, who had been in the process of packing up his office and retiring. The attack wasn't random. Shelley had represented Dyess' ex-wife in a bitter divorce in 2006. He was one of five victims of a rampage that lasted six hours and ended only when Dyess turned the gun on himself. Family law attorneys reacted to the news of Shelley's death with sadness, but not surprise. At least five family law attorneys have been killed or violently attacked by clients' ex-spouses since February 2010, and the recent deaths have highlighted the safety risks they face.
- Redmond Coyle, 61, was shot and killed outside his office in Pickens, South Carolina, on February 3, 2010, in front of his wife and child. His killer was Jerry Crenshaw, the ex-husband of a woman Coyle had represented in divorce proceedings. After shooting Coyle, Crenshaw killed himself.
- Terri Melcher on June 11, 2010, was stabbed nearly 30 times in her law office outside Minneapolis, Minnesota by the ex-husband of a woman she represented in a child custody case. Melcher was able to persuade her attacker to stop the assault and survived. The attacker, Sheikh Nyane, turned himself in to police.
- Judith Soley, 65, was shot and killed on February 16, 2011 alongside her client at a restaurant near Fresno, California, while on court recess in the client's divorce. The assailant was the client's estranged husband, who later killed himself.
- Criminal defense attorney Emmett Corrigan, 30, was shot and killed in the parking lot of a Walgreens outside Boise, Idaho, on March 11, 2011, one day after he had filed divorce proceedings on behalf of the attacker's wife, who was one of his employees.

## **Ethics Challenges From One Judge's Perspective**

This will be an essay on a theory of considering whether behaviour is aspirationally appropriate, ethical, or improper and to be avoided. It is general and non-traditional in its approach. It will be a short essay, because the basic concept is very simple. Its very generality will provide a more universal standard for comparing specific conduct to the highest standards of our professional behavior. It is furnished as a background for discussions on the enlightened practice of family law.

Ethical considerations regarding custody evaluations and the presentation of parenting issues to the Court can be as simple or as complex as an individual professional chooses to make them. There are several levels to consider:

Is the behavior of the professional based solely upon the need for the professional to follow regulations that prevent unethical practices? Or should the behavior be viewed as a part of a larger social compact among all members of our society? This social compact could be considered to be an agreement that we will not harm each other and will conduct ourselves in a way that subordinates our individual desires to the needs of our society to preserve our universal values: individual liberty, prosperity, and happiness.

Consider these different levels of needs and obligations:

**Society's needs:** Healthy families that produce children who become good, productive citizens. In the realm of divorce cases, this could mean parents who can separate without the type of conflict that traumatizes their children. Ethical considerations for all professions should involve performing their work in a manner that promotes healthy conflict resolution.

**The profession's obligations:** This adds a concept of competence to the aspirational goal of serving society's needs. Competence in this sense means two things:

1. Knowing the techniques and skills which will allow the professional to present credible and useful information to the Court
2. Being aware of the processes used for conflict-resolution which will most likely lead to the achievement of the societal goals listed above.

**The individual practitioner's obligations:** Applying the skills and techniques in a process which will produce a resolution which is reasonably cost efficient and prompt and which will hold the greatest promise of preserving emotional and financial health for all members of the family.

**The judiciary's obligations:** To move the families through the court process in a manner that causes the least harm and preserves as much emotional strength and financial resources as possible. This requires monitoring and guiding the work of the professionals so that they are held to the appropriate standards of their ethical obligations and aspirational conduct.

The guiding force should be society's needs. That is our aspirational goal. It would be inappropriate only when our individual or professional ethics require otherwise.

Thus, instead of considering professional ethics as our guiding light for whether a certain behavior or practice is appropriate, I propose that our beacon should be society's needs first and then consider whether those needs conflict with individual ethics.

Isn't this what makes society successful? Isn't this the highest goal? Yes, there are individual freedoms that may clash with society's needs, and if that clash occurs, and you represent an individual whose rights clash with society's needs then you must follow the individual ethics standard.

I believe this approach will produce the most beneficial and appropriate behavior. We operate in a world of those who are sometimes referred to as "temporarily insane". Most of their issues revolve around emotional needs, not legal needs. We need a different approach in determining appropriate representation of these people, who are often disabled. We have a higher and more difficult burden than we would shoulder professionally if we were representing someone with a "normal" outlook and a straightforward legal problem.

The matrix for deciding if our behavior is appropriate:

Society needs healthy family relationships which will produce children who are good productive citizens. Will our advice, representation, and counseling advance this overarching need of society?

Our professional code of conduct requires that we competently (not zealously) represent our clients. Will our advice be competent enough to include the recommendation of processes, approaches, and resources which are more likely to lead them to happiness than traditional adversarial techniques?

Individual freedom mandates that our clients have the right to be different. If they are in their right mind, if they have been counseled as to what society considers as the most important values, and if they have been exposed to the most effective and enlightened methods of resolving their family issues, then what remains may be an adversarial case.

Most ethical obligations will be determined by adhering to this process of analyzing our professional behavior.

#### **Discussion Issues and resources:**

Attorneys: Code of Professional Conduct, zealous representation/competent representation, interest of the child, modern alternative dispute resolution techniques.

damage to children because of parental conflict, temporarily insane clients, Academy of Matrimonial Lawyers' Bounds of Advocacy

Judges: Code of Judicial conduct, ex parte conferring with others, neutrality and fairness, recusal

Mental Health Professionals: Ethical considerations, improper influence by ex parte contact

All continuing professional relationships: obligation to families and society, aspirational goals and professionalism

Cross examination of an expert witness or the other party or their family member  
Conducting an adversarial hearing and seeking to "win"

Abrupt "macho" communication with another professional

Advising clients how to present themselves in a conference with an evaluator

## Using a Financial Neutral for the Benefit of the System

What the neutral financial can do for the Family Court system:

1. Their professional training tends to automatically eliminate emotion and advocacy. They are natural problem-solvers. When approaching the hard and messy financial choices of a divorcing family, the financial expert is more likely than the parties or their attorneys to create an objective, reality-based plan to help them through some very difficult times. The other participants are more likely to be caught up in emotion or advocacy and will often take positions that cannot be carried out when looking at the entire separated family system.
2. Financial experts usually have good skills and training for performing the following tasks:
  - A. Mediation: The financial expert brings a calm, knowledgeable approach to mediation. This approach often works as well on parenting issues as it does for the financial issues. The financial expert generally has a different, more practical approach than other professionals. A co-mediation with a lawyer or mental health professional may allow both types of professional to learn from each other, and may yield an even better result.
  - B. Problem-solving: The logical, fact-based nature of their training produces an expert who is focused on gaining a solution, not seeking emotional satisfaction alone. "Just the facts, Ma'am!"
  - C. Acting as Investigative CPA's: Acting as a neutral expert appointed by the Court, the financial expert is freed of pursuing useless, but expensive, tracks. You can give them a budget and tell them to gain as much information as they can within the budget and to ask for more only if it is truly warranted by the potential worth of the final product. They can use the parties personal pre-existing financial advisors and take advantage of their knowledge to save considerable time and expense.
  - D. Tax-effecting awards of equitable distribution and alimony. Often the tax ramifications may cause an otherwise beneficial award to diminish greatly. A neutral expert can ferret out ways to fashion an equitable distribution, or an alimony or child support award, that is different than the parties would desire, but that meets their needs better because of the tax ramifications. This is frequently overlooked by parties who have an emotional investment in a particular scheme of distribution.
  - E. Consultants to attorneys or the court on practical solutions to difficult financial issues: When employed on an ad hoc basis, the financial expert can provide valuable neutral opinions on specific technical or sophisticated financial information in a very cost efficient manner that may make the difference in successful negotiation. A judge could also appoint the expert to advise the Court (and all the parties) on a financial issue that may be a real "sticking point" in making a decision
  - F. Members of collaborative or cooperative law teams: For all the reasons given above, the neutral financial expert can be an invaluable member of the team.
  - G. General or special masters: In cases involving complicated financial issues a neutral expert can be appointed by consent of the parties to act as a master. The neutral expert can take evidence and make a recommendation to the Court. This saves the judge

considerable time, and gives the parties a more knowledgeable fact-finder for the particular type of case. The neutral expert may also have more patience and be more attentive and focused than a judge would be on this type case. The judge, of course, still decides pure legal issues, and makes or approves the final decision. This could be accomplished for a certain part, or for the entire case, if it is purely financial.

H. Planning and extending financial plans into the future and beyond retirement of both parties: Often financial plans and awards look very good and fair when made, and even for a long time afterwards. Unfortunately, severe changes in time and economic conditions may completely vitiate what was originally a good plan. Likewise, a plan may be doomed from the beginning because the parties don't fully understand the long-range effect of the awards. A neutral expert can assist in making a sounder long-range plan, and help avoid unintended consequences which sometimes occur because of a failure to extend the effect far enough into the future.

3. Look for a financial expert who is:

Flexible

Has people skills

Is a decision-maker

Remember, not every financial expert will have the personal make-up to work well in the caldron of divorcing family issues. It takes a special type of person.

Consider using a financial expert for gender identification; for example, a female CPA may be able to strike a rapport with a wife who needs guidance as to structuring her financial life. On the other hand, a strong male CPA may be able to convince an authoritative husband that he needs to give in on certain financial issues.

Consider personality type; be careful not to recruit those who are so detail and fact oriented that they may not be able to make prompt, practical, and global decisions.

4. Hopefully, you may wind up with less post-judgment problems in the financial arena because of the work the neutral financial expert can accomplish in helping to forge a solid, practical plan. Whether you are a judge, attorney, or party, use these valuable experts for what they do best. Don't merely follow the traditional mode of hiring them as a "hired gun". Be creative! Free the financial expert to do their best work by using them as a neutral in as many different ways as is possible; that will help the whole system!

Hugh E. Starnes, Circuit Judge  
Fort Myers, Florida

## A PROCESS TO FACILITATE SETTLEMENT OR PROTECT RIGHT TO RECOVER ATTORNEY'S FEES AND COSTS

1. Accumulate information and begin to form a theory of the case.
  - A. Determine additional information needed.
  - B. Estimate rough range of costs and fees to complete a trial of the case. Contrast this figure with the cost of the matter if settled fairly quickly.
  - C. Propose a rough outline of a resolution of the case, stating the assumptions and facts it is based upon. Put this in writing to the opposing counsel, offer cooperation in furnishing information quickly and informally, and in considering any counter proposals with an open mind, if they are furnished with a similar format - assumptions and facts stated. Invite reciprocal cooperation and a written response as to any counter proposal.
  - D. Offer to continue this process to a cooperative conclusion.
2. If the other party does not reciprocate, set a case management conference with the Judge and set forth the dispute parameters to the Judge and ask the Judge to intervene or facilitate to promote a cooperative effort by both sides.
3. Repeat this process, if necessary.
4. If the other side does not cooperate, then you have maximized your position to recover attorney's fees if the final ruling is closer to your assessment or at least not to have to pay the other party's fees.
5. Other miscellaneous tools:
  - A. Use the "Cooperation Assessment" to determine capability of the parties mediation or negotiating in good faith.
  - B. Use one expert (Court appointed) to help facilitate resolving parenting issues.
  - C. Use an investigative CPA (Court appointed) to resolve financial issues.
  - D. Customize alternative dispute resolution plan to fit the parties so that any agreement will be a long lasting one.
  - E. **REMEMBER:** A *sincere*, good faith attempt to proceed to a fair agreement settling the case will never be wrong in the Judge's eyes...An *insincere* pretense at settlement earns no respect.