

AAML Monthly Newsletters

Testing the Waters: Key Alcohol Testing Strategies for Family Lawyers

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In recent years, family law professionals have witnessed an alarming rise in divorce cases involving serious mental health issues and substance abuse concerns. When these issues arise, they often impact one of the most critical aspects of any divorce—child custody and parenting arrangements. Of the most pressing concerns in such cases is the excessive use of alcohol by one or both parents, which raises significant safety concerns for the minor children. In order to best protect your client and their children, it is imperative that you understand the **What, Where, When, Why, and How** of effective alcohol testing in the context of your case.

Why is Alcohol Testing Important in a Divorce Case?

Alcohol testing plays a critical role in custody disputes when concerns arise about a parent's ability to provide a safe and stable environment for their child. A parent may request testing if they believe the other parent's excessive drinking poses a risk, while some may find themselves subject to testing if their own alcohol use is questioned. In either case, courts may order testing to determine whether alcohol use is impairing a parent's judgment and ability to care for their child.

For family law practitioners, the key question is **why** testing is necessary in a given case. *Ask yourself: Am I advocating for my client to test, or do I want the other party tested?* If your own client is the subject of concern, take the time to fully understand their relationship with alcohol before rushing into testing to “prove” they don't have an issue. Pushing for testing without a clear strategy could backfire—if your client struggles with sobriety, you may inadvertently create damaging evidence for the opposing side. If this is not a concern, are you testing to create evidence for your case to prove that the concern from the other side lacks veracity? On the other hand, if your client believes their co-parent's alcohol use is a threat to their child's well-being, pinpointing the specific concern is crucial. Is it habitual daily drinking? Binge drinking? Dangerous behavior while under the influence? Clarifying the **why** behind your request will help shape the next critical steps in the case—ensuring that testing is not just a tactic, but a meaningful tool for protecting the best interests of the child.

When should Alcohol Testing be Introduced?

The decision to introduce alcohol testing in a family law case is a strategic one that can significantly impact the outcome. If substance abuse is a known concern, testing should be considered early to ensure the

child's safety and establish a clear record. However, **timing, frequency, and duration** of testing are just as critical as the decision to test itself. Should a parent be tested daily, randomly, or only in response to specific incidents? Should testing continue for a set period, or should it remain in place until a consistent pattern of sobriety is demonstrated?

Without well-defined testing stipulations and court orders, the process can become ineffective, failing to provide the necessary accountability or evidence to support your case. A poorly structured testing plan may allow concerning behavior to go unchecked or, conversely, place an unnecessary burden on a parent. Thoughtful, strategic planning ensures that alcohol testing serves its intended purpose—protecting children and ensuring fair, fact-based custody decisions.

What Defines a Positive or Missed Test?

One of the most critical aspects of alcohol testing in family law cases is ensuring that stipulations and proposed court orders clearly define what constitutes a “positive” test—and what the consequences are for missing one. Ambiguity can lead to loopholes, disputes, and ineffective enforcement. To avoid these pitfalls, courts and attorneys should establish firm, well-defined parameters, including:

- **What qualifies as a positive test?** A broad, comprehensive definition is recommended. What blood alcohol concentration (BAC) level constitutes a “positive” result? Should a missed test be treated as a failed test? Consider also including situations where a parent admits to drinking, is suspected of DUI, or enters rehab or hospitalization for alcohol-related issues—even without a confirmatory test.
- **Retest protocols for accuracy.** False positives can happen, so it's crucial to outline a process for retesting and verifying results before taking action.
- **Handling missed tests.** What if the tested parent is out of cell phone range and doesn't receive a test prompt? What if work-related travel disrupts scheduled testing? Anticipating and addressing these scenarios in advance eliminates confusion and prevents misuse of technicalities as excuses.

By establishing clear, enforceable definitions and procedures, practitioners and the courts can ensure that alcohol testing serves its true purpose: protecting children and holding parents accountable.

Where and How is Testing Conducted?

For alcohol testing to hold weight in a custody dispute, it must be properly administered, reliable, and legally admissible in court. A poorly structured testing agreement or court order can lead to loopholes, disputes, or even unreliable results. To avoid these pitfalls, stipulations and court orders should address critical details:

- **Who conducts the testing?** Will a court-appointed expert, an independent lab, or another entity oversee the process? Ensuring a reputable administrator is key to maintaining credibility. The stipulation or court order should clearly indicate who is the administrator.
- **Is expert testimony necessary for admissibility?** To prevent costly and time-consuming legal battles, consider including a stipulation that allows testing reports to be admitted as evidence without requiring expert authentication.

Final Thoughts: Balancing Accountability and Fairness

Alcohol testing in divorce cases is a powerful tool for protecting children, but it must be implemented with careful consideration. A well-crafted alcohol testing order must be **fair, transparent, and enforceable** to ensure that results are accurate, meaningful, and truly serve the best interests of the child. Without these

safeguards, testing can become a wasted effort rather than a tool for accountability and protection. By understanding the **why, when, what, where, and how** of alcohol testing, families can navigate these difficult situations with greater clarity and fairness—ultimately ensuring that children remain safe and well cared for.
