



**Association of Family
and Conciliation Courts**

The documents that follow are the
INTRODUCTION to the AFCC MODEL STANDARDS,
REPORTER'S FORWARD to the AFCC MODEL STANDARDS,
and the
ASSOCIATION OF FAMILY AND CONCILIATION COURTS'
MODEL STANDARDS OF PRACTICE
for CHILD CUSTODY EVALUATION

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**MODEL STANDARDS OF PRACTICE
FOR CHILD CUSTODY EVALUATION**

**INTRODUCTION TO THE ASSOCIATION OF FAMILY AND
CONCILIATION COURTS' *MODEL STANDARDS OF PRACTICE*
FOR CHILD CUSTODY EVALUATION**

David A. Martindale

The Association of Family and Conciliation Courts (AFCC) is an international and interdisciplinary organization. In addition to custody evaluators from all the mental health professions, AFCC's membership includes mediators, parenting coordinators, parent educators, attorneys, judges, court commissioners, and researchers. One of AFCC's strengths lies in the fact that its members are drawn from various professions, but share a strong commitment to programs of benefit to children. Previous AFCC task forces have developed *Model Standards of Practice for Family and Divorce Mediation* (AFCC, 2000) and *Guidelines for Parenting Coordination* (2005).

The AFCC Task Force on *Model Standards of Practice for Child Custody Evaluation* was assembled in 2004 by Past President Leslye Hunter. The Task Force was charged with developing a set of model standards that would guide the practice of evaluators with different professional backgrounds and operating in different contexts and would also be useful to attorneys, judges, and others involved in the adjudication of disputes concerning custody and access. The Task Force included evaluators from the fields of social work and psychology, employed in court-connected facilities and in private practice; a reviewer of evaluations, consulting to evaluators, attorneys, and regulatory agencies; an attorney; and a judge.

Work on the *Model Standards* was begun in October 2004 during the Sixth International Symposium on Child Custody Evaluations, conducted in Nashville, Tennessee, under the auspices of AFCC. The Task Force developed eight drafts before writing the final document. At two points during the development of the *Model Standards*, the current draft was publicly posted and input from interested practitioners and groups was actively sought. These *Model Standards* are the product of input by practitioners representing numerous professions. In developing the *Model Standards*, the Task Force received more than 600 written comments on the two publicly posted drafts and more than 200 attendees also provided feedback at one or more of three public meetings. The Task Force and the AFCC are very appreciative of the time and effort that was expended by the many people who carefully examined drafts and offered input.

Since the publication of the American Psychological Association's *Guidelines for Child Custody Evaluations in Divorce Proceedings* (1994) and the previous version of the AFCC's *Model Standards* (1994), much has changed in the world of custody evaluation. More

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professionals, at all educational levels, are performing child custody evaluations—some without having obtained formal training. Many practitioners are performing evaluations that do not meet the needs of the courts that have appointed them. Judges who are members of AFCC have expressed concern with the poor quality of the reports being submitted to them by evaluators. In fact, problems with the custody evaluation process have become the subject of front-page articles in newspapers as prestigious as *The New York Times* (Eaton, 2004).

In New York State, in response to much publicly expressed discontent, in January 2004 Chief Judge Judith S. Kaye appointed a Matrimonial Commission “to examine every facet of the divorce and custody determination process and recommend reforms to reduce trauma, delay and cost to parents and children so personally impacted by the system” (Matrimonial Commission, 2006).

Grisso (2005) observed that calls for reform have been heard for years but “[t]he real world will not yield to logic until some practical dilemmas are faced and resolved” (p. 224). Grisso pointed out that professional organizations representing specific disciplines are torn by competing responsibilities—an obligation to the public and accountability to their members. Practitioner-members seek protection from licensing board complaints and malpractice actions and they do not want their income-generating capacity placed in jeopardy. In a recent commentary on the APA’s new Ethics Code (APA, 2002), Barnett (2003) asserted: “A main goal of the ECTF [(Ethics Code Task Force)] was to create a revised *Ethics Code* that provides *better protection for psychologists*” (p. 9, emphasis added). Organizations that represent specific disciplines are pressured by their own members not to create practice-related documents that may complicate the lives of practitioner-members. Grisso opined that documents such as the AFCC’s *Model Standards* “cannot have a serious impact on practice until they can be developed through *interdisciplinary collaboration*” (p. 225, emphasis added). Seeing past the needs of one’s own profession is facilitated by interdisciplinary collaboration and it is such collaboration that made development of the *Model Standards* possible.

When evaluators first began assisting judges in adjudicating custody and access disputes, evaluator input was widely appreciated. In the last decade complaints against evaluators have increased dramatically (Kirkland & Kirkland, 2001), as have malpractice actions (Marine & Bogie, 2004); attorneys, often reinforced by mental health professionals, have issued a call for clinical humility and judicial vigilance (Tippins & Wittmann, 2005; Gould & Martindale, 2005); and our assessment methods have been criticized by experienced professionals (Emery, Otto, & O’Donohue, 2005; Otto & Martindale, 2006). Most importantly, judges, to whom evaluators’ reports are submitted and before whom evaluators testify, have expressed their dissatisfaction with the quality of the evaluations being conducted. The Honorable Stephen Hjelt, Administrative Law Judge for the California Office of Administrative Hearings in San Diego, has observed that “deference paid to poor testimony logically creates poor judicial outcomes” (Hjelt, 2000, p. 9).

There can be little doubt that pressure on evaluators to improve the quality of their work is already being felt and is likely to intensify. By making their input more valuable, evaluators can again be perceived as helpful participants in the complex dynamics of custody dispute resolution.

The AFCC Task Force rejected the notion that a main goal of a task force such as ours should be to provide better protection for those offering professional services to families in distress and to courts charged with the responsibility of adjudicating custody and access disputes. The main goal of the AFCC Task Force was to create a document that would assist

evaluators in performing their tasks more effectively and, in doing so, address the needs and rights of those to whom evaluator services are provided.

While recognizing the need for a reasonable amount of carefully placed ambiguity, the Task Force favored clarity and specificity. The dangers created for professionals by specificity pale in comparison to the dangers created by ambiguity. When expectations (or obligations) are clear, everyone wins. Evaluators improve themselves professionally when they read and digest documents in which good practice procedures are outlined. Those to whom evaluators offer their services are provided with a better description of what constitutes good practice. When complaints are filed, those who sit in judgment of their colleagues are better able to ascertain what is and what is not a violation of the articulated standards. Where evaluator actions have been in conformity with the standards, complaints can be dismissed more rapidly. Where evaluators have deviated from the standards, those deviations can be more reliably identified and appropriate disciplinary action can be taken.

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**MODEL STANDARDS OF PRACTICE
FOR CHILD CUSTODY EVALUATION**

**REPORTER'S FOREWORD TO THE ASSOCIATION
OF FAMILY AND CONCILIATION COURTS' MODEL
STANDARDS OF PRACTICE FOR CHILD CUSTODY EVALUATION**

David A. Martindale

As was suggested in the Introduction, the need for heightened standards has been articulated persuasively and repeatedly, yet many of those involved in the resolution of contested custody disputes have been ignoring the overtures. The time was right for an interdisciplinary group to develop *Model Standards of Practice for Child Custody Evaluation*.

In offering their comments and perspectives to the AFCC Task Force, several evaluators characterized cross-examining attorneys as "the enemy." They expressed concern that, in addition to providing information to evaluators, the *Model Standards* would provide ammunition to families, attorneys, and judges, all of whom were conceptualized as potential adversaries. Sentiments expressed by some evaluators suggest that they may perceive themselves as crusaders, accepting Sisyphean tasks and motivated entirely by concern for the well-being of children. In contrast, cross-examining attorneys were often cast in the role of mercenaries. In discussions of the circumstances under which favorable outcomes for families are most likely to be seen, we are led astray when we bicker with one another concerning the nature of our motives. Outcomes trump motives; in particular, purity of motives guarantees neither objectivity, impartiality, nor competence. If an attorney's scrutiny of evaluator testimony uncovers serious evaluator error, the children's best interests may be better served by the attorney's efforts than by the evaluator's efforts.

WHAT ARE MODEL STANDARDS?

Model standards, as defined by the Task Force Reporter, are, most simply put, ideas for standards. Most professional practice standards evolve from accepted ethical principles and ethical principles are derived from and are, in essence, elucidations of the ethic of reciprocity. Evaluators should treat those with whom they interact as the evaluators would wish to be treated if the roles were reversed. It is incumbent upon evaluators to view the evaluation process from the perspective of the child, the litigants, the family members, the collateral sources, the attorneys, and the judge.

Evaluators exhibit fairness to children when the evaluators provide children with age-appropriate information concerning the process; are fair to litigants when the evaluators provide clear, complete, written information to the litigants concerning the evaluators' policies, procedures, and fees; are fair to family members and to collateral sources when the evaluators make clear the ways in which information gathered will be used and identify those to whom the information is likely to be disclosed; are fair to attorneys when the evaluators provide information reasonably needed by attorneys in order to effectively counsel their clients; and are fair to judges when the evaluators offer advisory input that has been developed

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in a sound manner. The Task Force focused its attention on the needs and rights of those to whom evaluators offer their services and those who are affected by the work done by evaluators. The goal was to outline procedures that are consistent with ethical and effective practice.

EXPERT TESTIMONY: ISSUES OF WEIGHT AND ADMISSIBILITY

Evaluators most effectively serve families in conflict, the court system, and the image of the mental health professions when they are mindful of the defining features of helpful advisory input. The U.S. Supreme Court, in *Daubert v. Merrell Dow Pharmaceuticals, Inc.* (1993), described Federal Rule of Evidence (FRE) 702 as setting forth a “helpfulness standard” (pp. 591–592). FRE 702, as amended April 17, 2000, declares that expert testimony must be “based upon sufficient facts or data,” must be “the product of reliable principles and methods,” and must be offered by a witness who has “applied the principles and methods reliably to the facts of the case.”

In an article addressing the cross-examination of experts, I observed that “[t]he defining attributes of an expert opinion relate not to the credentials held by the individual whose fingers type the words or from whose mouth the words flow; rather, the requisite characteristics relate to the procedures that were employed in formulating the opinion and the body of knowledge that forms the foundation upon which those procedures were developed” (Martindale, 2001, p. 503).

That admissible expertise is defined not by credentials but by methodology was established by the U.S. Supreme Court in *Kumho Tire Co., v. Carmichael* (1999). Evidence proffered by an expert had been rejected by an Alabama court. In upholding the ruling of the Alabama court, the Supreme Court called attention to the fact that “[t]he District Court did not doubt [the expert’s] qualifications. . . . Rather, it excluded the testimony because, despite those qualifications, it initially doubted, and then found unreliable, ‘the methodology employed by the expert’” (p. 153).

EVALUATOR RECORD KEEPING

The section of the *Model Standards* in which record keeping is addressed (section 3) is quite detailed. From the perspective of the AFCC Task Force, the developers of the *Ethical Guidelines for Forensic Psychologists* (Committee on Ethical Guidelines for Forensic Psychologists, 1991) were setting the bar where it belongs when they observed that the standard to be applied to records such as those created by custody evaluators “anticipates that the detail and quality of such documentation will be subject to reasonable judicial scrutiny”; when they emphasized that “this standard is higher than the normative standard for general clinical practice”; and when they explained that when we have “foreknowledge that [our] professional services will be used in an adjudicative forum, [we] incur a special responsibility to provide the best documentation possible under the circumstances” (from section VI. B. of the *Specialty Guidelines*).

Forensic mental health professionals should formulate opinions only on the basis of information that is in their records and is available for inspection. Only in this way can evaluators be cross-examined concerning the manner in which the information was utilized in the formulation of the opinion(s) conveyed to the court. Failure to create and maintain legible and appropriately detailed records, concealment or destruction of records, and/or noncompliance with lawful requests for the production of records serve to circumvent due process.

The definition of spoliation, as it appears in *Black's Law Dictionary* (Nolan & Nolan-Haley, 1990) incorporates the notion that the act of spoliation “constitutes an obstruction of justice” (p. 1401). If obstruction of justice is accepted as a defining feature of spoliation, then it follows that evaluators have an affirmative obligation to preserve their records. It is indisputable that evaluators have foreknowledge that their records are likely to be needed if the cases in which they have been involved proceed to trial. For that reason, it is naïve not to recognize that the destruction by evaluators of their own records is a self-serving act. Such destruction makes effective cross-examination impossible.

When evaluators alter, conceal, or destroy portions of their files, efforts to thoroughly explore their methods and procedures are frustrated and the risk is increased that errors will go undetected. Evaluators—even those who have been appointed by the court—sometimes err. The work product of a court-appointed custody evaluator should be subjected to no less scrutiny than the work product of a retained expert.

The importance of the cross-examination process must be acknowledged and it must be recognized that the failure by an evaluator to retain items (or acceptable copies) presented to the evaluator for consideration jeopardizes the due process rights of the litigant who might wish to challenge the evaluator's findings or opinions. Cross-examining attorneys must be able to present evaluators with items from their files and inquire concerning the ways in which the identified items were utilized by the evaluators in formulating their opinions. It should not be inferred that evaluators must retain only those items that they have used in formulating their opinions. They should also retain items that were presented to them but not utilized by them. Cross-examining attorneys should be able to inquire concerning any/all evaluator decisions—including decisions *not* to utilize certain items in formulating their opinions.

ACKNOWLEDGING LIMITATIONS

By describing known limitations to their data, evaluators provide judges with information that is essential to the judges' consideration of the weight to be assigned to each aspect of the evaluators' advisory input. From a purely tactical perspective, there is no reason for evaluators to believe that voluntarily articulating the limitations of their data renders them less effective as testifying experts (Pfau & Burgoon, 1988; Pfau, Kenski, Nitz, & Sorenson, 1990).

KNOWING THE LAW

Though several posters expressed the view that evaluators should not be expected to “have knowledge of the legal and professional standards, laws, and rules applicable to the jurisdiction in which the evaluation is requested” (from model standard 2.1), it was the view of the Task Force that the forensic nature of the custody evaluator's task demands that the evaluator have this knowledge. When mental health treatment providers joined provider panels so that clients could more easily utilize health insurance to offset the cost of treatment, the providers had to learn a new set of rules. There were record-keeping standards, regulations concerning access to records, and policies affecting practitioner accountability. Those practitioners who wished to join provider panels accepted responsibility for learning the new rules. Mental health practitioners who wish to enter the forensic arena must also learn a new set of rules.

DELINEATING ROLES

From the perspective of the Task Force, objectivity is impaired when an evaluator currently has, has had, or anticipates having a relationship with those being evaluated. Relationships cannot be time delimited; specifically, prior relationships or the anticipation of future relationships can have the same deleterious effects upon evaluator objectivity as current relationships would have. It was the position of the Task Force that the harmful dynamics that characterize concurrent relationships also operate in sequential relationships.

PROVIDING INFORMATION IN WRITTEN FORM

It is likely that anyone in the field of law or in one of the mental health fields who reflects upon the advantages and disadvantages of a written document and compares these with the advantages and disadvantages of orally given information would agree that information provided in written form is superior to information provided orally.

TRANSPARENCY

Evaluators' policies, procedures, and fees become a matter of record, thereby making them available for scrutiny, when they are outlined in a written document.

CONSISTENCY

Our human frailties include carelessness, forgetfulness, and distractibility. Any of these can cause deviations in the manner in which orally provided information is given from one person to the next. When explanations are distributed in written form, the clarity and detail with which the explanations are offered is consistent.

CLARITY

The clarity of information provided in writing far exceeds the clarity of information provided orally. We reflect upon what we have written. We get feedback from colleagues concerning the clarity with which we have expressed ourselves. We ensure that documents prepared by us for use in custody work will be clear to those for whom they are intended.

ACCESSIBILITY

Unless it is misplaced or deliberately discarded, a written document presented to a litigant or to anyone else involved in the evaluative process remains available for review by the person to whom it has been given. It is often helpful to reread a document presented to you earlier. In stressful situations, important information imparted orally is often not accurately recalled.

FAIRNESS

Providing litigants, participants, and collateral sources with written information reasonably needed by them is likely to increase the probability that those involved will feel that they have been treated fairly and have been told what they needed to know.

PRACTITIONER PROTECTION

The same memory-distorting dynamics that often hinder the settlement of disputes between two parents embroiled in custody litigation can impede the resolution of complaints registered against evaluators by litigants. A written document, signed by those to whom it has been presented, often facilitates the adjudication of complaints. Notations appearing in evaluators' records are not likely to be as useful. Discussions of policies, procedures, and fees preserved on audiotape would also be helpful, yet many evaluators reject the suggestion that they tape record their contacts with litigants and others.

ACCOUNTABILITY

In disputes between court-appointed evaluators and litigants, nonparty participants, or collateral sources concerning orally communicated ground rules, the evaluators, as agents of the court, hold an indisputably unfair advantage. When evaluators have deviated from their own stated policies and procedures, the ability of litigants to demonstrate that this has occurred is dependent upon their having in their possession written documents in which evaluators' policies and procedures have been outlined.

SAYING "NO" TO JUDGES

During the discussion that followed the posting of drafts, many evaluators informed the Task Force that judges frequently ask evaluators to do things that the *Model Standards* were telling evaluators not to do. The Task Force's awareness that judges sometimes make inappropriate requests did not alter our perspective on those requests. Responsible professional behavior sometimes requires that we take positions that place us in conflict with colleagues or with authority figures. It is hoped that information and perspectives appearing in the *Model Standards* will enable evaluators to more cogently explain why compliance with certain requests is ill-advised.

INTERIM RECOMMENDATIONS

Offering interim recommendations creates a substantial risk that the dynamics of confirmatory bias will impair evaluator objectivity, increases the risk that the litigant whose position before the court has been weakened by the evaluator's interim recommendation will question the evaluator's receptivity to new information, and, as a result, makes it more difficult for the evaluator to fulfill the primary obligation of a court-appointed expert—providing assistance to the court if the dispute proceeds to trial. Evaluators should always be mindful of the fact that their ability to effectively assist in the resolution of disputes concerning custody and access is strongly dependent upon both actual and perceived impartiality.

Changes in custody and/or access resulting from temporary orders transform previously level playing fields into precarious slopes. Evaluators who have all the information needed in order to responsibly offer recommendations concerning custodial placement and/or access should conclude their evaluations and prepare their reports. Evaluators who have not yet obtained all the information needed in order to responsibly offer recommendations should not offer recommendations. Imparting information should not be confused with offering a recommendation. In response to a request from the court, an evaluator can responsibly share

whatever pertinent information has been gathered. By providing information but offering no recommendation, the evaluator assists the court by supplementing the information available to the court as it deliberates concerning whatever matter is under consideration.

“EXPERT SPECULATION” IS AN OXYMORON

Some judges apparently believe that any input from a mental health professional is helpful, even if that input comes in the form of pure speculation. Standards requiring that evaluators operate within “the narrower boundaries of empirically-based practice are good for practitioners in that they preserve the integrity of the profession, thereby strengthening its credibility” (Grisso, 2005, p. 224). With empirically based practice evaluators earn credibility; with credibility, evaluators earn respect. One poster opined that “an educated guess from an expert is better than nothing.” It was the view of the Task Force that, while carefully developed inferences may be useful when appropriate emphasis is placed upon the limits of such inferences, speculation is more harmful than helpful. Statements and opinions uttered by experts in the course of offering testimony are often assigned more weight than is warranted.

Experts are often reluctant to say “I don’t know,” but when it is the truth and when one has taken an oath to tell the truth, it is what must be said. The admonition to do no harm applies not only to the families with whom evaluators work but to the justice system as well. Evaluators do harm to the operation of the justice system when they deliberately or unintentionally lead courts to believe that they know more than they do, that their assessment devices are more reliable and precise than those instruments are known to be, that clinical intuition is a suitable substitute for opinions based upon empirical data, or that speculation offered by an expert is better than nothing.

THE ROLE OF FORMAL PSYCHOLOGICAL TESTING

It was the goal of the Task Force to create a document that would remain useful for at least a decade and we were mindful of professional perspectives that have changed between 1996 and 2006. As this document was being developed, the Task Force was aware that questions concerning the usefulness of formal psychological testing are being raised with increasing frequency. In a concurring opinion in *People v. Wesley* (1994), New York’s Chief Judge, Judith Kaye, observed that an absence of controversy may reflect nothing more than the fact that criticism does not emerge overnight. It is reasonable to anticipate that, in the years between 2006 and 2016, research will reveal flaws in currently accepted instruments or that improvements will be made in instruments currently deemed unacceptable. With this in mind, the Task Force elected to focus on basic principles of test use and test selection.

Evaluators and the courts seeking their advisory input are (or should be) interested in data that provide information concerning enduring characteristics that relate to parenting in general and, more specifically, to the parenting of the specific children who are the focus of the custody dispute. The performance of test takers on some of the more established instruments is strongly influenced by situational factors, leaving unresolved many pertinent questions concerning dispositional factors.

Our more established tests are self-report inventories (SRIs). Theodore Millon, certainly no critic of SRIs, observed that “there are distinct boundaries to the accuracy of the self-report format; by no means is it a perfect data source. Inherent psychometric limits, the tendency of similar patients to interpret questions differently, the effect of current affective

states on trait measures, and the effort of patients to affect certain false appearances and impressions all lower the upper boundaries of this method's potential accuracy" (Millon, Davis, & Millon, 1997, p. 7).

Deciding whether or not to administer formal psychological assessment instruments must be left to evaluators. The applicable model standard (6.1) simply calls attention to the fact that, like any decision made by an evaluator, a decision *not* to test made by an evaluator who is licensed to administer and interpret psychological tests is a decision the basis for which may need to be articulated by the evaluator.

The search for pertinent information is impeded when we look in the wrong places. In 1971, in deciding a case unrelated to child custody matters (*Griggs v. Duke Power Co.*), the U.S. Supreme Court ruled that testing procedures must be demonstrably reasonable measures of (or predictors of) job performance. Discussions of the implications of the *Griggs* decision led, ultimately, to the development of the concept of *functional abilities* (Grisso, 2002).

Endeavors to assess the characteristics that bear directly upon parenting are more likely to meet with success if evaluators conceptualize parenting as a job and focus attention on those attributes, behaviors, attitudes, and skills that are reliably related to the demands of the job. Evaluations must, therefore, critically examine the role of testing in custody evaluations. In particular, evaluators must consider what type of information is being sought, how tests may (or may not) assist the evaluator in gathering pertinent information, and the ways in which tests of *every* type are deficient.

EVALUATOR OBLIGATIONS TO UNSPECIFIED OTHERS

In contemplating courses of action, intent is important, but so, too, are reasonably foreseeable consequences. In the preface to the *Model Standards*, the Task Force has endeavored to disabuse evaluators and others of the notion that evaluators' only obligations are to the courts that appoint them, to the adults whom they evaluate, or to the children whose best interests are the focus of custody/access evaluations. The preface reminds evaluators that they have obligations to consumers of their services, to participants in their evaluations, and to affected others.

OBTAINING THE INFORMED CONSENT OF COLLATERALS

Evaluators are taking advantage of the cooperative nature of collateral sources when the evaluators fail to tell potential collateral sources what they need to know in order to make informed decisions concerning whether or not to assist. Evaluators cannot presume that those who are contacted for information will realize that information provided by them is ordinarily discoverable. Many collaterals are likely to assume that information shared with a mental health professional is confidential.

TAPPING THE KNOWLEDGE BASE

Following much discussion, the Task Force concluded that evaluators should be "strongly encouraged to utilize and make reference to pertinent peer-reviewed published research in the preparation of their reports" (from model standard 4.6 (b)). In its analysis of the meaning of "scientific knowledge" the U.S. Supreme Court, in *Daubert*, citing

Webster's, stated that *knowledge* refers to a "body of known facts or to any body of ideas inferred from such facts. . . ." (*Daubert*, p. 590). Tippins and Wittmann (2005) have called attention to the fact that no matter how well qualified an expert may be, credentials are of little consequence if the information needed by the court is not contained within the knowledge base of the field in which the expert's credentials have been earned. It is the view of the Task Force that custody evaluators most effectively demonstrate that their opinions rest upon a "body of known facts or . . . any body of ideas inferred from such facts" when references to relevant peer-reviewed publications are included in advisory reports.

"With only rare exceptions, the information imparted by custody experts in their reports and in their testimony is not information that they themselves have uncovered in their own research. Experts are, in reality, perpetual students. Good experts devour the professional literature, critically examine published research, and draw upon the knowledge base of an entire profession each time they conduct an evaluation. The task of the skilled evaluator is to decide what research is applicable to the specific family that is the focus of the court's attention, to apply the research, and to explain how the cited research sheds light on the particular issues in dispute" (Martindale & Gould, in press).

APPLYING THE *MODEL STANDARDS*

When the American Psychological Association released its *Guidelines for Child Custody Evaluations in Divorce Proceedings* (APA, 1994), some psychologists objected to that portion of the document in which the APA declared that "[t]he psychologist avoids multiple relationships." They felt that this restriction might "unduly restrict the ability of experienced psychologists to make appropriate clinical decisions" (Saunders, Gindes, Bray, Shellenberger, & Nurse, 1996, p. 34). When the *Ethical Guidelines for Forensic Psychologists* (Committee on Ethical Guidelines for Forensic Psychologists, 1991) were undergoing revision, a listserv was created for the purpose of obtaining input from interested professionals and sentiments such as that conveyed by Saunders et al. were again expressed.

Not all mental health professionals who prepare reports, affidavits, or declarations or who appear in court to offer recommendations in custody and access disputes are evaluators. Most of those who are not evaluators make that fact known. Of these, some might assert that, because they have not conducted evaluations and have not held themselves out to the court as evaluators, the *Model Standards* do not and should not be used as a basis upon which to reject the utility or appropriateness of their proffered testimony or to examine their professional behaviors. It was an awareness of the "judge-me-by-what-I-call-myself-not-by-what-I-do" position that led the Task Force to insert a reminder that the applicability of the *Model Standards* is to be determined by the nature of the services performed and not by a practitioner's declared professional affiliation, stated areas of expertise, or customary area(s) of practice. Whatever one's feelings may be concerning where the bar has been placed by the *Model Standards*, it would make no sense to lower the bar for individuals who, with foreknowledge that custody and/or access issues are being adjudicated, offer opinions on the issues in dispute while reminding the court that they are not to be viewed as evaluators.

Borrowing from the APA Ethics Code (APA, 2002), mental health professionals should "base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings" and should "provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to

support their statements or conclusions.” Whether professionals have conducted evaluations, have provided therapy, or have involved themselves in custody/access disputes in some other manner, it is the offering of opinions concerning the issues in dispute that makes the *Model Standards* applicable.

CONCLUSION

With an acknowledgment that the Task Force’s perspective on the impact of the *Model Standards* is irremediably subjective, we anticipate that the *Model Standards* will be viewed as an important instructional tool for evaluators, attorneys, and judges. If evaluators are guided by the information and perspectives contained in the *Model Standards* and if judges and attorneys know what can reasonably be expected from evaluators, the document will contribute significantly to an improvement in the quality of custody evaluations.

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Task Force for Model Standards of Practice for Child Custody Evaluation,
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INTRODUCTION

I.1 PURPOSE

These *Model Standards for Child Custody Evaluation* are designed to promote good practice; to provide information to those who utilize the services of custody evaluators; and to increase public confidence in the work done by custody evaluators.

These *Model Standards for Child Custody Evaluation* are designed to guide custody evaluators in all practice contexts. In disseminating these *Model Standards*, AFCC's goal is to contribute to the ongoing education of evaluators, thereby promoting good practice; to provide information to those who utilize the services of custody evaluators; and, to increase public confidence in the work done by custody evaluators. Unless and until these *Model Standards* are incorporated into law, included in the rules of a court system, or adopted by a licensing board or similar regulatory authority, they do not have the force of law. Nonetheless, the adoption of these *Model Standards* by AFCC, the sponsoring organization, should alert custody evaluators to the possibility that these *Model Standards* may be utilized in developing standards of care for custody evaluators.

I.2 ENFORCEMENT

AFCC believes it to be advisable that our members conform their practices to these *Model Standards*; however, AFCC does not have an enforcement mechanism.

AFCC does not have and does not intend to establish an enforcement mechanism. We believe it to be advisable that our members conform their practices to the *Model Standards* articulated here, but membership in AFCC does not compel them to do so. These *Model Standards* may communicate expectations that exceed those established by law or by regulatory bodies. Where conflict exists, law, rules of the court, regulatory requirements, or agency requirements supersede these *Model Standards*. Where the standard articulated herein is higher than the standard required by law or regulation, it is hoped that AFCC members will be guided by the standard articulated here.

I.3 SCOPE

The *Model Standards for Child Custody Evaluations* are intended to address common concerns regarding the processes that lead to an analysis of the relative strengths and deficiencies of the litigants or that offer an analysis of different parenting plans under consideration by the evaluator.

The *Model Standards of Practice for Child Custody Evaluation* are intended to address common concerns. The *Model Standards* are not intended to establish standards for the various components of those custody evaluation models that are collectively referred to as briefer models, such as focused evaluations, mini-evaluations, and early neutral evaluations. Neither are these *Model Standards* intended to apply to evaluations that may formally incorporate a settlement component and that are, therefore, hybrid models. It is recognized that reports that are the end products of competently conducted evaluations will often be utilized in a settlement process. Furthermore, the *Model Standards* are designed to apply only to processes that lead to an analysis of the relative strengths and deficiencies of the litigants or that offer an analysis of different parenting plans under consideration by the evaluator. If, however, a practitioner functioning in a capacity other than as an evaluator is offering an opinion regarding parenting arrangements or regarding relative parenting strengths and deficiencies, the *Model Standards* shall be applicable to the evaluative techniques used by the practitioner.

PREAMBLE

P.1 CONCEPTUALIZATION OF THE CHILD CUSTODY EVALUATION PROCESS

The child custody evaluation process involves the compilation of information and the formulation of opinions pertaining to the custody or parenting of a child and the dissemination of that information and those opinions to the court, to the litigants, and to the litigants' attorneys. Child custody evaluators shall secure from the court and/or attorneys reasonably detailed information concerning their role and the purpose and scope of the evaluation.

(a) Child custody evaluation is a process through which information and opinions bearing upon the custody of, parenting of, and access to children can be made known to the court, to the litigants, and to the litigants' attorneys in those cases in which the parents and/or other primary caregivers are unable to develop their own parenting plans. An evaluation may be requested by the parents or by their attorneys or may be ordered by the court. Though these *Model Standards* focus on evaluations that are being performed within a court system or for a court, they may be useful in other contexts as well.¹

(b) The application of the knowledge and skills of the mental health professions to the resolution of legal matters is, by definition, a forensic endeavor and these *Model Standards* have been written from that perspective.² Prior to commencing evaluations, evaluators shall take reasonable steps to secure court orders or consent agreements in which they are specifically named and in which their roles, the purposes of their evaluations, and the focus of their evaluations are clearly defined.³

(c) Evaluators shall perform their professional activities with a recognition of the investigative nature of the task, an acknowledgment of the limitations inherent in their evaluative procedures, and an understanding of the distinction between mental health issues and the specific legal questions before the court.

P.2 EVALUATORS

Child custody evaluators are qualified mental health professionals who function as impartial examiners.

Evaluations shall be performed by qualified mental health professionals who are part of a family court system or carried out privately by qualified individuals or teams. [Refer to section 1 for information regarding qualifications.] Regardless of the manner in which arrangements for their services have been made and regardless of the source of remuneration, evaluators shall always function as impartial examiners.

P.3 SCOPE OF EVALUATORS' OBLIGATIONS

Evaluators are responsible to all consumers of their services; namely, the courts, the participants in the evaluation process, and affected others.

(a) Custody evaluators have obligations to consumers of their services (such as the courts that seek their advisory input), to participants in their evaluations (adults and children; parties and non-parties; fee-payers and non-fee-payers), and to affected others (such as people whose privacy rights are affected when the rules of discovery require the disclosure of the contents of evaluators' files).

(b) Evaluators fulfill a role that is consistent with the needs and directives from the court. When the specified role(s) cannot ethically be accepted and/or when the directives cannot ethically be followed, evaluators shall decline participation and shall articulate in writing the basis for the decision to decline. When evaluators give notice of their intention to decline an assigned evaluation, the written notice shall be provided to the court and to the attorneys.

P.4 APPLICABILITY

The *Model Standards for Child Custody Evaluations* apply to any situation in which a mental health professional offers recommendations concerning custody and/or access issues.

The applicability of these *Model Standards* is to be determined by the nature of the services performed and not by the evaluator's declared professional affiliation, stated areas of expertise, or customary area(s) of practice. Specifically, these *Model Standards* are intended to apply in any situation in which mental health professionals who have foreknowledge that custody and/or access issues are involved in a matter offer recommendations concerning such custody and/or access issues to a court.

1. TRAINING, EDUCATION, & COMPETENCY ISSUES

1.1 CUSTODY EVALUATION AS A SPECIALIZATION

A child custody evaluator shall have specialized knowledge and training in topics related to child custody work and shall keep abreast of the ever evolving research in the field.

Child custody evaluators shall gain specialized knowledge and training in a wide range of topics specifically related to child custody work. Evaluators shall gain broad knowledge

of family dynamics. Evaluators conducting evaluations that raise special issues shall obtain specialized training. [Refer to 1.2 for a list of areas in which specialized training is required.] Since research and laws pertaining to the field of divorce or separation and child custody are continually changing and advancing, child custody evaluators shall secure ongoing specialized training.

1.2 EDUCATION AND TRAINING

Child custody evaluators shall have the 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.

(a) Child custody evaluators shall have a minimum of a master’s degree (or its regionally-recognized equivalent) in a mental health field that includes formal education and training in child development, child and adult psychopathology, interviewing techniques, and family systems. In addition, by formal education or by supervised work experience, evaluators shall possess advanced knowledge of the complexities of the divorce or separation process, a working knowledge of the legal issues in divorce or separation in their jurisdictions of practice, knowledge of the sources of evaluator bias and methods for maintaining neutrality, and an understanding of the many issues—legal, social, familial, and cultural—involved in custody and access.

(b) Areas of expected training for all child custody evaluators include:

- (1) the psychological and developmental needs of children, especially as those needs relate to decisions about child custody and access;
- (2) family dynamics, including, but not limited to, parent-child relationships, blended families, and extended family relationships;
- (3) the effects of separation, divorce, domestic violence, substance abuse, child alienation, child maltreatment including child sexual abuse, the effects of relocation, sexual orientation issues, and inter-parental conflict on the psychological and developmental needs of children, adolescents, and adults;
- (4) the significance of culture and religion in the lives of parties;
- (5) safety issues that may arise during the evaluation process and their potential effects on all participants in the evaluation;
- (6) when and how to interview or assess adults, infants, and children;
- (7) how to gather information from collateral sources;
- (8) how to collect and assess relevant data and recognize the limits of the reliability and validity of different sources of data;
- (9) how to address issues such as general mental health, medication use, and learning or physical disabilities;
- (10) how to apply comparable interview, assessment, and testing procedures that meet generally accepted forensic standards to all parties;
- (11) when to consult with or involve additional experts or other appropriate persons;
- (12) how to inform litigants, children, other participants, and collateral sources, of the purpose, nature, and method of the evaluation and the limits of confidentiality;
- (13) how to assess parenting capacity and co-parenting capacity and to construct effective parenting and co-parenting plans;
- (14) the legal context within which child custody and access issues are decided and additional legal and ethical standards to consider when serving as a child custody evaluator;

- (15) how to make the relevant distinctions among the roles of evaluator, mediator, therapist, parenting coordinator, and co-parenting counselor;
 - (16) how to write reports for the courts to which they will be presented;
 - (17) how to prepare for and give testimony at deposition or at trial; and,
 - (18) how to maintain professional neutrality and objectivity when conducting child custody evaluations.
- (c) Areas of additional specialized training include:
- (1) the assessment of allegations of child sexual abuse issues;
 - (2) the assessment of children's resistance to spending time with a parent or parent figure and allegations of attempts to alienate children from a parent, parent figure, or significant other;
 - (3) the assessment of children's best interests in the context of relocation (move-away) requests by one parent;
 - (4) the assessment of substance abuse; and,
 - (5) the assessment of child abuse and domestic violence and the assessment of safety plans for both parents and children.

1.3 EXPERIENCE REQUIREMENTS

Child custody evaluators shall possess appropriate education and training. All evaluators who have fewer than two years experience are encouraged to seek ongoing supervision prior to offering to perform or accepting appointments to conduct evaluations.

Since child custody evaluation is a unique specialty area, anyone conducting child custody evaluations shall have obtained appropriate education and professional training prior to offering to perform or accepting an appointment to perform evaluations. Novice evaluators shall obtain supervision or consultation with another professional who meets the education, experience, and training requirements of this section. Evaluators who have fewer than two years of experience conducting custody evaluations are encouraged to continue receiving ongoing supervision or to arrange for consultation to be available and to utilize the services of a consultant when needed.⁴

2. KNOWLEDGE OF LAW

2.1 KNOWLEDGE OF STATUTES AND LEGAL PRECEDENTS

All child custody evaluators shall have knowledge of the legal and professional standards, laws, and rules applicable to the jurisdiction in which the evaluation is requested.

(a) Evaluators shall be familiar with the applicable statutes, case law, and local rules governing child custody. These will vary from jurisdiction to jurisdiction, and evaluators must be knowledgeable concerning the criteria for original determination of custody, criteria for change of custody, the use of custody evaluations, qualifications for custody evaluators, and the legal requirements of the custody evaluation process of the jurisdictions in which the evaluators will be performing their evaluations.

(b) Evaluators shall have a fundamental and reasonable level of knowledge and understanding of the legal and professional standards, laws, and rules that govern their

participation as experts in the resolution of disputes concerning the custodial placement of children and specific parenting plans. Even if they are qualified to do so, evaluators shall not provide legal advice to those whom they are evaluating or to others with whom they may interact in the course of an evaluation.

2.2 RESPECT FOR THE LEGAL RIGHTS OF LITIGANTS

Child custody evaluators shall have an understanding of the fundamental legal rights of those who are part of the evaluation process and shall conduct themselves in such a manner as to not violate or diminish those rights.

(a) Evaluators shall have a fundamental and reasonable level of knowledge and understanding of the legal rights of those whom they are evaluating and of individuals who may be affected by the evaluative process or by the evaluators' reports.

(b) Evaluators shall conduct themselves in such a manner as not to violate or diminish the due process rights of such individuals.

3. RECORD KEEPING AND RELEASE OF INFORMATION

3.1 "RECORD" DEFINED

As used in these Model Standards, the term "record" refers to the following documents relating to the evaluation: notes, recordings, pleadings and other court papers, assessment instruments and testing data.

The term "record", as used herein, applies to all notes, documents, recordings, correspondence in any form or on any medium, tangible, electronic, hand-written, or mechanical, that are specifically related to the evaluation being conducted. The term "record", as used herein, includes, but is not limited to, all a) reports, letters, affidavits, and declarations; b) notes, recordings, and transcriptions that were created before, during, or after interactions with persons in connection with the evaluation; c) fully or partially completed assessment instruments; d) scored and un-scored raw test data, scoring reports, and interpretations; e) billing, expense, and income records pertaining to the services provided; f) mechanical, digital, physical or electronic print, film, photocopy, tape, audio, video, or photographic records; and, g) all other notes, records, copies, and communications in any form that were created, received, or sent in connection with the evaluation.

3.2 RECORD-KEEPING OBLIGATIONS

Child custody evaluators have an obligation expeditiously to establish and to maintain a record-keeping system.

(a) Evaluators shall establish and maintain a system of record-keeping and professional communication that is consistent with law, rules, and regulations, and that safeguards applicable privacy, confidentiality, and legal privilege. Evaluators shall create all records expeditiously. Unless laws, rules of the court, directives from the court, rules promulgated by regulatory bodies, or private agency policy specify otherwise, evaluators shall presume that their records are created, maintained, and preserved in anticipation of their review by others who are legally entitled to possess them and/or to review them.

(b) Records of all aspects of the evaluation shall be created in reasonable detail, shall be legible, shall be stored in a manner that makes expeditious production possible, and shall be made available in a timely manner to those with the legal authority to inspect them or possess copies of them. Excluded from the requirements alluded to in the foregoing discussion of records production are items that may be protected from disclosure by copyright laws.

(c) Where the policies of private agencies conflict with the requirements of law, rules of the court, directives from the court, or rules promulgated by regulatory bodies, the role of private agency policies shall be considered subordinate.

3.3 ACTIVE CONTROL OF RECORDS

Child custody evaluators shall maintain active control of their records and shall take reasonable care to prevent the loss or destruction of records.

In creating and organizing their files, evaluators shall conceptualize all items pertaining to a particular case as elements of one file. Evaluators shall be mindful of the fact that distinctions often made in clinical contexts between progress notes and process notes or between a client's file and a treating practitioner's personal file are distinctions that are not recognized in child custody work. Evaluators shall maintain active control over records and information. Regardless of the form in which information is presented, once evaluators take possession of an item, it must be retained and reasonable care must be taken to prevent its loss or destruction. For example, evaluators shall not return items to litigants or others unless such return has been authorized by the attorneys for both litigants or by the court.⁵

3.4 DISCLOSURE AND/OR RELEASE OF RECORDS

Child custody evaluators shall establish policies regarding their procedures, including procedures for the release of information and payment of fees.

In describing their policies, procedures, and fees, evaluators shall address all issues pertaining to access to the records that are maintained by them. Evaluators' policies concerning the release of information and/or copies of portions of their files shall be guided by the policies and directives of the courts for which the evaluations are being or have been conducted.

4. COMMUNICATION WITH LITIGANTS, ATTORNEYS, & COURTS

4.1 WRITTEN INFORMATION TO LITIGANTS

Child custody evaluators shall provide each litigant with written information outlining the evaluator's policies, procedures and fees.

(a) Even when litigants are submitting to an evaluation in response to a directive from the court, evaluators shall provide detailed written information concerning their policies, procedures, and fees. In the portion of the document in which fees are outlined, it shall be made clear that the services to be rendered are neither health services nor health service related and that no claims for health insurance reimbursement will be completed by the evaluator.

(b) The descriptive document provided by the evaluator shall specify the intended uses of the information obtained during the evaluation, shall include a list of those to whom the evaluator will make the report available and the manner in which the report will be released, and shall confirm that evaluator policies governing the release of items in the case file will be in conformance with applicable laws and court rules. This information shall be provided to the litigants and to their attorneys in advance of the first scheduled session, so that litigants may obtain advice of counsel and be able to examine the document in an unhurried manner and in an atmosphere that is free of coercive influences. When the parties are not represented by counsel, the detailed information alluded to herein shall, nevertheless, be forwarded to them prior to the initial evaluative session.

4.2 REVIEWING POLICIES, PROCEDURES, AND FEES

Child custody evaluators shall review their policies and procedures with the litigants prior to commencing an evaluation.

In the initial meeting with the parties, evaluators shall review key elements of their policies and procedures, respond to any questions, and seek assurance that the policies and procedures are fully understood. The obligation to take reasonable steps to avoid harm where it is possible to do so and to minimize harm that is foreseeable but unavoidable extends to all those with whom evaluators professionally interact; to all those who are involved in the evaluative process in any manner, including children; and, to those from whom evaluators seek collateral source information. Evaluators shall inform children of the limits of confidentiality, using language that is chosen based upon each child's cognitive capacity and receptive language abilities.

4.3 INFORMED CONSENT OF COLLATERALS

Child custody evaluators shall take steps to ensure that collaterals know and understand the potential uses of the information that they are providing.

Individuals from whom information is sought shall be informed in writing of the manner in which information provided by them will be utilized and reminding them that information provided by them is subject to discovery. The aforementioned notice may be provided orally where time constraints make providing written notice not feasible.

4.4 EX PARTE COMMUNICATION

Child custody evaluators shall not have substantive ex parte communications about a case with the Court or with the attorney's representing the parties.

From the time that evaluators learn of their assignments until the time that their evaluations have been completed and their reports have been submitted, evaluators shall take all reasonable steps to minimize ex parte communication with the court and with attorneys representing the parties. Where ex parte communication occurs, all reasonable steps shall be taken to limit discussions to administrative or procedural matters; to avoid discussion of substantive issues; and, to refrain from accepting or imparting significant information

orally. Evaluators shall respect local rules or court orders with respect to ex parte communication with attorneys representing children.

4.5 INTERIM RECOMMENDATIONS

Child custody evaluators shall refrain from making interim recommendations.

Evaluators shall refrain from offering interim recommendations or treatment interventions pertaining to custodial placement, access, or related issues and shall refrain from negotiating settlements with the parties and/or with their attorneys.⁶

4.6 PRESENTATION OF FINDINGS AND OPINIONS

Child custody evaluators shall strive to be accurate, objective, fair and independent in their work and are strongly encouraged to utilize peer-reviewed published research in their reports.

(a) Evaluators shall not present data in a manner that might mislead the triers of fact or others likely to rely upon the information and/or data reported. In their reports and when offering testimony, evaluators shall strive to be accurate, objective, fair, and independent. Evaluators shall resist partisan pressure to report their information and data or to communicate their opinions in ways that might be misleading. [Refer to 5.3, below.]

(b) Evaluators are strongly encouraged to utilize and make reference to pertinent peer-reviewed published research in the preparation of their reports. Where peer-reviewed published research has been alluded to, evaluators shall provide full and accurate references to the cited research.

(c) Evaluators recognize that the use of diagnostic labels can divert attention from the focus of the evaluation (namely, the functional abilities of the litigants whose disputes are before the court) and that such labels are often more prejudicial than probative. For these reasons, evaluators shall give careful consideration to the inclusion of diagnostic labels in their reports. In evaluating a litigant, where significant deficiencies are noted, evaluators shall specify the manner in which the noted deficiencies bear upon the issues before the court.

(d) Evaluators shall recognize that information not bearing directly upon the issues before the court may cause harm when disclosed and may have a prejudicial effect. For these reasons, evaluators shall avoid including information in their reports that is not relevant to the issues in dispute. Notwithstanding the foregoing, evaluators shall retain all information gathered by them and shall be responsive to lawful requests for the production of that information.

5. DATA GATHERING

5.1 ESTABLISHING THE SCOPE OF THE EVALUATION

The scope of the evaluation shall be delineated in a Court order or in a signed stipulation by the parties and their counsel.

(a) Evaluators shall establish the scope of the evaluation as determined by court order or by a signed stipulation by the parties and their attorneys. If issues not foreseen at the

outset of an evaluation arise and if it is the evaluator's professional judgment that the scope of the evaluation must be widened, the evaluator shall seek the approval of the court or of all attorneys prior to going beyond the originally designated scope of the evaluation. Any changes in the scope of the evaluator's assigned task shall be memorialized in writing and signed by the court or by all attorneys, as applicable.⁷

(b) Evaluators shall employ procedures that are most likely to yield information that will meet the needs of the court and shall conduct the data gathering phase of their evaluations in a manner consistent with state, provincial, or territorial statutes, or with judicial rules governing such evaluations. When circumstances demand that an evaluation be limited in scope, evaluators shall take steps to ensure that the boundaries to the evaluation and the evaluator's role are clearly defined for the litigants, attorneys, and the court.

5.2 FACTORS OR VARIABLES TO BE ASSESSED

Child custody evaluators shall assess the factors and variables pertinent to the evaluation. These factors or variables shall be determined according to local statutes, case law, referring questions and research.

Evaluators shall assess factors or variables that are statutorily defined; dictated by case law; presented in the referring questions, court orders or stipulations; and/or deemed to be pertinent on the basis of peer-reviewed published research. If additional factors are brought to the evaluator's attention or emerge during data collection, the evaluator shall use discretion and professional judgment and shall initially seek direction from the attorneys, if needed, as decisions are made concerning the applicability of these factors to the issues before the court.⁷ If the attorneys are unable to agree or if, for any reason, further guidance is needed, the evaluator shall seek direction from the court.

5.3 COMMITMENT TO ACCURACY

Child custody evaluators shall strive to be accurate, objective, fair and independent in gathering their data and shall be prepared to defend decisions made by them concerning their methodology.

In gathering data, evaluators shall be committed to accuracy, objectivity, fairness, and independence; shall treat all participants and weigh all data, opinions, and alternative hypotheses thoroughly and impartially; and, shall be prepared to articulate the bases for decisions made by them concerning their methodology.

5.4 USE OF DIVERSE METHODS

Child custody evaluators shall strive to use multiple data gathering methods in order to increase accuracy and objectivity.

Evaluators shall use multiple data-gathering methods that are as diverse as possible and that tap divergent sources of data, thereby facilitating the exploration of alternative plausible hypotheses that are central to the case. The referral questions and issues in the case may be cast as testable hypotheses for the evaluator's investigation. Decisions concerning the selection of data gathering methods shall be made with the circumstances of the evaluation in mind.

5.5 USE OF A BALANCED PROCESS

Child custody evaluators shall strive to use a balanced process in order to increase objectivity, fairness and independence.

(a) Evaluators shall endeavor to employ procedures that will create a sense of balance for those involved in the process. As one element of a balanced process, the evaluative criteria employed shall be the same for each parent-child combination. In the interests of fairness and sound methodology, evaluators shall ensure that any allegation concerning a matter that the evaluator is likely to consider in formulating his/her opinion shall be brought to the attention of the party against whom the allegation is registered so that s/he is afforded an opportunity to respond.

(b) The chosen assessment instruments shall be used with both parties and the interview time with each party shall be essentially the same, except where circumstances warrant a departure from this procedure. Where circumstances warrant a departure from the foregoing standard, the reasons shall be articulated.

5.6 USE OF RELIABLE AND VALID METHODS

Child custody evaluators shall use empirically-based methods and procedures of data collection.

Because evaluators are expected to assist triers of fact, evaluators have a special responsibility to base their selection of assessment instruments and their choice of data gathering techniques on the reliability and validity of those instruments and techniques. Evaluators shall strive to use methods and procedures of data collection that are empirically-based. In the selection of methods and procedures, evaluators shall be aware that the use of greater numbers of instruments (particularly when some of those instruments may be of questionable reliability or validity) does not necessarily produce more reliability and validity in the data set. In selecting methods and procedures, evaluators shall be aware of the criteria concerning admissibility and weight of evidence employed by courts in their jurisdictions.

5.7 ASSESSMENT OF PARENTS AND PARENTING FIGURES

Child custody evaluators shall strive to assess each parent and all adults who perform a caretaking role and/or live in the residence with the children.

(a) Except where contraindicated by special circumstances, evaluators shall assess each parent and any other adults who are currently living in a residence with the children and performing a caretaking role. Additionally, except where contraindicated by special circumstances, evaluators shall assess any other adults who are likely to be living in a residence with the children and performing a caretaking role.⁸ Special circumstances may arise in situations in which the court has specified who is to be evaluated and the evaluator believes it is appropriate to evaluate other individuals who are living in the home or who have continued close contacts with the children. In those circumstances, evaluators, using their professional judgment, shall either (1) seek the court's authority to evaluate the additional individuals, if doing so is deemed necessary; (2) decline assignments in which, in the

evaluator's judgment, obtaining sufficient information will require the assessment of additional individuals; or (3) clearly articulate the limitations applicable to the information obtained and the opinions expressed in light of being unable to assess the other individuals.

(b) It is recognized that individuals who are not parties to the litigation cannot ordinarily be compelled to participate in an evaluation.

5.8 ASSESSMENT OF CHILDREN

Child custody evaluators shall individually assess each child who is the subject of the evaluation.

(a) Evaluators shall assess each child whose placement is at issue and shall be attentive to any special developmental needs of the children. Evaluators shall consider the stated wishes and concerns of each child as these relate to the allocation of parental rights and responsibilities if the child is of sufficient developmental maturity to independently express informed views. Evaluators shall describe the manner in which information concerning a child's stated perceptions and/or sentiments was obtained and shall specify the weight given by the evaluator to the child's stated perceptions and/or sentiments.

(b) Evaluators shall assess and describe sibling relationships. If a parenting plan that is under consideration involves the placement of siblings in different residences, the advantages and disadvantages of such a plan shall be clearly articulated.

5.9 ASSESSMENT OF ADULT-CHILD RELATIONSHIPS

Child custody evaluators shall assess the relationships between each child and all adults who perform a caretaking role and/or living in the residence with the child.

Evaluators shall assess the relationships between each child and all adults residing with the child or functioning in caretaking capacities, or reasonably likely to be functioning in caretaking capacities, except when such adults are paid caretakers, or where the circumstances described in 5.7(a) apply.

5.10 IN PERSON AND TELEPHONIC INTERVIEWS

Child custody evaluators shall conduct at least one in person interview with each parent and other adults who perform a caretaking role and/or are living in the residence with the child(ren). Telephonic interviews are an acceptable means for collecting data from collaterals.

Telephonic communication is an acceptable means for obtaining interview data from collateral sources and as a supplemental technique with primary parties. Except where contraindicated by special circumstances, evaluators shall conduct at least one in person interview with each parent and any other adults who are currently living in a residence with the child(ren) and performing a caretaking role. Additionally, except where contraindicated by special circumstances, evaluators shall conduct at least one in person interview with any other adults who are likely to be living in a residence with the child(ren) and performing a caretaking role.

5.11 DATA BEARING UPON SPECIAL ISSUES

Special issues such as allegations of domestic violence, substance abuse, alienating behaviors, sexual abuse; relocation requests; and, sexual orientations issues require specialized knowledge and training. Evaluators shall only conduct assessments in areas in which they are competent.

Evaluators shall have the professional knowledge and training needed to conduct assessments in which special issues are reasonably likely to arise. Such special issues may include acknowledged or alleged domestic violence, acknowledged or alleged substance abuse, acknowledged or alleged alienating behaviors, acknowledged or alleged child maltreatment including child sexual abuse, relocation requests, and sexual orientation issues. When evaluators lack specialized training in particular areas of concern for the evaluation, they shall either decline the appointment for the evaluation or seek professional consultation in the assessment of that portion of the evaluation. Where such consultation has been obtained, this shall be noted in the evaluator's report. Evaluators shall utilize a generally recognized and systematic approach to the assessment of such issues as domestic violence, substance abuse, child alienation, child maltreatment including child sexual abuse, relocation, and sexual orientation issues.⁴

5.12 INCOMPLETE, UNRELIABLE, OR MISSING DATA

Child custody evaluators shall disclose incomplete, unreliable or missing data.

In their forensic reports, evaluators shall make known to the court when there are incomplete, unreliable, or missing data. Where data are incomplete, unreliable or missing, evaluators shall identify the incomplete, unreliable, or missing data, shall offer an explanation if doing so is possible, and shall articulate the implications of the incomplete, unreliable, or missing data upon any opinions communicated in reports or testimony.

6. USE OF FORMAL ASSESSMENT INSTRUMENTS

6.1 THE DECISION TO USE FORMAL ASSESSMENT INSTRUMENTS

Use of formal assessment instruments is within the discretion of the child custody evaluator.

The use of formal assessment instruments is not always necessary. Where those who are legally permitted to administer and score psychological assessment instruments elect not to do so, they shall recognize that they may be called upon to articulate the basis for that decision.⁹

6.2 EVALUATOR BACKGROUND IN TESTING

Child custody evaluators not trained and experienced in the selection and administration of formal assessment instruments and not reasonably skilled in data interpretation shall not conduct testing.

Some of the model standards that follow apply to the use of any formal assessment instruments or procedures; some are applicable only when psychometric testing is

employed. If testing is advisable and if the evaluator does not have sufficient education, training and/or experience, s/he should refer the testing portion of the evaluation to a case consultant who has sufficient training and experience, including education and training in the interpretation of psychometric test data within a forensic context.⁴

6.3 SELECTION OF ASSESSMENT INSTRUMENTS

When formal assessment instruments are employed, child custody evaluators shall be prepared to articulate the bases for selecting the specific instruments used.

Evaluators shall be prepared to articulate the criteria utilized by them in selecting assessment instruments and shall be prepared to provide the bases for their selection of the instruments utilized in a particular case. Some assessment instruments, data-gathering techniques, and tests that are acceptable in health care settings may not meet the evidentiary demands associated with forensic work. In selecting methods and procedures, evaluators shall be aware of the criteria employed by courts in their jurisdictions in rendering decisions concerning admissibility and weight. Evaluators shall be mindful of issues pertaining to the applicability of psychometric test data to the matters before the court and shall be familiar with published normative data applicable to custody litigants. Evaluators shall carefully examine the available written documentation on the reliability and validity of assessment instruments, data gathering techniques, and tests under consideration for use in an evaluation.

6.4 PROPER USE OF ASSESSMENT INSTRUMENTS

Formal assessment instruments shall be used for the purpose for which they have been validated and the testing shall be conducted according to the instructions.

(a) Evaluators shall utilize assessment instruments and tests in accordance with the instructions and guidance contained in the manuals that accompany the instruments and tests. When utilizing tests, evaluators shall not make substantial changes in test format, mode of administration, instructions, language, or content, unless extraordinary circumstances require that such changes be made. When such changes have been made, evaluators shall have an affirmative duty to articulate the rationale for having made such changes.

(b) Evaluators shall not use instruments for purposes other than those for which they have been previously validated. Evaluators shall be mindful of cultural and language diversity and the impact that these may have on test performance and the resultant data.

6.5 INCLUSION IN REPORTS OF DATA FROM PREVIOUS REPORTS

Child custody evaluators shall take note of any prior formal assessments conducted on the subjects of the evaluation.

Evaluators shall give careful consideration to the inclusion of testing data from previous evaluations. In doing so, evaluators shall consider how current the data are; the qualifications of the previous evaluator; the context of the previous evaluation; and, the importance of examining the raw data.

6.6 USE OF COMPUTER-GENERATED INTERPRETIVE REPORTS

Caution shall be exercised by any child custody evaluator when utilizing computer-generated interpretive reports and/or prescriptive texts.

Evaluators shall exercise caution in the use of computer-based test interpretations and prescriptive texts. In reporting information gathered, data obtained, and clinical impressions formed and in explaining the bases for their opinions, evaluators shall accurately portray the relevance of each assessment instrument to the evaluative task and to the decision-making process. Evaluators shall recognize that test data carry an aura of precision that may be misleading. For this reason, evaluators shall not assign to test data greater weight than is warranted, particularly when opinions expressed have been formulated largely on some other bases.

7. THE TEAM APPROACH TO EVALUATION

7.1 COMPETENCE OF TEAM MEMBERS

A team approach to conducting child custody evaluations is appropriate.

A team approach to conducting child custody evaluations is appropriate, provided that all of the mental health professionals are competent to fulfill their assigned roles. In jurisdictions where court-appointed evaluations are governed by licensure laws, unlicensed team members shall receive close supervision by a designated licensed team member.

7.2 RESPONSIBILITY FOR TEAM-CONDUCTED EVALUATIONS

Any team member who signs the forensic report shall be knowledgeable and answerable to the court on all aspects of the final forensic work product.

8. ROLE CONFLICT AND DUAL ROLE ISSUES

8.1 MAINTAINING OBJECTIVITY

Child custody evaluators shall strive for objectivity and shall take reasonable steps to avoid multiple relationships with any and all participants of an evaluation.

The responsible performance of a child custody evaluation requires that evaluators be able to maintain reasonable skepticism, distance, and objectivity. For this reason, evaluators shall take reasonable steps to avoid multiple relationships. Evaluators shall recognize that their objectivity may be impaired when they currently have, have had, or anticipate having a relationship with those being evaluated, with attorneys for the parties or the children, or with the judges. Evaluators shall recognize that relationships cannot be time delimited; specifically, prior relationships or the anticipation of future relationships may have the same deleterious effects upon evaluator objectivity as current relationships would have.

8.2 DISCLOSURE OF POTENTIAL CONFLICTS

Child custody evaluators shall disclose any and all professional and social relationships with any subject of the evaluation, attorney or judge involved in the proceeding.

It is recognized that in some geographic areas evaluators may not be able to avoid professional or social relationships with individuals whom they may subsequently be asked to evaluate, with attorneys for those individuals, or with judges hearing the disputes. When avoiding multiple relationships is not feasible, evaluators shall be alert to the ways in which their objectivity may be impaired and prior to accepting an appointment, they shall provide a reasonably detailed written disclosure of current, prior, or anticipated relationships with others involved in the litigation. Such disclosure shall be made in a timely manner.

8.3 DEALING WITH UNAVOIDABLE MULTIPLE RELATIONSHIPS

Multiple relationships may be unavoidable in some jurisdictions. When an evaluator is asked or ordered to function in multiple roles and where doing so can be avoided, the child custody evaluator shall have the affirmative duty to inform the appointing agent(s) of the disadvantages of multiple roles and to decline one of the assigned roles.

(a) It is recognized that it may sometimes be necessary to provide both forensic and therapeutic services, or both forensic and parenting coordination services, such as when another reasonably skilled and competent provider is unavailable to provide either service.

(b) When requested or ordered by a court to provide either concurrent or sequential forensic and therapeutic, mediation, or parenting coordination services and when the circumstances described in 8.3(a) do not apply, the evaluator shall inform the court of the disadvantages of this arrangement and shall decline one of the assigned tasks.

8.4 AVOIDANCE OF THERAPEUTIC INTERVENTION

Child custody evaluators shall not offer advice or therapeutic interventions to anyone involved in the child custody evaluation process.

Though therapeutic interventions and the offering of advice are deemed inappropriate under most circumstances, it is recognized that it may be necessary for an evaluator to intervene or to offer advice when 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. [Refer also to 4.6.] The term “advice”, as used herein is not intended to include offering information concerning appropriate resources or offering a referral to an appropriate resource. Where therapeutic intervention has been employed or advice has been offered, as soon thereafter as is practical, the evaluator shall prepare a description of the intervention or advice and the bases upon which intervention or advice was deemed necessary, and shall forward the description to the attorneys.¹⁰

8.5 ROLE DELINEATION IN CONSULTING

Practitioners who are hired to review the work of a child custody evaluator shall restrict their role to that of a reviewer and shall avoid relationships with the participants in the evaluation.

Practitioners shall consider the importance of role delineation in undertaking reviews of the work of evaluators, shall avoid multiple roles, and shall not meet with litigants, family members, or allies of litigants (other than counsel). Reviewers shall not have had any prior relationship with any member of the family that is the subject of the evaluation being reviewed.

9. INTERVIEWING CHILDREN

9.1 CRITICAL FACTORS IN CHILD INTERVIEWING

Child custody evaluators shall be trained and skilled in interview strategies with children and shall follow generally recognized procedures when conducting interviews with children.

Children who are the focus of custody/access disputes shall be interviewed if they have reasonable receptive and expressive language skills. When structuring interviews, evaluators shall consider a range of hypotheses and base their interview strategies on published research addressing the effects upon children's responses of various forms of questioning. Evaluators shall have knowledge of and shall consider the factors that have been found to strongly affect children's capacities as witnesses. Evaluators shall have knowledge of and shall follow generally recognized procedures in establishing the structure and sequence of interviews with children. Evaluators shall commence interviews with children by informing them that what they tell the evaluator is not confidential.

10. OBSERVATIONAL – INTERACTIONAL ASSESSMENT

10.1 AWARENESS OF OBSERVER EFFECTS

Evaluators shall be mindful of the fact that their presence in the same physical environment as those being observed creates a risk that they will influence the very behaviors and interactions that they are endeavoring to observe.

10.2 PARENT-CHILD OBSERVATIONS

Each parent-child combination shall be observed directly by the child custody evaluator, unless there is a risk to the child's physical or psychological safety.

(a) All children, including pre-verbal children, shall be observed with their parents, unless verifiable threats to a child's physical or psychological safety will create foreseeable risk of significant harm to the child or where conducting such an observation is impossible (as when a parent is incarcerated or overseas). Where parent-child observations have not been conducted on the basis of possible risk to a child, evaluators shall have an affirmative obligation to articulate the bases for their decisions.

(b) Observations of parents with children shall be conducted in order that the evaluator may view samples of the interactions between and among the children and parents, and may obtain observational data reflecting on parenting skills and on each parent's ability to respond to the children's needs. In the course of such observations, evaluators shall be attentive to (1) signs

of reciprocal connection and attention; (2) communication skills; (3) methods by which parents maintain control, where doing so is appropriate; (4) parental expectations relating to developmentally appropriate behavior; and, (5) when parents have been asked to bring materials for use during the interactive session, the appropriateness of the materials brought.

(c) Each parent-child combination shall be observed, unless doing so is not feasible [Refer 10.2(a) above.]; parent-child observations shall be conducted subsequent to the first set of interviews with the parents, unless there are compelling reasons to do otherwise; evaluators shall refrain from offering custody and/or access recommendations if observations of both parents with all children have not been completed; and, in formulating their opinions concerning the significance of parent-child interactions, evaluators shall consider religious, cultural, ethnic, and lifestyle factors.

10.3 PROCEDURAL ISSUES

Child custody evaluators shall inform the subjects of the evaluation of the purpose for which observational sessions are conducted and such observations shall be scheduled and overt.

(a) Parent-child observations shall ordinarily be scheduled and overt. Unannounced observations or covert observations (as with hidden cameras or hidden microphones) are deemed unacceptable unless consent to such observational methods has been given in advance by the parties.¹¹

(b) The parties shall be provided with information regarding the purpose of the parent-child observation; the manner in which observational sessions differ from other sessions shall be explained; and, the parties shall be made aware of any special guidelines for the visit before the meeting takes place.

(c) A detailed record of the observational session shall be created. If neither audio- nor video-taping is done and if, for any reason, contemporaneous note-taking is difficult, notes must be entered as soon as possible following the session.

(d) If and when interviews or observational sessions are being audiotaped or videotaped, all introductory comments, all questions, all responses, and all statements made by the evaluator in providing closure shall be included on the audiotape or videotape.

11. USE OF COLLATERAL SOURCE INFORMATION

11.1 THE IMPORTANCE OF COLLATERAL SOURCE INFORMATION

Valid collateral source information is critical to a thorough evaluation. Sufficiency and reliability of collateral source information is a determination to be made by the child custody evaluator.

(a) Evaluators shall be mindful of the importance of gathering information from multiple sources in order to thoroughly explore alternative hypotheses concerning issues pertinent to the evaluation. Evaluators shall recognize the importance of securing information from collateral sources who, in the judgment of the evaluators, are likely to have access to salient and critical data.

(b) Decisions concerning the sufficiency of collateral source information shall be made by evaluators. Accordingly, the data sources may include, but are not limited to, oral and/or

written reports from collateral sources; school, medical, mental health, employment, social service, and law enforcement records; computer files; financial information; and, video and audio data that have been legally obtained.

(c) When collateral and documentary data are not available, then this limitation shall be made known to the court in the forensic report.

11.2 CORROBORATION OF INFORMATION RELIED UPON

Collateral source information is essential. Child custody evaluators shall disclose situations where uncorroborated information was utilized in the formulation of an opinion expressed by the evaluator.

Evaluators shall acknowledge the limits in the ability to discern the truthfulness of oral reports from the primary participants and so shall seek from collateral sources information that may serve either to confirm or to disconfirm oral reports, assertions, and allegations. When assessing the reports of participants in the evaluation, evaluators shall seek from other sources information that may serve either to confirm or disconfirm participant reports on any salient issue, unless doing so is not feasible. Where seeking such confirming or disconfirming information is not feasible, evaluators shall exercise caution in the formulation of opinions based upon unconfirmed reports and shall clearly acknowledge, within the body of their written reports, statements that are not adequately corroborated and why it may or may not be appropriate to give weight to such data.

11.3 AWARENESS OF HEARSAY RULES

Child custody evaluators shall be aware of their local practices regarding hearsay in reports and in testimony.

Because collateral information constitutes hearsay when included in a forensic work product, evaluators shall be aware of exceptions to hearsay rules and other rules governing the admissibility of expert opinion that may apply to forensic evaluations in the legal jurisdictions in which their evaluations have been performed. Evaluators shall also be mindful of the fact that the interpretation of hearsay rules and exceptions may vary considerably from judge to judge and as a function of the unique elements of the case.

11.4 FORMULATION OF OPINIONS

Evaluators shall be prepared to explain how different sources and different types of information were considered and weighted in the formation of their opinions.¹² In utilizing collateral sources, evaluators shall seek information that will facilitate the confirmation or disconfirmation of hypotheses under consideration.

11.5 IDENTIFICATION OF COLLATERAL SOURCES

All collateral sources contacted shall be disclosed by the child custody evaluator.

Evaluators shall list all collateral informants who were contacted and all data sources that were utilized, whether or not the information obtained was utilized by the evaluators

in formulating their opinions. Where unsuccessful attempts have been made to contact collaterals, those collaterals shall be identified and an appropriate notation shall be made.

11.6 SECURING AUTHORIZATION

The subjects of the evaluation shall provide explicit authorization for the child custody evaluator to contact collateral sources unless the authority is provided in the order appointing the evaluator or is statutorily provided. The child custody evaluator shall inform collateral sources that there is no confidentiality in the information that is being discussed between the collateral sources and the evaluator.

(a) Evaluators shall secure authorization to contact collateral sources who, in the evaluators' judgment, are likely to have information bearing upon the matters before the court. Such authorizations shall be secured from the parties in the legal action, unless such authorization is clearly articulated in the order appointing the evaluator or such authorization is provided by statute. Evaluators shall clearly explain the purpose of the evaluation and how the collateral's information will be used. Evaluators shall provide potential collateral informants with written information that shall include an unambiguous statement concerning the lack of confidentiality in a forensic mental health evaluation.

(b) The information alluded to in 11.6(a) may be provided orally only where time constraints make providing written information not feasible. Evaluators shall not promise confidentiality to collateral sources who volunteer to contribute information for the evaluation, including children, unless there is a legal exemption by statute, case law, judicial administrative rule, or court order.

12. PRESENTATION AND INTERPRETATION OF DATA

12.1 COMPETENCE

Evaluators shall only offer opinions to the court in those areas where they are competent to do so, based on adequate knowledge, skill, experience, and education.

12.2 ARTICULATION OF THE BASES FOR OPINIONS EXPRESSED

Opinions expressed by child custody evaluators shall be based upon information and data obtained through the application of reliable principles and methods. Evaluators shall differentiate among information gathered, observations made, data collected, inferences made, and opinions formulated.

Evaluators shall only provide opinions and testimony that are a) sufficiently based upon facts or data; b) the product of reliable principles and methods; and c) based on principles and methods that have been applied reliably to the facts of the case. In their reports and in their testimony, evaluators shall be careful to differentiate among information gathered, observations made, data collected, inferences made, and opinions formulated. Evaluators shall explain the relationship between information gathered, their data interpretations, and opinions expressed concerning the issues in dispute. There shall be a clear correspondence between the opinions offered and the data contained in both the forensic report and the case file.

12.3 ADEQUACY OF DATA

An evaluator shall provide written or oral evidence about the personality characteristics of a particular individual only when the evaluator has conducted a direct examination of that individual and has obtained sufficient information or data to form an adequate foundation for the information provided and/or opinions offered.

12.4 ARTICULATION OF LIMITATIONS

In reports and in testimony evaluators shall articulate any limitations to the evaluation with respect to methodology, procedure, data collection, and data interpretation. [Refer to 5.4.] When the available data do not enable evaluators to opine responsibly on the relative advantages and disadvantages of different parenting plans under consideration, they shall decline to offer an opinion.

12.5 RECOGNITION OF THE SCOPE OF THE COURT ORDER

Evaluators shall avoid offering opinions to the court on issues that do not directly follow from the court order of appointment or signed stipulation or are not otherwise relevant to the purpose of the evaluation.

NOTES

1. Because of the frequency with which evaluators' reports are utilized for settlement purposes, evaluators are urged to include in their reports information needed by the families in addition to the information needed by the courts. This includes situations in which disputes arise concerning the need, or lack thereof, to modify an existing parenting plan.

2. In some jurisdictions, the term "forensic" is not employed in the construction of court orders and the evaluations performed for the courts may be referred to as "clinical" evaluations. Our purpose in emphasizing the forensic nature of the evaluative task is to call attention to two aspects of custody evaluations that distinguish them from other evaluations performed by mental health practitioners. First, because custody evaluations are performed in order that evaluators will be able to assist triers of fact by formulating opinions that can responsibly be expressed with a reasonable degree of professional certainty, sufficiency of information (both from a qualitative and from a quantitative perspective) is judged by a higher standard than that which might be applied to evaluations conducted within a treatment context. Second, notwithstanding the fact that reports prepared by evaluators are used for settlement purposes more often than they are used by the judges who have ordered the evaluations, evaluations must be conducted and reports must be written with the needs of the court in mind.

3. As used herein, the term "court order" includes orders that result from stipulations by the parties.

4. When the services of a consultant have been utilized, the consultant shall be identified and his/her role in the evaluative process shall be briefly described.

5. Evaluators can meet their obligation to retain file items by formally notifying the attorneys and litigants of the intention to copy items and return the originals and retaining original items only if concerns are raised with regard to (a) issues of authenticity, (b) the degree to which the copy is a sufficiently accurate reproduction of the original, or (c) an objection is raised to the return of the originals for any reason.

6. Attention is called to the introductory section of the *Model Standards* (in particular, "1.3 Scope") in which it is stated that the *Model Standards* are not "intended to apply to evaluations that may formally incorporate a settlement component and that are, therefore, hybrid models." If an evaluator will be participating in settlement negotiations, this must be established at the outset of the evaluation and the ramifications of this role change shall be fully explained in writing.

7. Though Standard 5.5 does not specify that approval must be explicit as opposed to tacit, evaluators are urged to obtain legal advice if they are considering a notification/tacit approval approach. In jurisdictions in which evaluators are protected by some form of immunity, the protection may be dependent upon conformity with the

terms of the court order and it is possible that anything other than explicit, written direction from the court would void whatever immunity might otherwise be in place.

8. Two examples of such special circumstances follow. (1) A non-party declines to participate. Ordinarily, individuals who are not parties to the litigation cannot be compelled to participate in an evaluation. (2) a current or potential caretaker is deemed acceptable by both parties. Example: one set of grandparents is actively involved in a child's care; intend to continue being active; and no objections or concerns are expressed by either party.

9. In these Model Standards, a distinction is made between "formal assessment instruments" and "tests". The definition of a test has been taken from the *Standards for Educational and Psychological Testing* [American Educational Research Association, American Psychological Association & National Council on Measurement in Education (1999). *Standards for educational and psychological testing*. Washington, DC: American Psychological Association.] "A test is an evaluative device or procedure in which a sample of an examinee's behavior in a specified domain is obtained and subsequently evaluated and scored using a standardized process" (p. 3). The term "formal assessment instruments" includes tests but also includes structured procedures and techniques that are not "scored using a standardized process". Terms such as "assessment procedures" and "data-gathering techniques" refer to instruments and procedures the data from which are not scored.

10. The language of the court order, local rule, or local custom may determine whether the information alluded to in 8.4 shall be forwarded to the court at the same time that it is forwarded to the attorneys or, alternatively, included in the custody evaluator's final report.

11. This standard is not intended to apply to unintentional observations such as those that may occur in the waiting room or in public areas in which evaluators and evaluatees may encounter one another.

12. It is not intended that evaluators will assign numerical values to different sources and types of information as a means by which to communicate the weight assigned to them.

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