

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.

2

ROLES AND ETHICAL ISSUES IN CUSTODY DISPUTES

High rates of divorce and separation are not new in the United States. What is new, however, is the high rate of custody disputes. Prior to the advent of no-fault divorce, divorcing couples battled in court over issues related to property, sexual infidelity, blame for the break-up, and other things unrelated to the children. On an emotional level, these legal disputes were really over marital conflicts that remained unresolved during the separation. Once no-fault divorce laws removed most of the contested issues from the courtroom, enraged couples who had used the court to continue their marital battles had only child custody to fight about. Thus child custody has become a major focus of legal disputes between divorcing, high-conflict parents (Stahl, 1994) and these high-conflict families use a disproportionate amount of court resources (Pruett, Nangle, & Bailey, 2000).

When marital conflict is severe, families turn to a variety of professionals for assistance. Some of these professionals focus on helping the family improve their relationships and stay together, while others focus on helping the parents separate, divorce, and devise a long-term plan for parenting the children. If separating and divorcing parents cannot agree on a parenting plan, the Court will have to order one. If the circumstances are complicated and unclear

to the Court, the judge may appoint a child custody evaluator to gather information and report back to the Court. Thus only when all other interventions have failed does the Court appoint a legal or mental health professional to do a child custody evaluation. When doing a child custody evaluation, the professional has to fulfill a role that is quite different from the other roles they are used to. It is important, therefore, to consider how the various roles in custody disputes differ from one another and to remember that one can only serve in one role in any given child custody case.¹

ROLES FOR LEGAL PROFESSIONALS

Attorney

When acting as an attorney for one of the separating or divorcing parties, one's responsibility is to serve the interests of that party rather than the entire family. The code of conduct for matrimonial attorneys does require that attorneys consider the welfare of the child, however. Furthermore, attorneys are officers of the Court, which imposes a duty for them to consider what is best for the children and not to mislead the Court. Attorney/client privilege applies to all conversations and work products.²

As discussed in Chapter 5, there is some variation between **collaborative** and **adversarial models of legal practice**. In both approaches, however, the attorney's primary responsibility is to the party/parent who engaged them, not to the children or to the entire family.

In some states, courts appoint attorneys as other types of representatives in custody disputes. In Texas, for instance, an **attorney ad litem** represents and advocates for the interests of a party, including a child,³ while an **amicus attorney** assists the court rather than providing legal services directly to the child (Hazlewood, 2004).

Arbitrator

In arbitration, the parties agree to use a neutral third party, or arbitrator, whose decision is binding. Arbitrators are usually attorneys. The major difference from mediation is the legally binding

nature of the neutral party's decisions. Many jurisdictions do not permit the use of arbitration in child custody disputes.⁴

Judge

The family law judge has the final decision-making responsibility in child custody disputes and other family-law issues. The judge is the trier of fact who hears testimony, reviews evidence, and issues orders regarding child custody, adoption, and other matters in dispute within the family.⁵ The judge must approach each case in an impartial manner and combine an extensive knowledge of law and judicial procedure with an understanding of basic human nature and the requirements for using scientific methodology in family law disputes.⁶ If judges think that more information is needed in order to make a decision in a custody dispute, they may appoint a custody evaluator.⁷

ROLES FOR LEGAL OR MENTAL HEALTH PROFESSIONALS

Mediator

Mediation involves using an impartial, objective third party to reach a nonbinding resolution of a dispute outside of the court system. Some writers maintain that divorce mediation is superior to divorce litigation because it tends to reduce competition between the parents, improve the children's post-divorce adjustment, reduce re-litigation, and increase compliance with agreements.⁸

When acting as a mediator in a child custody dispute, the professional is responsible to the couple or family as a whole. The mediator's goal is to help the couple develop their own plans for the children. The process is often confidential, which prevents the couple from later involving the mediator in the adversarial court process. Many mediators include such confidentiality in their contracts, so that the couple will be able to talk freely in mediation without fear that their comments can be used against them in later litigation.

Either attorneys or mental health professionals may be mediators, and are appointed by the Court or seen in private practice by agreement of the parties. No one should undertake the role of a mediator without being trained in the mediation model, however, because effective mediation requires a unique set of skills and extensive, specialized experience.

Custody Evaluator or Investigator

The major characteristics of this role are outlined in Box 4 and discussed in the section below which compares the role of a psychotherapist with that of a custody evaluator. Although attorneys do serve as custody evaluators in many states, the psychological complexities of many of these evaluations require extensive mental health experience and training. For this reason, the new standards for child custody evaluations call for them to be done by qualified mental health professionals who have a “minimum of a master’s degree . . . in a mental health field that includes formal education and training in the legal, social, familial and cultural issues involved in custody and access decisions” as well as “child development, child and adult psychopathology, interviewing techniques, and family systems” (AFCC, 2007, section 1.2, p. 73).

Some states have dealt with this issue by distinguishing between evaluations that need mental health experts and those that do not. In Massachusetts, for instance, there are (1) Category F Investigators who can be either attorneys or mental health professionals and (2) Category E evaluators who must be mental health professionals (Comm.Mass., 2005b).

Parenting Coordinator⁹

In 8–12% of custody disputes, the severe conflict does not end with the child custody evaluation and subsequent court order regarding a parenting plan. These extremely high-conflict parents continue to fight over the children in repeated court battles, and in the process use a disproportionate amount of the court’s time and resources, deplete their own economic and emotional reserves, and subject the children to toxic conflict.¹⁰ In response to their frustration with the constant re-litigation of these families, judges in some jurisdictions have begun to

Box 4. *Differences Between the Roles of Psychotherapist and Child Custody Evaluator*

	Psychotherapist	Custody Evaluator
◆ Identity of client	patient	court
◆ Disclosure of Information	confidentiality	<u>no</u> confidentiality
◆ Payment	by patient, at time of service	by parents, in advance
◆ Attitude	advocate	impartial
◆ Sources of Information	patient/family only; assume accuracy	family and collaterals; check on accuracy
◆ Decision-making	revision and updates	no revision
◆ Activism	intervention	no intervention
◆ Goal	improve patient mental health	accurate information/ recommendations to Court

delegate limited areas of authority over child custody issues to experienced mental health professionals and attorneys by appointing them as parenting coordinators. The parenting coordinator seeks to settle

parental disputes in an immediate, non-adversarial, court-sanctioned forum that combines assessment, case management, mediation, and arbitration functions (Coates, Deutsch, Starnes, Sullivan, & Sydlik, 2004).

The new professional role of parenting coordinator (PC) has recently been implemented in 13 states, although only Idaho, Oklahoma, and Oregon have statutes specifically authorizing the appointment of a PC (AFCC, 2003).¹¹ The PC is typically appointed by court order (with parental consent) for a term of two years, can be re-appointed, and may also resign, be removed, or substituted through the court. Depending on the jurisdiction, the PC is given varying authority over child-related issues such as parenting time and decisions regarding child education and medical treatment. Usually, however, the PC must work within the existing court-ordered parenting plan and cannot make changes in custody or substantially alter existing access schedules.

The PC process is usually *not* confidential, so the PC can be called to testify as a witness in a court hearing or be asked to make a report to the Court.¹² The PC typically has access to all of the professionals involved with the family, and almost always meets not only with the parents, but also occasionally with the children.

Not all families with intractable long-term conflict can benefit from parenting coordination. A PC cannot serve as a change agent for families where a parent chronically refuses to follow court orders, has a severe personality disorder, or suffers from mental illness or substance abuse (Coates et al., 2004). On-going domestic violence changes the function of the PC to enforcement rather than dispute resolution, and requires specialized expertise (AFCC, 2006).¹³

The Parenting Coordinator's purpose is to facilitate the implementation of the parenting plan, thus helping to safeguard the wellbeing of the children. The PC's legal responsibility is to the appointing Court, however. The PC needs to be impartial and objective, trying not to "take sides" (or even *appear* to take sides) in the continuing conflict between the parents. The costs of parenting coordination are paid by the parents, in proportions determined by the Court. The litigious, conflict-ridden style of the parents makes retainers advisable.¹⁴

Although the Association of Family and Conciliation Courts has proposed national guidelines for the practice of parenting coordination (AFCC, 2006), jurisdictions currently vary in the formality and extent of training required to be appointed as a PC.¹⁵ Because the PC role exists in the interface of law and mental health, both attorneys and mental health professionals serve as PCs.

Before attempting this new role, professionals must consider the unusually complicated legal, ethical, and professional malpractice risks associated with being a parenting coordinator. The most obvious risk derives from the fact that the parenting coordinator often serves as a “lightning rod for the [parental] conflict” (Coates et al., 2004), raising the possibility that one of the litigious parents will file a spurious complaint against the PC either in court or with a professional licensing board.¹⁶ Additional risks are posed by the hybrid nature of this legal/psychological role, which requires specialized training, experience, and skill and invites review by a myriad of legal and psychological regulatory organizations (Sullivan, 2004).

Special Master

This is the term used in California to refer to a parenting coordinator (AFCC, 2003).

ROLES FOR MENTAL HEALTH PROFESSIONALS

Psychotherapist

This is the role most familiar to mental health professionals. For a mental health professional just starting to do child custody evaluations, it is a challenge to shift to the new forensic role. Important differences in the roles occur in the following areas (also outlined in Box 4):¹⁷

- 1. Identity of the client.** Regardless of who hires a therapist and pays the bills, the *client is the patient*: whether an adult, child, couple, or entire family. Even when an insurance company, governmental body, or parent of a child patient requires that

the therapist provide certain information about the therapy, the therapist's ultimate responsibility remains to the patient.

For the child custody evaluator, on the other hand, *the client is the appointing court*, even though the parents usually pay for the evaluation.¹⁸ Even when the evaluator is hired by an attorney, remember that, "The party being evaluated is the attorney's client, not the evaluator's client. The examiner is ultimately answerable to the court" (Gould, 2006, p. 18). This is one of most difficult shifts for experienced therapists who are new custody evaluators. As therapists, they are accustomed to responding immediately to the needs of individuals and families in crisis. As custody evaluators, they must learn to resist forming therapeutic alliances with those in distress; they must hold back, and conduct their evaluation in a manner that will be useful to the Court [who can then help the family find a custody arrangement that will be best for the children]. Having an impact indirectly, through someone else, is initially foreign to therapists beginning to do custody evaluations.

2. **Disclosure of information.** In therapy, confidentiality exists and is strictly interpreted and enforced by both professional and governmental bodies. This confidentiality belongs to the patient, *not* the therapist. This means that only the patient can give permission for the therapist to provide information about the patient or therapy to a third party, by signing a Release of Information form.¹⁹

In custody evaluations, on the other hand, there is *no* confidentiality; the entire purpose of the evaluation is to collect and report information to the Court.

3. **Payment arrangements.** Most therapy patients (or their insurance companies) pay for services immediately or soon after each session.

Child custody evaluations should be paid for in advance, through the use of retainers, so that everyone is clear that the result of the evaluation is not related to the amount or source of payment.²⁰

4. **Attitude towards the patient/parent.** A therapist listens intently to their patient and offers support, acceptance, and compassion.

At the same time, the therapist is also expected to maintain a professional and objective relationship with the patient. In spite of a therapist's concern and emotional involvement with the patient, they cannot permit their own emotional difficulties to impinge upon the therapy, nor let themselves become so attached to the patient that they cannot perceive the patient and the therapy relationship clearly. Experienced therapists learn to balance these elements of the therapy relationship so that they can offer support without becoming overly emotionally involved. If the therapist manages this task well, the patient will perceive the therapist as their trusted *advocate*.

A custody evaluator approaches parents/litigants with a more detached and impartial demeanor. Here the task is to obtain thorough and accurate information about painful topics from people who are in crisis. To do this, the evaluator must also listen intently but act in a noncommittal yet supportive manner. Each parent needs to feel that their concerns have been heard and that they have been treated fairly, and yet they cannot be led to believe that the evaluator is on their side in the dispute. *Impartiality* is essential for the custody evaluator.²¹

5. Sources of Information. A therapist usually seeks information only from the patient. There is no concerted effort to corroborate that information. Even trauma specialists take the patient's story at face value, without checking on medical records, police reports, or battered women's shelters. The exception here is previous therapy, where good practice requires the therapist (with the patient's written permission) to get previous medical records and speak with previous psychotherapists.

Custody evaluators, on the other hand, should corroborate all of the essential information provided by the parents/litigants, especially information that is contested by any party to the dispute.

6. Type of decision-making. In psychotherapy and psychiatric consultation, a therapist draws conclusions and makes recommendations that can be revised should the need arise. Even when psychotherapy or a consultation is completed, the patient or consulting parent may return for follow-up.

Child custody evaluations call for a more definitive set of conclusions and recommendations that have even more far-reaching implications and yet cannot be refined or revised as more or differing information is collected later on. This difference causes many psychiatrists and other mental health professionals to be reluctant to become involved in child custody evaluations (APA-med, 1988).

7. **Activism.** The therapist is accustomed to intervening in the patient's life; in fact, therapy itself is really an intervention. The whole purpose of therapy is to change the patient and their circumstances in order to alleviate pain and suffering.

Custody evaluators, on the other hand, are asked to gather information for the Court. Even when the evaluator can see changes that need to be made immediately, or a parent asks them to intervene in a particular situation, they should not do so. Decisions and actions should be left to the Court because it is impossible for the evaluator to maintain their neutrality, or appearance of neutrality, during and after such an intervention.²² This is one of the most difficult shifts for mental health professionals to make because most of their professional training and experience has prepared them to intervene, and because it is emotionally painful not to be able to do so.

8. **Goal.** The psychotherapist's goal is to help the patient to function in a healthier manner, to improve their happiness and mental health. Although there is always some concern about how the patient affects other people, the therapist's main responsibility is to the patient alone. The tension inherent in this responsibility is most evident in individual psychotherapy, where psychological improvement in the patient may mean that they leave a destructive relationship or make other changes that are in their own best interests but not necessarily in the best interests of their family members, friends, or employer.

The purpose of a child custody evaluation is to provide accurate and helpful information and recommendations to the Court so that the *judge* can make appropriate decisions which will benefit the children. As the evaluator collects information and formulates conclusions, they must always focus on what would be best for the

children, and this is often different from what would be best for the parents or other parties in the custody dispute. Thus the ultimate goal of a custody evaluation is to help the children, but this is done indirectly through the Court.

Mental Health Evaluator

A mental health professional may perform a psychological evaluation for a variety of reasons, including (1) as part of an overall diagnostic assessment prior to beginning psychotherapy or other treatment, (2) as part of an in-patient evaluation, (3) as part of an assessment for disability benefits, or (4) to assess changes in functioning as part of ongoing treatment plans. This evaluation often involves psychological testing, and is usually billed to the patient's health insurance. The client is the individual being evaluated; there is often little focus on the family context.

Psychological evaluations performed for regular psychiatric purposes are *not* the same as those performed as part of child custody evaluations. The clinicians involved in regular psychiatric evaluations are not experienced with the complexities of child custody disputes. The psychological tests involved cannot be applied to parenting issues.²³ The standards for sufficiency of information are lower in clinical evaluations than in forensic evaluations because the information gathered in forensic evaluations is used to formulate opinions that can responsibly be expressed with a reasonable degree of professional certainty. The audience differs: clinical evaluations are done with other psychiatric providers or insurers as the imagined audience, while forensic evaluations must be conducted and the ensuing reports written with the Court's needs in mind (AFCC, 2007). And finally, health insurance is routinely used for clinical evaluations but cannot be used for forensic evaluations.

Consultant to Attorneys

Over time, experienced custody evaluators often come to work closely with a number of family law attorneys. The attorneys call to ask the evaluator to assess the information in a case to determine whether a child custody evaluation is needed, or to review the report of a completed child custody evaluation. Some mental health experts

avoid these situations which involve assisting the attorney on one side of a custody dispute. I have found, however, that it is often possible to help the attorney understand the individual and family dynamics in a way that ultimately helps the family to settle their dispute in a more reasonable fashion. Others have suggested that such reviews of child custody evaluations are important because they provide “a mechanism by means of which [forensic mental health professionals] can police themselves” (Gould, Kirkpatrick, Austin, & Martindale, 2004, p. 39).

In the consultation with an attorney, the mental health professional must make it clear that they cannot offer an opinion about custody without evaluating *all* of the parties in the case (AAPL, 1995; AFCC, 2007, APA, 2002; APA-med, 1988) and conducting a complete child custody evaluation. Therefore, a consulting forensic mental health professional cannot offer a professional opinion about custodial placement.²⁴

In these consulting situations, the mental health professional's client is the attorney; the attorney's client is the parent. The interactions between the consultant and the attorney are usually covered by attorney-client and attorney work-product privilege.

See Chapter 15 for a discussion of methods for reviewing child custody evaluations.

Divorce Coach

The collaborative approach to separation/divorce often requires a divorce coach who meets with a parent to help them cope with the emotional issues involved in their separation or divorce. This role is similar to that of a therapist who does short-term therapy focused on a specific issue. The client is the parent who meets with the divorce coach, and the goal is to help that parent move ahead with the divorce in a more comfortable way. The parent pays the divorce coach directly, and fees are similar to those for psychotherapy.²⁵ Confidentiality applies to divorce coaching, although the parent usually gives permission for the divorce coach to discuss matters with one or both attorneys, and the divorce coach may participate in five-way meetings with both parents and both attorneys.

Child Expert

The collaborative approach to separation/divorce may also require a child expert, or mental health professional who meets with both parents to help them understand the needs of the children. The child expert often meets with the children separately in order to understand their particular personalities and needs in the context of the separation/divorce. This information is then reported to both parents in a joint meeting, and there are often five-way meetings with the attorneys as well.

Although the child expert does meet with the parents together, as a couples therapist would, the child expert is focused on improving the parents' understanding of their children. Family dynamics may be discussed in terms of their impact on the children. Unlike couples therapy, however, the purpose is not to help the parents understand and ultimately to change their own interactions, but rather to help the parents understand and address the needs of the children.

Confidentiality may apply to the child expert's meetings with the parents and the children, but the parents usually give permission for the child expert to meet with both the parents and, on occasion, with the attorneys in the case.

Expert Witness

There are times when a court or the attorneys in a case engage a forensic mental health professional to evaluate and offer an opinion on certain aspects of a case, without doing a child custody evaluation. In this context the mental health professional is acting as an expert witness, whose testimony is allowed on the basis of their training, expertise, and adherence to scientific principles of data collection and inference formation (Fed. R Evid, 2004).²⁶

A mental health professional may become an expert witness in two basic ways. One way is for the Court to request that the professional provide information about child development, family dynamics in divorce, general psychological principles and research, or other matters related but not limited to a case. Here the mental health professional is offering expert testimony to the Court without direct knowledge of a specific case. This is the most straightforward,

non-controversial type of expert witness because the expert is not seen as favoring one side in the custody dispute.

A second way to become an expert witness is to be hired by an attorney to critique a custody evaluation report. This role is similar to the consultant to attorneys except that here the attorney seeks to have the consultant testify in court as an expert witness. Attorneys are apt to engage such an expert when the report of a child custody evaluation has been unfavorable to their client. When a forensic mental health expert takes on this role, it is crucial to observe the stricture about offering professional opinions *only* about people one has evaluated personally. Thus before beginning to serve as an expert witness the mental health professional must inform the attorney that they cannot offer an opinion about custody *per se* and must limit their testimony to (a) an evaluation of the data-gathering techniques used in the custody evaluator's report, and (b) an explanation of the meaning of various findings or concepts in the custody evaluator's report, in the context of social science research. Even when the expert carefully limits the type of testimony they can offer, it is still very difficult for them to maintain the reality and appearance of impartiality. In fact many judges will not permit an expert hired by one of the parents to testify in court.

TRAINING AND CERTIFICATION FOR CHILD CUSTODY EVALUATORS

By now, it should be clear that a child custody evaluator has to be knowledgeable about a wide variety of techniques and topics, both psychological and legal. Basic clinical expertise is not sufficient, even if one already works with adults, children, and families; a wide variety of other skills must be mastered as well. In the last ten years, the professional associations have developed a list of training requirements for child custody evaluators. These are summarized in Box 5 and include knowledge of relevant behavioral science research, forensic assessment techniques, legal standards and procedures, and special issues such as abuse, relocation, and

Box 5. *Training Requirements for Child Custody Evaluators*

Prerequisites:

- Minimum of a Master's degree in a relevant mental health field
- Competency in psychological assessment of children, adults, and families

Basic training and expertise:

- Interviewing and assessment techniques
- Techniques to collect relevant data and assess its reliability and validity
- Child development and family dynamics, including diverse family structures
- Child and family psychopathology
- Complexities of divorce and impact on children
- Social, legal, familial, religious, and cultural issues involved in custody and visitation
- Applicable legal standards and procedures, including laws governing divorce and custody
- Preparation and delivery of court testimony

On-going education:

- Current knowledge of relevant scientific and professional developments

Specialized training:

- Child abuse and neglect
- Family violence
- Substance abuse
- Relocation
- Child alienation

Supervision and consultation:

- Supervision essential for first two years
- On-going peer supervision recommended
- Consultation for topics outside areas of expertise, even for experienced evaluators.

child alienation. Supervision and consultation is encouraged for all evaluators and required for anyone just starting out.²⁷

This is a daunting list, but mental health professionals who want to begin doing custody evaluations should not be discouraged. The rest of this book will introduce the essential elements of the required areas of knowledge. To follow-up, evaluators should attend some of the training workshops listed in Appendix A.²⁸ Then on-going supervision, consultation, and conference attendance can clarify any remaining areas of confusion and provide up-to-date information about changes in the field. These activities will also provide evaluators with invaluable contact with other professionals working in this challenging but rewarding area.

States have just started to develop certification and training requirements for child custody evaluators. California, for instance, has statutes that spell out the training requirements for child custody evaluators (Cal. R. Ct., 2005b, 2005c). By starting to fill any gaps in their knowledge now, evaluators working in other states will not only be able to perform better evaluations, but will also be ready for the more formal certification process that will probably occur in their area eventually.²⁹

Notes

1. There has been extensive discussion of whether a child custody evaluator (CCE) should later serve as a parenting coordinator (PC) in the same case, because the CCE has the advantage of already being familiar with the family. I think that such service as a PC is not advisable because it would prevent the CCE from doing a follow-up evaluation, should the Court later decide that one is necessary. It is never appropriate to serve as a therapist and a child custody evaluator in the same case, even at different points in time, because (a) the CCE must be impartial, whereas a therapist is an advocate for the patient, and (b) the confidentiality which exists in the therapist/patient relationship is not present with the CCE, so that the CCE who has previously been a therapist in the case may have information the parent would not wish a CCE to have. See Box 4 for other differences between the two roles.
2. For a detailed discussion of the practices and obligations of attorneys in divorce cases, see the guidelines written by the American Academy of Matrimonial Lawyers (AAML, 2000), which are included in the CD accompanying this volume.
3. The role of the *attorney ad litem* in Texas is similar to that of the *guardian ad litem/next friend* in Massachusetts.
4. Hon. Arline Rotman (ret.), Personal communication, January 5, 2007.
5. In some jurisdictions the Probate and Family Court is called the Domestic-Relations Court, the Court of Domestic Relations, or simply the Domestic Court.

6. Ackerman (2001) surveyed a nationwide sample of 800 family law judges and reported on the judges' approaches to a variety of issues in custody evaluations and in the resolution of child custody disputes.
7. The parties in a custody dispute may also motion for a custody evaluator to be appointed.
8. These claims have been advanced by some well-known forensic psychologists (e.g. Dillon & Emery, 1996; Gould, 1998, 2006). Others have challenged the advantages of mediation, however, citing contradictory research. This controversy will be discussed in the section comparing collaborative and adversarial law in Chapter 5.
9. Current usage varies between *Parent* Coordinator and *Parenting* Coordinator. Given that the professional involved is attempting to coordinate or facilitate the couple's parenting, rather than to coordinate the parents themselves, the latter form seems more appropriate.
10. Garrity & Baris (1994) have suggested that in approximately 20% of cases involving child custody evaluations, the severe conflict continues for at least two years after the evaluation and subsequent court order. Given the growing demand for Parenting Coordinators, Special Masters, and other professionals who work with post-divorce families in an ongoing manner, the percentage of families who experience continuing severe conflict may be even higher than 20%.
11. In states without statutes specifically authorizing a Parenting Coordinator, the PC concept is authorized by using the authority of an existing, related statutory concept such as that for guardians *ad litem*, mediators, referees, or special masters. In addition to the term "parenting coordinator" (GA, ID, MA, NC, OH, VT), this hybrid role has also been called a "special master" (CA), "med-arbiter" (CO), "wiseperson" (NM), "custody commissioner" (Hawaii), "family court advisor" (AZ), "resolution coordinator" (OK), and "parenting referee" (OR) (AFCC, 2003). In the present volume the term Parenting Coordinator (PC) will be used to apply to all of these similar models.
12. See the AFCC Guidelines for a discussion of the confidentiality issue in parenting coordination (AFCC, 2006, p. 168).
13. The AFCC Task Force on Parenting Coordination states that, "Parenting coordination is a service for high conflict domestic relations cases, which clearly encompasses cases in which there is domestic violence, including not only physical abuse, but also the domineering, intimidating behavior that may accompany it." (AFCC, 2003, p. 549.) However, they go on to note that, "By the time parents become involved with a PC, the presence of violence in their relationship should have been litigated..." Thus the AFCC appears to be referring to a family having a *history* of domestic violence. On-going domestic violence would render the dispute-resolution interventions of a PC ineffective and potentially harmful.

In their later guidelines (AFCC, 2006) the AFCC Task Force clarifies the matter further by stating that, "The alternative dispute resolution process described above as central to the parenting coordinator's role may be inappropriate and potentially exploited by perpetrators of domestic violence... [Here] the role of the PC changes to an almost purely enforcement function [involving a court order]... ADR techniques in such cases may have the effect of maintaining or increasing the imbalance of power and the victim's risk of harm." (p. 165).

14. Most PCs charge hourly rates of \$75 to \$275 for costs that include sessions with the parents; communications with the parents by phone, Email, or letter; interviews with the children; investigation of records and contact with other professionals involved with the family; travel, preparation of agreements and reports; and court appearances. (AFCC, 2003)
15. The AFCC (2003, 2006) lists areas of required expertise that essentially involve those needed to be a child custody evaluator (see Box 5 in this chapter) plus expertise in conflict resolution.
16. Although court-appointed experts are normally given quasi-judicial immunity, most court appointments of parenting coordinators are not based on statutes or clear case law. Therefore it is not yet clear whether a court-appointed PC can be sued for carrying out appropriate PC functions. Furthermore, a disgruntled party can always (1) sue a professional for negligence for violating the standard of care in their profession, or (2) make a complaint to a licensing or other regulatory board (Coates et al., 2004).
17. The differences between the role of a psychotherapist and that of a custody evaluator have been discussed by many writers (e.g. APA-med, 1988; Gould, 1998; Greenberg & Shuman, 1997). Greenberg & Gould (2001) go beyond these distinctions to emphasize the importance of a “hybrid role” where a treating mental health professional is also well-versed in the forensic issues surrounding child custody in separation/divorce cases. Greenberg and Gould are not advocating a combination of the clinical/treating and forensic/evaluating roles, however, but rather emphasize the need for every psychotherapist working with families in separation/divorce cases to be aware of the forensic issues and how these affect the therapy.
18. Philip Stahl has expressed a different opinion, saying that, “Regardless of who appoints the evaluator or who is paying the fee, the client must be the entire family... Certainly evaluators can try to help judges make sound decisions and can try to assist attorneys in directing their clients toward settlement, but in all instances, the primary goal must be to help the parents understand the needs of their children.” (Stahl, 1994, p. 8). This statement appears to involve a different use of the term “client,” for while it is clear that the ultimate purpose of child custody evaluations is to help the children’s needs be met by the parents, the evaluator is legally answerable to the appointing court (as well as to the ethics guidelines of the evaluator’s professional association and licensing board).
19. As noted in the HIPAA Act, one exception is when the therapist provides information about types and dates of service to an insurance company. Another exception to these broad rules for confidentiality occurs when a child is the patient because the parents have a legal right to obtain information about their child’s therapy and can give their permission for information about the therapy to be released to third parties. It is essential to note, however, that *confidentiality* is different from *privilege*, where the information is released to a court. In the latter case, only a court can authorize the release of information about the child’s therapy. This matter is discussed further in Chapter 5.
20. An exception occurs when a child custody evaluation is paid for by the state. In that case, payment usually occurs after the report is submitted to the Court. State payment does not raise the issue of examiner bias, however, nor does the outcome of the evaluation affect the promptness of the payment.

21. The AFCC Task Force on Parenting Coordination has offered the following definition of *impartiality*, which is also applicable to custody evaluators: "Impartiality means freedom from favoritism or bias in word, action, or appearance, and includes a commitment to assist all parties, as opposed to any one individual" (AFCC, 2006, p. 167).
22. Of course if an evaluator discovers that there is on-going child abuse, they must report it to the authorities in accordance with the professional and state requirements for mandated reporters. Intervention is also required if there is "credible evidence of substantial risk of imminent and significant physical or emotional harm to a litigant, child(ren), or others involved in the evaluative process" (AFCC, 2007, section 8.4, p. 85).
23. The issue of whether psychological tests should be used in child custody evaluations will be addressed in Chapter 11.
24. The interdisciplinary guidelines recently issued by the Association of Family and Conciliation Courts is very specific about this issue, stating that a forensic consultant who is hired to review the work of a custody evaluator "shall avoid multiple roles, and shall not meet with litigants, family members, or allies of litigants (other than counsel" (AFCC, 2007, section 8.5, p. 86).
25. Although I am not aware of any case law regarding insurance payment for the services of a divorce coach, the function is similar to that of short-term issue-focused psychotherapy and therefore may sometimes be billable to the parent's health insurance.
26. The types of witnesses and rules of evidence will be discussed in more detail in Chapter 6.
27. The training requirements for child custody evaluators listed in Box 5 are derived from a combination of sources: AFCC, 2007; APA, 1994; Cal. R. Ct., 2005b, 2005c.
28. Gould & Martindale recommend that psychologists obtain at least 21 continuing education credits (three full-day workshops) through the American Academy of Forensic Psychology (Gould & Martindale, in press, p. 113; reprinted in Gould, 2006, p. 252). See the Resources section at the end of this volume for contact information for AAFP.
29. Weinstock & Markan (2006) have argued for the development of formalized training guidelines for child custody evaluators and practitioners in family law psychology. The content they recommend is similar to that listed in Box 5, which is based on previous recommendations by the California Court system (Cal. R. Ct., 2005b, 2005c) and professional associations such as the Association for Family and Conciliation Courts (AFCC, 2007) and the American Psychological Association (APA, 1994).