

# The San Diego Family Law Council For Children Newsletter

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## Council Hosted Conference Featuring Isolina Ricci, Ph.D. : 2nd Annual Guiding The Lives Of Children Of Separation & Divorce

### Another Successful "Guiding the Lives of Children of Divorce and Separation" Conference

By Barney Connaughton, Attorney at Law

In June 2006 SDFLCC in association with the San Diego Chapter of CAMFT (California Association of Marriage and Family Therapists) and the San Diego County Commission on Children, Youth and Families, held its second annual "Guiding the Lives of Children of Divorce and Separation" Conference.

This year's conference featured Dr. Isolina Ricci, Ph.D., author of Mom's House, Dad's House and the recently released children's version, Mom's House, Dad's House for Kids. Dr. Ricci drew upon her over 30 years of experience as a family researcher, child and family therapist, family mediator, educator, and her work as head of the Statewide Office for Family Court Services for the California Administrative Office of the Court.

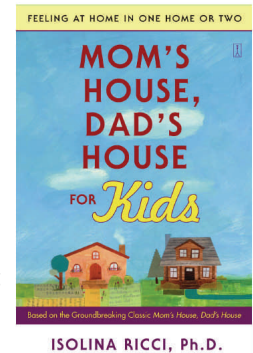
The morning portion of the Conference was directed toward legal and mental health professionals and focused on the role and responsibility of the family law professional in protecting children from the process of divorce and separation. Dr. Ricci challenged that it is our responsibility as professionals to educate ourselves and set up our practices so that we are educating and guiding our clients on how to meet the needs of their children throughout the process. This begins by setting expectations when the client first walks in the door, providing alternate dispute options, and using effective methods for conflict and emotion management throughout the case. While it is important to have referral resources where we can send the client for needed help, we too, play a very important role in the process. By increasing our own awareness of the needs of dual household children, we can be part of the team educating parents on how to meet the needs of their children going through these issues.

Dr. Ricci's presentation was followed by a panel discussion moderated by Judge H. Ronald Domnitz and included Family Court Services mediator, Laura Tielman, minor's attorney, Terry Chucas, Marriage and Family Therapist Robin Tarbox-Roland, and Dr. Ricci. Judge Domnitz facilitated a spirited discussion on issues ranging from the true role of minor's counsel in family law cases to the best practices for child therapists and mediators in supporting the children and the parents.

The afternoon portion of the conference was for Parents, Grandparents, Teachers and any others concerned and involved with children of separating families. Dr. Ricci provided tips on what we can do to meet the needs of these children, and what we can do to help guide the parents to make good decisions taking into consideration the impact their decisions are having on the children. From providing order, structure, routine and developing habits that foster good health for the child and parent, to eliminating behaviors that directly or indirectly place the child in the middle of the dispute, the conference offered information and direction on how to discover what these children need, and how to meet their needs. Dr. Ricci also explored ways to diffuse negative relationships between parents after separation, and strategies for gradually moving the relationship to a more healthy one focused on meeting the needs of the children.

Following Dr. Ricci's presentation, Shawn S. provided insights on what he experienced as a child going through a divorce, and the lessons he brought from that experience into adulthood. Robert Simon, Ph.D followed by answering the question: "How do we know when our child needs counseling or therapy?" Susan Griffin, M.S. then spoke about identifying and dealing with the issues of a substance abusing parent. The final speaker was Ruth Hatcher, M.S., who spoke about parent education related to divorce and separation, and the programs at San Diego Community Colleges available to help parents.

SDFLCC continues to work toward its goals of expanding public awareness of the special needs and challenges of dual-household children, providing current information regarding developments in psychology and family law, and providing resources and information to those involved in family conflict.



# HOW TO “EX” COMMUNICATE

BY DEENA STACER. PH.D.

In a family breakup or a divorce with children, there are often high emotions and tension between both parents. This tension creates anxiety for the children as well as the parents. The children sense their parent's anxiety in their voice, their body language and in their parent's behavior. When the parents become focused on the fight with their ex, they are distracted when they are with their children.

Conflict occurs when there is face to face contact and frequent communication between the parents. To significantly reduce this conflict, for all of the family members, parents should follow two simple rules. If the breakup is new, the couple should follow these rules for a minimum of two years, and if the couple has been warring with each other over the children for several years, they should follow this for the remainder of their parenthood responsibility. Even if a parent believes that there may be no reason to expect tension between the other parent, the rules are designed to eliminate potential problems. The rules are as follows:

*Number one: Eliminate all face-to-face communication or contact with the other parents (including telephone contact), for a minimum of two years.*

*Number two: All communication should be done in writing only, using a memo format of facts only to communicate with each other.*

We are all like vulnerable animals, because our “survival instinct” deep inside keeps us alive. We all struggle with fight or flight issues sometime in our lives. During gestation and as children we learned to read our parent's looks, feelings of fear, anger, nervousness and joy. We learned to read our parent's vibes. Children learn when their parents are upset and when they are feeling good. When a parent is worried, upset or unsure of themselves, the child will read that and react with anxiety too. This is how anxiety states are formed. The more anxious a parent is during our own childhood, the more opportunity we have for being wired and sensitive to anxiety. If there is anger and conflict between parents, children get heavy doses of anxiety from their parents. Children attach “life and death security” to both of their parents. This security is broken when parents split up. It must be rebuilt individually by both parents rather than as a unit like it was originally created.

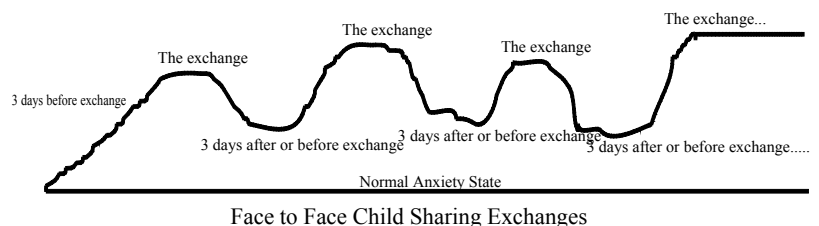
When parents have conflict, the children feel unsafe and disconnected from their parents. Parents in custody conflict remain in a heightened anxiety state all of the time. Because they are distracted, they are unable to nurture or reassure their children that everything will turn out “ok.” Children start to feel disconnected from school and their friends, they experience depression, loneliness and isolation as a result. As the children become more and more isolated from their world, they become more afraid. They start to create a belief system that they are unsafe in the world. Parents in conflict are focused on battling the “ex,” for the sake of the children. Ironically, the more distracted by the conflict the parents are, the more the children become at risk. Their needs become invisible to the parents and then the children become invisible. When parents become preoccupied with what may or may not happen with the ex during a child exchange, the parents are emotionally charged by what the other parent may say or do. Their anxiety level stays high because they are constantly experiencing anxiety

about what will happen to them. Every time a parent has *visual* or *verbal* contact or communication with the other parent, their anxiety level goes up. If parents are seeing each other often, at exchanges, talking on the phone about child sharing issues, seeing each other at school activities or even writing responses to declarations, they remain in heightened states of anxiety. The anxiety is like a computer that they can't stop running, and they try to press control, alt, delete but it still won't restart. The computer has a giant folder which contains all of the files of every argument or conflict they have ever had. It has negative memories which remind them constantly of their failed relationship.

After the breakup, the computer file continues to run. This large file controls every conversation between the couple from that point on. It never gets deleted from the computer. Every time the couple sees or hears the other person, that file comes up and runs at full speed. The file replays the failures and the feelings over and over again. This creates an ongoing anxiety state in the parents head, which controls their emotions and behavior. When a couple eliminates the contact and communication between them, the file is not triggered and they finally have a chance to calm down. If they calm down, they will not react as much with anxiety and may eventually be able to communicate with each other without blow ups or negative anticipation. Years after the breakup, the couple may not react with as much anxiety if they practice the rules and allow themselves to calm down initially.

The file and the accompanying anxiety state continues to run approximately 72 hours after the contact occurred between the parents. Amazingly, the research has also revealed that about three days before an exchange or interaction between the parents, the parents starts to get worked up in negative anticipation about the exchange. Often parents are not actually aware that this is happening, but after explaining what happens to the mind and body with conflict, most parents acknowledge that it does bother them to see the other parent, to hear their voice, or to have to read and respond to emails.

After any parents exchange, it takes another twenty-four to seventy-two hours to calm down. If there are several exchanges each week between the parents, the parents never calm down and neither do the children. The more anxious the parent, the more emotionally disconnected they are for the children. The enclosed chart shows what happens to an individual who is having frequent contact and communication with the other parent.



## The High Conflict Couple

The definition for a high conflict case is that one or both of the parents in the conflict is unable or unwilling to end their marital relationship. Frequent intervention from the court is required to protect the

children from that conflict.

High conflict parents have tremendous difficulty with the breakup, which keeps them in high anxiety. The parent who can't let go wants to control the other parent, through contact and communication. They become invested in keeping in the other parent's life for a variety of reasons..

The children begin to suffer the effects of the parents at war. These effects can have a permanent impact in their own relationships in the future. Many children end up permanently feeling isolated, plastic or lost as adults.

1. **DO NOT HAVE FACE TO FACE EXCHANGES.** Have child exchanges occur at school or day care. One parent can drop the children off, while the other picks up.

2. **MAKE SURE PARENTS HAVE A CLEARLY DEFINED CHILD SHARING PLAN.** The clearer your child sharing arrangement, the less parents need to communicate with each other.

3. **DO ALL OF YOUR COMMUNICATION IN WRITING.** Send written communication through email, fax, or the US Mail. Don't pass notes through the children or send verbal messages through the kids to each other.

4. **FOLLOW THE 'JUST THE FACTS MA'AM' RULE.** After you have clearly defined the child sharing agreement for the children, you no longer will have much to communicate over. All communication (if necessary) should be done in note form. When sending a note, stick to the facts, only. Write one topic per note. Any information that is unnecessary should be eliminated.

5. **DON'T ALTER THE CHILD SHARING SCHEDULE.** Remain vigilant about keeping the child sharing schedule the same so there is no contact or communication to have conflict over.

6. **DON'T SEND NOTES THAT INFLAME THE OTHER PARENT.**

7. **PARALLEL PARENT RATHER THAN CO-PARENT.** Parallel parenting is described as both sets of parents parenting the children their own way. They do not discuss their parenting decisions with the other parent. Communication is kept to a minimum. Interaction between the parents is limited.

Attend the High Conflict Intervention Program, which includes classes and consultation information to learn effective strategies to let go of the fight, and to connect in a deeper way with the children. Learn how to build up your parenting confidence, problem solving skills and ways to nurture your children in your own world. Work on strategies to keep the communication with the other parent to a minimum. Learn new ways to move on with your life and leave the pain and loss behind.

Information about The High Conflict Intervention Program can be found at [www.HighConflictIntervention.com](http://www.HighConflictIntervention.com). Or contact Deena Stacer. Ph.D. at 800-980-0434.

## **SDFLCC MISSION AND GOALS**

The San Diego Family Law Council for Children is a nonprofit 501(c)(3) organization committed to the belief that dual-household children need both their parents, and that both parents and professionals play a role in safely supporting the presence of Mom AND Dad in the lives of these children.

### **OUR MISSION**

Support the physical and emotional welfare of children residing in San Diego County placed at risk because their caregivers are involved in a custody dispute, marital dissolution action, or ongoing domestic conflict.

### **GOALS**

Create and expand public awareness of the special needs and challenges of dual-household children.

Support existing educational, psychological, and physical safety programs to dual-household children.

Serve as a resource for information, collaboration, and referrals for services to those involved in family conflict.

Generate private and public support for services to dual-household children.

Serve as a resource for compiling and disseminating current developments in the fields of psychology and family law to the judiciary, legislature, and professionals serving dual-household children.

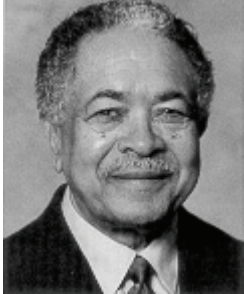
### **MEMBERSHIP**

Annual dues are \$100 and support the work of the council. A membership form is available at [www.sdccouncil4children.org](http://www.sdccouncil4children.org).

Please visit our website and consider joining the Council in helping dual-household children in San Diego County.

# Collaborative Family Law Act

by Enrique A. Monteagudo, J.D.



In September 2006, a new procedural alternative for proceedings for dissolution of marriage, nullity of marriage, and legal separation became law. The passage of AB 402 (Dymally) enacted the Collaborative Family Law Act. This groundbreaking, yet uncontroversial law allows the parties to those proceedings, by written agreement, to utilize a collaborative law process rather than an adversarial judicial proceeding to resolve their disputes.

The new law adds §2013 to the Family Code, which defines “Collaborative law process” as a process in which the parties, and any professionals engaged by the parties to assist them, agree in writing to use their best efforts and to make a good faith attempt to resolve disputes related to the family law matters on an agreed basis without resorting to adversarial judicial intervention. Additionally, the new law requires a court to issue a statement of decision explaining the factual and legal basis for its custody decision upon the trial of a question of fact in a proceeding to determine the custody of a minor, upon the request of either party.

The new law also requires the Judicial Council to create an information sheet for parties involved in child custody and visitation matters on or before January 1, 2008. The information sheet will inform parties that they have the right to agree to a custody or visitation arrangement, that if they do not agree, they will be required to participate in child custody mediation, and that if mediation does not result in an agreement, the court will be required to make a determination on the custody issues. The sheet shall also provide information on how to obtain assistance in resolving a custody case, including, but not limited to, information on finding an attorney, information on accessing court based self-help services if they are available, and information regarding other sources of assistance in developing a custodial agreement.

Although this new law lays the groundwork for the practice of collaborative law, it requests the Committees on the Judiciary of the Senate and Assembly to flesh it out. In particular, the Committees are to form a working group to study and make recommendations for a comprehensive statute governing the actual practice of collaborative law. The working group will include family law attorneys, representatives from the judicial, executive, and legislative branches, and members of the public. Also, the working group is requested to complete its deliberations by January 1, 2007. Then, during the 2007-08 legislative session, the Legislature intends to enact the procedural framework for the practice of collaborative law using the working group’s research and recommendations.

According to the bill author’s office, this law “recogniz[es] and encourag[e]s the process of collaborative law as a legitimate means by which to resolve and complete dissolution proceedings.” The collaborative law process, according to the bill author, seeks to “maximize settlement options for the benefit of both parties and

children and to minimize or eliminate the negative economic, social and emotional consequences of litigation.” Accordingly, the bill author has contended that this law will cause, “more practitioners [to] look to the collaborative model and the judiciary will put their weight of approval behind the process. Having such a statute in California will give this method of resolving a dissolution legitimacy, which will insure judges support it and encourage more practitioners to use it.”

Echoing those same comments, one supporter has stated that “[t]hose of us who use [Collaborative Practice] to resolve conflict had hoped that this statute would help to normalize and legitimize [Collaborative Practice], in much the same way as the adoption of mandatory mediation of custody disputes helped make mediation a well-accepted dispute resolution mode.”

[Note: significant portions of this article are taken from the legislative analysis and the bill author’s publication]



## **SELECTING A SUPERVISED VISITATION MONITOR FOR YOUR FAMILY: Requirements for Supervised Visitation Monitors in California** *by Susan Griffin, MS, Professional Visitation Provider and Trainer*

Many parents are confused about how to go about finding and selecting a Provider of Supervised Visitation Services when they walk out of Court with such an order. The Court in San Diego does provide a list of Providers but does not monitor, endorse, or evaluate the Providers. This means that parents need to educate themselves about the laws regulating Visitation Providers to ensure they are able to find a Provider who both meets the legal requirements and complies with all aspects of the regulations in their delivery of services.

This article is designed to provide parents with a series of questions and checklists they can use to assess the professionalism and appropriateness of Visitation Monitors when selecting a Professional Provider for their family. This information is based on the regulations that govern the conduct of Monitors and the way in which these services must be provided.

Section 26.2 of the California Standards of Judicial Administration became effective January 1, 1998, to read: Section 26.2 Uniform standards of practice for providers of supervised visitation. Section 26.2 is part of California's Family Code 3100. The goal of these standards is to assure the safety and welfare of the child, adults and providers of supervised visitation. Once safety is assured, the best interest of the child is the paramount consideration at all stages and particularly in deciding the manner in which supervision is to be provided in your case.

There are three types of monitors described in 26.2 and there are some standard requirements for all three types as well as a unique aspect for each. The three types are:

- Nonprofessional Provider (usually a friend or family member)
- Professional Provider (Trained Professional paid for services)
- Therapeutic Provider (Licensed Mental Health Professional paid for services)

The Nonprofessional Provider is any person who is not paid for providing supervised visitation services. The most common person in this category is a friend or a family member. Unless otherwise ordered by the court or stipulated by the parties, the Nonprofessional Provider should meet the following requirements:

- Be 21 years of age or older
- Have no conviction for driving under the influence (DUI) within the last 5 years
- Not have been on probation or parole for the last 10 years
- Have no record of a conviction for child molestation, child abuse, or other crimes against a person
- Have proof of automobile insurance if transporting the child
- Have no civil, criminal, or juvenile restraining orders within the last 10 years
- Have no current or past court order in which the provider is the person being supervised
- Not be financially dependent upon the person being supervised
- Have no conflict of interest as per subdivision (f) of 26.2 and
- Agree to adhere to and enforce the court order regarding supervised visitation.

The Professional Provider is any person paid for providing visitation services, or an independent contractor, employee, in tern, or volunteer operating independently or through a supervised visitation center or agency. The Professional and Therapeutic Provider should meet the following requirements:

- Be 21 years of age or older
- Have no conviction for driving under the influence (DUI) within the last 5 years
- Not have been on probation or parole for the last 10 years
- Have no record of a conviction for child molestation, child abuse, or other crimes against a person
- Have proof of automobile insurance if transporting the child
- Have no civil, criminal, or juvenile restraining orders within the last 10 years
- Have no current or past court order in which the provider is the person being supervised
- Be able to speak the language of the party being supervised and of the child, or provide a neutral interpreter over the age of 18

- Have no conflict of interest as specified by 26.2\* and
- Agree to adhere to and enforce the court order regarding supervised visitation.

The Therapeutic Provider is a licensed mental health professional paid for providing supervised visitation services, including but not limited to the following: a psychiatrist, psychologist, clinical social worker, marriage and family counselor, or intern working under direct supervision. A judicial officer may order therapeutic supervision for cases requiring a clinical setting.

All Providers are required by Statute 26.2 to make every reasonable effort to assure the safety and welfare of the child and adults during visitation. Professional and Therapeutic providers are required to have written security procedures and inform the parties of these procedures prior to the start of services. Professional and Therapeutic providers are required to conduct a comprehensive intake and screening to assess the nature and degree of risk for each case. The procedures for intake should include separate interviews with the parties before the first visit. If the child is of sufficient age and capacity, the provider should include him or her in part of the intake or orientation process.

Professional and Therapeutic providers are required by Statute 26.2 to obtain copies of any protective order, current court orders, any Judicial Council form relating to supervised visitation orders, a report of any written records of allegations of domestic violence or abuse and an account of a child's needs if they have a chronic health condition.

Professional and Therapeutic providers are required by Statute 26.2 to determine the appropriate ratio of children to provider by assessing risk factors, the nature of supervision, the number and ages of the children, the number of people visiting the child, the duration and location of the visit and the experience of the provider.

Professional and Therapeutic Providers are required by Statute 26.2 to maintain a neutral role by refusing to discuss the merits of the case or agree with or support one party over another. Any discussion between a Provider and the parties should be for the purposes of arranging visitation and providing for the safety of the children.

\*In order to avoid a conflict of interest, no Provider should, by Statute 26.2 :

- Be financially dependent on the person being supervised
- Be an employee of the person being supervised
- Be an employee of or affiliated with any superior or municipal court in the county in which the supervision is ordered unless specified in the employment contract or
- Be in an intimate relationship with the person being supervised.

The Professional and Therapeutic Provider are required by Statute 26.2 to keep a record for each case, including but not limited to the following:

- A written record of each contact and visit including the date, time, and duration of the contact or visit
- Who attended the visit
- A summary of activities during the visit
- Actions taken by the Provider, including any interruptions, termination of a visit, and reasons for these actions
- An account of critical incidents, including physical or verbal altercations and threats
- Violations of protective or court visitation orders
- Any failure to comply with the terms and conditions of the visitation as per subdivision (i) of 26.2 which delineates the terms and conditions of supervised visitation and
- Any incidence of abuse as required by law.

Professional and Therapeutic providers are required by Statute 26.2 to ensure that case recording are limited to facts, observation, and direct statements made by the parties, not personal conclusions, suggestions, or opinions of the provider. All contacts by the provider in person, in writing, or by telephone with either party, the children, the court, attorneys, mental health professionals, and referring agencies should be documented in the case file. All entries should be dated and signed by the person recording the entry.

Professional and Therapeutic providers are required by Statute 26.2 to produce a report if ordered by the court, requested by either party or the attorney for either party or the attorney for the child. The report should include facts, observations, and direct statements and not opinions or recommendations regarding future visitation unless ordered by the court. A copy of any report should be sent to all parties, their attorneys, and the attorney for the child.

Professional and Therapeutic providers are required to safeguard any identifying information about the parties and the child including addresses, telephone numbers, places of employment and schools by deleting them prior to releasing the documents to any court, attorney, attorney for the child, party mediator, evaluator, mental health professional, social worker, or referring agency, except as required in reporting suspected child abuse.

Communications between parties and Providers of supervised visitation are not protected by any privilege of confidentiality. The psychotherapist-patient privilege does not apply during therapeutic supervision. Professional and Therapeutic providers are required to, whenever possible, maintain confidentiality regarding the case except when:

- Ordered by the court
- Subpoenaed to produce records or testify in court
- Requested by a mediator or evaluator in conjunction with a court-ordered mediation, investigation or evaluation
- Required by Child Protective Services or
- Requested by law enforcement.

The sole responsibility for enforcement of all terms and conditions of any supervised visitation is the provider's. Professional and Therapeutic providers are required to prepare a written contract to be signed by the parties before commencement of supervised visitation. The contract should inform each party of the terms and conditions of supervised visitation. The contract should include both the requirements set out in Section 26.2 of the Family Code as well as the Rules and Guidelines of the Professional.

Professional and Therapeutic providers are required to make every reasonable effort to provide a safe visit for the child and the non-custodial party. If a provider determines that the rules of the visit have been violated, the child has become acutely distressed, or the safety of the child or the provider is at risk, the visit may be temporarily interrupted, rescheduled to a later date, or terminated entirely. All interruptions or terminations of visits are to be recorded in the case file. All providers should advise both parties of the reasons for interruption of a visit or termination.

Professional and Therapeutic providers are required to state the reasons for temporary suspension or termination of supervised visitation in writing and provide them to both parties, their attorneys, the attorney for the child, or the court.

Supervised Visitation and Supervised Exchange are valuable services for parents who are working out their differences as the family makes the often difficult transition from living together to living apart. It is important to find a Professional who is the best fit for the family who provide these vital services. Look for a Professional Provider who follows the law and, equally important, provides a warm, friendly, safe and fair environment and relationship for everyone in the family. Interview Professional Providers using the information provided in this article so you are confident the services are being provided in compliance with the law. Ask for a tour of the facility or the public places used to provide services so you can determine if the Provider and the setting are right for you and your children.

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VISIT THE SDFLCC WEBSITE!

[www.sdCouncil4Children.org](http://www.sdCouncil4Children.org)