

# A Comprehensive Guide to Child Custody Evaluations: Mental Health and Legal Perspectives

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This publication has been prepared in order to provide accurate and authoritative information on child custody evaluations. Neither the publisher nor the author is intending to provide professional legal or psychological services with this publication. If such service is required, assistance should be obtained from a qualified professional.

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# PREFACE

In order to assist families embroiled in child custody disputes, the courts order thousands of child custody evaluations each year. Some of these evaluations are brief, problem-focused assessments aimed at quickly resolving a specific area of dispute. Other evaluations are more comprehensive, covering all aspects of family functioning in complex cases. The process of ordering, conducting, or assessing either type of child custody evaluation requires a clear understanding of how legal and psychological issues are intertwined in each case.

This book is designed to meet this need for a comprehensive guide that combines legal information and forensic procedures with the social science research that must be the basis for all custody recommendations and decisions. The book should be helpful to three separate but related groups of experienced professionals: (a) family and probate judges, (b) family practice attorneys, and (c) forensic mental health professionals.

Before they can order a custody evaluation and use the information it provides, judges must have a clear understanding of how to integrate clinical information about each family with the related social science research. This book will also enable judges to assess each custody report in terms of (a) the professional and legal guidelines for conducting custody evaluations, and (b) research-based criteria in each area of family functioning. The text and CD also offer examples of how best to write orders for custody evaluations, and detailed parenting plans that address the issues in each family.

As attorneys think about how to approach each child custody case, they need to consider whether the parents are good candidates for mediation or collaborative law. In cases that require

litigation, attorneys must consider whether to request a court-ordered custody evaluation, and what kind of evaluation that should be. Once the custody evaluation is done, attorneys have to know how to evaluate it before they can decide how best to approach the rest of the litigation. The text and CD contain information needed for all of these processes.

In order to conduct a child custody evaluation, all mental health professionals must have a clear grasp of the relevant social science research, legal issues, and forensic procedures. The interdisciplinary approach of this book is designed to provide this information in a clear, concise format. The accompanying CD also provides examples of materials that can be adapted to each evaluator's practice at every phase of the evaluation.

All professionals who are involved in a child custody dispute – regardless of professional background and role in the dispute – should ensure that the families being evaluated do not become lost in the mechanics of the evaluation and the related litigation. Every custody evaluator must collect and present the information in a way that preserves each family member's dignity and conveys their particular characteristics clearly, without becoming caught up in the custody battle itself. Impartiality is essential to a good evaluation; without this, even sophisticated assessment methods can be ineffective or harmful.

The book is organized into four parts. *Part I* covers the general issues and controversies about the role of the Child Custody Evaluator, including state variations, ethical issues, legal rules in the family court, and relationships among all of the professionals working on a given custody dispute. *Part I* also summarizes the current standards and guidelines for child custody evaluations and discusses the on-going controversy about whether evaluators should make custody recommendations.

*Part II* summarizes the social science research about the developmental needs of children and families, and then considers what this information suggests about parenting plans, family interventions, and parent/child contact in abusive families.

*Part III* focuses on how to conduct and how to critique a custody evaluation. Chapter 11 presents the complex issues

surrounding the use of psychological tests in custody evaluations. Then Chapters 12, 13, and 14 provide detailed information about the steps involved in the evaluation, assessment techniques, data-organizing tools, and approaches to writing the report. Chapter 15 discusses how to evaluate a completed report.

*Part IV* covers the special issues that may arise during child custody evaluations, such as alternative family structures, third-party visitation, relocation, alienation and estrangement, parental abduction, medical problems, mental illness, substance abuse, domestic violence, child abuse and neglect, and child sexual abuse. Each chapter in *Part IV* contains information about: (1) legal issues and standards involved in that area, (2) social science research, and (3) procedures and factors that must be included in the evaluation.

This book aims to provide a thorough, concise summary of the current information available on each topic. Readers who want to explore a topic in more depth should consult the list of *References* and the section on *Resources*. The *Glossary* defines legal and social science terms used in the discussion, and the *Index* allows readers to go directly to any topic. All of the forms and other materials in the CD enclosed with the book are downloadable, making it simple to edit and print the material for individual use. In this way, professionals can increase their efficiency and thoroughness, freeing them to concentrate on the families who should be the true focus of every evaluation.

# ACKNOWLEDGMENTS

**M**any people have helped me with this project. First, I would like to thank the many families I have worked with over the years. They have taught me, over and over, how resilient, thoughtful, warm, and loving many adults can be in the face of great adversity, and how wonderful even the most distressed children are when we listen to their voices and dreams. The struggles of these families in crisis inspired me to write this book, which is dedicated to improving the effectiveness of the mental health and legal professions in providing services for them.

The staff at Harvard have been very generous in sharing their time and resources with me. My colleagues and supervisees at the Medical School were always a source of encouragement and intellectual challenge. Suzanne Spreadbury has provided invaluable assistance through the Faculty Aide Program of the Harvard University Extension School, which gives students the opportunity to work with faculty on ongoing research and writing projects. John Brewton was creative and diligent in finding all manner of scholarly resources, and Ilana Hodsdon spent many hours doing a variety of essential tasks, especially literature reviews and searches for mystery references.

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My colleagues on the Massachusetts Board of the Association of Family and Conciliation Courts have been particularly inspiring and supportive. Always loving a lively discussion, they have encouraged me to look at many issues in new and varied ways. I am also indebted to the many colleagues who critiqued various parts of the manuscript, especially psychologists Robert Zibbell and Sharon Gordetsky and attorney Linda Fidnick. Others have permitted me to reprint or incorporate their forms and methodologies in my manuscript, including judges Gail Perlman, Geoffrey Wilson, and Arline Rotman, psychologists Linda Santos Smith and Robert Zibbell, and social worker Joseph Onofrio.

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Joanna Bunker Rohrbaugh  
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# ABOUT THE ACCOMPANYING CD-ROM

**T**he CD includes downloadable copies of the following materials, which are designed to be adapted for mental health and legal practices. Just download the document you want to use and add your own letterhead, address, and any changes you wish. All documents were produced using Word for Windows.

## **I. Court Appointments**

- Short Appointment Form with Checklist of Issues -- #1
- Short Appointment Form with Checklist of Issues -- #2
- Detailed Appointment Form with Checklist of Issues -- #1
- Detailed Appointment Form with Checklist of Issues -- #2
- Appointment Form with Blank Lines for Judge to Define Issues
- Narrative Appointment Form -- #1
- Narrative Appointment Form -- #2
- Appointment Form Regarding Child/Psychotherapist Privilege

## **II. Record Keeping**

- **IIa – Case Management**
  - Case Label
  - Folder Labels
  - Case Cover Sheet
  - Client Information – Consultation
  - Checklist for Child Custody Evaluations
- **IIb – Billing**
  - Time Sheet
  - Itemization of Services for Custody Evaluation
  - Forensic Consultation Ledger
  - Billing Statement - Child Custody Evaluation
  - Billing Statement - Forensic Consultation

### **III. Introductory Letter to Parent**

### **IV. Authorizations for Release of Information**

- Authorization for Release of Information – Child Custody Evaluation
- Authorization for Release of Information – Consultation

### **V. Contracts and Fee Agreements**

- Va – Introduction
- Vb – Contract and Fee Agreement – Child Custody Evaluation
- Vc – Consultation Agreement: Child Expert
- Vd – Contract and Fee Agreement: Consultation

### **VI. Parent Questionnaire**

### **VII. Parent Interview**

### **VIII. Collateral Information**

- **VIIIa – Professionals and Institutions**
  - Letter to Police Department
  - Letter to Department of Social Services
  - Letter to Pediatrician
  - Letter to Couples Therapist
  - Letter to Individual Psychotherapist or Counselor
  - Letter to School
  - Questions for Teachers
  - Interview for Teachers
- **VIIIb – Non-Professionals**
  - Letter to Friends, Relatives, and Community Members
  - Consent Form for Non-Professional Collaterals
  - Questions for Friends, Relatives, and Community Members
  - Interview for Friends, Relatives, and Community Members

### **IX. Parenting Plans**

- IXa – Introduction
- IXb – State of New Hampshire Judicial Branch, 2006 – *Parenting Plan*
- IXc – American Academy of Matrimonial Lawyers, 2005 – *Model for A Parenting Plan*

- IXd – Massachusetts Trial Court, Domestic Violence Visitation Task Force of the Probate and Family Court Department, 1994 – *Supplemental Order: Visitation Issues*

## **X. Report Form**

### **XI. Declarations, Motions, and Complaints**

- XIa – Introduction
- XIb – Declarations for Evaluators to Send to Attorneys
  - Declaration of Non-Participation
  - Declaration of Non-Payment
- XIc – Court Motions for Evaluators
  - Motion for Clarification of Purpose of Evaluation
  - Motion for Expansion of Scope of Evaluation
  - Motion for Contempt for Non-Participation
  - Motion for Copies of Previous Reports
  - Motion for Access to Court Records
  - Motion for Appointment of a GAL to Evaluate Waiver of Patient-Therapist Privilege
  - Motion for Extension of Time for Child Custody Evaluator
  - Motion for More Hours for Child Custody Evaluator
  - Motion for Payment for Court Testimony
  - Motion to Compel Payment
  - Motion to Quash Subpoena
  - Motion for Reappointment of Child Custody Evaluator
- XId – Complaints for Evaluators
  - Complaint for Contempt for Non-Payment

### **XII. Guidelines for Child Custody Evaluations**

- XIIa – Introduction
- XIIb – American Academy of Matrimonial Lawyers, 2000 – *Bounds of Advocacy: Goals for Family Lawyers* (Rev. ed.)
- XIIc – American Psychological Association, 1991 – *Specialty Guidelines for Forensic Psychologists*
- XIId – American Psychological Association, 1994 – *Guidelines for Child Custody Evaluations in Divorce Proceedings*
- XIIe – Association of Family and Conciliation Courts, 2007 – *Model Standards for Child Custody Evaluation*