



The New York State Office of Court Administration

Attorney for the Child Contracts

and



**In collaboration with
The Appellate Division, Fourth Department
present**

**ATTORNEY FOR THE CHILD
LEGAL UPDATE**

2012

This program is supported by Federal Court Improvement Grant funding from the U.S. Department of Health and Human Services.

THE OFFICE OF COURT ADMINISTRATION
ATTORNEY FOR THE CHILD CONTRACTS
& CHILD WELFARE COURT IMPROVEMENT PROJECT
IN COLLABORATION WITH
THE APPELLATE DIVISION, FOURTH DEPARTMENT

Present
ATTORNEY FOR THE CHILD UPDATE

JUNE 11th, 2012
THE DESMOND HOTEL AND CONFERENCE CENTER
ALBANY, NEW YORK

- | | |
|-----------------------|---|
| 1:00 P.M. – 1:50 P.M. | REGISTRATION AND SNACK |
| 1:50 P.M. – 2:00 P.M. | WELCOME
Rachel Hahn, Esq.
Coordinator, OCA Attorney for the Child Contracts |
| 2:00 P.M. – 3:15 P.M. | DOMESTIC VIOLENCE AND TECHNOLOGY
Ian Harris, Esq.
Day One |
| 3:15 P.M. – 3:30 P.M. | BREAK |
| 3:30 P.M. – 5:15 P.M. | COMPLEX CUSTODY ISSUES AND ETHICAL
IMPLICATIONS FOR THE ATTORNEY FOR THE CHILD
Michele A. Brown, Esq.
Chief Attorney for the Child
Children’s Legal Center

Jeffrey P. Wittmann, Ph.D
Forensic Psychologist and Trial Consultant
The Center for Forensic Psychology |
| 7:00 P.M. – 9:00 P.M. | DINNER & TECHNOLOGY PRESENTATION |

The Appellate Division, Fourth Department has been certified by the New York State Continuing Legal Education Board as an Accredited Provider of continuing legal education in the State of New York from March 2, 2011 to March 1, 2014. This program has been approved for a total of (3.5) credit hours, of which one and one-half (1.5) credit hours can be applied toward the skills requirement, one-half (.5) credit hour can be applied toward the professional practice (family law) requirement, and one and one-half (1.5) credit hours can be applied toward the ethics and professionalism requirement. This program is suitable for experienced or newly admitted attorneys.

DIRECTIONS

The Desmond Hotel and Conference Center

660 Albany Shaker Road

Albany, NY 12211

Please note: Several online map services show The Desmond on the wrong side of Interstate 87 (The Adirondack Northway). The hotel is actually located just **West** of the overpass of the Northway on the **South** side of Albany Shaker Road (NY State Route 155).

If you encounter any difficulties as you make your way to The Desmond, please call the hotel toll-free at 800-448-3500.

Directions from the Albany International Airport:

Proceed straight out of the airport. At the traffic light, make a left and follow signs for I-87 & I-90. (You will be on Albany Shaker Road.) Proceed straight through two traffic lights. At the third light, continue following signs towards I-87 & I-90. The Desmond is set back from the road and resembles a Colonial village. The hotel will come up on your right, before the highway, exactly 8/10 of a mile from the third traffic light.

If you are arriving from the SOUTH or from the WEST:

Take the New York State Thruway to Exit 24. After toll booths, take the Adirondack Northway (I-87) North to Exit 4 (Albany Airport exit). At the end of the ramp, go left on Wolf Road. At next traffic light, go left on Albany-Shaker Road. You will pass under the highway; do not get back on I-87 south. Rather, proceed straight through the intersection, and prepare to make a left turn. The Desmond is the first building on your left, set back from the road. It resembles a Colonial village.

If you are arriving from the EAST:

Take the Mass Turnpike West to Exit B1. "I-90 Albany West". Remain on I-90 West for 15-20 miles; you will see downtown Albany to your left about midway through the trek. Stay on I-90 until you see signs for "Montreal North". Exit I-90 and enter the Adirondack Northway heading NORTH toward Montreal. Exit at Exit 4 (Albany Airport exit). At bottom of ramp go left onto Wolf Road. At next traffic light, go left onto Albany-Shaker Road. You will pass under the highway; do not get back on I-87 south. Rather, proceed straight through the intersection, and prepare to make a left-hand turn. The Desmond is the first building on your left, set back from the road. It resembles a Colonial village.

If you are arriving from the NORTH:

Take the Adirondack Northway (I-87) to Exit 4, "Albany Airport/Wolf Road". On ramp, bear to the right. At end of ramp, there is a traffic light. Go left onto Old Wolf Road. At the next traffic light go right onto Albany-Shaker Road and take an immediate left into our parking lot.

The Desmond is set back from the road, and resembles a Colonial village.

The Desmond is pleased to offer free parking in front and behind the hotel entrance.

Domestic Violence And Technology

Ian Harris, Esq.

Monday, June 11, 2012

Ian Harris

Ian Harris is a Staff Attorney at Day One, where he provides legal advice, information, and direct representation to young survivors of intimate partner abuse. Ian is also an Adjunct Professor at Wagner College, where he teaches sociology and gender studies. He holds a J.D. from American University Washington College of Law and an M.A. from the American University School of International Service.



P.O. Box 1507
Canal Street Station
New York, NY 10013
P 212.566.8120
800.214.4150
F 212.566.8121

Documenting Technological Abuse: *From Intake to Admission into Evidence.*

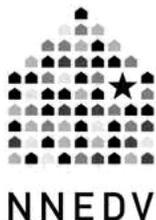
Contents:

I. Tips for Survivors of High-Tech Abuse and Stalking	pg. 2-9
II. Technology Safety Planning with Survivors	pg. 10
III. Stalking by a “High Tech” Guy	pg. 11-19
IV. Stalking Information Sheet	pg. 20-21
V. Tech Savvy Teens	pg. 22-23
VI. Clearing your Internet History.....	pg. 24-28
VII. Technology Best Practices.....	pg. 29
VIII. Cellular Abuse Resource Sheet.....	pg. 30-31

IMPORTANT NOTE: While most of these resources are available online, some information, although helpful in assisting survivors of intimate partner abuse, could increase the tools at the disposal of an abusive person. Therefore, to protect clients Day One requests that recipients refrain from posting or distributing this information without prior agreement from Day One. Thank you for your assistance.



WWW.DAYONENY.ORG



Tips for Survivors of High-Tech Abuse and Stalking

If you are experiencing High-Tech Domestic Violence, Sexual Violence or Stalking:

1. Trust Your Instincts
2. Talk about Safety with Advocates & Other Supporters
3. Save and Document Everything

1. Trust Your Instincts

- ❑ Does the person know too much about your activities or things you've only told a few people? If you think you're being monitored by an abuser, you probably are.
- ❑ Are you followed around town, even to new places? Abusers and perpetrators frequently stalk and follow their victims to work, school, etc, but if they show up to places you've never been before, perhaps they are using a global positioning device or other monitoring technique.
- ❑ Is the stalker comfortable with technology? Use computers? Willing to go to any effort to maintain control of you? Technology is getting easier to use and cheaper to access. Abusers are incredibly persistent and creative.

2. Talk about Safety with advocates and other supporters

- ❑ Are you in or ending a relationship with someone who might be dangerous or stalking you? In domestic violence situations, stalking is common during the relationship, when trying to end the relationship, and often occurs long after the relationship is over.
- ❑ Are you considering ending an abusive relationship? Trying to stop the abuse can be a very dangerous time, but there are steps you can take to try to increase your safety. Specially trained advocates at a local program or regional/national hotline can help you plan for safety and discuss options.
- ❑ Can you safely change your passwords, PIN numbers, create a new email account? (only do this on a safer computer if you suspect your home computer is being monitored)
- ❑ Which family members, neighbors, friends, and co-workers do you trust to help you plan for safety? It is common for batterers to push away most of your support systems, but they may be able to help you through a difficult time.

If you or someone you know is in danger, please call 911, or your local or regional hotline for support. In the U.S. you can also call the National Domestic Violence Hotline at 1-800-799-7233 or TTY: 1-800-787-3224.

DO NOT POST OR PUBLISH THIS DOCUMENT TO THE WORLD WIDE WEB

3. Save and Document Everything

- ❑ Even if you are not sure if you want to involve the police, it is a good idea to **keep a log of all incidents**. You may only use this log in your safety planning, but details can help you identify patterns. If you want the police to investigate they will need as many details as you can provide.

You might want to include: date, time, location, officer information (if reported), witnesses (if any), suspected technology involved (if any - phone, email, etc), and a description of the event or incident. (See appendix for a sample log)

- ❑ **Save** everything related to the event or incident. If you receive a threatening note on your car windshield, save it (and try not to touch all of it if possible to save fingerprints). Similarly, if you receive a threatening electronic message by email, pager, or voice mail, make sure you save it. Rather than deleting all traces of an incident, saving everything can help show patterns, plan for safety, and provide evidence for police. (see additional tips on saving email and instant messages below).
- ❑ If appropriate, take **photos**. If you find something suspicious, try not to remove it. You might want to carry a disposable camera with you. If the event is on your computer, there are ways to document and save your computer files. (see below tips on taking “**screen shots**”)
- ❑ Tell police about **all technology you know of**, if you are reporting the high-tech incidents to the police. It may help them find the appropriate technology devices used in the stalking or abusive incidents.
- ❑ Think about **patterns and passwords**. Are there patterns to some of the incidents? Do you only receive harassing email during the day when the abuser might be using a work computer? Do you think you are followed only when the stalker isn't at work? Does the abuser have favorite passwords that you know? Is there a place you think that the passwords might be written down? If the police need to collect computer evidence, it will help them to know where passwords might be stored.

Appendices Below

- | | |
|--|------|
| 1. Sample log of High-Tech Stalking | Pg 3 |
| 2. Blank log of High-Tech Stalking | Pg 4 |
| 3. Information about the Stalker, Passwords and Technology Devices | Pg 5 |
| 4. Saving email & email headers | Pg 6 |
| 5. Saving Instant Messages | Pg 7 |
| 6. Taking picture or “screen shots” of the computer screen | Pg 8 |

Contact information for advocates & allies:
(The project is not staffed for crisis calls)
Safety Net: the National Safe & Strategic Technology Project, at the
National Network to End Domestic Violence
Phone: 202-543-5566
Email: SafetyNet [at] nnedv.org
Web: nnedv.org/safetynet

DO NOT POST OR PUBLISH THIS DOCUMENT TO THE WORLD WIDE WEB

Sample Log for High-Tech Stalking Events

Date: Sun 5/4/2003	Time: (am/pm) 8:30 PM	Location: My home	Witnesses: (if any) My computer	Technologies Used (if any) Email
Description of Event: I received a threatening email from an email account that my ex created a few years ago. It isn't his normal email account, but I recognize the screen name. The email said "if you don't come back, I'm going to kill you"				
Response, check as many as boxes as appropriate and describe police or other response below: Police said to save the email and they would come out tomorrow.		<input checked="" type="checkbox"/> Saved paper & electronic evidence by doing: <u>saved and printed email</u> <input checked="" type="checkbox"/> Called Police (Report Number <u>20030504XCA</u>) and Officer Name <u>Sgt Jane Brown, County Police</u> <input type="checkbox"/> Went to the hospital or doctors office (name: _____)		
Date: Sat 5/31/2003	Time: (am/pm) 2:00 - 3:30 PM	Location: Downtown	Witnesses: (if any) My neighbor XXX	Technologies Used (if any) Phone and Answering Machine
Description of Event: All afternoon I received hang-up calls about every 5 minutes but the caller didn't leave messages and I didn't answer. My neighbor was there at 3:30 PM when my machine recorded a message from my ex saying I'd better watch out, and if I called the police I would get what's coming to me				
Response, check as many as boxes as appropriate and describe police or other response below: Police said to save the answering machine tape and they would pick it up on Monday.		<input checked="" type="checkbox"/> Saved paper & electronic evidence by doing: <u>removed tape so I wouldn't tape over it</u> <input checked="" type="checkbox"/> Called Police (Report Number <u>20030531DG5</u>) and Officer Name <u>Trooper J. Smith, County Police</u> <input type="checkbox"/> Went to the hospital or doctors office (name: _____)		
Date: Tues 6/3/2003	Time: (am/pm) 5:00 - 7:00 PM	Location: Downtown	Witnesses: (if any) XXX, friend	Technologies Used (if any) I suspect GPS
Description of Event: When I drove to a restaurant I've never been to, I noticed my ex in the parking lot watching me. My friend and I were going there for dinner. My ex has followed me to work (see log from last week), but this was the first time I was somewhere completely new. I suspect a GPS device might be in my car somewhere.				
Response, check as many as boxes as appropriate and describe police or other response below: Police suggested I bring my car to their dept or have a mechanic check it		<input checked="" type="checkbox"/> Saved paper & electronic evidence by doing: <u>looked around my car, under seat, under hood, under bumper, in trunk</u> <input checked="" type="checkbox"/> Called Police (Report Number <u>20030531DG5</u>) and Officer Name <u>Officer Doe, Municipal Police Dept</u> <input type="checkbox"/> Went to the hospital or doctors office (name: _____)		

DO NOT POST OR PUBLISH THIS DOCUMENT TO THE WORLD WIDE WEB

Stalking and High-Tech Stalking Log

Date:	Time: (am/pm)	Location:	Witnesses: (if any)	Technologies Used (if any)
Description of Event:				
Response, check as many as boxes as appropriate and describe police or other response below:		<input type="checkbox"/> Saved paper & electronic evidence by doing: _____ <input type="checkbox"/> Called Police (Report Number _____ and Officer Name _____) <input type="checkbox"/> Went to the hospital or doctors office (name: _____)		
Date:	Time: (am/pm)	Location:	Witnesses: (if any)	Technologies Used (if any)
Description of Event:				
Response, check as many as boxes as appropriate and describe police or other response below:		<input type="checkbox"/> Saved paper & electronic evidence by doing: _____ <input type="checkbox"/> Called Police (Report Number _____ and Officer Name _____) <input type="checkbox"/> Went to the hospital or doctors office (name: _____)		
Date:	Time: (am/pm)	Location:	Witnesses: (if any)	Technologies Used (if any)
Description of Event:				
Response, check as many as boxes as appropriate and describe police or other response below:		<input type="checkbox"/> Saved paper & electronic evidence by doing: _____ <input type="checkbox"/> Called Police (Report Number _____ and Officer Name _____) <input type="checkbox"/> Went to the hospital or doctors office (name: _____)		

Note from the Stalking Resource Center at the Nat'l Center for Victims of Crime www.ncvc.org/src/Help/log.html

"It is critical that victims of stalking maintain a log of stalking-related incidents and behavior. Recording this information will help to document the behavior for restraining order applications, divorce and child custody cases, or criminal prosecution. It can also help preserve your memory of individual incidents about which you might later testify "

Important note: Since this information could potentially be introduced as evidence or inadvertently shared with the stalker at a future time, **do not include any information that you do not want the offender to see.**"

DO NOT POST OR PUBLISH THIS DOCUMENT TO THE WORLD WIDE WEB

Information about the High-Tech Abuser/Stalker/Perpetrator:

Even if you are not sure you want to report the abuse to the police, keep a log of the events and also as much information about the abuser as possible. If you decide to report the events to the police in the future this information can help them investigate the crimes. It's OK if you only know some of the below information – any information may help police with your case.

Keep this information in a safe place – if you live with the abuser, consider keeping your logs locked in your office or with a trusted friend or relative.

Name of the stalker: _____ Date of Birth or Age: _____

Address: _____

Workplace & Address: _____

Type of Internet at stalker's home: ___ Dial Up ___ Cable ___ DSL ___ unknown

Name of Internet Service Provider, if known (Cox, AOL, etc) _____

All phones numbers used by this person or used in the abuse (from Caller ID, etc):

Home: _____

Cell: _____

Work: _____

Fax: _____

Other: _____

Other: _____

All email addresses used by this person or used in the abuse:

All screen name(s) used by the person or used in the abuse:

If known, list any favorite passwords used by this person:

Does this person keep a list of passwords in a book, or in a small handheld computer, or any other place you can think of? _____

Check as many as you know of that this person uses:

Personal Digital Assistant (PDA) such as a Palm Pilot or a Handheld Computer

Cell Phone

Laptop Computer

Small "Mini-Drives", also known as Pen Drives or USB drives

Desktop Computer(s)

External Hard Drives

Digital Camera

Tape Back-up System

CD Rom Burner (to make or copy CDs)

Others:

DVD Burner (to make DVDs)

Global Positioning Devices (GPS)

DO NOT POST OR PUBLISH THIS DOCUMENT TO THE WORLD WIDE WEB

Tips for Survivors of High Tech Stalking.

© 2003 NNEDV Safety Net Project

Web: nnev.org/safetynet • Email: SafetyNet [at] nnev.org • Phone: 202-543-5566

Page 5 of 8
[Revised 2008]

Save All Harassing Emails with their Header Information

To preserve evidence of harassing emails, you need to SAVE ALL EMAILS, including the email "header", the codes and letters that identify this particular message (it is usually hidden from view). The email header contains a lot of valuable information about where the email was sent from and who wrote it. Each email program is different, but SpamCop has some good instructions for many email programs. If you go to the web address below you can read the instructions for your email program.

If you are not sure how to do this correctly, contact your high-tech computer crime police unit. Do not delete anything.

<http://spamcop.net/fom-serve/cache/19.html>

How do I get my email program to reveal the full, unmodified email?

It depends on your email software. The above website offers instructions for some of the more popular programs:

Normal email software:

 Microsoft products: Outlook, Outlook Express

 Mac OS X

 Netscape, Mozilla and Thunderbird

 Eudora

 AOL

 Pine

 Lotus Notes

 Pegasus Mail

 WebTV

 Claris Emailer

 kmail (KDE Desktop)

 GNU/Emacs integrated email

 Mail Warrior

 Juno Version 4+

 Mutt

 The Bat!

 Pronto mail (GTK/unix)

 StarOffice

 Novell Groupwise

 Blitzmail

 Forté Agent

 Ximian Evolution

 Sylpheed

Web-based email software:

 Hotmail and Windows Live Hotmail

 Yahoo Mail

 Excite web-mail

 Netscape Webmail

 Blitzmail

 Operamail

 Lycos Mail (mailcity.com)

 Onebox.com

 Outlook Web Access

 Shawcable Webmail

 MSN Premium

AOL Tip: Save Email

[www.techtv.com/callforhelp/aol/story/0,24330,3370605,00.html]

Store your messages in your Personal Filing Cabinet automatically.

By Nicole Guilfoyle.

America Online has a horrible habit of deleting email before you're really done with it. A great workaround is to save the messages you want to keep in your Personal Filing Cabinet. Here are the steps:

1. *Click Preferences, and choose Filing Cabinet.*
2. *Put a check in the box next to "Retain all mail I read in my Personal Filing Cabinet."*
3. *Repeat steps 1 and 2 for your sent mail.*

Originally posted February 1, 2002

DO NOT POST OR PUBLISH THIS DOCUMENT TO THE WORLD WIDE WEB

Tips for Survivors of High Tech Stalking.

© 2003 NNEDV Safety Net Project

Web: nnedv.org/safetynet • Email: SafetyNet [at] nnedv.org • Phone: 202-543-5566

Page 6 of 8
[Revised 2008]

Save All Instant Messages

To preserve evidence of harassing or abusive instant messages or chat, you need to SAVE THEM. Each Instant Messenger (IM) program is different, but below are instructions for three common programs: AOL, Yahoo, and ICQ.

Since there are multiple versions of even these 3 programs and many other programs, please check the "HELP" section of your instant messenger or chat program to find out how to save messages. Some programs have settings to let you automatically log or archive everything.

If you are not sure how to do this correctly, contact your high-tech computer crime police unit.

YAHOO Instant Messages:

If you are chatting with a friend in Messenger and want to save the conversation to a text file:

1. Open the **File** menu at the top of the Instant Message window.
2. Choose **Save** from the menu.
3. Specify a name and location for the file, then click **Save**.

Do you want to automatically archive of all the Yahoo instant messages you send and receive on your computer? Do you want to view any existing archive of your previous chats?

1. Open the top **Messenger** menu and choose **Preferences**.
2. Select **Archive** from left menu and choose: "**Yes Save all my messages**"
3. After chatting, to view chats, you can select **View Archive**.

AOL Instant Messages (AIM):

If your chat messages are still on your screen in the Chat Room window:

1. Open the **File** menu, and click **Save**.
2. Enter a name for the file.
3. Select **Text Only** in the Save As Type field to save just the text of the messages or select **AOL Rich Text Format** if you want to save the text and be able to follow any hyperlinks in messages. This choice creates an HTML file you can view with a web browser.
4. Click **Save** to save messages that appear in the upper pane of the Chat Room window.

To turn on automatic logging of all your instant messages (IMs) or Chat room conversations:

1. Open top **Edit** menu and select **Settings**
2. Click on the **IM Logging** tab
3. Check or uncheck boxes to start or stop logging: Log IMs Log Chats
4. **Store Logs** lets you choose the place that chats are saved on your computer.

ICQ Instant Messages:

1. Open the **Preferences & Security** menu. Click **Main**.
2. Click **Preferences & Security**. Choose **Saving Options** (under Preferences).
3. Select the **Auto-save option** OR if you choose to save your history automatically, in the Save Messages/History pane, select the Save **History** checkbox.
4. Select **OK** to save your changes and close the window, or select **Apply** to save your changes and keep the window open.

DO NOT POST OR PUBLISH THIS DOCUMENT TO THE WORLD WIDE WEB

Taking picture or “screen shots” of the computer screen

If you need to take electronic pictures of your computer screen to document high-tech stalking, harassment, or hacking, you can do it manually or purchase software to help you take “screen shots” or “screen captures” as it is called.

Windows Computers

Manual Way to take Screen Shots:

1. **Press** “PrntScrn” or “PrintScreen” on your keyboard to take a “screen shot” of everything viewable on your computer monitor.
2. **Open** a program (like Microsoft Word or PowerPoint) and create a new document.
3. **Paste** the screen shot into new document. To Paste, go to the Toolbar at the top of the program screen, click on EDIT, then click on PASTE.

Macintosh Computers

Manual Way to take Screen Shots:

1. **Press** three keys at the same time: **Shift + Command + 3**
2. **See** the picture saved to your desktop as a file named Picture 1.
3. **Open** the image in a new document or click on the file saved to the desktop.

Sample Screen Capture Software Applications:

www.CaptureWiz.com
www.etrusoft.com
www.fullshot.com
www.screencapture.com
www.techsmith.com

Some companies offer a trial version you can download for free.

Acknowledgements: Some information was adapted from NCVC's Stalking Resource Center (www.ncvc.org/src).

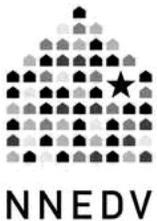
DO NOT POST OR PUBLISH THIS DOCUMENT TO THE WORLD WIDE WEB

Tips for Survivors of High Tech Stalking.

© 2003 NNEDV Safety Net Project

Web: nnev.org/safetynet • Email: SafetyNet [at] nnev.org • Phone: 202-543-5566

Page 8 of 8
[Revised 2008]



Technology Safety Planning with Survivors

Tips to discuss if someone you know is in danger

Technology can be very helpful to victims of domestic violence, sexual violence, and stalking, however it is important to also consider how technology might be misused.

- 1. Trust your instincts.** If you suspect the abusive person knows too much, it is possible that your phone, computer, email, driving or other activities are being monitored. Abusers, stalkers and perpetrators can act in incredibly persistent and creative ways to maintain power and control.
- 2. Plan for safety.** Navigating violence, abuse, and stalking is very difficult and dangerous. Advocates at the National Domestic Violence Hotline have been trained on technology issues, and can discuss options and help you in your safety planning. Local domestic violence and rape crisis hotline advocates can also help you plan for safety.
- 3. Take precautions if you have a “techy” abuser.** If computers and technology are a profession or a hobby for the abuser/stalker, trust your instincts. If you think he/she may be monitoring or tracking you, talk to hotline advocates or the police.
- 4. Use a safer computer.** If anyone abusive has access to your computer, he/she might be monitoring your computer activities. Try to use a safer computer when you look for help, a new place to live, etc. It may be safer to use a computer at a public library, community center, or Internet café.
- 5. Create new email or IM accounts.** If you suspect that anyone abusive can access your email or instant messaging (IM), consider creating additional email/IM accounts on a safer computer. Do not create or check this new email/IM from a computer the abuser could access, in case it is monitored. Look for free web-based email accounts, and strongly consider using non-identifying name & account information. (example: bluecat@email.com and not YourRealName@email.com)
- 6. Check your cell phone settings.** If you are using a cell phone provided by the abusive person, consider turning it off when not in use. Also many phones let you to “lock” the keys so a phone won’t automatically answer or call if it is bumped. When on, check the phone settings; if your phone has an optional location service, you may want to switch the location feature off/on via phone settings or by turning your phone on and off.
- 7. Change passwords & pin numbers.** Some abusers use victim’s email and other accounts to impersonate and cause harm. If anyone abusive knows or could guess your passwords, change them quickly and frequently. Think about any password protected accounts - online banking, voicemail, instant messaging, etc.
- 8. Minimize use of cordless phones or baby monitors.** If you don’t want others to overhear your conversations, turn baby monitors off when not in use and use a traditional corded phone for sensitive conversations.
- 4. Use a donated or new cell phone.** When making or receiving private calls or arranging escape plans, try not to use a shared or family cell phone because cell phone billing records and phone logs might reveal your plans to an abuser. Contact your local hotline program to learn about donation programs that provide new cell phones and/or prepaid phone cards to victims of abuse and stalking.
- 5. Ask about your records and data.** Many court systems and government agencies are publishing records to the Internet. Ask agencies how they protect or publish your records and request that court, government, post office and others seal or restrict access to your files to protect your safety.
- 6. Get a private mailbox and don’t give out your real address.** When asked by businesses, doctors, and others for your address, have a private mailbox address or a safer address to provide. Try to keep your true residential address out of databases.
- 7. Search for your name on the Internet.** Major search engines such as “Google” or “Yahoo” may have links to your contact information. Search for your name in quotation marks: “Full Name”. Check phone directory pages because unlisted numbers might be listed if you gave your number to anyone.

**Call the U.S. National Domestic Violence Hotline
800-799-7233 or TTY 800-787-3224**

**National Sexual Assault Hotline 800-656-4673
(RAINN) directly connects you to a local
U.S. rape crisis program near your phone number.**

Stalking by a “High Tech” Guy

A View from the Other Side

By John Loveall

2005

Table of Contents

Introduction	1
Finding You	1
Step 1: What do I know?	2
Step 2: Look for a Trail	2
Step 3: Follow the Trail to You	4
Stalking You Now That I've Found You	5
What I Do Depends on Why I'm Doing It.....	5
What Technology Helps Me Do.....	5
Technology That Lets Me Know You're Nearby	6
Technology That Lets Me Intercept Information from You	6
Technology That Lets Me Interact With You.....	7
Putting It All Together – Stalking You.....	8
Stalking Example 1: Stalking to make you like me	8
Stalking Example 2: Stalking to hurt you	8
Stalking Example 3: Stalking to have a vicarious relationship with you	9
Stalking Example 4: Stalking as a voyeur.....	9
The Bottom Line	9

Introduction

I could be called a “high tech” guy – I’m “into” technology, put my own computers together, and work in the computer industry. I take some pride about being informed about technology and friends often use me a “tech” resource for questions. I’m not a trained private investigator, nor do I own a collection of “stalking” gadgets. Let’s just assume that I am resourceful, learn fast, and know how to use most any technology just by picking it up and trying it. And one more thing: When I don’t know something I’m really good at finding information on the internet.

Given that background, it’s interesting to ask what a guy like me would/could do if I wanted to do either of:

1. Stalk you if I didn’t know where you were
2. Stalk you if I did know where you were

If the goal is to stalk you, then it’s certainly interesting to know where you are. I’ll talk first about how I would go about finding you, and then go from there to what I would do once I knew where you were. I’ll also assume that the reason why I want to stalk you doesn’t affect what I would do until I know where you are.

Finding You

Before I talk about what I would personally do to find you, I want to mention the obvious alternative: hiring someone to do this for me. While actually stalking you once I know where you are can be a much more

personal activity, the job of finding you can be fairly mechanical and is what private investigators (PI's) do for a living. If I have some money to spend, I could easily use the web to learn how to choose a good PI and then search for one I like. This is really easy, although somewhat traceable.

Also, it's important to realize that, depending on how much you don't want me to find you, you could also follow the steps I would take to see how "findable" you are. Do the steps I list yourself and see what I will know about you. Remember that it gives me power to know more than you, so you might want to take a little time to educate yourself. After all, I'll be spending a lot of time doing just that.

The remainder of this section will assume that I've decided to find you on my own.

Step 1: What do I know?

The search starts by knowing something about you. The more I know, the more ways there are to try to track you down. Let's assume that I have a basic set of facts:

- Your name, or at least what your name was at some point (you may be using an alias now)
- Your occupation, or at least what you did at some point in the past
- Your approximate age
- A picture of you, from some point in the past

Those are fairly basic facts. Depending on my previous relationship with you, it is likely that I would know any number of other facts about you, like:

- Where you lived
- Family: names, relationships, locations
- Friends: names, locations
- Where you went to school and what you studied
- What general job skills you have
- What email, on-line names or aliases, or passwords you have used or prefer
- What kind of computer you have, what the system name is, etc.
- What kind of cell phone you have
- Your preferences in:
 - Places to live
 - Restaurants
 - Places to go on vacation
 - Stores
 - Clothing
 - Movies
 - Music – e.g. bands
 - Cars
 - Hobbies

It's amazing how much information you can gather about people you know if you stop and think about it. Of course, being resourceful, I would also go on the web and search for information on private investigator methods. Googling on such phrases as "private investigator questions" or "private investigator interview" will pull up web pages, books, and even correspondence courses I can look at to see what other kind of information PIs find useful.

Step 2: Look for a Trail

Once I have my facts, the next step to finding you is picking up your trail. Once I know at least a recent place you have been, I can dig in and look for more clues from there. Think of how a blood hound works: once he has your scent he looks for it somewhere to pick up the trail. In our case, your "scent" is the information I know about you and the "trail" is any place (more recent the better) that I can find where you have been.

My first inclination is to see if you've left an obvious trail and use the web to search on your name. This can turn up any number of common on-line references:

- Phone listings
- Resume postings
- Newspaper articles
- Committee minutes
- Author/artist credits
- Logged email or chat room sessions
- Your personal web site

A hit anywhere and I can dig further, either on your information or on someone else's that is listed with your name that might know something.

Not forgetting "low tech" approaches, a great way to find you is to just ask someone else who knows. This is where names of other people that know you, like family, friends, and co-workers become very useful. Also, addresses of places where you lived or worked can be help to make contact with others who may know something. Or if I suspect you are in town but hiding, I could start spending some spare time at places I know you like to go, just to watch for you.

I'll assume the case where you know me and have been smart enough to tell some people that I might be looking for you. This means that I will want to hide who I am when asking for your location. Phone calls and email to people are my next choice, using any number of ploys. Phone calls claiming an important package for delivery, an important automobile recall notice, a final paycheck to deliver, or escalating collection issues for a bill not paid are all easy ways to anonymously get someone to tell me how to find you. Of course, in the on-line world, if you know people's email addresses, it's easy to craft "spoof" emails claiming similar things and in email it's easy to put in company logos and official-looking links to company web sites to appear more legitimate than a voice on the phone might be.

You can see why, if you're smart and want to hide from me, you'll get the word out to all of your family and friends to be on the lookout for contacts either from me or from anyone that claims to be looking for you. You should ask them to never respond to any of these inquiries and instead just let you know if such an attempt is made.

If these efforts fail, the next step I would take is to spend a little money and subscribe to one of the "super search" web services. These sites (the same ones that I would subscribe to if I looked for people for a living, or that direct marketing people use to create their mailing lists) provide access to the growing amount of on-line public record information. This includes court records (e.g. traffic tickets, foreclosures, evictions), real estate title transactions, and any number of databases that can be used to find you. The nice part about these services is that I can gain access to them 24 hours a day from the privacy of my own web connection, for a few 10's of dollars on a credit card.

Example "super search" sites:

- <http://find.intelius.com/>
- <http://www.peoplefinders.com/>
- <http://www.aaronspi.com/>
- <http://www.phonelosers.org/pi.html>

Step 3: Follow the Trail to You

Once I have a "hit" on your trail, I'll just follow the clues to the next steps you took. Each "hit" can provide me with more information, e.g. addresses, names, email addresses, companies, that I can then leverage to find the next step.

The trail can either lead to you physically, e.g. your current address, current place of employment, current school, or it could lead to one of your "on-line" locations, e.g. an email address, chat room alias, or EBay merchant name.

If I had an "on-line" location, next steps I would take to follow your trail are:

- **Email address:** If I had what I thought was your email address, I have a few options. If I'm lucky and it's a work address, then I just need to look up the company's website, put in a call to the HR department acting like a company that you interviewed with and then verifying your employment status. If it's a personal email address I would send a "phishing" email to try to get you to tell me your location or if nothing else to get a response email from you so I could look at the email headers.
 - **Phishing email:** I'd send a phishing email notifying you about something important that needs you to go to a web site and enter some information. The more I know about you, .e.g. where you shop, what restaurants you go to, where you went to school, the easier it is for me to avoid raising your suspicions. For example, if I know where you went to college, I could send an email, complete with the college logo, real links to their website, and current names of administrators, stating that there is a new program for alumni to receive, free of course, a new quarterly journal along with opportunities for great on-line discounts previously only available to their faculty but now, through a gracious agreement with the college, is now open to alumni. Example would be televisions at 55% discount, travel at 60% discounts, and automobiles at an amazing 70 to 75% discount. The list would of course be tailored to your tastes. And of course the web site you go to from the link in the email would look just like the current style of the college website, and it would ask for your name, graduating year, current address, and, optionally, some information for their records like current occupation and other advanced degrees. Of course, the web page would live on my web site, and the information you type would tell me just where to find you.
 - **Email headers:** In the case of the spoof email, a fallback plan would be that you replied to the email telling me to take you off my mailing list, so some such thing. I don't care what you type – I just want to see the email headers in your email. These let me know:
 - **IP addresses:** The internet addresses of your computer and internet service provider. This minimally gives me something else to key a web search on, where no matter what email aliases you were using, I can find emails or other postings originating from your home system. And of course more information for more next steps. I would also take all the IP addresses and decode them at a website like <http://www.dnsstuff.com/> or <http://remote.12dt.com/rns/> to see what it tells me about the service provider you're using. I'd also try to send phishing email to the internet service provider to try to get your account information. I could also send you more phishing email appearing to come from your internet service provider, perhaps complaining about an unpaid bill and with a link to update your current account information.
 - **Email software:** The headers often contain the name of the software you use to send your email, e.g. Microsoft Outlook, Outlook Express, or Mozilla. I can now think of another phishing email to send you with important information about, say, new security vulnerabilities found in your specific email software, asking you to provide some information to receive more information and an update...
 - **It's you:** Of course, getting a response of any kind gives me another chance to verify that I have a good email address for you and that I should keep trying. And

maybe your email contains a cute signature appendix that has more information, or a nice graphic that has web site information embedded in the HTML in the mail message that I can find...

- **Chat Room Alias:** I'd join the chat room, read as many of the existing logs of previous chats that you participated in, and when I saw you were on-line, I'd use my personal knowledge of you along with anything I learned from reading the chat logs to get you to interact. I'd then just try to get you to tell me some new facts about where you lived, worked, went to school, shopped, went on vacation, etc. Anything you tell me adds to my database and gives me ways to take next steps down the trail to you.

It's interesting to note my personality and how it affects my search for you. Remember, each new lead I get will reward me and give me more energy to find the next one. As a "high tech" guy I take it as a personal challenge to solve this problem, using any and all tools I can find. I'll be thinking that I'm smarter and better at this than you are and it will really bother me if I can't find you. Finding leads to you will provide me ongoing reinforcement that I'm a smart guy and you're not. I'll be thinking about how to find you when I get up, on my commute, at work, at lunch, and at night. I have access to the web at work and at home, so I'll be able to search and email constantly. I'll use my home system to set up some automated searches just in case something new about you shows up. Eventually, if you have any presence on-line at all, I'll find it and use the information to take the next step down the trail to you.

Stalking You Now That I've Found You

Once I've followed your trail and found you, the "personal" phase of the stalking can begin. By finding you, I mean that I now know a way to reliably know where you physically are. This can mean address where you go on a regular basis, e.g. home, work, school, store, gym, church, friend's home, bar, nightclub, etc. By "personal", I mean that what I now do with this information, and how I try to stalk you, depends on my motivation for stalking you in the first place.

What I Do Depends on Why I'm Doing It

The techniques I'll choose to stalk you depend on what I'm trying to accomplish. The basic goals I can think of for stalking you fall into a few categories:

- **Date you (get you to like me and want to be with me):** In this case, I want to have chances to "meet" you for the opportunity to convince you, somehow, that you like me (or whoever I'm pretending to be in disguise) and want to spend more time with me.
- **Scare or hurt you:** I want to intimidate, scare, damage, or even kill you. Note that this means that I'm potentially not just interested in you, but also in people or things that are important to you.
- **Have a vicarious relationship:** I don't hope (perhaps yet) to have an actual relationship with you, but if I eat at restaurants you like, see the movies you see, shop at stores you shop at, read books you read, take classes you take, take vacations where you take vacations, etc. I can pretend that we are getting closer and closer with each passing day.
- **Voyeurism:** I want to watch you, whenever I can, whatever you are doing. I am obsessed with knowing where you are, what you are doing, what you are wearing, who you are seeing. I want to see you every chance I can get, whenever I want.

What Technology Helps Me Do

Once I've understood the goal I have for stalking you, I have a general set of tools to choose from that help me do the job. These tools have three basic uses of interest to me:

Technology That Lets Me Know You're Nearby

These tools are useful to discover your presence in an area. Some of them are also useful to do more advanced things (see below), but it's important to realize that in their simplest and easiest use, they can tell me that you are nearby. (And sometimes that's all the information I need.)

▪ Location

- **GPS:** Global Positioning System (GPS) receivers are small enough to secretly attach to your car. Various connectivity schemes exist, including connection of the device via HAM radio. The interesting thing about HAM radio connections is that they are low power and, due to the use of HAM radio for emergency communication systems, they have receivers everywhere, even in fairly remote areas. It's straightforward to track your location on a live web page as a marker on a map.
- **WiFi:** If you use a laptop with WiFi (802.11a/b/g) wireless capability and I know your system name, I can listen for your broadcast signal and detect that you are within a few hundred meter radius of where I am sitting. I can scan for you by driving by your house or outside the walls of your office.
- **Bluetooth:** If you use a laptop, mobile phone, or PDA with Bluetooth wireless capability, there is a reasonable chance that you have not changed the default security settings and, if I know your system name or type, I can listen for your signal and know that you are less than about 50 to 100m from me.
- **IR:** Most laptops and many PDAs have an infrared communication port on them. I have to be in a line of sight with you, but if you have left your port open and I know the name of your system I can take a handheld PDA and scan a small group of people and detect you. This is more inconvenient, and I'd rather detect you with the longer range WiFi or Bluetooth technologies.
- **RFID:** This is mostly useful in the near future (2005 and later) as RFID technology replaces the UPC code on all products we buy and reader equipment becomes inexpensive. It provides an ability to detect you if you are carrying or are wearing any items that continue to have their RFID tags attached. It's also useful for providing a way to track items that I attach an RFID tag to, such as your car. If I place a tiny RFID tag on your car and place a small RFID detector by your garage door, using various connection technologies (including cell phone calls and HAM radio transmissions) I can detect if you have just pulled your car into or out of your garage. This can be a little easier than planting a GPS receiver on your car, since RFID tags can be as small as grains of sand, and I can take more time planting the reader on the outside of your house when you are not there.

▪ Visual Detection

- **Web cam:** While web cams are usually associated with watching live video, they can also be connected to a computer running motion detection software. I can plant a web cam watching your garage, front, or back door and have a computer looking for motion that can call or page me upon detection, including sending me a still photo of what it just saw. This gives me a way to know where you are without watching a video feed all day (after all, I'm a busy guy...).

Technology That Lets Me Intercept Information from You

The next step up from detecting your location is to get information from you. This information could be what you're typing (e.g. email, web sites, passwords), what you're saying (e.g. cell phones), or what you are doing (e.g. web cams).

- **Spyware:** If I can get access to your computer system, I can place spyware on it to read your every keystroke, allowing me to not only spy on everything where you go and everything you say on-line,

but also to hear all your login and password information. This is why you need to firewall and virus-protect your system and not install software with which you aren't completely familiar. It's also why it's important to physically protect your system including boot password protection, so I can't break into your home, fake a robbery as a diversion, and load spyware on your system that you likely won't even think about checking since you'll be so grateful I didn't steal your computer.

- **WiFi:** If you're not encrypting the data in your wireless networking connection, I can set up a receiver and read everything you send over the network. I may not be able to easily read your passwords and sensitive information since most web pages use separate encryption for that data (a good reason to check for a secure page, e.g. the small yellow lock icon in Internet Explorer, before you enter sensitive information on a web page.)
- **Bluetooth:** Like for WiFi, if you have not enabled encryption in your Bluetooth connection, I can read all the data being transmitted.
- **Cell / wireless phones:** This is a bit harder to do and requires more expensive equipment, but it's possible to listen to anything you transmit. This is why people still recommend switching to a "land line" for sensitive conversations. I can still tap your land line, but that will probably require me to at least enter your backyard which is riskier than listening in my car down the street. (However, people often don't realize how exposed the phone lines are when they enter your home. A few dollars at the local Radio Shack gets me the tools needed to splice into your phone line.)
- **Web cam:** I can either plant a web cam outside or inside your house or I can set up a receiver for any web cams that you have placed around your house. And don't forget that these tiny cameras can look into your windows if I don't want to actually break in.

Technology That Lets Me Interact With You

Knowing your location and watching you is great, but eventually I'm going to want to actually interact with you. For high tech tools, this means sending you computer data (e.g. email, digital media, software), talking to you (e.g. phone calls), scaring you (e.g. causing sounds or commotion where you are), or even hurting you (e.g. remotely exploding a bomb).

- **Email:** Once I have your email address, sending you email is the easiest way to interact with you. If nothing else, I know that unless you have learned to filter me out, each email I send will cause you to react. That's a very powerful feeling. (Something for you to remember is to not immediately destroy an email address as a response to me. If you do that, my email will start to bounce, and I'll know you're not getting it.) However, I can do several more things with email to you.
 - **Phishing email:** Since I have found you, I don't need to lure you to a web site to get your address or phone number. However, I can still send these emails to extract information such as credit card or bank account numbers. I can also make you worry by sending you alarming notices, e.g. credit problems, lawsuits, bench warrants from unpaid traffic citations, communicable disease notices due to a friend's diagnosis, etc.
 - **Email signups:** With an active email, and possibly your address and phone number, I can start signing you up on all kinds of lists, e.g. pornography, white supremacists, etc.
 - **Spyware email:** I can bundle spyware with my emails and try to get you to install it for me on your computer. These emails can be disguised and can be tricky, such as making the link to "remove from our mailing list" be the button to install my software. Your anti-virus software may stop me, but I don't have much to lose by trying.
- **Chat:** If you chat and I know your identity, I can pretend to be anyone I want and interact with you. This can be for fun, to fool you into doing something, or to disturb you whenever I see you on-line.
- **WiFi:** If your home wireless network is not password protected, I can log into your network and search for shared disk drives or printers. If there are unprotected shared disks, I can put anything on your disk I want. If I find a shared printer, I can print anything I want inside your home.
- **Bluetooth:** If your Bluetooth device is unprotected, I can try to access whatever Bluetooth device I can find, e.g. printers, PDAs, laptops.
- **IR:** If your IR port is not protected, I can carefully get close to your computer and send you files. This is not as intrusive as directly accessing your disk, but it can let you know I've been there.

- **Actuators:** The advent of the "smart home" has provided a completely stocked playground for people like me. The same technology that allows my home computer to switch lights on and off through wireless modules or through the power lines also allows me to install remote devices that I can activate from my computer. For example, many houses today have outside power sockets. If you don't switch these off, I can connect a smart home module and receiver that I can activate from my laptop from the comfort of my car just down the street. This device could do anything from making noise in the middle of the night to exploding into flames, just as easy examples. Now imagine what I could do if I planted these devices inside your house.

Putting It All Together – Stalking You

Put the goals for stalking together with the tools and I can work on a number of scenarios for you. These are short examples of what I can do depending on what I know about you, what stalking vulnerabilities you have, and the goal I have for stalking you.

Stalking Example 1: Stalking to make you like me

In this case I want to get mindshare with you which can either be an online anonymous contact (in the case where you know me and won't interact) or an in-person meeting.

In the online case where I need to hide my identity, I would want to track down your email, which will be interesting for awhile if you respond to me, and then eventually move to a live chat session to we could "talk". I would of course make up a different identity, but I would likely only change obvious things like my name. After all, if you won't interact with me if you know who I am, I probably want to "prove" to you that you're not being fair by showing, eventually when I choose to reveal it to you, that you like me on-line with a different name. This is like the "pina colada" song scenario, except I know it's really me and you all along.

If I'm actually a stranger or someone that you have ignored in the past but want to convince you to like me, I would want to create as many "coincidence" meetings as I could to allow me to interact with you. In this case, I would want to track you continuously to understand your daily routine and so a GPS receiver attached to your car would be great. The problem is that I want to avoid actually following you everywhere, but I need to know where you'll be to "meet" you. So finally I would want to narrow down the locations to meet you to particular stores, restaurants, etc. meaning that while the GPS might go be good enough, if you're, say, arked at the mall I may use my handheld PDA to look for your PDA's or mobile phone's WiFi or Bluetooth signal. Of course, when we do meet, I'll use all of the other information I've gained from web searching, spyware, or phone tapping to lure you into a conversation with me. Note that without even tracking you I can use my on-line information to find out meetings or other scheduled time you have corresponded to other about and arrange to be there.

Stalking Example 2: Stalking to hurt you

I can hurt you by affecting you emotionally or physically, and I can affect you directly or by affecting people or things dear to you. If I mainly want to annoy or punish you, then I can use any of my on-line connections to make your on-line life unlivable. I can use email or on-line identities you have to flood you with contacts, both from myself as well as by subscribing you to mailings from others. I can set up automated searches for email addresses that may be associated with you and then put those on a list that I feed to other automated programs to flood them. I can also do the same thing to your friends and colleagues if I can get their addresses, embarrassing you as well as hurting them.

To physically hurt you, I can either work to set up something remotely to hurt you or arrange to meet you where I can hurt you directly. For example, it's easy to set up incendiary devices to be remotely activated. I can buy model rocket engines with remote electric starters, mount these in gas cans and hook up a remotely controlled "smart home" light switch controlled by my laptop from my car. In other words I can create a powerful, remotely controlled bomb with a few purchases at my local shopping mall. I could use the GPS I

placed in your car or a remote web cam with motion detection software or, more likely in the future, an RFID tag and sensor to determine when you're home, or even in the garage if I want to be more precise. I could even place an inexpensive remote computer to trigger this for me, but I would probably want to monitor this personally since I don't want to hurt anyone accidentally and there is a certain amount of satisfaction to pushing the button myself.

And of course I can do all these things to people that you care about as well.

Stalking Example 3: Stalking to have a vicarious relationship with you

To mirror your activities, purchases, and overall lifestyle, I mainly need to be able to watch you closely. Location isn't good enough for this – I really want to be able to see you. I can do this personally by following you with my laptop web page tracking a GPS receiver, for example, but I'd rather be able to watch video remotely if I can. In either case, web cams with motion detection software are great ways to detect and monitor you at known locations that you frequent. I can also get a lot of information from you by sending you phishing email asking for extensive personal information. Imagine what you'll tell me, for example, to get a free TV for answering a marketing survey about your opinions of various styles from Victoria Secret's new catalogue.

Stalking Example 4: Stalking as a voyeur

As a voyeur, I mainly want to see you in ways others can't see you. I want a special seat, just for me, that lets me see you in your most private moments or doing things in situations that I contrive. The key is that it's a special view, unique to me. Note that this "view" can be your data in addition to your video image. Reading or listening to your intimate communications satisfies my need for a unique, private view as well as a web cam in your bedroom (or bedroom window) might. This means spyware and phone taps are as interesting to me as a web cam, and in some cases perhaps more interesting since your communications can tell me your intimate thoughts. The tricky thing for you is to detect me – since my overall goal is to have a private seat I don't want to alert you to my presence. If I do my job correctly, you won't ever know. This means that if you don't want me to watch, you will have to take pro-active steps to keep me away and can't simply wait to react to a "problem" that you see.

The Bottom Line

Technology is a dual-edged sword. It enables us with unprecedented connectivity and functionality in all aspects of our lives. We work, play, learn, and overall live differently with the tools technology provides. At the same time, we are also vulnerable in many new ways and the "bad guys" can leverage both this new technology as well as the ways we use it. Being more connected means it's easier to connect to you. Having more functionality means there are more tools available to get to you.

Technology has become so integrated into our lives that it is no longer practical to be safe from technology attacks by simply avoid technology altogether. To be safe, we have to be smart about how we use our technology and we also have to be aware of how bad guys can use these tools against us.



Stalking Information Sheet

What is Stalking?

“Any person who willfully harasses another person with the intent to injure, terrify, threaten or intimidate commits the offense of stalking.” ~Section 28-311.03 NE Statute

Stalking is a course of conduct directed at a specific person that would cause a reasonable person to feel fear. Stalking can include persistent phone calls, messages, hang ups; following or watching; unwanted gifts, letter, cards, emails; vandalism, breaking & entering, theft; monitoring phone or computer use; hidden cameras; gps; driving by or loitering near home, school; threats to harm.

Prevalence of Stalking

- 1.4 million people are stalked every year in the U.S.—more than 1 million are women
- About 1 in 12 women and 1 in 45 men will become targets of stalking behavior at least once in their lifetime.
- 87% of stalkers are men
- 13% of college women were stalked during one 6-9 month period

Stalking and Intimate Partner Violence

- 59% of female victims & 30% of male victims are stalked by an intimate partner
- 81% of women stalked by a current/former intimate partner are also physically assaulted
- 73% of intimate partner stalkers threatened victims with physical violence; almost 46% experienced one or more violent incidents.
- 31% of stalking victims who were stalked by an intimate partner reported that they had been sexually assaulted by that partner
- In 10.3% of stalking incidents of college women, the victim reported the stalker forced or attempted sexual contact.
- 76% of intimate partner femicide victims had been stalked by their intimate partner and 67% of them had been physically abused by their intimate partner.

Stalking and Technology

Telephone technology – such as monitoring or intercepting calls, spy phones, using voice mail to leave/intercept messages, spoofing, IP relay, VoIP, or anonymous text messaging.

Surveillance Technology – such as using GPS to track via cell phone/other device or using cameras such as webcams and nannycams.



Welcome to Nebraska Domestic Violence Sexual Assault Coalition

committed to the prevention and elimination of domestic and sexual violence

Computer and Internet Technology – such as using email to threaten, intercept messages, or impersonate someone, using spyware, using a keystroke logging device, or monitoring internet history.

What is on the web about you (or your clients)?

- “Google” yourself to see what information is on the internet about you.
- Free databases of information like ZabaSearch and Veromi can give your information to others
- Satellite maps can show your location
- Court and government sites may have information about you, including property assessor sites.

Stalking Myths	Stalking Realities
Only celebrities are stalked	1.4 million people are stalked every year in the US. We may hear more about celebrity stalking, but the vast majority of victims are ordinary citizens
If you ignore stalking, it will go away	Stalkers don't “just stop.” Behaviors can turn more and more violent as time goes on. Victims can seek help from advocates and the criminal justice system to intervene.
Stalking is creepy but not dangerous	Stalking is creepy and dangerous. Three out of four women who were murdered by an intimate partner had been previously stalked by the killer
Stalking is annoying but not illegal	Stalking is a crime in Nebraska under Section 28-311.03 of Nebraska statutes
You can't be stalked by someone you are dating.	If your current partner tracks your every move or follows you around in a way that causes you fear, that is stalking.
Modern surveillance technology is too expensive and confusing for most stalkers to use.	Stalkers can buy surveillance software and hardware for as little as \$30 and can easily track victim's every move on a computer.
If you confront the stalker, he will go away.	Stalkers can be unreasonable and unpredictable. Confronting a stalker can be dangerous.

Resource: Stalking Resource Center www.ncvc.org/src

Nebraska Domestic Violence Sexual Assault Coalition
www.ndvsac.org



TECH SAVVY TEENS

CHOOSING WHO GETS TO SEE YOUR INFO

BLOGS & SOCIAL NETWORKING

HAVE YOU PUT YOUR PROFILE ON A SOCIAL NETWORKING SITE LIKE MYSPACE OR FACEBOOK, AN ONLINE DATING OR ALUMNI SITE? Have you set your profile to be private? If not, anyone who visits that site, including college admissions offices, teachers, family, potential employers or even stalkers can see your personal information.

DO YOU USE FREE E-MAIL, A BLOG, INSTANT MESSAGING, OR SHARE MUSIC OR PHOTOS ONLINE? When you signed up for that service, did you give your name, age, gender, the town you live in or your hobbies? If so, the company that got your information might post it online for everyone to see. Many times, you can choose not to have your information included in public directories. You can also provide very little information if you want (only your first name or a fake name, for example).

HAVE YOU EVER PLAYED IN THE SCHOOL BAND, HAD YOUR WORK INCLUDED IN AN ART SHOW, OR BEEN ON A SPORTS TEAM? If so, your name, personal details, and contact information might be posted online. Some Web sites will remove information at your request, but if the site is archived, your information may not really be gone. If you don't want information posted online, you should act quickly to have it removed.

ARCHIVES

Web sites can be "archived" or "cached" so people can still access the old content even if the Web site disappears or changes. This means that any information posted to the Web could be online for a long time - maybe even forever. Internet Archive (www.archive.org) has 55 billion Web pages!



OTHER WAYS YOUR INFORMATION GETS ON THE WEB:

- A store asks for your phone number or zip code when you buy something and that information is put into a database. The store might later sell your information to a data broker who posts it in an online directory.
- A friend or classmate posts information or photos that include you. Or, a relative posts a family photo album with you in it.
- If you have a drivers license, have gotten a traffic ticket or gone to Court, your name, address, and other personal information may be available online on a court or county Web site.



REMOVING INFORMATION

Sometimes it's okay to leave certain information online, especially if it's harmless. When trying to remove your information from any Web site, consider not sharing your correct information because data brokers make money by selling accurate information. If you want something removed, the Web site may have instructions, or provide a form or E-mail address to contact them. If the information is in a government record, you may need to fill out an official petition, motion, request or letter.

HOW DO I KNOW WHAT IS ON THE WEB ALREADY? If you can find it, someone else can too.

- Search the Web for your personal information and photos. Some places to start: Google, Yahoo, Classmates.com, YouTube and Flickr.
- Look on Web sites for groups and places where you might have a connection: your school, clubs, jobs, faith community, sports teams, community and volunteer groups, etc.

PHONES

ARE YOU RECEIVING HUNDREDS OF TEXT MESSAGES OR VOICEMAILS FROM SOMEONE YOU DON'T WANT TO TALK TO?

If you're being stalked via phone or text message, you have options:

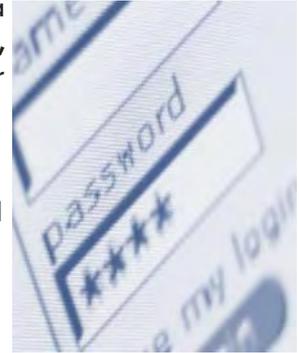
- For support, you can call the free U.S. National Teen Dating Abuse Helpline at 1-866-331-9474 (TTY 1-866-331-8453)
- You can talk to your phone service provider about call blocking and other call features, or about changing your number.
- You can talk to the police to find out if there is evidence for a stalking or harassment charge. Harassing phone calls and text messages are often illegal.

SPYING ON YOU

DOES SOMEONE SEEM TO KNOW ABOUT EVERY E-MAIL YOU'VE WRITTEN OR EVERYTHING YOU WROTE IN AN INSTANT MESSAGE?

Someone may be using the logging feature on your instant messaging program or may have changed your E-mail program settings to secretly send them copies. It's also possible that someone may have installed spyware on your computer. Stalkers can install spyware even if they don't have physical access to your computer or handheld device. Some stalkers might hack into your computer from another location via the Internet. Some might send spyware as an attached file that automatically installs itself when you open the E-mail or initially view it in a preview window. Others may E-mail or instant message a greeting card, computer game or other decoy to lure you into opening an attachment or clicking a link.

Once spyware is on your computer, it can run in stealth mode and is difficult to detect or completely uninstall. If the person who installed spyware has physical access to your computer, a special key combination can be used to make a secret log-in screen appear. After entering the password, the spyware program lets that person view a record of all computer activities since the last login, including E-mails you sent, documents printed, Web sites visited, searches you did and more. Even without physical access to your computer, stalkers can set up the spyware to take pictures of your computer screen (screen shots) every few seconds and have these pictures sent to them over the Internet without your knowledge.



PROTECTING YOUR PRIVACY

If you think there may be spyware on your computer try to use a safer computer when you look for help. It may be safest to use a computer at a library, friend's house, community center, or Internet café.

- If you suspect that someone has the password to any of your accounts, go to a computer that this person doesn't have access to and change your password. Only check that account from a computer that this person cannot access. The most secure passwords are at least 8 characters long and use a combination of letters and numbers.
- If you suspect that an abuser can access your E-mail or Instant Messages (IM), consider creating additional E-mail/IM accounts on a safer computer. Do not create or check new E-mail/IM accounts from a computer that might be monitored. Look for free Web-based E-mail accounts, and consider using non-identifying name and account information (example: bluecat@email.com and not YourRealName@email.com). Also, carefully read the registration screens so you can choose not to be listed in any online directories.
- Remember that many phones are just mini-computers. Stalkers can put spyware programs on cell phones and other handheld devices to track every text message sent and phone number dialed. Also, if someone knows or can guess your password, that person can log on to your phone account, bank account or other accounts online. So keep your passwords secret and change them often!

Clearing your Internet History:

When you search the internet, your internet browser stores a lot of information about the web pages that you visited, the graphics that you viewed and/or the passwords that you entered. If an abusive person knows how to read your computer's history, they may be able to see information you viewed on the internet.

Each internet browser has methods that will allow you to “empty your cache file.” The following document provides instructions on how to clear cache files for each of the four most popular internet browsers: Mozilla Firefox, Google Chrome, Internet Explorer, and Safari.

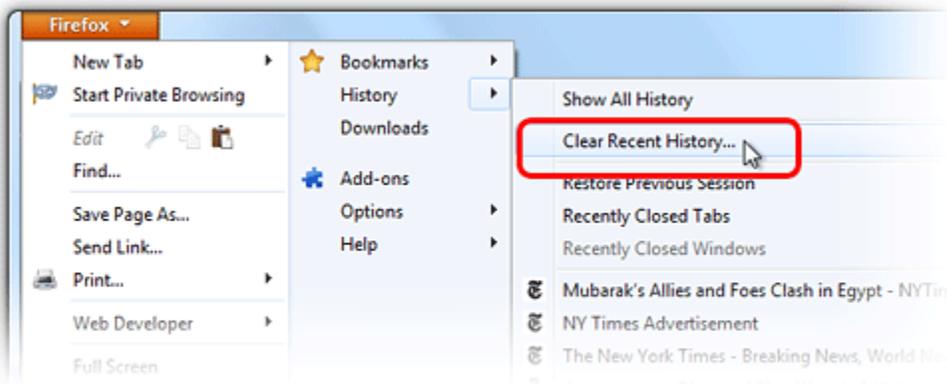
I. Mozilla Firefox:

More information online at: http://support.mozilla.org/en-US/kb/Clear%20Recent%20History#w_how-do-i-clear-my-history

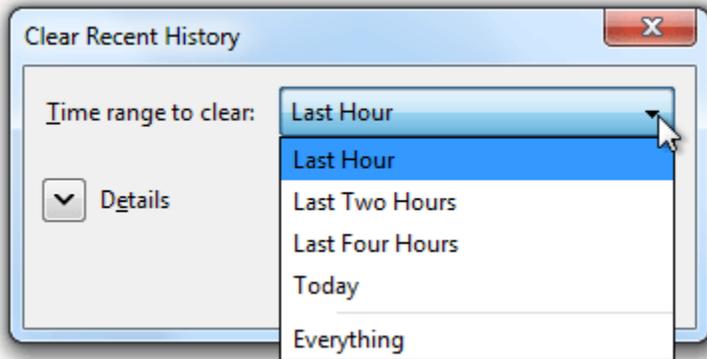
How do I clear my history?

1. At the top of the Firefox window, click the **Firefox** button, go over to the **History** menu and select **Clear Recent History....**

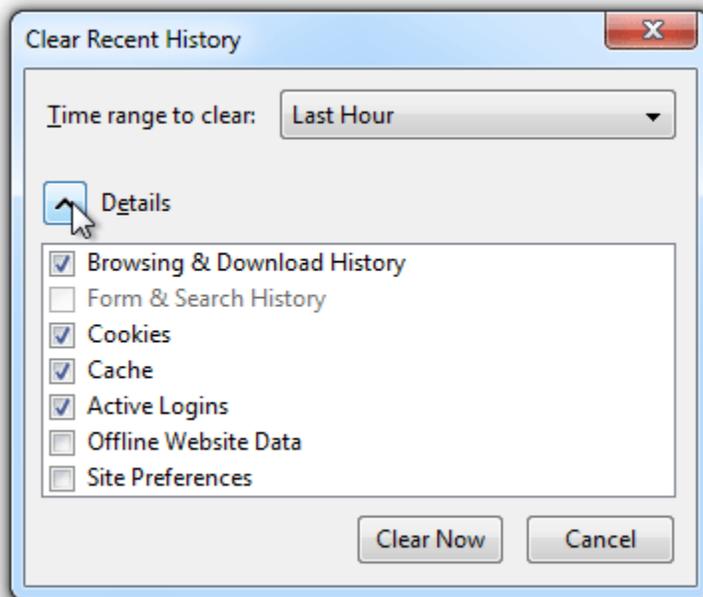
For Windows XP: At the top of the Firefox window, click the **Tools** menu and select **Clear Recent History....**



2. Select how much history you want to clear:
 - o Click the drop-down menu next to **Time range to clear** to choose how much of your history Firefox will clear.



- Next, click the arrow next to **Details** to select exactly what information will get cleared. Your choices are described in the [What things are included in my history?](#) section above.



3. Finally, click the **Clear Now** button and the window will close and the items you've selected will be cleared.

II. Google Chrome:

More information online at:

https://support.google.com/chrome/bin/answer.py?hl=en&answer=95537&p=cpn_delete_history

To clear your entire browsing history, click the wrench icon  on the browser toolbar.

1. Select **Tools**.
2. Select **Clear browsing data**.
3. In the dialog that appears, select the "Clear browsing history" checkbox.
4. Use the menu at the top to select the amount of data you want to delete. Select **beginning of time** to clear your entire browsing history.
5. Click **Clear browsing data**.

The following information is removed when you clear your browsing history:

- Web addresses you've visited, listed on the History page
- Cached text of pages you've visited
- Snapshots of your most frequently visited pages on the New Tab page
- Any IP addresses pre-fetched from pages you've visited

III. Internet Explorer:

More information online at: <http://windows.microsoft.com/en-US/windows-vista/Clear-the-history-of-websites-youve-visited>

Clear the history of websites you've visited

This information applies to Windows Internet Explorer 7 and Windows Internet Explorer 8.

Internet Explorer stores a history of all the websites you have visited. You can delete this information to save hard disk space or to protect your privacy.

To delete your browsing history in Internet Explorer 7

1. Open Internet Options by clicking the **Start** button , clicking **Control Panel**, clicking **Network and Internet**, and then clicking **Internet Options**.
2. Click the **General** tab, and then, under **Browsing history**, click **Delete**.
3. Under **History**, click **Delete history**, and then click **Yes** to confirm that you want to delete the history.
4. Click **Close**, and then click **OK**.

To delete all or some of your browsing history in Internet Explorer 8

1. Open Internet Explorer by clicking the **Start** button , and then clicking **Internet Explorer**.
2. Click the **Safety** button, and then click **Delete Browsing History**.
3. If you do not want to delete the cookies and files associated with websites in your Favorites list, select the **Preserve Favorites website data** check box.
4. Select the check box next to each category of information you want to delete.
5. Click **Delete**.

IV. Safari

More information online at:

http://www.pcworld.com/article/246049/how_to_delete_your_browser_history.html

Like most browsers, Safari has a ton of keyboard shortcuts, but it doesn't have one for deleting your browser history. Instead, click the gear icon in the upper-right corner, and select *Reset Safari*. In the resulting pop-up menu, check the items that you want to clear; then press the *Reset* button to purge your data.



Technology Best Practices

- Provide the client with a log and/or encourage the use of a stalker log.
- If you are communicating with your client via email ask them frequently to change their password, do not send initial messages until you have verification that they have changed their password.
- Encourage clients to create hacker resistant password (see Privacy Rights Clearinghouse 10 Rules for Creating a Hacker-Resistant Password)
- Encourage clients to clean up their internet tracks.
- Make sure that clients are careful about their email signatures. (no cell phone numbers, etc...)
- Make sure that clients be careful not to reply to email messages asking for personal information.
- Have clients tell close friends and family to be careful to not give out any information.
- Let clients know that they may want to shut off their telephone while not in use.
- Let clients know that they can block numbers for free by calling their phone company.
- Encourage clients to do a Google search for themselves (or do it with them) to see what information is available that might help the abuser to locate them.
- Ask government agencies and courts how they are publishing records to the Internet and make sure that there is not personal information available about your clients.
- Let clients know about spyware and to make sure to protect their computer.
 - Take to a computer repair shop. Take pictures and try to get affidavits.
- Let clients know about that there is spyware for telephones as well as computers.
 - If they fear that spyware has been placed on their phone, take the phone to the wireless provider.
- Encourage clients to take "Screen shots" or "screen captures" of harassing information on their computers and/or smart phones.
- Have clients print Instant Messages, Text messages, Email messages (with Headers) and Call logs.
- Encourage clients to use the "Pressure valve" strategy. (i.e. Don't get rid of email addresses or phone numbers that are being stalked, keep them for records and get an additional new number)
- Call trace - most companies have a paid service that you can set up in advance. After receiving an anonymous or blocked harassing phone call, dial *57. The company will automatically trace the number. (Note: only works within the local service area)
- Traps - phone companies can set up a trap. It is free, but only for about two weeks. Client must make a log of the time and date of the call.
- Companies are now offering "Privacy Manager" features. For a small fee, all anonymous, unavailable, out-of-area, or private calls have to identify themselves before being allowed to complete the call.
- If the abuser uses instant messenger systems - tell your client to make sure that the system saves the messages or that the client manually saves the messages.
- Use the NVPD Computer Crimes Squad or call the DA's office for any questions

Cellular Abuse Resource Guide

This chart shows contact information and service features for most cell-phone service providers. Learning about and using the safety features on your phone can protect your privacy



	Alltel	AT&T	Verizon	Sprint	T-Mobile	Cricket	MetroPCS	Virgin Mobile	US Cellular	Boost
Customer Service Telephone	Dial 611	1.800.331.0500	1.800.922.0204	1.888.211.4727	1.800.866.2453	1.800.274.2538	1.888.863.8768	1.888.322.1122	1.888.944.9400	
Can I get a new number?	N/A	Free of charge for DV, call customer service.	Free of charge for DV, call customer service.	Free of charge for anyone, call customer service.	\$15 fee, no waivers.	\$15 fee, must go to a store in person with police report in order to have fee waived.	\$5, one-time waiver for DV.	First change is free. All others will be \$10.	No charge for first two changes each year. \$15 thereafter.	No charge for first change with harassment. \$5 for next changes.
Block your number from appearing on caller ID	*67 for one time block	Free. Call customer service.	Free. Call customer service or go online. (MyVerizon --> My Plan tab --> Add/change features --> Check "Caller ID Blocking"). *82 can override the block for a particular call.	Free. Call customer service. *82 can override the block for a particular call.	Not available.	Free. Call customer service.	Free. Call customer service.	Free. Call customer service.	Free. Call customer service.	Free. Call customer service.
Block texts, pics, flix	N/A	"Smart Limits" available for \$4.99/month to selectively block incoming calls, texts, pics, or flix from up to 15 numbers. Set-up by calling customer service or going online.	Free. Call customer service and request to add "VBLOCK."	Free. Call customer service. Can block specific phone number or all incoming.???	"Family Allowances" feature available for \$4.99/month to selectively block calls and texts from up to 10 numbers. Self-managed.	Not available.	Not available.	Free. Call customer service. Can block all incoming and outgoing or can just block incoming from specific numbers.	Free. Must block all of them.	Can block specific number but not all private numbers. Main menu on walkie-talkie.

Technological Abuse Resource Guide: Subpoenas

This chart shows contact information for the major social networking legal departments. This guide is meant to assist attorneys subpoenaing information about technological abuse.



Facebook	MySpace	Twitter	Gmail/Google	Hotmail/MSN	AOL (also includes Compuserve, AIM)	LinkedIn
<p>Contact: Security Department/ Custodian of Records Online Service Address: 1601 S. California Avenue Palo Alto, CA 94304 Fax Number: 650-644-3229 E-mail Address: subpoena@facebook.com</p> <p>NOTE: Requests may be faxed or emailed.</p> <p><i>For law enforcement emergency contact only, email: subpoena@fb.com and type "EMERGENCY MATTER" in the subject heading.</i></p>	<p>Contact: Legal Compliance Telephone Number: Legal Compliance #: 888-309-1314 24 LE hotline: 888-309-1311 Fax Number: Fax 310-356-3485 E-mail Address: lawenforcement@support.myspace.com</p> <p>NOTE: 1. Prefers subpoenas by e-mail or fax. 2. MySpace Law Enforcement Team is available 24 hour a day.</p>	<p>Contact: Send subpoenas to: c/o Trust and Safety Online Service Address: 795 Folsom Street, Suite 600 San Francisco, CA 94107 Fax Number: 415-222-9958 E-mail Address: lawenforcement@twitter.com - reply to autoresponse to reach agent.</p> <p>How to Report Violations: http://support.twitter.com/groups/33-report-a-violation/topics/122-reporting-violations/articles/15789-how-to-report-violations</p> <p>Note(s): 1. Only email from law enforcement domains will be accepted. All others will be disregarded. Non-law enforcement requests should be sent through our regular support methods (http://support.twitter.com). 2. Guidelines for Law Enforcement: http://support.twitter.com/articles/41949-guidelines-for-law-enforcement</p>	<p>Contact: Google Legal Investigations Support. Can mail or fax subpoena to: Attn: Custodian of Records Address: 1600 Amphitheatre Parkway Mountain View, CA 94043 Telephone Number: 650-253-3425 Fax Number: 650-249-3429 E-mail Address: legal-support@google.com</p>	<p>Address: MAIL subpoena to 80 State Street Albany, NY 12207-2543. Contact: Attn: to specific Microsoft company (can look up name on Secretary of State's website) c/o Corporation Service Company. Telephone Number: 425-722-1299. Note: Need subpoena to release info about MSN accounts. Don't receive by fax or email. Must serve agent in state. NY Telephone Number: 212-299-5600.</p>	<p>Note: 1. AOL requires account holder authorization or a court order, issued to the account holder, not to AOL, in order to release e-mail content. 2. For non e-mail contact (i.e. identification info) send subpoena to: Corporation Service Company Bank of America Center, 16th Floor 1111 East Main Street Richmond, VA 23219. More Info: http://legal.web.aol.com/aol/aolpol/civilsubpoena.html</p>	<p>Address: 2029 Stierlin Ct Mountain View, CA 94043 Telephone Number: 650-687-3600 Fax #: 650-687-0505</p>

Complex Custody Issues And Ethical Implications For The Attorney For The Child

**Michele A. Brown, Esq.
&
Jeffrey P. Wittmann, Ph.D**

Monday, June 11, 2012

Michele A. Brown

Michele A. Brown has practiced law for 32 years, 23 of which have been exclusively representing children in contested custody, access, abuse and neglect, and family offense proceedings. She is the Chief Attorney of the Children's Legal Center in Buffalo New York a program with nine attorneys and two social workers dedicated to the representation of children. She has spoken state wide on topics as diverse as issues in HIV and mental health records, the APA Guidelines for Custodial Evaluation, case law updates and her favorite, equitable estoppel. The materials today include an article on equitable estoppel which was used by the panel at the New York State Bar Association 2012 annual meeting on Children and the Law. Michele is a member of national and local bar and other groups involved in the representation of children. She also sits on the Advisory Panel to the 4th Department Attorneys for Children Program.

FOURTH DEPARTMENT

RECENT DEVELOPMENTS IN EQUITABLE ESTOPPEL

Materials Prepared by
Michele A. Brown, Esq. - Chief Attorney for the Child
Children's Legal Center
438 Main Street, Suite 200
Buffalo, New York 14202
(716) 332-0990

-o0o-

originally presented at:

Appellate Division, Fourth Department, Attorneys for Children Program
(Tracy Hamilton, Esq., Director)
September 16, 2010

The doctrine of equitable estoppel “is imposed by law in the interest of fairness to prevent the enforcement of rights which would work fraud or injustice upon the person against whom enforcement is sought and who, in justifiable reliance upon the opposing party’s words or conduct, has been misled in to acting upon the belief that such enforcement would not be sought”(Nassau Trust Co. v Montrose Concrete Products Corp., 436 N.E. 2d 1265 (N.Y. Court of Appeals 1982)).

When equitable estoppel is applied in family law, the doctrine prevents a party who allowed a course of action to be taken or a relationship to develop to disavow that action or relationship. Application of the doctrine is well established in paternity cases, where it can be applied to prevent a man, who developed a parental relationship with a child from disavowing paternity (Shondel and J. v Mark D., 7 N.Y.3d 320, 853 N.E. 2d 610, 820 N.Y.S. 2d 199 (2006)).

Equitable estoppel can be used to prevent a woman from asserting that a man, who believed he was the father and developed a relationship with the child, is not the father (Marilyn C.Y. v Mark N.Y., 64 A.D. 3d 645, 882 N.Y.S. 2d 511 (2nd Dept. 2009)). A biological father, without a relationship with the child, can use the doctrine of equitable estoppel to prevent an adjudication of paternity (Juanita A. V Kenneth Mark N., 15 N.Y. 3d 1, 930 N.E. 2d 214, 904 N.Y.S. 2d 293 (2010)). The doctrine is applied defensively against the party attempting to have a relationship altered. Attempts have been made to use equitable estoppel not just defensively, but offensively to establish paternity. Factual biological paternity can be completely irrelevant in the face of an equitable estoppel defense (Shondel, Matter of L.v P. 22 Misc. 3d 1114, 880 N.Y.S. 2d 874, (NY.Fam Court, Kings County 2008)). By preserving well established relationships in the child’s life, the

doctrine of equitable estoppel attempts to promote the best interest of the child.

The common law doctrine of equitable estoppel has been codified in the Family Court Act. Article Four of the Family Court Act governs support. Section 418 (a) provides

The court, on its own motion or motion of any party, when paternity is contested, shall order the mother, the child and the alleged father to submit to one or more genetic marker or DNA marker tests **No such tests shall be ordered, however, upon a written finding by the court that it is not in the best interests of the child on the basis of res judicata, equitable estoppel or the presumption of legitimacy of a child born to a married woman.**

(Emphasis supplied) That highlighted sentence, “ No such tests shall be ordered, ... woman”, appears in every statute cited below, with the exception of Domestic Relations Law Section 24 (1), which establishes the presumption of legitimacy of a child born to a married woman.

Article Five of the Family Court act governs paternity. Section 532 (a) mirrors Section 418 (a) exactly as to the “No such tests shall be ordered ...” language, but first sentence is a little different. It provides

The court **shall advise the parties of their right to one or more genetic marker tests or DNA tests and**, on the court’s own motion..... to submit to tests.. No such tests shall be ordered..... woman.

(Emphasis supplied).

Section 516 (a) of the Family Court Act is Acknowledgment of Paternity. The provisions of this statute govern the recognition and revocation of acknowledgments of paternity executed pursuant to the social services or public health law. Essentially, the signatories to an acknowledgment of paternity have from the earlier of sixty days from execution of the acknowledgment or the filing

of a proceeding relating to the child to rescind the acknowledgment by filing a petition to vacate with the family court. Section 516-a (b) (i) provides

The court shall order genetic marker tests or DNA tests for the determination of the child's paternity. No such tests shall be orderedwoman.

Section 516 -a (b) (ii) limits challenges to acknowledgments of paternity after the expiration of the sixty day period to circumstances where the party seeking to vacate alleges and proves fraud, duress or material mistake of fact. That section echoes the provisions above with an interesting twist:

If the petitioner proves to the court that the acknowledgment of paternity was signed under fraud, duress, or due to a material mistake of fact, the court shall order genetic marker tests or DNA tests for the determination of the child's paternity. No such test shall be ordered ... woman.

Social Services Law Section 111-k establishes procedures relating to acknowledgments of paternity. Section 111-k (2) (a) allows social services to order the mother, the child and the alleged father to submit to genetic marker or DNA tests when paternity is contested. The order can be issued prior to the filing of a proceeding to establish paternity with a court. The section provides

The parties shall not be required to submit to the administration and analysis of such tests if they sign a voluntary acknowledgment of paternity or if there has been a written finding by the court that it is not in the bests interest of the child on the basis of res judicata, equitable estoppel or the presumption of legitimacy of a child born to a married woman.

Each of the above statutes echo the oft repeated holding that the presumption of legitimacy is “one of the strongest and most persuasive known to the law”.

David L. v Cindy Pearl L., 208 AD3d 502, 503, quoting Matter of Findlay, 253 N.Y. 1, 7. The presumption of legitimacy of a child born to a married woman,

referred to in all the statutes set forth above, is codified in Domestic Relations Law Section 24(1)

A child heretofore or hereafter born of parents who prior or subsequent to the birth of such child have entered into a civil or religious marriage, or shall have consummated a common-law marriage where such marriage is recognized as valid, in the manner authorized by the law of the place where such marriage takes place, is the **legitimate child of both birth parents** notwithstanding that such marriage is void or voidable or has been or shall hereafter be annulled or judicially declared void.

(Emphasis supplied).

Each of the statutes above reflect the simple fact that the presumption of legitimacy arose under common law to insure heredity and orderly succession, and to protect relationships, when true legitimacy, and therefore paternity, was impossible to determine. That presumption is not just on a collision course, but in fact has collided with modern technology. The old way of determining paternity - i.e. testimony of “exclusive access” during a “possible period of conception” has given way to the certainty of genetic marker tests and 99.99% probability that father is father, or in the alternative, complete exclusion of a potential father. And how can that scientific certainty be reconciled with the “best interests of the child”. Is it in the best interest of a child to be denied a relationship with his/her true biological parent? Is it in the best interest of a child to have a relationship continued with a non-biological parent that loves the child as if he/she were his own? Is it in the best interest of a child to have a legal relationship continued with a non-biological parent where no personal relationship exists or ever existed?

The answer to each and every question is, it depends.

The Court of Appeals has decided four major cases involving issues of equitable estoppel, parentage, and rights to support in the last four years - one in 2006, Shondel J., cited above. Three were decided on May 4, 2010 - H.M. v E.T., 14 N.Y. 3d 521, 930 N.E. 2d 206; Debra H. v Janice R., 14 N.Y. 3d 521, 930 N.E. 2d 206; and Juanita A. V Kenneth Mark N., 15 N.Y.3d 1, 930 N.E. 2d 214. These four cases are literally all over the board. Only one had a unanimous opinion - Juanita A. Interestingly, that decision relied heavily on Shondel, which had a strong dissent.

Shondel involved a child who was 10 by the time the case reached the Court of Appeals. Her mother and the Attorney for the Child argued that father, even though he was not the biological father, should be estopped from denying paternity. The child was conceived during a trip the father made to Guyana, and born in January 1996. Father continued to live in New York, and mother and child lived in Guyana. He visited in Guyana at least twice, supported the child and signed a registry and a notarized statement that he was the father accepted and “all paternal responsibilities”. In August, 2000 mother started filiation and support proceedings in New York. In September 2000, father commenced an Article 6 proceeding for visitation with the child. However, in October 2000, father requested DNA testing in connection with mother’s petitions. The Hearing Examiner ordered the genetic marker tests which revealed father was not in fact biological father. Mother’s petitions were dismissed, and father’s petition was withdrawn . Mother objected, the matter was transferred from the Hearing Examiner to the Court, Mother’s petitions were reinstated and an attorney was appointed to represent the child. The child’s attorney reported that father had acted as father, and that the child considered him her father. An equitable estoppel hearing was held with widely diverging testimony. The Family Court found

mother credible, and determined it was in the best interest of the child to equitably estop father from denying paternity. The Court of Appeals affirmed. In doing so it considered Section 418 (a) and found

In allowing a court to declare paternity irrespective of biological fatherhood, the Legislature made a deliberate policy choice that speaks directly to the case before us. The potential damage to a child's psyche caused by suddenly ending established parental support need only be stated to be appreciated. Cutting off that support, whether emotional or financial, may leave the child in a worse position than if that support had never been given. Situations vary, and the question is whether extinguishing the relationship and its attendant obligations will disserve the child is one for Family Court based on the facts in each case.

Shondel at 330. In considering the fact that father had renounced fatherhood and has no current relationship with the child, the Court noted, a man could “defeat the statute simply by severing all ties with the child” (Shondel at 33), and thus estoppel can still be applied.

The strong dissent in Shondel raised the issues of mother's fraud and wilful misrepresentation- she knew she had sex with at least one other person during the possible period of conception, thus the genetic marker testing done twice which excluded father. The dissent also noted the child's relationship with father was mostly by telephone. The majority addressed the fraud issue by noting it is the child in “whose favor estoppel is being applied and there can be no claim here that she was guilty of fraud or misrepresentation” (Shondel at 331). Moreover, the majority argues, even mother thought he was the father, otherwise she would not have initiated paternity proceedings. Lastly, and most importantly, the Court stated “the issue does not involve the equities between the two adults; the case turns exclusively on the best interest of the child” (Shondel at 331). The majority

concluded with

Given the statute recognizing paternity by estoppel, a man who harbors doubts about his biological paternity of a child has a choice to make. He may either put the doubts aside and initiate a parental relationship with the child, or insist on a scientific test of paternity *before* initiating a parental relationship.

Shondel at 331.

Clearly, Shondel stands for the simple proposition that relationships, even when they are no longer viable, and even when they are the product of a misrepresentation, can be legally protected “paternity”, when there is no biological connection to paternity. Simply put, paternity is a legal construct, not a biological fact. As of September 4, 2010, there were 159 citations to Shondel in decisions, articles and treatises. Many cases were decided between Shondel and the May 4, 2010 trio.

Matter of L. v P. 22 Misc 3d 1114, 880 N.Y.S. 874 (NY Family Court, Kings County 2008), is a good review of the case law and applies Shondel to the facts before it. The case involved a child born during the marriage of a brief affair and was 14 when the second wife demanded “clarification”. Like many cases, the horse was out of the barn before the proceedings were filed, as the “father” surreptitiously obtained an extra-judicial DNA test which excluded him as the bio-father. The court listed a variety of factors to consider in deciding to apply equitable estoppel including

- a child’s interest in knowing its biological father
- the ability to prove or disprove paternity
- are there other fathers known or likely to be discovered
- if there is another father, his willingness to assume the role
- the traumatic effect, if any, of testing

-impact that continuing uncertainty may have on the father-child relationship
if testing is ordered

- nature and extent of the existing parent-child relationship
- how long the child was treated as a child of the marriage
- whether father supported the child
- whether father visited the child
- whether father held himself out as father
- whether the child regards him as father

The Court discussed the mother's "deception" but noting that the "father" didn't have clean hands as he was responsible for the demise of the child's affections towards him (by the test and disclosure), it found he should not benefit from his own callous conduct in advancing his interests at the expense of the child. The Court concluded by finding that the Mother and the Attorney for the Child provided, by clear and convincing evidence, that the doctrine of equitable estoppel should be invoked, in the best interests of the child, to preclude the "father" from obtaining a court ordered genetic marker test, preventing him from denying paternity, and entered an order of filiation.

Another Shondel progeny is Greg S. V Keri C. 38 A.D.3d 905, 832 N.Y.S. 2d 652 (2nd Dept 2007). The case is interesting because it is the opposite of Shondel. Greg S. involved a biological father who was estopped from challenging paternity of the acknowledged father. The acknowledged father was on the child's birth and baptismal certificate, he was held out to the public as the father, there was a strong father-son relationship and he was the only father the child knew. The biological father did not support mom, nor was he present at birth, he had no contact with the child until age 2, and the mom and the acknowledged father

“reasonably believed that the petitioner (biological father) would not attempt to assert paternity”. Greg S. at 905-906. The Courts “are more inclined to impose equitable estoppel to protect the status of a child in an already recognized and operative parent-child relationship.” Greg S. at 905. See also Marilyn C.Y. v Mark N.Y. 64 A.D.3d 645, 882 N.Y.S. 2d 522 (2nd Dept 2009). That case involved the presumption of legitimacy and six children. The four oldest were children of the marriage, and two youngest the children of Charles. Only the mother challenged the claim of Charles when he filed for an order of filiation. The Court recognized, in part from the in camera where the two youngest clearly identified Charles as their Daddy, that ‘to apply the estoppel doctrine would have the very consequence which the doctrine is intended to prevent, that is the estrangement of someone who, (after) years of concern and love is the subject children’s father in every respect.” Marily C.Y. at 647.

Four years after Shondel, the Court of Appeals decided three cases on May 4, 2010, all of which involved issues of equitable estoppel. The only Court of Appeals case of the four (including Shondel) without a dissent, or concurring opinion, is Juanita. Juanita turns on facts completely different from Shondel, but the underlying biological issues are the same - a father who is not the father. In Juanita, the child was sandwiched between two full siblings, in a relatively intact family. Raymond was listed on the child’s birth certificate and the only father she had known. When the child was seven, she was told Raymond was not her father during a family dispute and that Kenneth was her father. She had a telephone conversation with Kenneth, but no further contact. Five years later, mother commenced a paternity proceeding against Kenneth when the child was twelve. Kenneth appeared and without the benefit of counsel, agreed to genetic marker

testing which indicated with 99.99% probability he was the child's father. Counsel appeared and interposed the defense of equitable estoppel, despite the genetic marker test results. The lower court entered an order of filiation. The Appellate Division affirmed, holding the doctrine of equitable estoppel is available only to further the best interest of the child, and is generally not available to a party seeking to disavow the allegation of parenthood for the purpose of avoiding child support" Juanita, at 2 quoting the Appellate Division 63 A.D. 3d 1662 (4th Dept. 2009).

The Court of Appeals reversed the Appellate Division, and remanded for a hearing, noting that Raymond must be joined as a necessary party. In doing so Judge Pigott wrote:

Indeed, whether it is being used in the offensive posture to enforce rights, or the defensive posture to prevent rights from being enforced, equitable estoppel is only to be used to protect the best interests of the child. Therefore, we hold that the doctrine of equitable estoppel may be used by a purported biological father to prevent a child's mother from asserting biological paternity - when the mother has acquiesced in the development of a close relationship between the child and another father figure, and it would be detrimental to the child's interests to disrupt that the relationship.

Juanita at 6. In protecting the relationship, the Court completely disregarded the position taken by the Attorney for the Child. She argued that the child already knew Raymond wasn't her biological father; that Kenneth was; and that she didn't "think there's any harm to her that isn't already done".

After Juanita, the logical question is how bad does the relationship have to be, to let a non-biological father off the support hook? Shondel implies the standard should be "disservice to the child". Although Martin G.D. v Lucille A.F., 35 A.D.3d 1280, 827 N.Y.S. 2d 797 (4th Dept 2006) pre-dates Juanita, the

standard of what constitutes “disservice” set forth may stand. The Attorney for the Child produced an expert psychologist who testified that the paternal relationship had been “demolished” and that further contact with the non-biological father would be damaging to the child. The court noted there was undisputed proof that the petitioner was not the child’s biological father, all parties agreed, and the acknowledgment of paternity was rescinded. Equitable estoppel was not applied. See also Bruce W.L. v Carol A.P., 46 A.D.3rd 1471, 848 N.Y.S. 2d 493 (4th Dept 2007), another horse out of the barn case, where the father of a 14 year old girl, after receiving information that he may not be the biological father, has a DNA test performed. His suspicion is confirmed, he is not bio dad, he tells his daughter, of whom he had custody, who moves out of his home and into mother’s. At the hearing he admitted he always thought she was his child, and that he did not want to pay child support. The Appellate Division said Family Court properly denied father’s petition and he was estopped from denying paternity based upon the biology of the child. It quoted Martin G. and noted father failed to present any evidence that the paternal relationship had been demolished and that further contact would be damaging to the child.

However, in Jose F.R. v Reina C.A. 46 AD3d 564, 846 N.Y.S.2d 630 (2nd Dept 2007) the Court considered a 2006 motion to vacate an order of filiation which was entered in 2004. The child involved was 10, and had enjoyed a parent-child relationship with father, and father’s family. The court held that the child’s “current estrangement does not preclude the application of equitable estoppel”, Jose F.R. at 565, and affirmed the lower court’s denial of the motion to vacate. Equitable estoppel applied and no genetic marker tests were ordered.

On the same day the Court of Appeals unanimously decided Juanita, it also decided two lesbian couple cases. These cases are unique in that they pose a

recurring problem for lesbian women and their children. Lesbian couple cases arise in a way no other case can. When heterosexual couples have children, a man, artificial insemination, or other contractual relationship, such as surrogacy is involved. A woman, with multiple partners, can be mistaken as to the father, or a man can assume paternity knowing he is not the father, but essentially all these cases involve underlying possible biology. Traditional “parents” as society has understood them.

In Alison D. v Virginia M., 77 N.Y. 2d 651 (1991), the Court of Appeals first addressed the same facts involved in both May 4, 2010 lesbian couple cases. There two women decided to have a child together and one was artificially inseminated. The non-biological mommy never adopted the child. Eventually, the women separated, the separation turned sour, and the biological mother started denying the non-biological mother access with the child. The case turned on standing to bring a visitation proceeding, not on the best interests of the child. The Court of Appeals found the non-biological mother was not a parent within the meaning of Domestic Relations Law Section 70, she did not fall within the classes of persons permitted to bring a petition for access pursuant to the Domestic Relations Law Section 71 (siblings) or 72 (grandparents) and thus she lacked standing to petition a court for access. Judge Kaye, then an Associate Judge of the Court, wrote a strong dissent, arguing that the non-biological mother could be a de facto parent, and therefore have standing to apply for access. This, she argued would comport with both the standing requirements and the best interests of the child.

The Court of Appeals next tackled issues of non-traditional families in the Matter of Jacob, 86 N.Y. 2d 651 (1995), when it allowed the unmarried partner of a child’s biological mother, whether heterosexual or homosexual, who is raising

the child together with the biological parent, to become the child's second parent by adoption. In making that decision, the Court reflected upon the sort of disruptive visitation battle in Alison D. and opined second-parent adoptions allows children to achieve a measure of permanency with both parent figures Jacob at 659.

In Debra H. V Janice R. 14 N.Y. 3d 576, 904 N.Y. S. 2d 263 (2010), the same facts were presented as Alison D., with one simple twist - the parties entered into a civil union in Vermont the month before the child involved was born. In a very long decision, the Court ultimately (relying on the civil union in Vermont, a Vermont case on point, and the doctrine of comity) decides that the non-biological mommy is a parent, which allows her to seek visitation and custody at a best interest hearing. But before deciding she was a parent on the grounds stated, the Court went to great lengths to affirm the holding in Alison D

The Court discussed "bedrock principles of family law" set forth in Bennett v Jeffreys, 40 N.Y. 2d 543 (1976) and Ronald FF v Cindy GG, 70 N.Y. 2d 141 (1987). Read together, the Court asserted these cases mean a parent, cannot be deprived of the right to custody, absent extraordinary circumstances, and possessed a fundamental right to chose with whom the child associates. The Court explicitly rejected Debra H.'s argument it had implicitly departed from Alison D in Shondel. The Court asserted that Shondel is consistent with Alison D.'s core holding that parentage under new York law derives from biology or adoption. The Court expounded by stating

Our holding in Shondel J. was limited to the context in which that case arose - the procedure for determining the paternity of an "alleged father." Moreover, we see no inconsistency in applying equitable estoppel to determine filiation for purposes of support, but not to create standing when visitation and custody are sought. As already noted, the Legislature has drawn the distinction for us:

sections 418 (a) and 532 (a) of the Family Court Act direct the courts to take equitable estoppel into account before ordering paternity testing, while section 70 of the Domestic Relations Law does not even mention equitable estoppel..... In sum, Alison D., in conjunction with second-parent adoption, creates a bright-line rule that promotes certainty in the wake of domestic breakups otherwise fraught with the risk of “disruptivebattles” over parentage as a prelude to further potential combat over custody and visitation.

Debra H. at 593 to 594.

One concurring opinion by Judge Graffeo agrees with the majority opinion, and re-states why, for slightly different reasons, Alison D remains good law and should be affirmed. He argues the best way for same-sex couples to insure relationships is to promptly undertake second parent adoptions. However, two additional concurring opinions of Judges Ciparick (joined by Chief Judge Lippman) and Smith, concur in the result (parentage) but argue that Alison D should be overruled.

The last May 4, 2010 case, H.M. v E.T. was the most divided decision of the three. Once again, the Court was presented with the same facts as in Alison D. and Debra H. A New York lesbian couple decide to have a child. One performs the artificial insemination procedure on the other. The relationship goes south. The parties separate. Child and biological mother move to Canada, and non-biological mother remains in New York. This time the issue isn't access. This time the issue is the non-biological parent's obligation to pay support. The biological mother filed a petition seeking a declaration of parentage and an order of child support pursuant to the Uniform Interstate Family Support Act. The Court finds because Family Court unquestionably has subject matter jurisdiction to decide support obligations of a female parent, it has the “inherent authority to ascertain in certain cases whether a female respondent is, in fact, a child's parent..... In short, because H.M. asserts that

E.T. is the child's parent, and is therefore chargeable with the child's support, this case is within the Family Court's Article 4 jurisdiction". H.M. at 526 to 527.

There are separate concurring and dissenting opinions in H.M. The concurring opinion agrees in the result - that E.T. is responsible for the support of the child, but argues that where a child is conceived through ADI by one member of a same sex couple living together, with the knowledge and consent of the other, the child should be, as a matter of law, the child of both. Judge Jones, joined by Judges Graffeo and Read, dissents and argues that because the child is neither a biological or adopted child, there is no right to receive support, and thus Family Court does not have jurisdiction to entertain the parentage and support petition.

So, where does that leave the child in H.M.? Can he receive child support from E.T., but if E.T. petitions to visit, does she lack standing under Alison D. and Debra H.? Do post May 4th cases provide any guidance?

P. v B. N.Y.S. 2nd , 2010 WL 2949880 (New York Family Court, Orange County, July 28, 2010) was decided after the trio of cases on May 4th. The two children, ages 7 and 4, were adopted by mother alone. Mother and "father" had been in an "intimate relationship" for 11 years, and father had always been held out as father, and acted as one. However, he did not adopt the children, a decision the Court noted to be a conscious decision on two separate occasions several years apart. Mother moved to dismiss father's paternity petition. Father and the Attorney for the Children opposed her motion. The Court, in accordance with Debra H., applied a bright line rule concerning the rights of legal parents as against virtual parents. "To permit petitioner, a known biological stranger to the children, under a claim of being a virtual parent to merely alter the form of the proceeding from a custody to a paternity proceeding in order to gain standing to seek custody and visitation against the wishes of the legal parent undermines the bright-line rule and

assurance of certainty the Court endorsed”. It continued, “The Court of Appeals has so far approved of applying the doctrine of equitable estoppel with respect to paternity related issues in particularized instances determined on a case by case basis” and dismissed the paternity petition.

On a procedural note, each of the statutes referring to equitable estoppel, as well as res judicata and the presumption of legitimacy, require the Court to order genetic marker tests, unless the Court makes a **written** finding it is not in the best interests of the child. Although in theory the written finding could be based upon submissions, where the facts are not in dispute, when one of the defenses is raised, a hearing generally should be conducted. But see Saragh Ann K. v Armando Charles C., 67 A.D. 3d 537 (1st Dept 2009), where the Court did not hold a hearing, and refused to allow the doctrine of equitable estoppel to avoid a support obligation. Genetic marker tests should not be ordered by the Court, or admitted into evidence if extra-judicial, unless the Court has made the required written finding.

In assessing the defenses available, the issue of res judicata should not be overlooked. Res judicata works to prevent an order of filiation or the presumption of legitimacy embodied in a decree, such as a judgment of divorce stating that children were born of the marriage, from being overturned. Res judicata is applied to show that a final judgment of the court is conclusive against the same parties in any further, identical cause of action between them. To prevent application, the proponent of re-litigating the issue must show that new facts could not have been discovered at the time of the order or the decree with due diligence. Even with newly discovered facts, res judicata and equitable estoppel may prevail and protect a father -child relationship, see Bruce W.L. above.

On a final note, the value of the Attorney for the Child in protecting the child’s interests against the adults in the child’s life cannot be underestimated. In

Savel v Shields, 58 A.D.3d 1083 (3rd Dept 2009), the child was born in 2004. Eight or nine months after the child was born, mother told father of another sexual relationship. Nonetheless, father continued to visit and develop a relationship with the child. In June 2007, father filed to vacate his acknowledgment of paternity. The Law Guardian successfully invoked the doctrine of equitable estoppel to defeat the father's request - he knew the possibility he wasn't the father and kept visiting. The child justifiably relied upon his representation of paternity. Laura WW v Peter WW 50 A.D.3d 1262, 857 N.Y.S.2d 246 (3rd Dept. 2008), illustrates perfectly the need for independent representation of a child. Mother and father are married. She is artificially inseminated but they agree that the child will not be the child of the marriage. The lower court, on grounds of both the presumption of legitimacy and equitable estoppel, disregarded the parties agreement and ruled the child was a child of the marriage. The Appellate Court noted "the lower court correctly recognized its obligation to protect the best interest of the child and appointed a Law Guardian." Finally, yet another horse is out of the barn case, a proceeding was brought to vacate a long standing order of filiation, on the basis of privately conducted paternity tests. In Troy D.B. v Jefferson County Department of Social Services 42 A.D.3d 967 (4th Dept 2007), the court found the appointment of a law guardian to represent the best interest of the child is necessary.

**ATTORNEY FOR THE CHILD UPDATE
COMPLEX CUSTODY ISSUES AND ETHICAL IMPLICATIONS
CASE UPDATE**

Materials Prepared by
Michele A. Brown, Esq. - Chief Attorney
Children's Legal Center
438 Main Street, Suite 200
Buffalo, New York 14202
(716) 332-0990

To Accompany the Presentation by
Michele A. Brown, Esq. and Jeffrey P. Wittmann, Ph.D
On June 11, 2012

THE NEW YORK STATE OFFICE OF COURT ADMINISTRATION
ATTORNEY FOR THE CHILD CONTRACTS
IN COLLABORATION WITH
THE CHILD WELFARE COURT IMPROVEMENT PROJECT
RACHEL HAHN, ESQ.
COORDINATOR

INDEX

COURT OF APPEALS.....3

APPELLATE DIVISIONS

Custody

Joint Custody After Trial3

Sole Custody After Trial.....4

Change of Custody.....6

False Allegations of Abuse.....9

Foster Relationship.....10

Conditions.....12

Third Party Custody.....12

Relocation.....13

Miscellaneous Custody.....15

UCCJEA.....15

Visitation/Access

General.....16

Supervised Access.....19

Prisoner Access.....20

Grandparent Access.....21

Paternity.....	21
Adoption.....	22
Improper Delegation of the Court’s Authority.....	23
Right to Counsel.....	23
Hearings	
General.....	23
Necessity.....	24.
Adjournments.....	25
Family Offense Proceedings.....	25
Sanctions.....	27
Miscellaneous Issues.....	28
Experts.....	31
Attorney for the Child Issues	
General.....	33
Lincoln Hearings.....	36.
Child’s Preference.....	38
Sound and Substantial Basis.....	39
Unavailing.....	43

COURT OF APPEALS

Matter of O. (Anonymous) v M. (Anonymous) (Court of Appeals, May 1, 2012)
Without any facts the court finds the Family Court erred by failing to hold a hearing on equitable estoppel *after genetic testing was conducted*. Also note that Family Court has jurisdiction to order child support *notwithstanding a New Jersey order directing another individual to pay child support*. Remitted to Family Court for a hearing.

APPELLATE DIVISIONS

CUSTODY

Joint After Trial

Helm v Helm, 92 AD3d 1164, 939 NYS2d 592 (3rd Dept 2012) Father controlling, does not engage older children (18 - where award moot, 17 and fifteen) during visits, does not attend school events nor know teachers names. Mother primary care giver, employment schedule which allows presence, active in education and medical, and encourages relationship with father. Children's preference to be with mother. Even with the domestic violence and controlling behavior, the parties relationship is not so acrimonious that they are incapable of putting aside their differences.

Raynore v Raynore, 92 AD3d 1167, 2012 WL 573093 (3rd Dept 2012) During pendency father had temporary physical. Mother awarded physical after trial. Father uses drugs, does not complete treatment, intermittent employment, criminal history. Mother has steady job and suitable home with her father. Domestic violence in child's presence and father arrested. Father interfered with mother's access while mother recognizes child's need for a relationship with father and his family.

Delgado v Frias 92 AD3d 1245, 937 NYS2d 814 (4th Dept 2012) Joint physical and legal custody. Split decision making appropriate given past acrimony. Father decides school and extra curricular and mother decides medical and religious*

Retzmozzo v Moyer 91 AD3d 957, 938 NYS2d 142 (2nd Dept 2012) Mother's request to change joint custody to sole denied. The record demonstrates that the parties are not so antagonistic, embattled and unable to set aside their differences that they cannot make joint decisions for the good of the child.

Saperston v Holdaway 2012 WL 975704, 2012 NY Slip Op 02187 (4th Dept 2012) In a

rare reversal, with equally rare dissent, the 4th Department continues joint custody, but changes primary from father to mother. As a de novo case, it considered mother's relocation, but did not apply the Tropea standards. Instead, an overall best interests analysis. In awarding physical to mother the Appellate Court considered her role as primary care giver, her income and housing, which parent is better able to provide for the child's intellectual and emotional development and father's dependence upon his family for housing and income. The dissent argued the decision rested on a sound and substantial basis in the record, that mother had her problems including moving without notifying father and avoiding service, and that father had extended family available.

Ruggerio v Noe 2012 WL 933769, 2012 NY Slip Op 02107 (2nd Dept 2012) A shared access is established in keeping with father's status and child's expressed wishes. Shared residential custody does not require the parties have an exactly equal number of hours with the child*

Olmsted v Boronow, 2012 NY Slip Op 03451 (2nd Dept May 1, 2012) Residential custody to mother*

D'Ambra v D'Ambra (4th Dept April 27, 2012) Joint after trial with physical residence to mother and visitation to father. Mother's argument that equal time if father obtains a suitable residence within six month is moot, as father did not do so.*

Sole Custody After Trial

Angel M. v Nereida M. 92 AD3d 583, 938 NYS2d 556(1st Dept 2012) Mother was primary care giver before father refused to return the child after a weekend visit. Father failed to attend to the child's educational needs, abused mother in child's presence. Failed to foster relationship.

Ricardo S. v Carron C. 91 AD3d 556, 937 NYS2d 54 (1st Dept 2012) Child thrived in father's care, receives regular medical care, gifted and talented at school, extensive bonds with paternal relatives in New York. Mom lives in Jamaica. Child's preference discerned during in camera

Bianca R v Anne Marie S. 91 Ad3d 560, 937 NYS2d 56 (1st Dept 2012) Custody to father and step-mother. They provided structure and stable home after need for removal from mother. Neither court appointed expert nor mother's therapist recommend return to mother. Child's preference not determinative.

Adams v Bracci, 91 AD3d 1046, 936 NYS2d 738 (3rd Dept 2012) In a second visit to the Appellate Division, a change from joint to sole custody is affirmed based upon father's job and household stability, mother's false allegations of sexual and other abuse, and appearance father versus toxic combination of mother and maternal grandmother would foster relationship. Also allows a relocation

Hoffmeier v Byrnes, 91 AD 3d 1307, 937 NYS 2d 650 (4th Dept. 2012) Legal and physical custody to father affirmed*

Smith v Ince 91 AD3d 1323, 937 NYS2d 654 (4th Dept 2012) Sole to father - he has a strong bond with child, better suited to provide a stable home, mother, if awarded custody, would continue to undermine father's relationship with child.

Mihalko v Charlton, 92 AD3d 1230, 937 NYS2d 910 (4th Dept. 2012) Sole custody to father. Appeal dismissed as moot*

Tin Tin v Thar Kyi 92 AD3d 1293, 938 NYS2d 407 (4th Dept 2012) Mother granted sole custody. She testified to physical abuse against her and one of the children, as well as threatening her life shortly before the hearing. Father did not testify or call witnesses. Evidence of acts of domestic violence demonstrates a character that is ill suited to the difficult task of providing children with moral and intellectual guidance.

Ashmore v Ashmore 92 AD3d 817, 939 NYS2d 504 (2nd Dept 2012) Sole custody to mother and relocation permitted to Michigan. Expert testified at trial regarding severe psychopathology, alienation of children and coaching of responses. Two additional experts concurred

Harry v Harry, 92AD3d 883, 938 NYS2d 808 (2nd Dept 2012) Sole custody to mother*

Cordero v DeLeon 92 AD3d 943, 938 NYS2d 901(2nd Dept 2012) Sole custody to mother*.

Fiacco v Fiacco 2012 WL 1033457, 2012 NY Slip Op 02356 (3rd Dept 2012) Sole custody to mother. Evidence demonstrates animosity and inability to cooperate, rendering joint inappropriate. Court unconvinced that mother drank to excess but troubled by father's Vicodin dependence. Father contributed to estrangement of children and was more of a friend than a parent. Father overly permissive.

Adriano D v Yolanda A 2012 WL 1129369, 2012 NY Slip Op 02566 (1st Dept 2012) Sole to father who provides stable healthy environment and home, provides financially and emotionally and involved in child's education and special needs. Mother has emotional issues, lacks insight which prevents putting the child's needs before her; poor judgment in discipline, uninvolved with education, evasive about income and employment history. Forensic psychologists report also supports.

Farran v Fenner, 2012 NY Slip Op 03189 (2nd Dept April 24, 2012) On a modification petition, sole is awarded to father. Mother failed to attend to recurrent infections, child had school absences and tardies. Medical and educational issues resolve while in father's care, father actively participates in school and fosters the relationship with mother.

Miller v Osik, 2012 NY Slip Op 03197 (2nd Dept April 24, 2012). On another modification petition, decided the same day as Fenner, the Court again relies on the foster

relationship factor in awarding sole custody to father.*

Pedro A. v Susan M. 2012 NY Slip Op 03524 (1st Dept May 3 2012) “final custody” to father*

Jeannemarie O v Richard P (3rd Dept April 26, 2012) Sole to father where mother moved several counties away to deliberately frustrate his involvement with the children, made negative allegations against the father regarding violence and substance abuse, and coached one child to make false allegations of sexual abuse.

Leonardo v Leonardo, (4th Dept April 20, 2012) Sole custody to mother* (Although the companion child support case decided the same day, in which father asked to have his child support modified as the children spend more time with him than with mother is interesting. He did not get the modification)

Triplett v Scott (4th Dept April 20, 2012) Sole custody to mother where father knew of hearing and although his attorney attended, he chose not to attend*

Walters v Walters (4th Dept April 20, 2012) Custody to father*

Change of Custody

West v Vanderhost 92 AD3d 615, 939 NYS2d 378 (1st Dept 2012) Joint changed to sole custody in mother where there was a complete breakdown in communication, a domestic violence incidence in the presence of the child and fostering a relationship with the other parent were issues.

Herschorn v Herschorn 938 NYS2d 528, 92 AD3d 500 (1st Dept 2012) Change to designation of primary custodial for purposes of child support denied where father failed to foster relationship with mother

Strauss v Saadatmand 92 AD3d 508, 938 NYS2d 425 (1st Dept 2012) No change to temporary parental access schedule in effect for two years - no showing modification necessary to protect the best interests of the child. Additionally, full custody trial almost concluded and final order anticipated.

Knight v Knight, 92 AD3d 1090, 2012 WL 489110 (3rd Dept 2012) Joint to sole where father sexually molested his girlfriend's 8 year old daughter, did not enter treatment, pled guilty to charges and sentenced to 60 days in jail, lack of insight as to impact on the victim and his own children. Test of subsequent change of circumstances from time of prior arrangement and modification is required to ensure ongoing best interests of children is met

Anthony MM v Jacquelyn NN, 91 AD3d 1036, 937 NYS2d 360 (3rd Dept 2012) Joint custody to sole after mother continues to make false allegations of abuse by father. She also

makes disparaging remarks, behaved inappropriately during visitation exchanges and has personality disorders.

Owens v O'Brien 91 AD3d 1049, 936 NYS2d 742 (3rd Dept 2012) Mother raised concerns about father's drug use prior to the entry of the existing custody order, therefore allegations of drug abuse, which pre date prior order do not constitute a change in circumstances. Additionally, court found, based upon father's probation officer's testimony, that father was no longer using drugs.

Orzech v Nikiel, 91 Ad3d 1305, 937 NYS2d 509 (4th Dept 2012) Joint, primary residence to mother, with sole to father. Unable to communicate, therefore joint unworkable. Mother interfered with father's relationship with child. Three experts testify.

Sorokina v Moody, 91 AD3d 1307, 937 NYS2d 650 (4th Dept 2012) Many trips to the Appellate Division. This one finds mother failed to make requisite showing of change of circumstances warranting a reexamination of the existing custody order.*

Morillo v Nunez, 91 AD3d 875, 936 NYS2d 910(2nd Dept 2012) Father's testimony did not establish a sufficient change in circumstances since entry of prior order to warrant modification*

Fortunato v Murray 91 AD3d 947, 937 NYS2d 604 (2nd Dept 2012) Modification denied*

Aquino v Antongiorgi 92 AD3d 780, 938 NYS2d 460 (2nd Dept 2012) Modification denied*

Dingeldey v Dingeldey, 2012 WL 975825, 2012 NY Slip Op 02219 (4th Dept 2012) Modification denied where 15 year old daughter was doing well and wanted to stay with mother, who is addressing her problems, rather than move to Tennessee with father and his new wife.

DiPaolo v Avery 2012 WL 895513, 2012 NY Slip Op 01993 (4th Dept 2012) Hearing ordered where mother and current husband have completed counseling and have a stable home, father not involved in children's schooling and refused to obtain counseling for the children to address their adjustment and coping issues.

Fox v Coleman 2012 WL 895458, 2012 NY Slip Op01909 (4th Dept 2012) Primary physical custody changed from mother to father*

Stilson v Stilson 2012 WL 895570, 2012 NY Slip Op 01962 (4th Dept 2012) Change from mother to father. Changed circumstances are parties inability to reach agreement regarding visitation and changes in child's school schedule since entry of the prior order. Best interests are served by father better able to provide for educational and medical needs.

Bond v Bond 2012 WL 1033469, 2012 NY Slip Op 02358 (3rd Dept 2012) Father fails to establish a change in circumstances, children's wishes alone are insufficient

Poremba v Poremba 2012 WL 1033523, 2012 NY Slip Op 02366 (3rd Dept 2012) Mother's alcohol abuse, attempted suicide and parties inability to communicate (including father being misled that child was being cared for by mother at maternal grandmother's home when mother was in-patient for substance abuse) constitute change requiring a best interest analysis. Father more stable home and willing to discuss child with mother. Mother fails to relay important information and involved child in the custody dispute.

Sendor v Sendor, 2012 WL 997008, 2012 NY Slip Op 02272 (1st Dept 2012) Joint parenting agreement to sole with mother. The parties acrimony and mistrust make joint custody inappropriate. Sole to mother where she had superior ability to meet emotional and intellectual needs of the child, father failed to foster relationship and he bullied mother. Mother addressed her mental health issues and depression did not affect parenting

Whitter v Ramroop 2012 WL 1033548, 2012 NY Slip Op 02392 (1st Dept 2012) No requisite evidentiary showing of change where allegations are maternal grandmother, who has custody pursuant to a New Jersey order, faces theft charges for stealing from petitioning father while he was incarcerated. What about the UCCJEA?

Moore v Moore 2012 WL 1020970, 2012 NY Slip Op 02288 (2nd Dept 2012) Modification from joint to sole was proper under the circumstance so the case* .

Jackson v Coleman, 2012 WL 1109325, 2012 NY Slip Op 02498 (2nd Dept 2012) Change to sole in father. Standard for change set forth without facts*

Solovay v Solovay, 2012 NY Slip Op 02698 (2nd Dept 2012) Joint to sole where parties so antagonistic they cannot cooperate in the best interests of the child.*

Blerim M. V Racquel M. 2012 NY Slip Op 02795 (1st Dept 2012) Joint to sole where mother relocates to North Carolina (with permission) but home schools the children over father's objection, has unnamed "tenants", allow church members to watch children and use corporal punishment and fails to keep father informed of any relevant details regarding the children. Mother negatively affected children - fell behind their peers, while they thrive in father's custody.

Aronowich-Culhane v Fournier, 2012 NY Slip Op 03186 (2nd Dept April 24, 2012) Modification only where showing of a change in circumstances such that modification is necessary to ensure the best interests of the child. *

Mason-Crimi v Crimi (4th Dept April 27, 2012) No real need for change to ensure the best interests of the child, where violations of visitation and access not proved. In a companion appeal, the father did fail to take the child to counseling as previously ordered, but such failure warranted a warning, not a change of custody.*

Mathewson v Sessler (4th Dept April 27, 2012) Father's change in employment which allows more free time and purchase of a home are insufficient changes to warrant modification. An usual case which reverses the lower court's award of joint custody and modifies access provisions*

Ildefonso v Booker (3rd Dept April 26, 2012). Sole custody to father denied where no change in circumstances. He filed a modification proceeding one hour after a default in which mother was granted sole custody. Although proper procedure would have been to move to vacate the default, the lower court conducted an evidentiary hearing on request for change and found none existed. Father's argument that his modification petition should have been considered as a cross-petition rejected

Martin v Mills (3rd Dept April 26, 2012) v Mills (3rd Dept April 26, 2012) Mother's continued drinking and domestic violence relationship constitute a sufficient change in circumstances to proceed to best interests, however, court below did not set forth the facts deemed essential in awarding custody to father, so remitted for determination of best interests.

Miller v Miller (3rd Dept April 26, 2012) Parties have three daughters. In 2005 they agree father will have custody. Mother brings a proceeding seeking custody of the middle daughter aged 12. There are a sufficient change in circumstances to warrant a hearing, but a best interests analysis supports continuing custody in father. Child's mental health treatment was discontinued by father, but he admits it was a mistake and resumes treatment. Mother unemployed, father employed. Mother unstable home (lives with her parents as a result of substance abuse struggles). Mother's visitation infrequent, has difficulties in discipline, and she has not engaged in family counseling with the child to resolve tensions.

False Allegations of Abuse

Anthony MM v Jacquelyn NN, 91 AD3d 1036, 937 NYS2d 360 (3rd Dept 2012). Joint custody after evaluation by psychologist who determines no evidence of sexual abuse by father. Changed to sole where mother continues to insinuate father was sexually abusing the child.

Adams v Bracci, 91 AD3d 1046, 936 NYS2d 738 (3rd Dept 2012) Mother and maternal grandmother made numerous allegations of physical, emotional and sexual abuse and neglect in court petitions, not with father, police or medical professionals. Element in awarding father sole custody and allowing relocation

Fox v Fox, 2012 WL 896167, 2012 NY Slip Op 01964 (4th Dept 2012) On a visitation case, mother files unfounded child abuse complaints against father

Jeannemarie O v Richard P (3rd Dept April 26, 2012) Mother manipulated child to make false allegation of abuse. Statement made to counselor either a result of mother's coaching or

method of questioning by counselor, but otherwise uncorroborated and unfounded after CPS investigation.

Foster Relationship

West v Vanderhost 92 AD3d 615, 939 NYS2d 378 (1st Dept 2012) Not allowing a child to talk to the other parent or inform the other parent of two hospital visits constitutes an “unwillingness to support and encourage a relationship”

Angel M. v Nereida M. 92 AD3d 583, 938 NYS2d 556(1st Dept 2012) Father attempted and intended to thwart any relationship between mother and child, while mother was willing to insure father had frequent contact.

Herschorn v Herschorn 938 NYS2d 528, 92 AD3d 500 (1st Dept 2012) the children (older) are choosing to spend time with dad but their feelings are influenced and fostered by his expressed hostility at mom and the acquisition of the former marital residence

Helm v Helm, 92 AD3d 1164, 939 NYS2d 592 (3rd Dept 2012) Mother allowed children to spend holiday that fell within her visitation with father, and encourage oldest child (18 at appeal) to improve a strained relationship with father.

Raynore v Raynore, 92 AD3d 1167, 2012 WL 573093 (3rd Dept 2012) despite difficulties, including domestic violence, mother appears to recognize child’s need for relationship with father and his family while father, while enjoying temporary physical custody, persistently interfered with mother’s access

Anthony MM v Jacquelyn NN, 91 AD3d 1036, 937 NYS2d 360 (3rd Dept 2012) Mothers repeated false allegations of sexual abuse, and her personality disorders which cause her to display little regard for the negative consequences that her actions had on father’s relationship with the child, and if untreated, her disorders could result in the child being alienated from father. Persistent hostility towards father and his family were appropriately viewed as efforts to interfere in relationship.

Adams v Bracci, 91 AD3d 1046, 936 NYS2d 738 (3rd Dept 2012) Mother, in toxic relationship with maternal grandmother, thwarted attempts at communication and appeared less likely to encourage any relationship between child and father.

Orzech v Nikiel, 91 Ad3d 1305, 937 NYS2d 509 (4th Dept 2012) Mother interferes with father’s relationship by omitting his name from school enrollment, changing medical providers, permitting her husband to take the child to an event on father’s access time and denying father access with the child on paternal grandfather’s birthday celebration. Expert testimony supports the conclusion that the mother engaged in a pattern of behavior to exclude the father from the child’s life. Concerted effort to exclude the other parent “raise (s) a strong

probability that the (interfering parent) is unfit to act as a custodial parent”

Smith v Ince 91 AD3d 1323, 937 NYS2d 654 (4th Dept 2012) Mother, if awarded custody, would continue to undermine father’s relationship with the child.

McBryde v Bodden 91 AD3d 781, 936 NYS2d 292 (2nd Dept 2012) In denying a relocation to Alabama, court notes mother makes minimal effort to foster the relationship between father and child.

Ashmore v Ashmore 92 AD3d 817, 939 NYS2d 504 (2nd Dept 2012) Father, who suffers from severe psychopathology and narcissistic personality disorder alienates the children and influences/coaches their response.

Fox v Fox, 2012 WL 896167, 2012 NY Slip Op 01964 (4th Dept 2012) In a case involving mother’s visitation, mother engages in alienating behavior including telling the child she had to chose between parents and there could be fires at the father’s house while the child was sleeping.

Fiacco v Fiacco, 2012 WL 1033457, 2012 NY Slip Op 02356 (3rd Dept 2012) Here father is the one who is alienating children from mother. He talked with children about child support, telling them mother took his money and spent it on herself. Sole custody to mother where record reflects father’s contributing to the children’s estrangement from mother. Father permissive - allows daughter make-up and clothing that may be age inappropriate, Facebook page against mother’s wishes, gave daughter a cell phone to use if she felt “unsafe” at mother’s. Permitted son to drive adult sized four wheeler and play violent video games (permissive behavior violated mother’s rules). Father exhibited bullying behavior and was more of a friend than a parent.

Poremba v Poremba 2012 WL 1033523, 2012 NY Slip Op 02366 (3rd Dept 2012) Father willing to discuss child’s needs with mother and to facilitate a relationship. Mother fails to relay important information, involves child in custody dispute and testified father is evil with bad intentions.

Sendor v Sendor, 2012 WL 997008, 2012 NY Slip Op 02272 (1st Dept 2012) Father repeatedly failed to foster relationship with mother. Numerous e mails demonstrated he bullied and derided mother and spoke negatively about her to the child.

D’Angelo v Lopez (3rd Dept , April 12, 2012) In an interesting wrinkle on the foster idea, having dad’s girlfriend as the visitation supervisor creates a loyalty conflict for the child - supervisor changed to mom’s selections

Blerim M. V Rauquel M. 2012 NY Slip Op 02795 (1st Dept 2012) Although not articulated directly, mother’s home schooling, failing to inform father of the relevant details of the children’s lives and interfering in his visitation demonstrated a complete unwillingness to fulfill obligations as a joint custodian - failed to foster relationship

Dempsey v Arreglado (3rd Dept May 3, 2012) In a child support - alienation case - although father was not a model cooperative parent, he did not unjustifiably interfere with mother-child relationship nor cause fracture

Farran v Fenner, 2012 NY Slip Op 03189 (2nd Dept April 24, 2012) In a modification proceeding, father resolves child's medical and educational issues as well as fosters the relationship between the child and the mother.

Miller v Osik, 2012 NY Slip Op 03197 (2nd Dept April 24, 2012) Mother engaged in a course of conduct which intentionally interfered with the relationship between the child and the father. Such action is "so inconsistent with the best interests of the child as to per se raise a strong probability that the offending party is unfit to act as custodial parent"*

Jeannemarie O v Richard P (3rd Dept April 26, 2012). Mother's cumulative efforts after the separation to interfere with the father's relationship with the children and prevent him from having a meaningful role in their lives outweighs her positive attributes. She was willing to deceive in order to achieve her goal of parenting the children without the father's involvement. Her efforts include moving several hours away from father, seeking multiple orders of protection (all of which were dismissed), cancelling agreed-upon visitation, negative allegations regarding violence and substance abuse and false allegations of sexual abuse.

Conditions

Anne S. v Peter S. 92 AD3d 483, 938 NYS2d 73 (1st Dept 2012) Father's continued custody has strict conditions including maintaining sobriety, intensive treatment, thrice -weekly therapy sessions, mandatory testing, Interlock breathalyser on car and open communication with mother about education and care.

Third Party Custody

In re Jessica W., 938 NYS2d 896, 2012 NY Slip Op 01631 (1st Dept 2012) Custody to paternal grandmother where the child has lived with her the whole life versus the mother who has mental illness and neglected the child..

Hezekiah L. v Pamela A.L. 92 AD3d 506, 938 NYS23d 87 (1st Dept 2012). Child lived with aunt for six years, three of which was pursuant to a consent guardianship. No extraordinary circumstances where father maintained contact, visited and provided material support for the child. The expert report would have gone to the issues of best interests, and therefore was properly excluded.

Evangeline R. v Jonathan R. 92 AD3d 482, 937 NYS2d 854 (1st Dept 2012) Claims that mental illness and anger management issues do not constitute extraordinary circumstances where ACS actively monitoring, preventative services including mental health and child's safety is not at risk.

Holland v Holland 92 AD3d 1096, 939 NYS 2d 584 (3rd Dept 2012) Stipulated custody to aunt where father bruised child's buttocks during excessive corporal punishment

Golden v Golden, 91 AD3d 1042, 938 NYS2d 207 (3rd Dept 2012) Maternal grandfather granted custody. Mother stipulates to extraordinary circumstances based upon her inability to provide for the children and mental health issues. Father home is observed to have numerous empty whiskey bottles, a 30 pack of beer and a marihuana pipe despite the claim does not use illegal drugs and does not abuse alcohol. Inconsistent involvement in children's lives - fails to support, rarely saw before proceeding, inattentive during visits. Refuses to change a diaper. Allows older child to engage in risky behavior and shows little interest in younger. Although parenting classes recommended, he does not attend. Grandfather has stable home and job. Children have established schedule and behavior of older child has improved under grandfather's care.

Flores v Flores 91 AD3d 869, 936 NYS2d 676 (2nd Dept 2012) Maternal grandmother established extraordinary circumstances and that it was in the best interests of the child for her to have custody*

Carpenter v Puglese (3rd Dept April 26, 2012). Mother's uncle and his girlfriend have informal custody of infant twin boys from about five weeks after their birth in February 2008 as a result of a CPS investigation. Extraordinary circumstances include father's lack of contact and planning, domestic violence, father's level 1 sex offender status, and the filth in the home at removal. Court also finds father unfit and upholds award of custody to the third parties. Query - why no neglect adjudication?

Cecil S. v Dionne S. 2012 NY Slip Op 03113 (1st Dept 2012). Great-grandfather awarded sole physical and legal custody against the named respondent, a great-aunt who had custody pursuant to a 2005 default order. He has provided home, medical care and supervision since child came to reside primarily with him in 2009. No mention of parents.

Relocation

Anne S. v Peter S. 92 AD3d 483, 938 NYS2d 73 (1st Dept 2012) Application to relocate to Luxembourg denied. Failed to demonstrate economic necessity or increased support from family. Father has maintained stable job and home for four years for children, who are happy and successful in current school. Father's alcoholism and past failure to communicate seriously considered and addressed by requiring sobriety and intensive treatment and open communication with mother.

Adams v Bracci, 91 AD3d 1046, 936 NYS2d 738 (3rd Dept 2012) Modifies joint to sole and allows father to move five hours away (as versus two). Continued enrollment in Marines provides stable employment and health insurance. Factors include false allegations by mother

Ramirez v Velazquez 91 AD3d 1346, 937 NYS2d 504 (4th Dept 2012). On a prior trip to the Appellate Division (74AD3d 1756) the 4th found the mother had established a prima facie case for relocation and remitted to Family Court for a hearing. This time, instead of dismissing

at the end of mother's case on father's motion, the hearing continues. Based upon father's exercise of access and relationship with his family, the relocation is denied.

Handel v Handel 92 AD3d 1285, 938 NYS2d 490 (4th Dept 2012) Mother fails to meet her burden of demonstrating that the proposed relocation to Florida was in the best interests of the child*

McBryde v Bodden 91 AD3d 781, 936 NYS2d 292 (2nd Dept 2012) Relocation to Alabama denied. Mother could live rent-free, but no job and school evidence conclusory. Father consistently uses time with child, desires more time, and mother makes minimal effort to foster the relationship. Relocation decision ultimately rests on the best interests of the child.

Shaw v Miller 91 AD3d 879, 938 NYS2d 107 (2nd Dept 2012) Relocation to Virginia permitted. Economic necessity, child's life enhanced emotionally and educationally by the move, and move will not have negative impact on child's relationship with mother. Extended visits will improve the relationship by eliminating the stress of frequent travel and allowing normalized domestic setting contact.

Retzmozzo v Moyer 91 AD3d 957, 938 NYS2d 142 (2nd Dept 2012) Relocation to Colorado denied. Impact of relationship upon child and non custodial parent of central concern. Here, both parents have close and loving relationship, father has regular and frequent visits at his home in Pennsylvania, often for extended times. Strong relationship with father's family as well. Mother fails to prove by preponderance of evidence that proposed relocation would be in the child's best interests.

Sweetser v Willis 91 AD3d 963, 937 NYS2d 322 (2nd Dept 2012) 55 mile relocation to Southampton allowed where mother established by a preponderance of the evidence it was in the children's best interests.*

Ashmore v Ashmore 92 AD3d 817, 939 NYS2d 504 (2nd Dept 2012) Mother permitted to relocate with Michigan. Father has severe mental health issues, alienates the children and coaches them. Totality of circumstances, including three concurring expert opinions, support the relocation.

Saperston v Holdaway 2012 WL 975704, 2012 NY Slip Op 02187 (4th Dept 2012) In a de novo custody trial, relocation is a factor. Error to require the moving party, in a de novo case, to prove the relocation is in the best interests of the child by a preponderance of the evidence. Instead, relocation is but one factor of many.

Holtz v Weaver (4th Dept April 27, 2012) Relocation denied where mother's reason is valid (to care for ill parents) but no demonstration of the child's best interests to relocate. Moreover, child's relationship with father would be adversely affected by the proposed relocation. Court properly considered Tropea factors in denial

Pizzo v Pizzo (3rd Dept April 26, 2012) Relocation from Sullivan to Monroe County denied. Mother did not demonstrate by a preponderance of the credible evidence that it was in

the children's best interests to relocate. Her claim she was unable to find employment in Sullivan county was found to be only perfunctory, as she cancelled one job interview in July, while not finding employment in Monroe County until September. Her argument that father's accident and DWI should "tip the scales" However, the lower court found that an aberration in an otherwise nurturing father, and that he took responsibility and steps to address the issue and mother's own driving record (without specifying). Stability offered to the children by remaining in the marital residence and their school (Children born in 200 and 2004. Via a variety of arrangements, they had primarily resided in the marital residence since the parties separated in 2007 when mother left father to live with her paramour in Monroe County)

Barlow v Smith (4th Department, April 20, 2012) Relocation to Detroit denied where mother failed to establish proposed relocation would be in children's best interests and proposed move would adversely affect the children's relationship with father. Court identified one relevant factor - absence of evidence mother made any attempt to secure mental health services in Detroit.

Miscellaneous Custody

Strauss v Saadatmand 92 AD3d 508, 938 NYS2d 425 (1st Dept 2012) Proper to allow enrollment in a pre-K in New Jersey where child had attended a pre-school in New Jersey the prior year. Mother's relatives are available for pick-up and drop-off. Stability by attending school close to home.

In the Matter of Alexis AA, 2012 WL 1033416, 2012 NY Slip Op 02354 (3rd Dept. March 29, 2012) Error to sua sponte return children to sole custody of mother at the conclusion of neglect proceedings when permanency plan, to which all parties consented, was return to joint custody of mother and father

Lee v Harris (4th Dept April 20, 2012) Order dismissing Article 6 Petition affirmed*

UCCJEA

In the Matter of Bridget Y. (4th Dept December 30, 2011) In a rare full opinion, the 4th Department upholds an emergency exercise of jurisdiction in a neglect proceeding against competing jurisdiction from New Mexico. Essentially, New Mexico is the home state, but New York can exercise emergency because New Mexico leaves the children without a remedy - no representation and no neglect proceedings - in a case where the parents are also charged criminally with ongoing and severe abuse. The court cites the "unique circumstances" of this case permitting emergency jurisdiction. New York can proceed to a disposition, because in a neglect proceeding there is no final custody order. A dissent argues that the majority gut the rationale of the UCCJEA by allowing New York to exercise emergency jurisdiction where New

Mexico was clearly the home state with proceedings pending.

Tin Tin v Thar Kyi 92 AD3d 1293, 938 NYS2d 407 (4th Dept 2012). Court has jurisdiction pursuant to DRL 76-c. Although emergency jurisdiction is generally temporary, here no other custody proceeding started in competing forum and New York had become home state during the pendency of the proceeding.

Ramirez v Sygutowska 91 AD3d 787, 936 NYS2d 899 (2nd Dept 2012) Court lacked exclusive continuing jurisdiction pursuant to DRL 76-a(1) because the child had not maintained a significant connection with New York, substantial evidence was no longer available concerning the child's care, protection, training and personal relationships*

Guzman v Guzman 92 AD3d 679, 938 NYS2d 195 (2nd Dept 2012) Mother seeks modification of a Florida divorce. New York had jurisdiction pursuant to DRL 76-b because both parties and the child lived in New York and none had resided in Florida for over a year. Moreover, child enrolled in school in New York, father had commenced proceedings in New York regarding the child's sister and a forensic study had been done regarding that matter. There are significant confessions and substantial evidence in New York. Additionally, the Florida and New York courts must confer with each other pursuant to DRL 76-e

VISITATION / ACCESS

General

Sandra C. v Enrique M. 92 AD3d 577, 938 NYS2d 796 (1st Dept 2012) Court lacks the authority to condition continued visits upon therapy.

Myles M. v Pei-Fong K. 2012 WL 787483, 2012 NY Slip Op 01758 (1st Dept 2012) Unsupervised visits were ordered where the observed visits were "overwhelmingly positive", the child was bonded to father and only at risk for domestic violence when there was a relationship, agency exchanges for safety

Raynore v Raynore, 92 AD3d 1167, 2012 WL 573093 (3rd Dept 2012) Father's argument that access was unfair and too restrictive rejected as the schedule established was clearly guided by the child's best interests.

Adams v Bracci, 91 AD3d 1046, 936 NYS2d 738 (3rd Dept 2012) visitation reduced to one weekend per month after relocation and required to be exercised within 50 miles of child's residence. Spares child long drive of five hours and requires conflict at visitation transfers. Mother, visiting parent, required to provide all transportation - some difficulties, including suspension of her drivers license for failure to pay child support, of her own making.

Grusz v Simonetti 91 Ad3d 645, 935 NYS2d 904 (2nd Dept 2012) Mid-week visitation denied*

Lew v Sobel 91 Ad3d 648, 936 NYS2d 554 (2nd Dept 2012) Mother frustrates father's

visitation so father pays child support to mother's attorney's escrow account to be held pending her compliance with access.

New v Sharma 91 AD3d 652, 936 NYS2d 265 (2nd Dept 2012) Father petitions for change in visitation, attorney for child asks limitation of visits to brief time in a public place. Court had the authority to grant relief requested by attorney for the child in opposition to father's petition. However, reversed for hearing.

McBryde v Bodden 91 AD3d 781, 936 NYS2d 292 (2nd Dept 2012) Additional visitation time to father after mother's failed relocation request to Alabama is not punitive, but reflects desires of both father and child.

Shaw v Miller 91 AD3d 879, 938 NYS2d 107 (2nd Dept 2012) On a relocation petition, mother loses weekends but has extended summer. The stress of frequent travel affected the quality of the child's visits with the mother, and less frequent but extended visits would be conducive to the maintenance of the relationship.

Retzmozzo v Moyer 91 AD3d 957, 938 NYS2d 142 (2nd Dept 2012) relocation to Colorado denied, and father's access is modified to permit access on alternate weekends and to require paternal grandmother care for child when both parties are active military.

Patterson v Patterson 92 Ad3d 682, 937 NYS2d 890 (2nd Dept 2012) Limited visitation between father and child based upon child's wishes*

Bassuk v Bassuk 2012 WL 717864, 2012 NY Slip Op 01671(2nd Dept 2012) Continues prohibition on child traveling to Brazil before the age of 8

In Re Maria F. and Eduardo F 2012 WL 975744 (4th Dept 2012) No standing to seek visitation for father whose parental rights have been terminated, therefore best interests are not reached.

Fox v Fox, 2012 WL 896167, 2012 NY Slip Op 01964 (4th Dept 2012) Court below suspends mother's access (failure to comply with court ordered psychiatric treatment, filing of unfounded child abuse complaints, alienating behavior), but 4th Dept reinstates petition and remands to fashion schedule, which explicitly may include supervision. The presumption that parental visitation is in the best interests of the child in the absence of proof it will be harmful. To suspend, there must be compelling reasons and substantial evidence that visitation is detrimental. Positives of access include child generally happy to visit, mother loves the child, child is functioning well and thriving in school.

Weaver v Durfey, 2012 WL 895497, 2012 NY Slip Op 01908 (4th Dept March 16, 2012) Interesting case where prior petition seeking to establish paternity was dismissed. The appeal of that dismissal was withdrawn based upon an agreement between the parties to allow access and DNA testing. Although petitioner is the biological father of the child, res judicata bars the court from considering that biological status as a basis for determining his standing to seek visitation.

Winder v Williams, 2012 WL 895442, 2012 NY Slip Op 02004 (4th Dept 2012)
Allocates responsibility for transportation to and from visitation*

In the Matter of Natasha M. 2012 WL 1109319, 2012 NY Slip Op 02501 (2nd Dept 2012) In a prior case the 2nd Department upheld the Family Court's April 28, 2010 finding that Gaston, having had sexual contact with the daughter of a paramour, neglected this child, the daughter of another paramour. The order of supervision over Gaston was extended in April 2011 for another year. Both orders of supervision included no contact between Gaston and Natasha. In August, 2011 Gaston asks to be permitted visitation with the child, after the 2nd paramour marries him. Family Court, without a hearing, allows supervised visitation between Gaston and this child. Attorney for the Child appeals and matter is remanded for a hearing. Query - does Gaston even have standing to request visitation with Natasha, as it appears she is not his child?

Krasner v Krasner, 2012 WL 1109321, 2012 NY Slip Op 02500 (2nd Dept 2012)
Extraordinary circumstances to terminate visitation where mother makes increasingly disruptive comments during supervised access, child's vehement opposition and court appointed forensic examiner's opinion.

DeSimone v Delano, 2012 WL 1109337, 2012 NY Slip Op 02492 (2nd Dept 2012)
Modification of visitation where change in circumstances such that modification is necessary to ensure the best interests of the children. Here mother's visits are limited to alternate Saturdays and Friday dinner visits. The parties have been to the Appellate Division before (Delano v DeSimone 60 AD3d 673 874, NYS 2d 810 (2nd Dept 2009), leave denied 12 NY 3d 711 (2009)), when mother's request for custody was denied and no family offense found.*

Solovay v Solovay, 2012 NY Slip Op 02698 (2nd Dept 2012) Family Court improvidently exercised its discretion in determining the amount of visitation for the father, which did not include an award of weekday overnight - access increased to include same*

Pei-Fong K. v Myles M. 2012 NY Slip Op 03280 (1st Dept April 26, 2012) Five year order of protection in favor of child allows visitation so that relationship is preserved (see same case, different appeal, in main materials)*

D'Ambra v D'Ambra (4th Dept April 27, 2012) Mother disabled and able to spend time with children after school. Awarding father alternate weekends and Sunday afternoons on the off weekend does not deprive mother of quality time. Not error to require mother to share equally in visitation transportation.

Mathewson v Sessler (4th Dept April 27, 2012) Although lower court abused its discretion in setting an excessive visitation schedule, the Appellate Division fashions a schedule and orders same which reflects mother's concession that an increase in father's visitation which was extremely limited (alternate Saturdays from 3 to 7 p.m.) was in the children's best interests.

Ildelfonso v Booker (3rd Dept April 26, 2012) Evidence sufficient to establish "exceptional circumstances" and no abuse of discretion to determine that visitation would be "inimical to the children's well-being" Animosity towards mother, domestic violence, lack of

respect for court orders, lack of insight into conduct, serious mental health issues and need for anger management.

Lydia M.B. v Administration for Children's Servs. 2012 NY Slip Op 02872 (2nd D) No visitation where in a related proceeding, father admitted to sexual abuse of the child and her sibling. Child's therapist and AFC recommend that no visitation as the child was not ready, and any contact would be harmful to her emotional well-being. Also, in a companion appeal, Court affirmed a one year stay away order of protection in favor of the child prohibiting the father from having any contact.

Supervised

Knight v Knight, 92 AD3d 1090, 2012 WL 489110 (3rd Dept 2012) Supervised access where father is a sex offender who lacks insight. Supervision is a matter left to sound discretion of Family Court.

Holland v Holland 92 AD3d 1096, 939 NYS 2d 584 (3rd Dept 2012) Improper delegation of the court's authority to the child's counselor to determine when supervised access should begin.

Golden v Golden, 91 AD3d 1042, 938 NYS2d 207 (3rd Dept 2012) Father refuses to change diapers, talks and texts and is inattentive to children during visits. Allows the older child to engage in risky behavior and shows little interest in the younger child.

Binong Xu v Sullivan 91 AD3d 771, 936 NYS2d 569 (2nd Dept 2012) Supervised visitation only where established unsupervised would be detrimental to the child. Expert opinion after forensic examination supports supervised*

Kortlang v Kortlang 92 AD3d 785, 938 NYS2d 457 (2nd Dept 2012) Therapeutic supervised access denies where court's expert's testimony and report indicate that reinstatement of contact between father and child would be detrimental to the welfare of the child*

Ashmore v Ashmore 92 AD3d 817, 939 NYS2d 504 (2nd Dept 2012) Father, with severe mental health issues, has supervised visitation as his actions have demonstrated that he was unwilling to allow the children to have a relationship with mother.

Harder v Phetteplace 2012 WL 896208, 2012 NY Slip Op 01925 (4th Dept 2012) Father's request for modification to a consent order of visitation denied, and Court Attorney's Referee's imposition of therapeutic supervision supported by record, particularly father's failure to fulfill preconditions in prior order. Referee's reiteration of a condition in the prior order, requiring father to obtain further evaluation by a psychologist, does not constitute a impermissible requirement of participation in therapy as a condition to applying for visitation.

D'Angelo v Lopez (3rd Dept , April 12, 2012) Supervisor changed from father's girlfriend, who insisted on public, fast food place with her own children present, to supervisors chosen by mom for visits at her own house. Constant presence of the girlfriend, who the child

considered a parent figure, created loyalty conflicts for the child

Beaudry v Beaudry 2012 NY Slip Op 03391 (2nd Dept May 1, 2012) Supervised visitation properly ordered*

Fontaine v Fontaine (4th Dept April 20, 2012) Order for supervised visitation reversed where the facts essential to the court's determination were not set forth in the decision. However, delegation of supervisor selection to AFC permissible.

Prisoner Access

Culver v Culver, 82 AD3d 1296, 918 NYS2d 619 (3rd Dept 2011) appeal dismiss 16 NY3d 884, 923 NYS2d 412 (2011). A rare case of a dissent in a Memorandum Decision. This is a particularly troubling case. Dad has a daughter born in 2005. He was an elementary school teacher and in February 2007, when the daughter is 18 months old, he is arrested and charged with 49 count indictment of sexually molesting the boys in his class. He pleads guilty to the entire indictment on a plea deal of 12 years, and his conviction is upheld by the 3rd Department. So, in November 2008, father files seeking prison visits. A four day trial ensues and father is allowed four visits per year, and some other contact, with mother to bear some of the expenses. The visits are affirmed, mostly on expert testimony and with the starting place that even prison visits are in the best interest of the child, but the costs of the visits, including telephone and counseling, are to be borne by father or his family, not the mother.

The dissent questions that who can a guy, who was molesting his own students, have a positive relationship with his own child, and questions the experts, who did not even conduct a perfunctory interview or assessment of the offender. He quotes mother's counsel as saying father is a "convicted, unrepentant, untreated penderast". They would just permit weekly monitored letters and monthly monitored hone calls at father's expense.

Smith v Smith 92 AD3d 791, 938 NYS2d 601 (2nd Dept 2012). Logistical and financial difficulties in arranging for children to visit father in prison support yearly visits only if father contributes to cost. A transfer to a nearby facility would be a change in circumstances alleviating the distance and cost, and thus the court prohibiting father from filing a modification for three years was an improvident exercise of discretion. Monthly phone calls upheld.

Grandparent Access

Peralta v Irrizary 91 AD3d 877, 938 NYS2d 114 (2nd Dept 2012) Once again, a repeat visit to the Appellate Division. Here, in the prior matter the parents indicated there did not intend to comply with the visitation order going forward. Grandmother's seeking modification of the prior order of supervised visitation (i.e substitute supervisor to an agency) and enforcement. Modification of prior order only upon showing of change. Here willing relative no longer willing to supervise constitutes such a change.

PATERNITY

Comm of Social Services v Victor C. 91 AD3d 417, 936 NYS2d 149 (1st Dept 2012)
Request for genetic marker tests properly denied, and order of paternity affirmed. Support Magistrate properly referred matter to Judge when issue of equitable estoppel raised. 13 year old considers him to be “dad”, has relationship with his family. Social worker testifies that subjecting the child to tests would be emotionally damaging. “Somewhat limited” relationship but estoppel applied.

Aikens v Nell, 91 AD3d 1308, 2012 WL 266320 (4th Dept 2012). A Court of Appeals case (Juanita A. V Kenneth Mark N. 15 NY2d 1) which reversed a prior 4th Department Decision. The Court of Appeals holds that a biological father can use the existence of a father - child relationship with another man as a defense to a paternity proceeding brought by the mother. Here, the 3rd Department, after a Lincoln Hearing, affirms the lower court’s refusal to adjudicate the biological father the child’s father. Note, it is the Attorney for the Child who appeals.

Weaver v Durfey, 2012 WL 895497, 2012 NY Slip Op 01908 (4th Dept March 16, 2012)
Biological father brings a paternity petition against husband and wife, which is dismissed based upon presumption of paternity and father’s acting as a friendly neighbor. The appeal from that dismissal is withdrawn, when the parties reach an agreement as to DNA testing and access. Based upon DNA results, child is drawing Social Security Benefits on father’s account. Husband and wife stop permitting access. Res judicata bars new petition to establish paternity, which would give standing to seek visitation.

David G. v Maribel G. 2012 WL 913763, 2012 NY Slip Op 02039 (1st Dept 2012)
Child’s best interests to equitably estop man from claiming paternity. He waited eight years before commencing proceeding, did not provide financial support or communicate, another man was listed on birth certificate and child believed the other man was her father.

Jocelyn J. V Francois J. 2012 WL 1109326, 2012 NY Slip Op 02497 (2nd Dept 2012)
Father adjudicated on doctrine of equitable estoppel. Genetic marker tests denied.*

Comm’r of Social Servs. C Dimarcus C. , 2012 NY Slip Op 02778 (1st Dept 2012)
“Father” denied genetic marker testing - best interests of child to estop denial of paternity. Held himself out, brought child to grandmother’s funeral, provided money and child believed he was his father. Interesting procedural notes - court not required to determine child’s biological father, when DNA excluded another man as potential father, nor required to join the other man as a necessary party as child born out of wedlock and father-son relationship exists.

Marquis B. V Rason B. 2012 NY Slip Op 02682 (2nd Dept 2012). Non-signatory to acknowledgment of paternity lacks standing to challenge the acknowledgment. However, since claim of paternity has standing pursuant to Family Court Act Section 522 to challenge the ultimate issue of paternity.

Elizabeth S. v Julio J. , 2012 NY Slip Op 03082 (1st Dept April 24, 2012) Child 8 years old. Failure to “ establish by evidence that was clear, convincing and entirely satisfactory that

respondent acted as the child's father to such an extent to give rise to equitable estoppel barring him from denying paternity and rendering a biological paternity test inappropriate". This is a split decision - the majority of three analyze the factors and say no estoppel, the minority of two dissent and looking at the same factors, but in a different light, say there is estoppel. Extremely fact driven case. The role of the AFC (see below) is interesting as well as the issue of whether or not a Lincoln Hearing was held.

ADOPTION

In Re Corey Dwayne B. 92 AD3d 552, 938 NYS2d 795 (1st Dept 2012) Father's consent not required where he did not provide child support, regularly visit or communicate although able to.

In the Matter of the Adoption of Colin, 92 AD3d 1283, 939 NYS2d 683 (4th Dept 2012) Mother executed an extrajudicial consent the day after the child's birth, and allowed the adopting parents to take physical custody of the child the next day. Within 24 hours her revoked her consent and the adoptive parents filed a timely notice of opposition to the revocation. By allowing the adopting parents to take physical custody, there is some overt manifestation to a third person allowing the extrajudicial consent to be operative. Lower court properly held a best interest hearing pursuant to DRL 115-b (6) (d). Adoption affirmed as in the best interest of the child.

Matter of Katharine, 2012 WL 851159, 2012 NY Slip Op 01866 (1st Dept. March 15, 2012) Father's consent to adoption not required as he admitted he never provided financial support for the child.

In the Matter of Dakiem M. (3rd Department, April 26, 2012) Consent to adoption not required where father does not demonstrate he has maintained substantial and continuous or repeated relationship with the child by means of financial support and either monthly visitation, when physically and financially able to do so, or regular communication with the child or the child's caregiver. Even if both support and communication is established by the father, the court can still consider whether clear and convincing evidence establishes abandonment within the meaning of DRL Section 111 (2)(a). Here no consent required where prisoner dad last visited in 2006, sporadic letters and calls - the last of which was in 2009, and did not support for more than six years. Incarceration does not relieve from obligation to provide some financial support to the extent of ability, and waiting for support order is not a valid excuse either.

IMPROPER DELEGATION OF COURT'S AUTHORITY

Holland v Holland 92 AD3d 1096, 939 NYS 2d 584 (3rd Dept 2012) Improper to delegate to the child's counselor when father's supervised access can begin. Court must determine father's access.

Fontaine v Fontaine (4th Dept April 20, 2012) Not an improper delegation of the court's authority to allow AFC to select visitation supervisors as the issue involving the children's best interests - i.e. whether visitation should resume and, if so, when, was not

delegated.

RIGHT TO COUNSEL

Heater v Peppin 92 AD3d 1169, 938 NYS2d 666 (3rd Dept 2012) Counsel's failure to call father's girlfriend to testify, who was the proposed visitation supervisor, does not mean he was deprived of effective assistance of counsel, where he directed his attorney not to call the girlfriend so she wouldn't miss work.

Knight v Knight, 92 AD3d 1090, 2012 WL 489110 (3rd Dept 2012) Counsel's focus on securing some form of visitation, in light of sex offender status, may be viewed as a legitimate trial tactic. Effective assistance of counsel rendered.

Fiacco v Fiacco 2012 WL 1033457, 2012 NY Slip Op 02356 (3rd Dept 2012) During trial father says he felt strange answering questions from mother's attorney, who he claimed he interviewed to represent him, but answered the questions and did not ask to have counsel disqualified. Overall he received effective assistance of counsel.

Garner v Garner 2012 WL 11093330, 2012 NY Slip Op 02495 (2nd Dept 2012) Rather tortuous history, where a prior remand to reconstruct a hearing which could not be transcribed, before reaching father's argument he was denied of right to counsel. Seven day hearing. On day five counsel asked to be relieved, four month adjournment to seek counsel, refused to retain and did not qualify financially. No deprivation of right to counsel.

HEARINGS

General

Orzech v Nikiel, 91 Ad3d 1305, 937 NYS2d 509 (4th Dept 2012) Court did not abuse its discretion in denying mother's motion to reopen proof at custody hearing after three experts testify she was engaging in a pattern of behavior to exclude father from the child's life.

Smith v Ince 91 AD3d 1323, 937 NYS2d 654 (4th Dept 2012) Court's credibility assessment is entitled to great weight re crediting testimony of father over mother and maternal grandmother.

Peralta v Irrizary 91 AD3d 877, 938 NYS2d 114 (2nd Dept 2012) Full hearing before a different judge on issues of grandparent access (modification of prior order to substitute supervisors and willful violation by parents)

Triplett v Scott (4th Dept April 20, 2012) Father chose not to attend custody hearing, although his attorney was present. Not an abuse of discretion for the court to conduct the hearing in his abuse.

Necessity

Sandra C. v Enrique M. 92 AD3d 577, 938 NYS2d 796 (1st Dept 2012) Remanded to another judge. A full evidentiary hearing is needed before modification of visitation. Must find a change in circumstances and modification in child's best interests.

Myles M. v Pei-Fong K. 2012 WL 787483, 2012 NY Slip Op 01758 (1st Dept 2012) Properly determined visitation without a plenary evidentiary hearing where judicial notice was taken of many appearances, the adjudication of a family offense with a five year order of protection and the testimony of a forensic social worker (query - testimony without a hearing?)

Evangeline R. v Jonathan R. 92 AD3d 482, 937 NYS2d 854 (1st Dept 2012) Petition does not allege sufficiently allege extraordinary circumstances to require a full evidentiary hearing (mental illness, anger management but preventative in place and not a danger to child's safety)

New v Sharma 91 AD3d 652, 936 NYS2d 265 (2nd Dept 2012) Father's visitation is limited to brief time in public places based upon reports from attorney for the child of her conversations with the child without a hearing. Hearing required to determine the best interests of the child. It is inappropriate for the attorney for the child to present reports containing facts which are not part of the record. On remand, a different judge in light of remarks made.

Patterson v Patterson 92 AD3d 682, 937 NYS2d 890 (2nd Dept 2012) hearing on visitation not necessary where the court has adequate relevant information to make an informed and provident determination as to the child's best interests. The court examined the parents over several court appearances and conducted an in camera interview of the child to determine his wishes*

Price v Jenkins 92 AD3d 787, 938 NYS2d 452 (2nd Dept 2012) No hearing required on a family offense petition where the allegations are conclusory and fail to allege conduct that would constitute the offenses alleged.

Aquino v Antongiorgi 92 AD3d 780, 938 NYS2d 460 (2nd Dept 2012) Mother waived full evidentiary hearing by consenting to a "mini hearing", but in any event the Court possessed sufficient information to make an informed decision without a full hearing*

DiPaolo v Avery 2012 WL 895513, 2012 NY Slip Op 01993 (4th Dept 2012) Error to sua sponte dismiss a modification petition with a hearing where mother made sufficient evidentiary showing of change and after judicial hearing officer had denied respondent's request to dismiss. Remanded for hearing before a different judge

David G. v Maribel G. 2012 WL 913763, 2012 NY Slip Op 02039 (1st Dept 2012) In a paternity proceeding, hearing not necessary to dismiss paternity proceeding as the court had sufficient information to determine the child's best interests. Formal motion not necessary as the court may dismiss on its own motion or that of any party..

In the Matter of Natasha M. 2012 WL 1109319, 2012 NY Slip Op 02501 (2nd Dept 2012) Hearing required to allow even supervised access. Gaston, person seeking access, had sexual

contact with the daughter of another paramour, and was found to have neglected Natasha, the daughter of a second paramour, who he later married.

Aronowich-Culhane v Fournier, 2012 NY Slip Op 03186 (2nd Dept April 24, 2012)
Conclusory, unsubstantiated and nonspecific allegations do not meet the standard sufficient to warrant a hearing on a modification petition.*

Adjournments

Hezekiah L. v Pamela A.L. 92 AD3d 506, 938 NYS2d 87 (1st Dept 2012) Proper exercise of discretion to refuse to adjourn where proceeding already protracted, failure to appear on other occasions despite court orders and opportunity to present evidence on subsequent days.

FAMILY OFFENSE PROCEEDINGS

Ortiz v Colon 92 AD3d 511, 938 NYS2d 427 (1st Dept 2012) Dismissal of family offense petition where failure to establish, by preponderance of the evidence, that acts were committed that would constitute harassment in the second degree. No reason to disturb credibility determinations of the Family Court

Holland v Holland 92 AD3d 1096, 939 NYS 2d 584 (3rd Dept 2012) Father bruised the child's buttocks while inflicting excessive corporal punishment. Order of custody to an aunt based upon stipulation, but record does not reflect that father agreed to an order of protection and no testimony or findings of fact regarding the order of protection. Order of protection vacated and remitted.

Kristina K. v Timothy K 91 AD3d 1045, 935 NYS2d 923 (3rd Dept 2012) Family offense found. Stay away order entered as to mother and her children from previous relationship, no offensive order entered as to their joint children. A dispositional hearing is not always required in Article 8 proceedings and here no prejudice to father as the order did not affect his visitation with his children.

Price v Jenkins 92 AD3d 787, 938 NYS2d 452 (2nd Dept 2012) Petition dismissed without a hearing where allegations are conclusory and fail to allege conduct that would constitute the offenses alleged*

King v Edwards 92 AD3d 783, 938 NYS2d 442 (2nd Dept 2012) although order of protection expired by its own terms, rendering that branch of the appeal moot, "in light of the enduring consequences which may flow from an adjudication that a party has committed a family offense, the appeal from the fact finding and disposition is not academic. Family Court's subject matter jurisdiction over a family offense is not limited by geography. The determination is a factual issue and here is supported by a fair preponderance of the evidence.*

Pamela N. v Neil N. 2012 WL 1033487 2012 NY Slip OP 02361 (3rd Dept 2012)
Family offenses do not have statute of limitations and traditional defense of laches does not

apply (in footnote). Inartfully drafted petition reinstated where harassment and stalking alleged.

Nunziata v Nunziata, 2012 WL 933781, 2012 NY Slip Op 02105 (2nd Dept March 20, 2012) Family offense not established by a fair preponderance of the evidence, so order of protection reversed and petition denied.*

Brito v Vasquez, 2012 WL 1020960, 2012 NY Slip Op 02301 (2nd Dept March 27, 2012) Fair preponderance of credible evidence supports determination that father committed the acts constituting a family offense. However, no finding of aggravation required so that duration may not exceed two years. The condition that father not leave the children with his wife and be with them at all times is unsupported by the evidence as reasonably necessary to protect the child from future family offenses.

Daoud v Daoud (2nd Dept February 21, 2012) The allegations in a family offense proceeding were supported only by inadmissible hearsay and thus the allegations were not supported by competent evidence*

Muller v Castagnola 2012 NY Slip Op 02692 (2nd Dept 2012) Allegations sufficient to prove, if true, family offense. Hearing should have been ordered.

Taub v Taub 2012 NY Slip Op 02700 (2nd Dept 2012) No family offense properly found based on competing credibility*

DeGasero v DeGasero 2012 NY Slip Op 03445 (2nd Dept May 1, 2012) Motion to dismiss properly denied as the evidence established prima facie the offense had been committed. Determination that offense of disorderly conduct had been committed was based upon assessment of credibility and an eyewitness, and is supported by the record.

Pei-Fong K. v Myles M. 2012 NY Slip Op 03280 (1st Dept April 26, 2012) Five year order of protection in favor of child against father where his admittedly series of violent and threatening actions was not directed at the child but was directed at the mother, sometimes in the presence of the child. Order allows for visitation so relationship with child preserved.

Wendy Q. v Jason Q (3rd Dept April 26, 2012). A good example of not every argument constitutes a family offense. Dad lives in Michigan, mother in New York. Dad calls to make holiday arrangements and mother uses divorce as condition of visitation. Father gets upset and yells at mother. Son is upset because he won't be going on planned visit. No family offense

Marquardt v Marquardt (4th Dept. April 20, 2012) Family offense found. Respondent requested limitation of the proof to two years prior to petition filing. Both acts of which he was found to have committed occurred within that two year window, thus he was not denied due process of law and waived his defenses of laches or the statute of limitations.

SANCTIONS

Claudio M. v Janet R. 92 AD3d 459, 937 NYS2d 849 (1st Dept 2012) Mom picks

summer visit, then Dad picks knowing his dates would overlap with moms. Dad acted unreasonable and mom did not willfully violate.

Sorokina v Moody, 91 AD3d 1307, 937 NYS2d 650 (4th Dept 2012). Many trips to the Appellate Division. Record insufficient to establish that the father willfully violated a clear mandate of the prior orders.*

Formosa v Litt, 91 AD3d 644, 936 NYS2d 270 (2nd Dept 2012) To establish contempt there must be a lawful court order clearly expressing an unequivocal mandate and the person alleged to have violated had actual knowledge of the terms. Clear and convincing evidence is required to establish will violation and the violation must defeat, impair, impede or prejudice the rights of a party. A direction to change visitation to accommodate a religious holiday when feasible is not violated when the child already had activities scheduled on the make up date.

Lew v Sobel 91 Ad3d 648, 936 NYS2d 554 (2nd Dept 2012) Custodial mother deliberately interferes with father's access. Initially child support paid ½ to mother and ½ to her attorney in escrow. Continued interference and all the child support is paid to her attorney in escrow pursuant to DRL 241.

Peralta v Irrizary 91 AD3d 877, 938 NYS2d 114 (2nd Dept 2012) In a repeat trip to the Appellate Division, the Court notes its prior decision where the parents had indicated they did not intend to comply with a grandparent visitation order going forward. Remanded for a hearing in light of the fact grandmother established, prima facie, the parents, in willful violation of the order, refused to allow visitation. Note, it is remanded before a different judge "under the circumstances of this case"

Beren v Beren 92 AD3d 676, 938 NYS2d 199 (2nd Dept 2012) In light of father's conduct in unnecessarily engaging in litigation relating to the children, provident exercise of discretion to award counsel fees to mother*.

Aquino v Antongiorgi 92 AD3d 780, 938 NYS2d 460 (2nd Dept 2012) Directing that no further petitions can be filed by mother unless approved by the attorney for the children is error.*

Grant v Grant 92 AD3d 882, 939 NYS2d 486 (2nd Dept 2012) In a prior matter, the Appellate Division considered school enrollment and primary residence issues. Then the parties cross request attorneys fees and sanctions against each other. Mother's attorneys fees properly awarded. Motion properly denied to impose sanctions on mother or her attorney as father failed to demonstrate either engaged in conducts which was frivolous.

Dempsey v Arreglado (3rd Dept May 3, 2012) In child support case no notice to opposing (losing) party that attorney fees were sought as a sanction, therefore improperly imposed.

Quinche v Gonzalez, 2012 NY Slip Op 03158 (2nd Dept April 24, 2012) To punish for civil contempt, there must be a demonstration by clear and convincing evidence that the party

charged violated a clear and unequivocal court order thereby prejudicing a right of another party to the litigation*

Mason-Crimi v Crimi (4th Dept April 27, 2012) Father's continued violation of an order to take the child to counseling "would mitigate against his continued appropriateness as a custodial parent, but did not warrant a change of custody. Court did not improvidently exercise its discretion in declining to sanction the father, the "court's admonition was sufficient in this instance"

Wendy Q. v Jason Q (3rd Dept April 26, 2012) Father calling after mother injects divorce as a condition of holiday visitation not a family offense. However, calling after temporary order of protection is a violation. Discretionary decision to admonish as punishment and not issue an order of protection upheld.

MISCELLANEOUS ISSUES

Jose L. v Yamely H. 91 AD3d 544, 937 NYS2d 50 (1st Dept 2012) **Default** custody order should have been vacated. Remanded for a hearing before a different Family Court Judge. Father did not file custody until served with mother's family offense petition. He told her family offense would be settled between them. Mother was not served with custody petition (excusable default). Meritorious defense - father reported mother took the child out of the country without his consent, but mother produced evidence he had given consent in writing.

Knight v Knight, 92 AD3d 1090, 2012 WL 489110 (3rd Dept 2012) **CPLR 4213** requires the court to state the facts it deems essential in making a decision. While the decision does not comport with that rule, the rationale for the decision may be discerned from the record, which is sufficiently developed to permit independent review. Issues involve a convicted sex offender who lacks insight into impact of his behavior upon the children.

Tin Tin v Thar Kyi 92 AD3d 1293, 938 NYS2d 407 (4th Dept 2012) **CPLR 4213** In a domestic violence case, the lower court sufficiently stated the facts it deemed essential to its decision.

Holland v Holland 92 AD3d 1096, 939 NYS 2d 584 (3rd Dept 2012) **Stipulation** Record does not support visitation condition or order of protection in the order (i.e. order exceeds the stipulation).

Derek P v Doris Q, 92 AD3d 1103, 939 NYS2d 151 (3rd Dept 2012) **Default** Father decides to leave harsh New York winter for his "health", does not provide medical evidence, and refuses offer to testify electronically upon the theory he did not have sufficient time to confer with his substitute counsel. His petitions for sole custody and enforcement are properly dismissed upon his default even over the objection of counsel who appeared.

Matter of M. (Anonymous), Anna 2012 WL 717856, 2012 NY Slip Op 01676 (2nd Dept March 6 2012) In three related guardianship proceedings the father claims the Family Court lacked jurisdiction as he had not been served and/or served on a Sunday in October 2008 when

the children's uncle was appointed their guardian. Where movant demonstrates a lack of **personal jurisdiction**, the movant is relieved of any obligation to demonstrate a reasonable excuse for the default and a potentially meritorious defense. Query - where has he been for over three years?

Saperston v Holdaway 2012 WL 975704, 2012 NY Slip Op 02187 (4th Dept 2012). Trial court allows into **evidence** a journal kept by father. The reversing majority ruled the journal did not fall within any recognized exception to the hearsay rule, that although it could have been used to refresh father's recollection, but it should not have been allowed into evidence. Moreover, the journal had numerous prejudicial "notes" and the court referred to the journal in its decision. The dissent argues that admitting the journal into evidence was harmless as the father testified and the admissible evidence, without the journal, supports the court's determination.

Dingeldey v Dingeldey, 2012 WL 975825, 2012 NY Slip Op 02219 (4th Dept 2012) Mother and Attorney for the Child, who is 15 and strongly desires to stay with her mother, join in a successful **motion for a directed verdict** at the conclusion of father's case.

In Re Maria F. and Eduardo F 2012 WL 975744 (4th Dept 2012) Attorney for Child brings a successful **motion for summary judgment** dismissing father's petitions for visitation when his parental rights have been terminated.

Fox v Coleman 2012 WL 895458, 2012 NY Slip Op01909 (4th Dept 2012) No appeal lies from an order entered on parties' consent.

Monaco v Armer 2012 WL 1033413, 2012 NY Slip Op 02353 (3rd Dept. March 29, 2012) Lower court properly refused to **vacate stipulation** made in open court by parties represented by counsel without good cause, such as fraud, collusion, mistake or duress. Settlement discussions prior to stipulation, father's counsel intended to place on record the stipulation, mother actively participated in response to father's requests and father made no objections.

Bond v Bond 2012 WL 1033469, 2012 NY Slip Op 02358 (3rd Dept 2012) Father argues that failure to allow him to submit **closing statement** is reversible error. Under circumstances it is not - court indicated closing statements after Lincoln Hearing, mother submitted one, father did not respond, and more than four weeks passed before decision rendered

Pamela N. v Neil N. 2012 WL 1033487 2012 NY Slip OP 02361 (3rd Dept 2012) In a **motion to dismiss pursuant to CPLR 3211** for failure to state a cause of action the pleading is to be afforded a liberal construction and court must determine only whether the facts as alleged fit within any cognizable theory. A family offense petition is reinstated which alleges harassment and stalking, although inartfully

Rhee-Karn v Karn, 2012 WL 914917, 2012 NY Slip Op 02045 (1st Dept March 20, 2012) Appeal from temporary order dismissed as taken from a nonappealable paper. Order is not appealable as of right and neither Family Court or the Appellate Court granted permission.

Mace v Miller, (3rd Dept March 29, 2012) Another trip to the Appellate Division for these parties, which is rendered moot by a subsequent stipulation in Family Court*

Ucci v Ucci (3rd Dept March 29, 2012) The time bar for an appeal is absolute and therefore the Appellate Court lacks jurisdiction*

Krasner v Krasner, 2012 WL 1109321, 2012 NY Slip Op 02500 (2nd Dept 2012) Children 18 and over are not subject to a visitation order.

Reilly v Reilly, 2012 NY Slip Op 02696 (2nd Dept 2012) Mother awarded attorneys fees in custody and visitation matter, together with related family offense proceeding.

Taub v Taub 2012 NY Slip Op 02700 (2nd Dept 2012) **Conditions on future filings.** Wife repeatedly obtains ex parte temporary orders on unsubstantiated allegations of abuse. A party can forfeit the right to free access to the courts by abusing judicial process and equity may enjoin such conduct. Family Court properly restrained wife from proceeding in any Family Court pursuant to Article 8 except by motion or application for judicial action made on notice to the husband

Child Support. Dempsey v Arreglado (3rd Dept May 3, 2012). Child support obligation runs to 21 unless the custodial parent unjustifiably frustrates the noncustodial parent's right of reasonable access or if the child is of employable age and the child actively abandons the noncustodial parent by, without cause, refusing contact. To prevail on the issue of abandonment, a parent must show that the child's refusal of contact is totally unjustified. Here, there was ample evidence that mother's conduct was cause of broken relationship (did not participate in counseling, blamed others, failed to appreciate her own role in alienating)

Hearsay Evidence Quinche v Gonzalez, 2012 NY Slip Op 03158 (2nd Dept April 24, 2012) Audio recordings were not admitted for the truth of the matters asserted therein, therefore not error to admit on this ground.*

Default Jill R v Eugene C. 2012 NY Slip Op 03282 (1st Dept April 6 2012) Motion to open father's default which resulted in order of protection and order suspending visitation properly denied. No nonfrivolous issues that could be raised on appeal and motion for counsel to be relieved is granted*

Appeals Pedro A. v Susan M. 2012 NY Slip Op 03524 (1st Dept May 3 2012) No appeal lies from a default, and in any event, in this case, appeal rendered moot by subsequent order of the same court and Judge.*

CPLR 4213 Mathewson v Sessler (4th Dept April 27, 2012) . Lower court failed to set forth the facts it deemed essential and upon which its determination was based. However, the record is sufficient for the Appellate Court to make a determination. It reverses and award of joint custody, and continues prior sole, while reforming the "excessive access" schedule awarded by the lower court. However, it also simultaneously modified the underlying old access order on the mother's concession expanded access would be in the children's best interests.

CPLR 4213 Martin v Mills (3rd Dept April 26, 2012) In a case involving domestic violence and alcohol, although record has sufficient facts to determine a change in circumstances, the lower court did not state the facts essential to its determination of best interests.

CPLR 3025 Martin v Mills (3rd Dept April 26, 2012). In case above, involving domestic violence and alcohol, mother's arrest and conviction for DWI and an October 2010 argument between mother and her oldest son that resulted in police involvement are not considered, as they post-date the petition and no motion was made pursuant to CPLR 3025 to conform the pleadings to the proof.

Appeal Carpenter v Puglese (3rd Dept April 26, 2012). Mother's files a brief on appeal, but not a notice of appeal. Court in upholding award of custody to 3rd parties, confines analysis to merits of father's appeal

CPLR 4213 Fontaine v Fontaine (4th Dept April 20, 2012) Order for supervised visitation reversed and remanded for a new hearing where the facts essential to the decision were not set forth.

Default Triplett v Scott (4th Dept April 20, 2012) Where attorney appears, but party he represents does not, it is not a default hearing and appeal is not precluded.

EXPERTS

Hezekiah L. v Pamela A.L. 92 AD3d 506, 938 NYS2d 87 (1st Dept 2012). Expert testimony properly not considered where it went to the issues of best interests, which are not reached when extraordinary circumstances are not proved. Additionally, unreliable because repeated incidents of domestic violence were concealed from the evaluator.

Anne S. v Peter S. 92 AD3d 483, 938 NYS2d 73 (1st Dept 2012) Court seriously considered and addressed concerns of court appointed evaluator about father's alcoholism and failure to communicate

Bianca R v Anne Marie S. 91 Ad3d 560, 937 NYS2d 56 (1st Dept 2012) Neither the court appointed expert nor mother's therapist recommend child be returned to mother in light of problems which led to child's removal. (Problems unspecified)

Comm of Social Services v Victor C. 91 AD3d 417, 936 NYS2d 149 (1st Dept 2012) In a paternity proceeding, social worker testifies that subjecting a 13 year old to genetic marker tests would be emotionally damaging

Anthony MM v Jacquelyn NN, 91 AD3d 1036, 937 NYS2d 360 (3rd Dept 2012) Psychologist testifies that mother, who is hostile towards father and makes false allegations of sexual abuse, has personality disorders that could result in child being alienated from father. Mother's treating social worker's testimony is of little value as she did not address the

personality disorders identified in the psychologists report.

Owens v O'Brien 91 AD3d 1049, 936 NYS2d 742 (3rd Dept 2012) Father's probation officer testifies he no longer uses drugs. Additionally, the officer was formerly a child protective investigator and stated he had no concerns about the father's parenting abilities.

Orzech v Nikiel, 91 Ad3d 1305, 937 NYS2d 509 (4th Dept 2012) Three psychologists testify to mother's engaging in a pattern of behavior to exclude father from the child's life.

Binong Xu v Sullivan 91 AD3d 771, 936 NYS2d 569 (2nd Dept 2012) Expert opinion supports supervised visitation after a forensic examination.*

Kortlang v Kortlang 92 AD3d 785, 938 NYS2d 457 (2nd Dept 2012) Court appointed psychologist performs a forensic evaluation and determines that reinstatement of contact between father and child would be detrimental to the welfare of the child.*

Ashmore v Ashmore 92 AD3d 817, 939 NYS2d 504 (2nd Dept 2012). Interesting expert opinion case. Three concurring experts, but focus is upon one who interviewed the parties, the children and collateral witnesses (who primarily did not testify) Expert testified she based her opinion on interviews with the parties and the children, and not on the interviews with the witnesses. Testimony and report properly admitted.

Cordero v DeLeon 92 AD3d 943, 938 NYS2d 901(2nd Dept 2012) Forensic psychologist support sole custody*

Fox v Fox, 2012 WL 896167, 2012 NY Slip Op 01964 (4th Dept 2012) Psychologist, in a visitation case, acknowledged mother loves the child and the child is functioning well.

Krasner v Krasner, 2012 WL 1109321, 2012 NY Slip Op 02500 (2nd Dept 2012) Court appointed forensic examiner recommends that mother's access be terminated.

Adriano D. v Yolanda A, 2012 WL 1129369, 2012 NY Slip Op 02566 (1st Dept) In making decision awarding custody to father, court did not rely primarily on forensic psychologist's report, but weighed all relevant factors.

D'Angelo v Lopez (3rd Dept , April 12, 2012) Child's counselor testifies a potential conflict of interest in having father's girlfriend supervise visits

Comm'r of Social Servs v Dimarcus C. 2012 NY Slip Op 02778 (1st Dept 2012) In an estoppel case, social worker testifies child believes estopped father to be his father and understands other men in mother's life are not his father.

Solovay v Solovay, 2012 NY Slip Op 02698 (2nd Dept 2012)Record does not indicate a forensic evaluation was necessary to enable the court to reach a determination*

In the Matter of Bridget Y. (4th Dept December 30, 2011) In a neglect case, where the

issue on appeal is the exercise of emergency jurisdiction in New York pursuant to the UCCJEA, the majority refers to expert opinion which basically says that to follow the competing states orders would essentially re-abuse the children involved.

Jeannemarie O v Richard P (3rd Dept April 26, 2012) Clinical psychologist called by the AFC, following a forensic examination, opines that mother believed children did not require a significant involvement with father to be happy and well-adjusted. He further opined relocation of mother was to put geographical distance between father and children so that mother could parent them as she deemed appropriate without his involvement

Lydia M.B. v Administration for Children's Servs. 2012 NY Slip Op 02872 (2nd D) Child's therapist strongly recommends no contact with sex abusing father as it would be harmful to her emotional well-being.

ATTORNEY FOR THE CHILD

General

Helm v Helm, 92 AD3d 1164, 939 NYS2d 592 (3rd Dept 2012) While not determinative, attorney for children fully supported an award of primary custody to mom

Owens v O'Brien 91 AD3d 1049, 936 NYS2d 742 (3rd Dept 2012) Continued physical custody to father consistent with the position advanced by the attorney for the child

Ramirez v Velazquez 91 AD3d 1346, 937 NYS2d 504 (4th Dept 2012) AFC opposes relocation because of the negative effect it would have on the father-children relationship

New v Sharma 91 AD3d 652, 936 NYS2d 265 (2nd Dept 2012) In a visitation case the AFC opposes father's request and asks visitation be reduced to brief periods and public places. The request is proper, but it was inappropriate for the AFC to present reports containing facts which are not part of the record. Remanded for an in camera interview.

Peralta v Irrizary 91 AD3d 877, 938 NYS2d 114 (2nd Dept 2012) In a grandmother visitation case, the contention of the AFC need not be addressed in light of the remand for a hearing before a different judge.

Shaw v Miller 91 AD3d 879, 938 NYS2d 107 (2nd Dept 2012) Relocation to Virginia is both the child's preference and the position of the AFC

Aquino v Antongiorgi 92 AD3d 780, 938 NYS2d 460 (2nd Dept 2012) Court erred in directing no additional petitions unless the attorney for the children has approved of them. The alternative also suggested by the attorney for the children in her brief is also improper*

Kortlang v Kortlang 92 AD3d 785, 938 NYS2d 457 (2nd Dept 2012) Attorney for the child indicates that reinstating contact with father would be detrimental to the welfare of the

child*

Cordero v DeLeon 92 AD3d 943, 938 NYS2d 901(2nd Dept 2012) Sole custody determination is consistent with the position of the attorney for the child*

Bassuk v Bassuk 2012 WL 717864, 2012 NY Slip Op 01671(2nd Dept 2012) A motion is granted striking certain portions of the attorney for the child's appellate brief as it refers to matter dehors the record. The material at issue was not considered in determining the appeal. Query - what was in that brief?

Saperston v Holdaway 2012 WL 975704, 2012 NY Slip Op 02187 (4th Dept 2012) Attorney for the Child appears to be squarely on the side of father, in a rare case in which the 4th Department reverses the trial court, and awards primary physical custody to the mother of a toddler. The Memo decision refers several times to the contentions of the father and the Attorney for the Child in regard to a journal that was improperly admitted into evidence and father's earning capacity.

Dingeldey v Dingeldey, 2012 WL 975825, 2012 NY Slip Op 02219 (4th Dept 2012) AFC, whose 15 year old client has a strong desire to remain with mother, joins in motion for directed verdict at the conclusion of father's case seeking a change of custody.

In Re Maria F. and Eduardo F 2012 WL 975744 (4th Dept 2012) AFC bring successful motion for summary judgment dismissing father's petition for visitation - father's parental rights have been terminated.

Fox v Fox, 2012 WL 896167, 2012 NY Slip Op 01964 (4th Dept 2012) At close of visitation hearing, AFC states she "certainly would never want to recommend that the child have no contact her mother"

Pamela N. v Neil N. 2012 WL 1033487 2012 NY Slip OP 02361 (3rd Dept 2012) well within court's discretion to appoint an attorney for the children to protect their interests in family offense proceedings. Allegations are that father committed family offenses in the presence of special needs children. AFC has standing to seek reinstatement of mother's family offense petition, especially as the children themselves could have originated a family offense proceeding against the father.

Sendor v Sendor, 2012 WL 997008, 2012 NY Slip Op 02272 (1st Dept 2012) An appointment of an attorney for the child was not necessary for the trial court to resolve the custody issue in the best interest of the child, and there is no indication that the child's interests were prejudiced in any way

Moore v Moore 2012 WL 1020970, 2012 NY Slip Op 02288 (2nd Dept 2012) Under the circumstance so this case, the court was not required to appoint an attorney for the child before modifying custody arrangement*

In the Matter of Natasha M. 2012 WL 1109319, 2012 NY Slip Op 02501 (2nd Dept 2012)

Attorney for child successfully appeals an order of visitation entered without a hearing.

Jackson v Coleman 2012 WL 1109325, 2012 NY Slip Op 02498 (2nd Dept 2012) change of sole custody to father consistent with position of attorney for the child. While not dispositive, entitled to some weight.

Sobel v Zimmerman 2012 NY Slip Op 02697. This is an Article 78 proceeding where a party is attempting to compel the Supreme Court Judge, in this case Hope Zimmerman, to appoint an attorney for the children. The relief requested is denied with the Court finding, “the extraordinary remedy of mandamus will lie only to compel the performance of a ministerial act, and only where there exists a clear legal right to the relief sought”

Solovay v Solovay, 2012 NY Slip Op 02698 (2nd Dept 2012) No merit to AFC argument that court erred in not ordering a forensic evaluation, nor evidence that referee was biased against the father or deprived him of a fair hearing.

In the Matter of Bridget Y. (4th Dept December 30, 2011) Clearly a very active AFC in New York, as compared to New Mexico where no attorney was appointed in a UCCJEA case

Dempsey v Arreglado (3rd Dept May 3, 2012) AFC successfully opposes child testifying in child support case where defense is failure to visit and alienation.

D’Ambra v D’Ambra (4th Dept April 27, 2012) AFC’s arguments that father should provide *all* visitation transportation; that father should have children on alternate school breaks and holidays; and that court should have ordered parenting education rejected.*

Holtz v Weaver (4th Dept April 27, 2012) AFC indicates child wishes to relocate to Florida*

McDermott v Bale (4th Department, April 27, 2012) A court can accept a settlement over the objection of the AFC where it gives the AFC a full and fair opportunity to be heard, gives credence to many of the comments, as did the attorneys for the parents who modified the stipulation to address several of the AFC’s concerns. **AFC does not have the right to preclude the court from approving the settlement in the event the court determines that the terms of the settlement are in the best interests of the children.** Children do not have the same legal status as do their parents.

Ildfonso v Booker (3rd Dept April 26, 2012) In denying sole custody to father, as well as visitation, while not determinative, the AFC is in accord with the Family Court’s determination

Jeannemarie O v Richard P (3rd Dept April 26, 2012) AFC calls clinical psychologist who testifies mother is actively attempting to eliminate father from children’s lives. AFC also takes the position that mother coached one of the children to claim sexual abuse by father.

Miller v Miller (3rd Dept April 26, 2012) AFC argues for child to reside with mother -

child age 12 at appeal

Fontaine v Fontaine (4th Dept April 20, 2012) Not an improper delegation of the court's authority to allow AFC to approve supervisors for visitation when it did not delegate whether visitation should resume, and if so, when.

Lydia M.B. v Administration for Children's Servs. 2012 NY Slip Op 02872 (2nd D) Child sexually abused by father. No visitation. AFC "strongly *recommends*" against visitation as it would harmful to her emotional well-being

Elizabeth S. v Julio J. , 2012 NY Slip Op 03082 (1st Dept April 24, 2012) In a paternity/equitable estoppel case, the child identified the respondent as her father to both mother and the AFC. The court notes the following: "It is true that the child (who remained ignorant of the nature of the proceeding) identified respondent as her father and talked positively about him in an out-of-court interview with her court-appointed attorney. Nonetheless, **her responses to the attorney's leading questions** are consistent with a warm but distant relationship". Really, if the child did not testify and a Lincoln Hearing was not conducted, how could anyone assess the AFC asked "leading questions"? The case's dissent notes that the child had expressed to "both her attorney and her mother a desire to spend more time with him". Again, how does the court know this?

Lincoln Hearings

Ricardo S. v Carron C. 91 AD3d 556, 937 NYS2d 54 (1st Dept 2012) court concludes child does not want to choose, but preference is to remain in New York with extensive visitation in Jamaica.

Aikens v Nell, 91 AD3d 1308, 2012 WL 266320 (4th Dept 2012) Attorney for the child waives her objection to the court relying on the child's statements in a Lincoln hearing as she requested the same. Appropriate for the court to rely on statements during Lincoln hearing to determine best interests.

New v Sharma 91 AD3d 652, 936 NYS2d 265 (2nd Dept 2012) Attorney for the child provided detailed accounts concerning conversations with the child. Court cannot rely on facts provided by AFC that are not in the record. Remanded for in camera hearing.

Patterson v Patterson 92 Ad3d 682, 937 NYS2d 890 (2nd Dept 2012) Visitation matter - court conducted an in camera interview of the child to determine his wishes, but no hearing held.*

Bond v Bond 2012 WL 1033469, 2012 NY Slip Op 02358 (3rd Dept 2012) Change of custody

Poremba v Poremba 2012 WL 1033523, 2012 NY Slip Op 02366 (3rd Dept 2012) held in context of change of custody

In the Matter of Justin CC 77 AD3d 207 (3rd Dept 2010) Rare full opinion. Testimony taken from a child during fact finding stage of an Article 10 proceeding, outside the presence of the respondent, but with counsel present and permitted to cross examine the child is not entitled to the same protections of confidentiality afforded to Lincoln testimony in an Article 6 proceeding. Different underlying rationale. If an appeal taken, copies of the transcript of the child's testimony must be provided to all counsel.

Spencer v Spencer, 85 AD3d 1244, 925 NYS2d 227 (3rd Dept 2011) Court changed custody without a hearing after several appearances and in camera interview with each of the children. The Appellate Court distinguishes an in camera interview from a Lincoln hearing. The purpose of a Lincoln hearing is to corroborate information adduced during the fact-finding hearing. A true Lincoln is held after or during fact finding. There is not authority or legitimate purpose for courts to conduct such interviews in place of a fact-finding hearing and the lower court erred in doing so. Court is cautioned to protect the children's right to confidentiality by avoiding disclosure of what children reveal in camera during a custody proceeding.

In the Matter of Tracey Brown, 85 AD3d 1497, 928 NYS2d 92 (3rd dept 2011) Children, ages 15 and 12, testify under oath in camera, parents excluded on consent but attorneys present and allowed to cross examine the children. Hearing not sealed. Note it was the children's petition to have visitation at their sole discretion.

Dempsey v Arreglado (3rd Dept May 3, 2012) In a child support case, where mother alleged the child had emancipated himself by refusing to visit, the Court did not err in refusing to comply child to testify in light of mother's lack of proof regarding alienation and AFC opposed in light of potential harm to the child

Pizzo v Pizzo (3rd Dept April 26, 2012) Held in a relocation proceeding.

Miller v Miller (3rd Dept April 26, 2012) Lincoln held where mother seeks custody of middle of three daughters only

Fontaine v Fontaine (4th Dept April 20, 2012) New Lincoln Hearing ordered when order for supervised visitatin reversed and remanded for new hearing

Elizabeth S. v Julio J. , 2012 NY Slip Op 03082 (1st Dept April 24, 2012) In a split decision paternity/equitable estoppel case, the majority notes no Lincoln Hearing was held and the child did not testify. The dissent comments that the child was unaware of the purpose of the proceedings and that conducting an "in camera interview" would have defeated the purpose of the equitable estoppel hearing

Child's Preference

Ricardo S. v Carron C. 91 AD3d 556, 937 NYS2d 54 (1st Dept 2012) Child's preference is significant but not dispositive. Court's order supports the child's preferred living arrangement

Bianca R v Anne Marie S. 91 Ad3d 560, 937 NYS2d 56 (1st Dept 2012) 11 year old's preference to return to mother is a factor but not dispositive in award of custody to father and step-mother

Heater v Peppin 92 AD3d 1169, 938 NYS2d 666 (3rd Dept 2012) In an effective assistance of counsel case, the court considers the children's preference of not wanting additional contact with their father.

Anthony MM v Jacquelyn NN, 91 AD3d 1036, 937 NYS2d 360 (3rd Dept 2012) Award of sole custody to father supported by the child's attorney

McBryde v Bodden 91 AD3d 781, 936 NYS2d 292 (2nd Dept 2012) Additional visitation given to father at end of failed request by mother to relocate reflects the express desire of both the child and the father to spend more time together.

Shaw v Miller 91 AD3d 879, 938 NYS2d 107 (2nd Dept 2012) Relocation to Virginia is the child's preference and the position of the attorney for the child.

Patterson v Patterson 92 Ad3d 682, 937 NYS2d 890 (2nd Dept 2012) In camera interview conducted with the child to determine his wishes regarding visitation. Full hearing not necessary* (Contrast with Spencer)

Dingeldey v Dingeldey, 2012 WL 975825, 2012 NY Slip Op 02219 (4th Dept 2012) 15 year old wishes to stay with mother and is doing well. While wishes not controlling, they are entitled to great weight, particularly where the child's age and maturity would make his or her input particularly meaningful

Fox v Fox, 2012 WL 896167, 2012 NY Slip Op 01964 (4th Dept 2012) Record clear in a visitation case that the child wished to continue to visit the mother.

Fiacco v Fiacco 2012 WL 1033457, 2012 NY Slip Op 02356 (3rd Dept 2012) Court considered but was not bound by child's wishes who was manipulative and wished to reside with father because he was overly permissive and allowed more freedom at his home than at mother's.

Bond v Bond 2012 WL 1033469, 2012 NY Slip Op 02358 (3rd Dept 2012) Children's wishes alone are insufficient to support a change in custody

Ruggerio v Noe 2012 WL 933769, 2012 NY Slip Op 02107 (2nd Dept 2012) Shared residential custody access schedule established by the court reflects the child's expressed wishes.*

Krasner v Krasner, 2012 WL 1109321, 2012 NY Slip Op 02500 (2nd Dept 2012) Child's vehement opposition to any form of visitation, coupled with forensic examiner's opinion that visitation should be terminated. Visitation terminated.

Holtz v Weaver (4th Dept April 27, 2012) Child's preference to relocate to Florida, as articulated by AFC, is not determinative especially in light of the child's young age (not stated)*

Miller v Miller (3rd Dept April 26, 2012) Child's desire to live with mother should be given great weight given her age (12 at appeal) but it is not dispositive and a variety of factors weigh against award of custody to mother.

SOUND AND SUBSTANTIAL BASIS

Angel M. v Nereida M. 92 AD3d 583, 938 NYS2d 556(1st Dept 2012) Custody where there was domestic violence and failure to foster a relationship

Myles M. v Pei-Fong K. 2012 WL 787483, 2012 NY Slip Op 01758 (1st Dept 2012) ordered unsupervised visits where observed visits were overwhelmingly positive

Anne S. v Peter S. 92 AD3d 483, 938 NYS2d 73 (1st Dept 2012) Relocation

Ricardo S. v Carron C. 91 AD3d 556, 937 NYS2d 54 (1st Dept 2012) Custody to father with visitation to mother after Lincoln Hearing

Bianca R v Anne Marie S. 91 Ad3d 560, 937 NYS2d 56 (1st Dept 2012) Custody to father and step-mother where conditions continue which led to child's removal. Expert testimony does not support return to mother.

Helm v Helm, 92 AD3d 1164, 939 NYS2d 592 (3rd Dept 2012) Joint custody, primary physical to mother

Raynore v Raynore, 92 AD3d 1167, 2012 WL 573093 (3rd Dept 2012) Joint custody, physical to mother.

Knight v Knight, 92 AD3d 1090, 2012 WL 489110 (3rd Dept 2012) Father sexually abused his girlfriend's 8 year old daughter, joint to sole with mother and supervised access

Anthony MM v Jacquelyn NN, 91 AD3d 1036, 937 NYS2d 360 (3rd Dept 2012) Mother makes repeated false allegations of sexual abuse, sole to father

Golden v Golden, 91 AD3d 1042, 938 NYS2d 207 (3rd Dept 2012) Custody to maternal grandfather

Orzech v Nikiel, 91 Ad3d 1305, 937 NYS2d 509 (4th Dept 2012) Three psychologists testify regarding mother's concerted effort to exclude father from child's life.

Ramirez v Velazquez 91 AD3d 1346, 937 NYS2d 504 (4th Dept 2012) Relocation

denied where close relationship between children, father and his relatives

Smith v Ince 91 AD3d 1323, 937 NYS2d 654 (4th Dept 2012) Sole custody to father, issues of credibility and fostering relationship

Delgado v Frias 92 AD3d 1245, 937 NYS2d 814 (4th Dept 2012) Joint physical and legal custody, split decision making*

Handel v Handel 92 AD3d 1285, 938 NYS2d 490 (4th Dept 2012) Relocation to Florida denied

Tin Tin v Thar Kyi 92 AD3d 1293, 938 NYS2d 407 (4th Dept 2012) Sole custody, domestic violence - note the evidence is described as “sufficient”

Grusz v Simonetti 91 Ad3d 645, 935 NYS2d 904 (2nd Dept 2012) No mid week visitation*

Binong Xu v Sullivan 91 AD3d 771, 936 NYS2d 569 (2nd Dept 2012) Supervised visitation*

McBryde v Bodden 91 AD3d 781, 936 NYS2d 292 (2nd Dept 2012) Relocation denied and visitation increased

Flores v Flores 91 AD3d 869, 936 NYS2d 676 (2nd Dept 2012) Grandparent custody

Shaw v Miller 91 AD3d 879, 938 NYS2d 107 (2nd Dept 2012) Relocation to Virginia established by a fair preponderance of the evidence

Fortunato v Murray 91 AD3d 947, 937 NYS2d 604 (2nd Dept 2012) Modification denied*

Retzmozzo v Moyer 91 AD3d 957, 938 NYS2d 142 (2nd Dept 2012) Relocation to Colorado denied, visitation modified*

Sweetser v Willis 91 AD3d 963, 937 NYS2d 322 (2nd Dept 2012) 55 mile relocation permitted*

Smith v Smith 92 AD3d 791, 938 NYS2d 601 (2nd Dept 2012) Prisoner visits

Aquino v Antongiorgi 92 AD3d 780, 938 NYS2d 460 (2nd Dept 2012) Modification of custody*

Ashmore v Ashmore 92 AD3d 817, 939 NYS2d 504 (2nd Dept 2012) Relocation, sole custody, and supervised visitation have a sound and substantial basis in the record including three concurring expert opinions.

Harry v Harry, 92AD3d 883, 938 NYS2d 808 (2nd Dept 2012) Sole custody*

Cordero v DeLeon 92 AD3d 943, 938 NYS2d 901(2nd Dept 2012) Sole custody*

Bassuk v Bassuk 2012 WL 717864, 2012 NY Slip Op 01671(2nd Dept 2012) Travel to Brazil before the age of 8 prohibited*

Saperston v Holdaway 2012 WL 975704, 2012 NY Slip Op 02187 (4th Dept 2012) The majority of the 4th Department finds there is not a sound and substantial basis in the record to award primary physical custody to the father, while the dissent argues there was.

Dingeldey v Dingeldey, 2012 WL 975825, 2012 NY Slip Op 02219 (4th Dept 2012) Modification denied, wishes of 15 year old

Fox v Fox, 2012 WL 896167, 2012 NY Slip Op 01964 (4th Dept 2012) Record lacks the requisite substantial evidence to damage to the child required to suspend all visitation

Fox v Coleman 2012 WL 895458, 2012 NY Slip Op 01909 (4th Dept 2012) Change of custody*

Harder v Phetteplace 2012 WL 896208, 2012 NY Slip Op 01925 (4th Dept 2012) Imposition of therapeutic supervised visitation

Stilson v Stilson 2012 WL 895570, 2012 NY Slip Op 01962 (4th Dept 2012) Change of custody

Fiacco v Fiacco 2012 WL 1033457, 2012 NY Slip Op 02356 (3rd Dept 2012) Sole to mother where father contributes to estrangement from mother.

Poremba v Poremba 2012 WL 1033523, 2012 NY Slip Op 02366 (3rd Dept 2012) Change of custody, mother to father. Mother an alcoholic

Ruggerio v Noe 2012 WL 933769, 2012 NY Slip Op 02107 (2nd Dept 2012) Establishes shared custody access*

Jackson v Coleman, 2012 WL 1109325, 2012 NY Slip Op 02498 (2nd Dept 2012) Change of custody to sole in father*

DeSimone v Delano, 2012 WL 1109337, 2012 NY Slip Op 02491 (2nd Dept 2012) Modification of visitation*

D'Angelo v Lopez (3rd Dept , April 12, 2012) Change of visitation supervisor from father's girlfriend

Solovay v Solovay, 2012 NY Slip Op 02698 (2nd Dept 2012) Joint to sole custody*

Taub v Taub 2012 NY Slip Op 02700 (2nd Dept 2012) No family offense and future

filings enjoined without notice.*

Dempsey v Arreglado (3rd Dept May 3, 2012) Ample evidence to demonstrate mother alienated child in support proceeding to defeat her claim of emancipation.

Beaudry v Beaudry 2012 NY Slip Op 03391 (2nd Dept May 1, 2012) Supervised visitation*

Olmsted v Boronow, 2012 NY Slip Op 03451 (2nd Dept May 1, 2012) Residential custody*

Farran v Fenner, 2012 NY Slip Op 03189 (2nd Dept April 24, 2012) Sole to father on modification petition

Miller v Osik, 2012 NY Slip Op 03197 (2nd Dept April 24, 2012) Sole to father on modification petition where mother actively interferes in relationship*

Pedro A. v Susan M. 2012 NY Slip Op 03524 (1st Dept May 3 2012) “sufficient information to support” final custody to father*

Holtz v Weaver (4th Dept April 27, 2012) Relocation to Florida denied*

Ildefonso v Booker (3rd Dept April 26, 2012) Best interests of children would not be served by awarding sole custody to father

Pizzo v Pizzo (3rd Dept April 26, 2012) Relocation denied.

Triplett v Scott (4th Dept April 20, 2012) Sole custody to mother*

Lydia M.B. v Administration for Children’s Servs. 2012 NY Slip Op 02872 (2nd D) No visitation to the sex abusing father

UNAVAILING

Angel M. v Nereida M. 92 AD3d 583, 938 NYS2d 556(1st Dept 2012) Custody to mother where father attempted and intended to thwart any relationship

Strauss v Saadatmand 92 AD3d 508, 938 NYS2d 425 (1st Dept 2012) Change of custody and enrollment in pre-K

Claudio M. v Janet R. 92 AD3d 459, 937 NYS2d 849 (1st Dept 2012) No sanctions where dad deliberately picked overlapping summer vacation time.

Ricardo S. v Carron C. 91 AD3d 556, 937 NYS2d 54 (1st Dept 2012) Child continues with father where he is doing well

Knight v Knight, 92 AD3d 1090, 2012 WL 489110 (3rd Dept 2012) Sex offender arguments for continuation of joint custody and unsupervised visitation are without merit.

Holland v Holland 92 AD3d 1096, 939 NYS 2d 584 (3rd Dept 2012) Stipulated custody to aunt where father bruised child's buttocks during discipline

Anthony MM v Jacquelyn NN, 91 AD3d 1036, 937 NYS2d 360 (3rd Dept 2012) Mother's contentions in light of her repeated false allegations of sexual abuse are unpersuasive

Fox v Coleman 2012 WL 895458, 2012 NY Slip Op01909 (4th Dept 2012) No merit to arguments in a change of custody case.*

Pamela N. v Neil N. 2012 WL 1033487 2012 NY Slip OP 02361 (3rd Dept 2012) Father's argument that attorney for children lacks standing to request reinstatement of Mother's family offense petition is meritless

Poremba v Poremba 2012 WL 1033523, 2012 NY Slip Op 02366 (3rd Dept 2012) Mother, who is an alcoholic and describes father as evil, makes meritless arguments on a change of custody.

Whitter v Ramroop 2012 WL 1033548, 2012 NY Slip Op 02392 (1st Dept 2012) Father's allegations that grandmother's facing criminal charges for theft found unavailing where the charge is she stole from father while he was incarcerated.

Adriano D v Yolanda A. 2012 WL 1129369, 2012 NY Slip Op 02566 (1st Dept 2012) custody to father, mother's arguments unavailing

Solovay v Solovay, 2012 NY Slip Op 02698 (2nd Dept 2012)No merit to AFC arguments regarding failure to order forensic examination, bias against father or deprived of fair hearing.

Carpenter v Puglese (3rd Dept April 26, 2012) Custody awarded to 3rd parties, father's argument that supervised visitation only was "lacking in merit"

Triplett v Scott (4th Dept April 20, 2012) Father's argument that the court abused its discretion in proceeding to a hearing, where his attorney was present but he chose not to attend "lacks merit

* Cases with the asterisk before them are unanimously affirmed without discussion of the facts, often with reference to the reasons stated in the decision below.

Jeffrey P. Wittmann

Dr. Wittmann is a forensic psychologist, trial consultant, and divorce mediator whose practice concentrates on trial support for attorneys in custody and access matters. He is an Adjunct Clinical Professor at SUNY Albany (forensic psychology) and he serves as a trial consultant for major law firms nationally. Dr. Wittmann is a widely recognized expert on the intersection of law and psychology and on professional practices in the child custody area. He is regularly on the faculty for training seminars offered to attorneys and mental health professionals, and has been a frequently utilized scholar-trainer for judges in Family, Supreme, and Appellate courts in New York and elsewhere nationally. Dr. Wittmann is on the editorial board of the *New York Family Law Monthly* and the *Journal of Child Custody* and is the author of “*Custody Chaos, Personal Peace*” (Perigee, 2001) and of numerous scholarly articles regarding forensic psychology. The *Empirical Forensic Model* which he developed with Timothy Tippins Esq. was published in the *Family Court Review* in 2005 and is now taught in many venues nationally as a template for critiquing the custody evaluation process.

**Complex Custody Issues And
Ethical Implications For The
Attorney For The Child**

Jeffrey P. Wittmann, Ph.D.
The Center for Forensic Psychology
Albany, NY
jw@childcustodyforensics.com
Copyright 2012, Jeffrey P. Wittmann

Four Topics

- Child Alienation
- Paternity and Equitable Estoppel
- Joint and Sole Custody
- Miscellaneous Topics

Child Alienation

- The irrational rejection or avoidance of a parent.

Move Away from Parental Alienation Syndrome

- A significant shift has occurred away from Richard Gardner's concept of Parental Alienation Syndrome (PAS) toward more complex, multidimensional models of the processes that lead children to reject a parent.
- PAS: A condition in the child usually caused by a brainwashing parent (who is usually the mother)
- Profound empirical and definitional problems

New Models of Child Alienation

- Kelly and Johnston (2001): The focus is first on the nature of the visitation-resistance:
 - Alignment (preference)
 - Realistic Estrangement (Trauma)
 - Alienation
- Austin (2011) & Kline Pruett, et al (2007):
 - Maternal Gatekeeping
 - Access to social capital
- Drozd & Olesen (2004): "Counterproductive protective parenting."

Paternity and Equitable Estoppel

Identity Development

- Before age 3 children gradually develop basic forms of self-representation (eg, recognize image in the mirror)
- Children begin developing a sense of “self” --- of who they are, at age 3.
- At age 3, children begin to knit together autobiographical personal narratives about who they are, who the people are around them, etc.

Identity Development

- Aspects of the autobiographical personal narrative and of the sense of self in general include:
 - Who’s Mommy --- Who’s Daddy
 - Where did I come from?
- The structure of the sense of self become organized around this narrative.

Identity Development

- Threat or disruption of this gradually developing sense of self can be stressful and/or traumatic.
- Little research about how children fare after the news that the man they had always known as their father may not be their father.
- Logic and experience suggests it will usually be stressful but that children can adapt.

Identity Development

- Reality: In many families children develop a sense over time that something is amiss --- but it depends on the family.
- It hurts more to find out later rather than sooner
 - placing the relationship with the mother at risk.
- Teens will often want a definitive answer about their origins.

Thoughts about Discussions with Children

- Language is critical. Example:
- Two kinds of fathers: Birth-father and heart-father
 - Birth-father - Helped to make you as a baby.
 - Heart-father - The person who you love who has taken care of you day-to-day.
- Some kids have one person who is both birth father and heart father.
- Others have two dads --- one who helped them to be born and one who has taken care of them day-to-day over time.
- We are trying to figure out if you are a child who has one dad who did both of these things, or two dads.

More Thoughts about Discussions with Kids

- The skills of the AFC and sophistication of the child should determine who has the discussion.
- Consider having a consulting mental health professional design and be present for the discussion.
- Determining the level of conviction about who is who may require psychological expertise.

Joint Custody

- No simple answers.
- Very controversial topic, with scholarly debate continuing.
- Some guidelines from the research we do have.
- See Kline-Pruett & Barker (2009)

Benefits for Children

- Both joint physical and joint legal custody appear associated with a list of psychological benefits for children, *but the research is far from unanimous.*
- This association appears to be present even if one subtracts out the benefits that accrue from greater cooperativeness in the joint custody population.

Benefits for Children

- Joint physical and legal custody leaves fathers feeling more satisfied after divorce --- translating to greater involvement with their children.
- Joint custody plans appear most present for higher SES families - The structure may reinforce cooperative tendencies present before the divorce.

Joint Custody and Parental Cooperation

- Joint custody parents do tend, on average to be more cooperative as a group, but the correlation is far from strong.
- In general it appears that joint custody can succeed under conditions of low to moderate conflict (But many other variables can suggest it is a bad idea).
- No evidence that joint custody itself makes people more cooperative.

Joint Custody Risks for Children

- Little evidence that joint plans themselves increase conflict among already hostile families.
- High levels of conflict/hostility are associated with negative outcomes for children.
- This is especially true when children are in the middle of conflict, are the subject of the conflict, or when the couple cannot compartmentalize conflict between spousal and child issues.

Joint Custody Risks for Children

- High levels of conflict/hostility are associated with negative outcomes for children.
- This is especially true when children are in the middle of conflict, are the subject of the conflict, or when the couple cannot compartmentalize conflict between spousal and child issues.

Joint Custody Risks for Children

- However, researchers have yet to figure out whether children in situations of similar levels of conflict fare poorer in joint arrangements compared to sole plans.
- Special infancy issues with joint plans:
 - Higher frequency---lower duration
 - Overnights controversy

Selected references

Child Alienation

- Drozd, L. M. & Olesen, N.W. (2004). Is it Abuse, Alienation, and/or Estrangement? A Decision Tree. *Journal of Child Custody* 1(3).
- Johnston, J.R. (2003). "Parental alignments and rejection: An empirical study of alienation in children of divorce," *Journal of the American Academy of Psychiatry & Law*, 31, 158-170;
- Johnston, J.R., Walters, M.G., & Olesen, N.W. (2005). The psychological functioning of alienated children in custody disputes: An exploratory study. *American Journal of Forensic Psychology*, 23(3).
- Johnston, J.R., Walters, M. G, & Olesen, N.W. (2005). Is it alienating parenting, role reversal or child abuse? An empirical study of children's rejection of a parent in child custody disputes. *Journal of Emotional Abuse*, 5(4), 191-218.
- Kelly, J. B. & Johnston, J. (2001). The alienated child: A reformulation of parental alienation syndrome. *Family Court Review*, 39 (3), 249-266.
- Lee, S M, & Olesen, NW. (2001) Assessing for alienation in child custody and access evaluations. *Family Court Review*; 39: 282-98
- Warshak, R. (2001). Current controversies regarding parental alienation syndrome. *American Journal of Forensic Psychology*, 19, 1-31
- Zirogiannis, L. (2001). Evidentiary issues with parental alienation syndrome. *Family Court Review*, 39 (3), 334-433.

Interviewing Children

- Poole, D. A., & Lamb, M. E. (1998). *Investigative interviews of children: A guide for helping professionals*. Washington, DC: American Psychological Association.

Joint Custody

- Bauserman, R. (2002). Child adjustment in joint-custody vs. sole custody arrangements: A meta-analytic review. *Journal of Family Psychology*, 16(1), 91-102.
- Kelly, J. & Lamb, M. (2000). Using child development research to make appropriate custody and access decisions for young children. *Family and Conciliation Courts Review*, 38(3), 297-311.
- Pruett, M.K. & Barker, R. Joint Custody: A judicious choice for families – but how, when, and why? In R. M. Galatzer-Levy and L. Kraus (Eds.), *The scientific basis of custody decisions* (2nd ed., pp. 417-462). New York: Wiley, 2009.
- Lamb, M. (2002). Placing children's interests first: Developmentally appropriate parenting plans. *Virginia Journal of Social Policy & the Law*, 10:1, 98-119.
- McIntosh, J.E. & Smyth, B. (2012). Shared-time parenting: An evidence-based matrix for evaluating risk. In K. Kuehnle and L. Drozd (Eds), *Parenting plan evaluations* (pp. 155-187).