

# **CHILD CUSTODY EVALUATION STANDARDS**

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AMERICAN ACADEMY OF MATRIMONIAL LAWYERS

THE MISSION OF THE AAML IS TO PROVIDE LEADERSHIP THAT  
PROMOTES THE HIGHEST DEGREE OF PROFESSIONALISM AND  
EXCELLENCE IN THE PRACTICE OF FAMILY LAW.

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## **PRESIDENT'S MESSAGE**

The Child Custody Evaluation Standards Committee was created during the presidency of Gaetano Ferro, who appointed Maria Cognetti as chair of an interdisciplinary committee consisting of five attorneys and two nationally recognized mental health professionals, Marc Ackerman, Ph.D. and Arnold Shienvold, Ph.D.

It is hoped that these Standards will provide uniformity and promote better practices for those who conduct custody evaluations in all jurisdictions, whether mental health professionals or others; and that the promulgation of these Standards will assist those conducting child custody evaluations in their investigation and preparation of reports that will aid the courts, parties, and attorneys in the appropriate resolution of custody and parenting time issues.

Designed as a resource, these Standards are not intended to supersede or replace the ethical obligations of each profession.

The Academy is grateful to the committee for their tireless work on this worthwhile and important project.

October, 2011

Linda Lea M. Viken, President

American Academy of Matrimonial Lawyers



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## **P R E A M B L E**

The American Academy of Matrimonial Lawyers was founded in 1962, by domestic relations attorneys highly regarded in their respective jurisdictions who identified a need for an organization dedicated to elevating the standards of practice in family law. There are currently more than 1600 Fellows in 50 states.

During the 2006-2007 term, President Gaetano Ferro appointed Maria Cognetti chair of an interdisciplinary committee to develop standards for the courts, parties, counsel and mental health professionals for the preparation of uniform child custody evaluations. The committee was composed of experienced family lawyers, all Fellows of The American Academy of Matrimonial Lawyers, from regions throughout the United States who have not only handled all types of custody disputes but also functioned as Guardians ad Litem. Two nationally recognized forensic psychologists, Arnold Shienvold, Ph.D. and Marc Ackerman, Ph.D., volunteered their time to provide valuable insight into the complexity of the conduct of these evaluations.

Every jurisdiction in the United States has established legal standards for the determination of child custody; few states have rules or laws which govern how child custody evaluations are conducted. In large urban areas where mental health professionals are plentiful, these evaluations are typically completed by licensed psychologists who have stated competencies in child development and custody evaluation. However, this committee recognizes the fact that in the rest of the country, where mental health professionals are scarce and economic resources limited, these evaluations may sometimes be conducted by professionals (which may include attorneys) without training in custody evaluations and court appointed lay persons functioning as Guardians ad Litem and under the mantle of various ADR methodologies. It is the intent of the committee that these Standards will aid professionals in understanding the necessary training, skill and experience required in conducting custody evaluations. It is also the intent of

the committee that the court will utilize these Standards in their selection of custody evaluators.

Citizens are more likely to be touched by the family court system than any other area of law and no intrusion of the law is more intimate than the determination of who will have custody of a child. The ramifications extend well beyond the family to the entire community. The task of the child custody evaluator is unlike any other court expert. The consequences of these recommendations reverberate long after the legal case is over.

It was the conclusion of the committee that there is need for a coherent, uniform set of standards for the variety of professionals who may be called upon by the court to conduct a custody evaluation. The standards set by this committee are not intended to supersede the ethical precepts of each profession; rather they are an adjunct, intended to provide the court with a uniform means of assessing the quality of a custody evaluation submitted to the court. The committee gratefully acknowledges a major debt to the Association of Family and Conciliation Courts [hereinafter, AFCC] for its permission to utilize and rely upon major portions of its Model Standards of Practice for Child Custody Evaluation, 2006 , and the Guidelines for Brief Focused Assessment, 2009. Many of the issues involved in drafting these Standards are virtually identical to those presented by the AFCC in its Model Standards. As a result, some of the provisions are taken verbatim or with slight adaptation of the Model Standards. To reduce confusion, those provisions are presented here without quotation marks or citations. The committee also acknowledges the Specialty Guidelines for Forensic Psychology.

The criteria for expertise as set forth in *Daubert v. Merrell Dow Pharmaceuticals, Inc.*, 509 U.S. 579, 113 S. Ct. 2786 (1993) and *Frye v. United States*, 54 App. D.C. 46, 293 F. 1013 (1923) were incorporated in these Standards. In addition, the committee reviewed and took into consideration the American Psychological Association [hereinafter, APA] Guidelines for Child Custody Evaluations in Divorce Proceedings, 2009, the APA Draft Guidelines for Evaluating Parental Responsibility , May 2007, and

the APA Ethical Principles of Code of Conduct for Psychologists with 2010 Amendments .

Application of the knowledge and skills of mental health providers in the resolution of legal disputes is a forensic endeavor. These standards have been written in consideration of the importance of that skill set to the orderly and effective resolution of child custody disputes. In the case of custody evaluations, the purpose is to assist the court in application of the law to these important decisions. Lawyers, mental health professionals and judges each have different and distinct roles in child custody disputes. The lawyer advocates for the client; the mental health professional investigates, evaluates and recommends under the canopy of the best interests standard. It is in domestic relations that law and psychology intersect.

The AAML Child Custody Evaluation Standards are intended to provide the parties, courts and professionals who conduct these evaluations a uniform guide to the properly performed child custody evaluation. These Standards may be applicable in any proceeding in which custody or access to a child is being determined.

Maria Cognetti, J.D., Chair

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## **INTRODUCTION**

### **I.1 PURPOSE**

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

These *Child Custody Evaluation Standards* are designed in part to guide and assist custody evaluators, attorneys and the court in the performance of their duties. In disseminating these Standards, the goal of the American Academy of Matrimonial Lawyers is to contribute to the ongoing education of custody evaluators, attorneys and courts, thereby promoting good practice; to provide information to those who utilize the services of custody evaluators; and, to increase confidence in the work done by custody evaluators. Unless and until these 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 development and adoption of these Standards by the AAML, can guide custody evaluators, attorneys, courts, and parties in the best practices to be utilized in custody evaluations.

### **I.2 ENFORCEMENT**

**The AAML believes it to be advisable that custody evaluators conform their practices to these *Standards*; however, the AAML does not have an enforcement mechanism.**

The AAML does not have and does not intend to establish an enforcement mechanism for these *Standards*. We believe it to be advisable that custody evaluators conform their practices to these

*Standards.* These *Standards* may communicate expectations that exceed those established by law or by regulatory bodies. Where conflict exists, laws, rules of court, regulatory requirements, or agency requirements supersede these *Standards*. Where the *standard* articulated herein is higher than the *standard* required by law or regulation, the custody evaluators should be guided by these *Standards*.

### **I.3 APPLICABILITY**

**The *Child Custody Evaluation Standards* are intended to address the process of a custody evaluation.**

The *Child Custody Evaluation Standards* are intended to address the process of a custody evaluation. The *Standards* are designed to apply only to processes that lead to an analysis of the relative strengths and deficiencies of the parties or that offer an analysis of different parenting plans under consideration by the custody evaluator. The *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 Brief Focused Evaluations, mini-evaluations, and Early Neutral Evaluations. Neither are these *Standards* intended to apply to evaluations that may formally incorporate a settlement component and that are, therefore, hybrid models.

**American Academy of Matrimonial Lawyers  
Child Custody Evaluation Standards**

**1. TRAINING, EDUCATION &  
COMPETENCY ISSUES**

**1.1 CUSTODY EVALUATIONS AS A SPECIALIZATION**

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

Custody evaluators should have specialized knowledge and training in a wide range of topics specifically related to child custody as well as a broad knowledge of family dynamics. Those individuals conducting custody evaluations that raise special issues should have specialized training. [Refer to 1.2(c) for a list of areas in which specialized training is required.] Because research and laws pertaining to the field of divorce or separation and custody are continually changing and evolving, custody evaluators should participate in continuing education on a regular basis.

**1.2 EDUCATION, TRAINING AND EXPERIENCE**

**Custody evaluators shall possess appropriate education and training. Custody evaluators should have at least a master's degree in a mental health field that includes formal education in the legal, social, familial and cultural issues involved in custody and parenting time decisions. Custody evaluators who have fewer than three years' experience in conducting custody evaluations and have conducted fewer than 20 custody evaluations should seek ongoing supervision from an experienced custody evaluator**

**prior to offering to perform or accepting appointments to conduct custody evaluations.**

## **EDUCATION**

(a) Custody evaluators shall have at least a master's degree (or its regionally-recognized equivalent) in a mental health field or a juris doctor degree, both of which shall have the training requirements in 1.2(b) and the experience requirements in  
1.2 (e).

## **TRAINING**

(b) Areas of expected formal education and/or training for all child custody evaluators include but are not limited to:

### *General Information*

(1) the legal context within which child custody and parenting time issues are decided and additional legal and ethical standards to consider when serving as a child custody evaluator;

(2) the psychological assessment of children and adults;

### *Knowledge*

(3) psychopathology of children and adults;

(4) the psychological and developmental needs of children, especially as those need relate to decisions about child custody and parenting time;

(5) family dynamics, including, but not limited to, parent-child

relationships, blended families, and extended family relationships;

(6) research, theory, policy and practice regarding divorce and child custody issues;

(7) the effects of separation, divorce, custody arrangements, and parental conflict on the psychological and developmental needs of children and adults;

(8) the significance of culture and religious diversity in the lives of parties;

(9) relevant aspects of forensic psychology;

(10) the ethical guidelines for their professions;

*Role*

(11) how to make the relevant distinctions among the roles of evaluator, mediator, therapist, parenting coordinator, and co-parenting counselor;

(12) how to deal with issues of informed consent;

(13) when to consult with or involve additional experts or other appropriate persons;

(14) how to maintain neutrality;

*Procedure*

(15) how to apply comparable interview, assessment, and testing procedures that meet generally accepted forensic standards;

- (16) how to collect and assess relevant data and recognize the limits of the reliability and validity of different sources of data;
- (17) when and how to interview or assess children and adults;
- (18) how to assess and construct effective parenting and co-parenting plans;
- (19) how to gather information from collateral sources;
- (20) how to recognize safety issues that may arise during the evaluation process and their potential effects on all participants in the evaluation;
- (21) how to write reports for the courts;
- (22) how to conduct an assessment of attachment or bonding;

*Recommendations*

- (23) how to address issues such as general mental health, medication use, learning or physical disabilities, and special needs;
  - (24) how to maintain professional neutrality and objectivity when conducting child custody evaluations; and
  - (25) how to achieve balance and recognize bias.
- (c) Areas of additional specialized training for a particular situation including, but not limited to:
- (1) assessment of allegations of child sexual abuse issues;

- (2) assessment of child abuse;
- (3) assessment of domestic violence;
- (4) assessment of alienation;
- (5) assessment of relocation (move-away) requests by one parent;
- (6) assessment of substance abuse; and,
- (7) sexual orientation issues.

(d) Custody evaluators shall maintain the requisite knowledge and skill, keep abreast of developments in the fields of psychology and the law, and engage in continuing study and education. Custody evaluators who are not competent in a specific area should demonstrate that they have consulted with a professional who is competent in that area, and disclose such consultation in their reports.

## **EXPERIENCE REQUIREMENTS**

(e) Because a custody evaluation is a unique specialty area, anyone conducting custody evaluations should have obtained appropriate education and professional training prior to offering to perform or accepting an appointment to perform such evaluations. Novice custody evaluators should obtain supervision or consultation with another professional who meets the education, experience, and training requirements of this section. Custody evaluators who have fewer than three years of experience conducting custody evaluations and have conducted fewer than 20 custody evaluations should continue receiving ongoing supervision or arrange for consultation to be available to them and to utilize the services of a consultant

when needed. When a custody evaluator utilizes the services of a consultant in forming their opinion, the consultant and their role shall be identified.

(f) Upon request, custody evaluators should adequately and accurately inform all recipients of their services about relevant aspects of the nature and extent of their experience, training, credentials, and qualifications.

## **2. COMMUNICATION WITH LITIGANTS, ATTORNEYS & COURTS**

### **2.1 POLICIES, PROCEDURES AND FEES**

**Custody evaluators should communicate their policies regarding their procedures in conducting custody evaluations.**

(a) Custody evaluators should communicate their policies regarding their procedures in conducting custody evaluations. Custody evaluators should provide to the recipients of their services, detailed written information concerning their policies, procedures, scope of services, time frame of services, and fees. In the portion of the document in which fees are outlined, it should be made clear that the services to be rendered are forensic in nature.

(b) The court order or engagement letter as defined herein shall: specify the intended uses of information obtained during the custody evaluation; include a list of those to whom and the manner in which the report will be released; and confirm that release of items in their file will be in conformance with applicable laws and court rules. This information shall be provided to the parties and to their attorneys.

(c)(i) In the initial meeting with the parties, custody evaluators should review their policies and procedures, confirm understanding of the engagement letter, respond to any questions, and seek assurance that the policies and procedures are fully understood.

(c)(ii) Custody evaluators should inform children of the limits of confidentiality, using language that is based upon each child's cognitive capacity and receptive language abilities.

## **2.2 INFORMED CONSENT – PARTIES**

**Custody evaluators should take steps to ensure that parties from whom information is sought know and understand the potential uses of the information that they are providing.**

(a) Custody evaluators shall inform the parties as to the manner in which information provided by them will be utilized with emphasis on the fact that the information provided by them is not confidential.

(b) Custody evaluators shall disclose to the parties information that may include, but is not limited to: the purpose, nature, and anticipated uses of the custody evaluation; who will have access to the information obtained during the custody evaluation; and associated limits on privacy, confidentiality, and privilege including who is authorized to release or access the information contained in the custody evaluator's records.

(c) Any document given to the custody evaluator by an attorney or a party shall also be immediately given to the other side. The custody evaluator will inform each attorney of documents received from the parties. Documents provided to the custody evaluator are not privileged.

(d) If a party is ordered by the court to participate, the custody evaluator can conduct the examination over the objection, and without the consent, of the party. If the party declines to proceed after being notified of the nature and purpose of the custody evaluation, the custody evaluator may, as appropriate, attempt to conduct the examination, postpone the examination, advise the party to contact his or her attorney, or notify the attorneys and/or court of the party's unwillingness to proceed.

## **2.3 INFORMED CONSENT – COLLATERAL CONTACTS**

**The custody evaluator should obtain explicit authorization from the parties for the custody evaluator to contact collateral sources unless the authority is provided in the order appointing the custody evaluator or is statutorily provided. The custody evaluator should inform collateral sources that the information that is being discussed between the collateral sources and the custody evaluator is not confidential.**

(a) The custody evaluator should obtain explicit authorization from the parties for the custody evaluator to contact collateral sources unless the authority is provided in the order appointing the custody evaluator or is statutorily provided.

(b) The subjects of the evaluation should provide explicit authorization for the custody evaluator to contact collateral sources who, in the custody evaluator's judgment, are likely to have information bearing upon the matters before the court. Such authorizations should be secured from the parties in the legal action, unless such authorization is clearly articulated in the order appointing the custody evaluator or such authorization is provided by statute. Custody evaluators should clearly explain the purpose of

the evaluation and how the collateral's information will be used.

(c) The custody evaluator should inform collateral sources that the information that is being discussed between the collateral sources and the custody evaluator is not confidential.

(d) The custody evaluator should disclose to collateral sources relevant information that may include, but may not be limited to, who has retained the custody evaluator; the nature, purpose, and intended use of the examination or other procedure; limits on privacy, confidentiality, and privilege.

(e) Documents provided to the custody evaluator by collateral sources are not privileged and the parties will either receive copies of the documents or a list of documents received from collateral sources.

## **2.4 EX PARTE COMMUNICATION**

**Custody evaluators should refrain from ex parte communications about a case with the court or with the attorneys representing the parties, except in extraordinary circumstances.**

(a) From the time that the custody evaluator learns of their assignment until the time that the custody evaluation has been completed and their report has been submitted, custody evaluators shall avoid ex parte communication with the court and with any of the attorneys representing the parties regarding substantive matters. Ex parte communication is permissible only as to administrative or procedural matters.

(b) Upon the release of the report, there shall be no ex parte communications between the custody evaluator and an attorney or a party unless expressly agreed upon by the attorneys and the evaluator. Preparing the custody evaluator for testimony at trial is not considered inappropriate ex parte communication.

### **3. INTERIM RECOMMENDATIONS**

**Custody evaluators should refrain from making interim recommendations, except in extraordinary circumstances.**

Unless agreed to by the attorneys, by court order, or by agreement of the parties, or except in extraordinary circumstances, and unless the custody evaluator has the necessary information, the custody evaluator should refrain from making an interim recommendation.

### **4. DATA GATHERING**

#### **4.1 ESTABLISHING THE SCOPE OF THE EVALUATION**

**The scope of the custody evaluation should be delineated in a court order or in a signed stipulation by the parties and their counsel.**

Custody evaluators should establish the scope of the custody evaluation as determined by court order or by a signed stipulation by the parties and their attorneys. A sample court order and stipulation are appended as Exhibit A. If issues not foreseen at the outset of an evaluation arise and it is the custody evaluator's professional judgment that the scope of the custody evaluation must be widened, the custody evaluator should seek the approval of the court or of all attorneys prior to expanding the originally designated scope of

the custody evaluation. Any changes in the scope of the custody evaluator's assigned task should be memorialized in writing and signed by the court or by all attorneys and parties, as applicable.

## **4.2 COMMITMENT TO ACCURACY**

**Custody evaluators should strive to be accurate, objective, fair, balanced, and independent in gathering their data and should be prepared to defend decisions made by them concerning their methodology.**

- (a) Custody evaluators must recognize that their own attitudes, values, beliefs, opinions, or biases may diminish their ability to evaluate in a competent and impartial manner. Under such circumstances, custody evaluators should take steps to correct or limit such effects, decline participation in the matter, or limit their participation in a manner that is consistent with professional obligations.
- (b) In gathering data, the custody evaluator should be accurate, impartial, objective, fair, balanced, and independent. All data shall be weighed, and alternative hypotheses examined. All participants shall be treated impartially. Custody evaluators should be prepared to articulate the bases for decisions concerning their methodologies.
- (c) When providing reports and other sworn statements or testimony in any form, custody evaluators should present their conclusions, evidence, opinions, or other professional products in a fair and balanced manner. Custody evaluators shall not, by either commission or omission, participate in misrepresentation of their evidence, nor shall they participate in partisan attempts to avoid, deny or subvert the presentation of evidence contrary to their own position or opinion. This principle does not preclude forceful

presentation of the data and reasoning upon which a conclusion or the custody evaluation is based.

#### **4.3 USE OF DIVERSE METHODS**

**Custody evaluators should use multiple data gathering methods in order to enhance accuracy and objectivity.**

(a) Custody evaluators should use multiple data gathering methods that are as diverse as possible and that draw upon divergent sources of data, and which may lead to alternative plausible hypotheses that need to be explored. Decisions concerning the selection of data gathering methods should be based upon the specific circumstances of the case.

(b) Custody evaluators should avoid reliance on a single source of data. Important data should be corroborated whenever feasible. When relying on uncorroborated data, custody evaluators should make known the uncorroborated status of that data, any associated strengths and limitations, and the reasons for reliance on the data.

(c) Custody evaluators should employ optimally diverse and accurate methods for addressing the questions raised in a specific custody evaluation. Direct methods of data gathering typically include such components as psychological testing, clinical interviews, and behavioral observation. Custody evaluators should seek documentation from a variety of sources (e.g. schools, health care providers, child care providers, agencies, and other institutions), and should attempt to gain information from the extended family, friends, and acquaintances, as well as other collateral sources when the resulting information is likely to be relevant. Custody evaluators should seek corroboration of information gathered from third parties, and should document the bases of their conclusions.

## **4.4 USE OF A BALANCED PROCESS**

**Custody evaluators should use a balanced process in order to increase objectivity, fairness and independence.**

- (a) Custody evaluators should employ procedures creating a sense of balance and preventing bias from influencing the result for those involved in the process. As one element of a balanced process, the evaluative criteria employed should be the same for each parent-child combination, except as provided in 4.6. In the interest of fairness and sound methodology, custody evaluators should ensure that any allegation that the custody evaluator is likely to consider in formulating his or her opinion will be brought to the attention of the party against whom the allegation is directed so that the party is afforded an opportunity to respond. Where circumstances warrant a departure from the foregoing standard, the reasons therefore should be articulated.
- (b) Consistent with relevant laws and rules of evidence, when providing reports and other sworn statements or testimony, custody evaluators should provide a complete statement of all relevant opinions formed, the basis and reasoning underlying those opinions, the salient data or other information considered, and an indication of any additional evidence that may be used in support of the opinion offered.

## **4.5 USE OF RELIABLE AND VALID METHODS**

**Custody evaluators should use empirically-based methods and procedures of data collection.**

- (a) In assisting the court, custody evaluators have a special responsibility to select assessment instruments and choose data-

gathering techniques that are reliable and valid. Custody evaluators should use methods and procedures of data collection that are empirically-based. In the selection of methods and procedures, custody evaluators should 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, custody evaluators should be aware of the criteria concerning admissibility and weight of evidence employed by courts in their jurisdictions.

(b) When offering opinions, custody evaluators should be mindful of evidentiary standards in their jurisdiction and of the importance of reliability, validity and relevance to their specific tasks and should consider multiple factors, including, but not limited to:

1. Possessing the necessary skill, knowledge, experience, training and education in the areas that fall within the scope of their evaluations;
2. Refraining from offering theories and hypotheses that have not been subjected to peer review or publication;
3. Avoiding the application of theories or techniques that are not considered generally accepted within the psychological community;
4. Avoiding opinions that rely too heavily on their subjective interpretation;
5. Avoiding opinions and theories that have not been sufficiently tested within the psychological community; and
6. Remaining familiar with literature within their field of expertise, but especially in the area in which they plan to offer opinions.

In the event of any deviation from the principles set forth above, the custody evaluator shall be prepared to set forth the rationale for such deviation.

## **4.6 ASSESSMENT OF PARENTS AND PARENTING FIGURES**

**Custody evaluators should assess each parent and all adults who perform a caretaking role and/or live in the residence with the children.**

(a) (i) Except where contraindicated by special circumstances, custody evaluators should assess each parent and any other adults who are currently or likely to be living in a residence with the children and/or performing a caretaking role.

(a) (ii) Special circumstances may arise in situations in which the court has specified who is to be evaluated or in which the custody 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, custody evaluators, using their professional judgment, should either seek the court's authority to evaluate the additional individuals, if doing so is deemed necessary; or clearly articulate the limitations on the information obtained and the opinions expressed in light of the inability to assess the other individuals.

(b) Custody evaluators should only provide written or oral evidence about the psychological characteristics of particular individuals when they have sufficient information or data to form an adequate foundation for those opinions or to substantiate their findings. Custody evaluators should make reasonable efforts to obtain such information or data, and they should document their

efforts to obtain it. When it is not possible or feasible to examine individuals about whom they are offering an opinion, custody evaluators should make clear the impact of such limitations on the reliability and validity of their professional products, opinions, or testimony.

(c) Custody evaluators shall not offer opinions regarding individuals they have not directly evaluated.

(d) Custody evaluators may offer opinions in response to hypothetical questions so long as the limited basis of the question is noted.

#### **4.7 ASSESSMENT OF CHILDREN**

**Custody evaluators should individually assess each child who is the subject of the evaluation.**

(a) Custody evaluators should assess each child whose placement is at issue and should be attentive to any special developmental needs of the children. If a child has stated a preference, then custody evaluators should consider the preference of each child but only if the child is of sufficient developmental maturity to independently express informed views. Custody evaluators should describe the manner in which information concerning a child's stated perceptions and/or preferences were obtained and should specify the weight given by the custody evaluator to the child's stated preference.

(b) Custody evaluators should assess and describe sibling relationships.

## **4.8 PARENT - CHILD OBSERVATIONS**

**The custody evaluator should observe each parent-child combination, unless there is a risk to the child's physical or psychological safety.**

(a) The custody evaluator should observe each parent-child combination, including pre-verbal children, unless verifiable threats to a child's physical or psychological safety will create a foreseeable risk of significant harm to the child or where conducting such an observation is impossible.

(b) Where there are restrictions on the contact between a parent and child, the custody evaluator shall work with the attorneys and the court to develop a safe procedure under which such observation may take place.

(c) Where parent-child observations have not been conducted, custody evaluators have an affirmative obligation to articulate the bases for their decision as to why no such observations were conducted.

(d) Observations of parents with children should be conducted in order that the custody evaluator may view samples of the interactions between and among the children and parents, to obtain observational data reflecting on parenting skills and on each parent's ability to respond to the children's needs.

## **4.9 IN PERSON AND TELEPHONIC INTERVIEWS**

**Custody evaluators should 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.**

**Telephonic interviews are an acceptable means for collecting data from collaterals.**

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

**4.10 INCOMPLETE, UNRELIABLE, OR MISSING DATA**

**Custody evaluators should disclose incomplete, unreliable or missing data.**

In their custody evaluations, custody evaluators should make known to the court when there are incomplete, unreliable, or missing data. Where data are incomplete, unreliable or missing, custody evaluators should: 1) identify the incomplete, unreliable, or missing data; 2) offer an explanation if doing so is possible; and 3) articulate the implications of the incomplete, unreliable, or missing data upon any opinions communicated in reports or testimony.

## **4.11 THIRD PARTY PARTICIPATION**

**Except under unusual and/or necessary circumstances, third parties should not be present during any portion of the custody evaluation.**

Except under unusual and/or necessary circumstances third parties should not be present during any portion of the custody evaluation. The presence of third parties shall be disclosed by the custody evaluator in his report. Custody evaluators should be mindful of the potential impact of third parties on the interview or observation process.

## **5. REQUIREMENT OF COLLATERAL SOURCE INFORMATION**

### **5.1 THE IMPORTANCE OF COLLATERAL SOURCE INFORMATION**

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

(a) A custody evaluator should recognize the importance of gathering information from multiple sources that are likely to have access to salient and critical data, in order to thoroughly explore alternative hypotheses pertinent to the custody evaluation.

(b) Decisions concerning the sufficiency of collateral source information should be made by the custody evaluator. 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, this limitation should be made known to the court in the custody evaluation report if not previously disclosed.

## **5.2 CORROBORATION OF RELIED UPON INFORMATION**

**Collateral source information is usually essential in corroborating participant information.**

Custody evaluators should acknowledge the limits in their ability to discern the accuracy of oral reports from the primary participants and so shall attempt to seek from collateral sources information that may serve either to confirm or to disconfirm oral reports, assertions, and allegations. When assessing the information received from participants in the custody evaluation, custody evaluators should 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, custody evaluators should 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.

## **5.3 IDENTIFICATION OF COLLATERAL SOURCES**

**All collateral sources contacted should be disclosed by the custody evaluator.**

A custody evaluator should list all collateral sources, whether or not the information obtained was utilized by the custody evaluator in formulating his opinion. Where unsuccessful attempts have been made to contact collaterals, those collaterals should be identified and an appropriate notation made.

## **6. USE OF FORMAL ASSESSMENT INSTRUMENTS**

### **6.1 THE DECISION TO USE FORMAL ASSESSMENT INSTRUMENTS**

**Use of formal assessment instruments and psychological tests are within the discretion of the custody evaluator.**

(a) Custody evaluators should use assessment procedures in the manner and for the purposes that are appropriate in light of the research on or evidence of their usefulness and proper application. This includes assessment techniques, interviews, tests, instruments, and other procedures as well as their manual or computerized administration, adaptation, scoring, and interpretation. Assessment in legal contexts differs from assessment in therapeutic contexts in important ways that custody evaluators should take into account when conducting custody evaluations. Custody evaluators should consider the strengths and limitations of employing traditional assessment procedures in custody evaluations. Custody evaluators should take special care to ensure the integrity and security of test materials and results.

- (b) Where those who are permitted to administer and score psychological assessment instruments elect not to do so, they shall articulate the basis for that decision.

## **6.2 TRAINING NECESSARY TO USE FORMAL ASSESSMENT INSTRUMENTS**

**Custody evaluators should be trained and experienced in the selection and administration of formal assessment instruments and should be reasonably skilled in data interpretation.**

If formal assessment or testing is advisable and if the custody evaluator does not have sufficient education, training and/or experience, the custody evaluator should refer that portion of the custody 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.

## **6.3 BASIS FOR SELECTING FORMAL ASSESSMENT INSTRUMENTS**

**When formal assessment instruments are employed, the custody evaluator should be able to articulate the bases for selecting the specific instruments used.**

- (a) Custody evaluators should be able to articulate the criteria utilized by them in selecting assessment instruments and 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, custody evaluators shall know the criteria employed by courts in their jurisdictions in rendering

decisions concerning admissibility and weight. Custody evaluators should be knowledgeable of issues pertaining to the applicability of psychometric test data to the matters before the court and should be familiar with published normative data applicable to custody litigants. Custody evaluators should be aware of the reliability and validity of assessment instruments used.

(b) When interpreting assessment results, custody evaluators should consider the purpose of the assessment as well as the various test factors, test-taking abilities, and other characteristics of the person being assessed, such as situational, personal, linguistic, and cultural differences that might affect their judgments or reduce the accuracy of their interpretations. Custody evaluators should identify any significant strengths and limitations of their procedures and interpretations.

(c) If the validity of an assessment technique has not been established in the forensic context or setting in which it is being used, the custody evaluator should describe the strengths and limitations of any test results and explain the extrapolation of these data to the forensic context.

## **6.4 PROPER USE OF ASSESSMENT INSTRUMENTS**

**Formal assessment instruments should be used for the purpose for which they have been validated and the testing should follow standardized procedures.**

Custody evaluators should utilize the standardized procedures associated with each test. When utilizing tests, custody evaluators should refrain from making 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, custody evaluators shall articulate the rationale for having made such changes.

## **6.5 INCLUSION IN REPORTS OF RELEVANT DATA FROM PREVIOUS REPORTS**

**Custody evaluators should take note of any prior formal assessments conducted on the subjects of the evaluation.**

Custody evaluators should consider the results of testing data from previous evaluations. In doing so, custody evaluators should 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 should be exercised by the custody evaluator when utilizing computer-generated interpretive reports and/or prescriptive texts.**

Custody evaluators should 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, custody evaluators should accurately portray the relevance of each assessment instrument to the evaluative task and to the decision-making process. Custody evaluators should not assign to test data greater weight than is warranted, particularly when opinions expressed have been formulated largely on some other basis.

## **7. THE TEAM APPROACH TO CUSTODY EVALUATIONS**

### **7.1 COMPETENCE OF TEAM MEMBERS**

**A team approach to conducting custody evaluations may be appropriate in certain circumstances.**

(a) A team approach to conducting custody evaluations may be appropriate in certain circumstances, provided that all of the mental health professionals are competent to fulfill their assigned roles. In jurisdictions where court-appointed custody evaluations are governed by licensure laws, unlicensed team members should receive close supervision by a designated licensed team member.

(b) A custody evaluator shall explain the reasons for using the team approach.

### **7.2 RESPONSIBILITY FOR TEAM-CONDUCTED CUSTODY EVALUATIONS**

Any team member who signs the custody evaluation report should be knowledgeable and available to the court.

## **8. ROLE CONFLICTS**

### **8.1 AVOIDING MULTIPLE RELATIONSHIPS**

**Custody evaluators shall take reasonable steps to avoid multiple relationships with any party, attorney, or court.**

(a) A multiple relationship occurs when a custody evaluator and either a party, attorney or court is: 1) at either the same or a previous

time in different roles with the same person; involved in a personal, fiscal, or other relationship with such person; 2) is in a relationship with a person closely associated with or related to a party, attorney, or court; or 3) offers or agrees to enter into another relationship in the future with the person or a person closely associated with or related to them.

(b) Custody evaluators should take reasonable steps to avoid multiple relationships. The responsible performance of a custody evaluation requires that custody evaluators be able to maintain reasonable professional boundaries, a balanced approach, and objectivity. Custody evaluators should recognize that relationships cannot be time limited; specifically, prior relationships may have the same deleterious effects upon the objectivity of the custody evaluator as current relationships.

(c) Custody evaluators should recognize that their objectivity may appear to be impaired when they currently have or have had a relationship with attorneys for the parties or the children, or with the judge.

(d) Custody evaluators should refrain from taking on a professional role when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to impair their objectivity, competence, or effectiveness.

(e) The payment by one party of the fees for the custody evaluator does not constitute bias in favor of that party by the custody evaluator.

## **8.2 INFORMING THE COURT OF MULTIPLE RELATIONSHIPS**

**If the existence of a multiple relationship is unavoidable, the custody evaluator should inform the court of the existence of a multiple relationship and the impact of the same on the custody evaluation and then proceed only upon waiver in writing signed by the parties and their counsel.**

If the existence of a multiple relationship is unavoidable, the custody evaluator should inform the court of the existence of a multiple relationship and the impact of the same on a custody evaluation and then proceed only upon waiver in writing signed by the parties and their counsel.

## **8.3 DISCLOSURE OF POTENTIAL CONFLICTS**

**Custody evaluators should disclose any and all professional and social relationships with any party or participants to the evaluation.**

It is recognized that in some geographic areas custody 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, custody evaluators should be alert to the ways in which their objectivity may be impaired, and they should provide disclosure of current or prior relationships with others involved in the litigation. Such disclosure should be made in a timely manner.

## **8.4 AVOIDANCE OF THERAPEUTIC INTERVENTION**

**Except in the case of emergencies, custody evaluators should refrain from offering advice or therapeutic interventions to anyone involved in the child custody evaluation process.**

When providing custody evaluation services, an emergency may arise that requires the custody evaluator to provide therapeutic services to the examinee in order to prevent imminent harm to the examinee or others. In such cases, the custody evaluator should limit disclosure of information to that which is consistent with applicable law, code, statute, and order of the court, and should inform the attorneys, or the court in an appropriate manner. Upon providing emergency treatment to a party, custody evaluators in that case shall determine whether they can continue in the evaluative role.

## **9. RECORD-KEEPING AND RELEASE OF INFORMATION**

### **9.1 RECORD-KEEPING OBLIGATIONS**

**Custody evaluators have an obligation to expeditiously establish and to maintain a record-keeping system.**

(a) Custody 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. Custody evaluators should create all records in an efficient and timely manner. Unless laws, rules of court, directives from the court, rules promulgated by regulatory bodies, or private agency policy specify otherwise, custody evaluators should 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 should be created in reasonable detail, be legible, be stored in a manner that makes production possible, and be made available in a timely manner to those with the legal authority to inspect them or possess copies of them. Excluded from the production of records referenced above are items that may be protected from disclosure by trade secret and copyright laws, for example test booklets and manuals, unless the original order for the evaluation defines the manner in which records are to be released that differs from the process described above.

(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 polices should be considered subordinate.

(d) Pursuant to proper subpoenas or court orders, or other legally proper consent from authorized persons, custody evaluators shall make available records, all financial records related to the matter, and any other records including reports (and draft reports if they have been provided to a party, attorney, or other entity for review), that might reasonably be related to the opinions expressed. The records are subject to production pursuant to a validly issued subpoena or court order.

(e) Records should be retained pursuant to the custody evaluator's ethical guidelines, but at a minimum until the youngest child attains the age of majority.

## **9.2 CONTROL OF RECORDS**

**Custody evaluators should maintain control of their records and take reasonable care to prevent the loss or destruction of records.**

Custody evaluators should maintain control over records and information. In creating and organizing their files, custody evaluators should treat all items pertaining to a particular case as elements of one file. Regardless of the form in which information is presented, once custody evaluators take possession of an item, it must be retained and reasonable care must be taken to prevent its loss or destruction. Custody evaluators can meet their obligation to retain file items by formally notifying the attorneys and parties of the intention to copy items and return the originals and by 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.

## **10. PRESENTATION OF FINDINGS AND OPINIONS**

**Custody evaluators should strive to be accurate, objective, fair, balanced and independent in their work and are strongly encouraged to utilize peer reviewed published research in their reports.**

(a) Custody evaluators should present data in an unbiased manner. In their reports and when offering testimony, custody evaluators shall strive to be accurate, objective, fair, and independent.

(b) Since custody evaluations are to be “evidence based”, custody 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 utilized, custody evaluators should provide full references to the cited research.

- (c) Custody evaluators should recognize that information not bearing directly upon the issues before the court may cause harm when disclosed and may have a prejudicial effect.
- (d) Custody evaluators shall retain all information gathered by them and to be responsive to lawful requests for the production of that information.

## **11. PRESENTATION AND INTERPRETATION OF DATA**

### **11.1 ARTICULATION OF THE BASES FOR OPINIONS EXPRESSED**

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

Custody evaluators should only provide opinions and testimony that are 1) sufficiently based upon facts or data; 2) the product of reliable and valid principles and methods; and 3) based on principles and methods that have been applied reliably to the facts of the case. In their reports and in their testimony, custody evaluators should be careful to differentiate among information gathered, observations made, data collected, inferences made, and opinions formulated.

Custody evaluators should explain the relationship between information gathered, their data interpretations, and opinions expressed concerning the issues in dispute.

## **11.2 RECOGNITION OF THE SCOPE OF THE COURT ORDER**

**Custody evaluators should avoid offering opinions that do not directly follow from the court order or signed stipulation regarding the appointment of the custody evaluator or are not otherwise relevant to the purpose of the custody evaluation.**

Custody evaluators should avoid offering opinions to the court on issues that do not directly follow from the court order or signed stipulation regarding the appointment of the custody evaluator or are not otherwise relevant to the purpose of the custody evaluation.

EXHIBIT "A"

ORDER OF COURT

AND NOW, this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_, it is hereby ORDERED that:

1. The evaluator shall be:

[ ] \_\_\_\_\_ insert name \_\_\_\_\_;

[ ] Will be selected by the parties.

2. The evaluator shall conduct a:

[ ] Custody Evaluation;

[ ] Drug and/or Alcohol Evaluation;

[ ] Home Study;

[ ] Other (Specify) \_\_\_\_\_.

3. The evaluator [ ] shall [ ] shall not make specific recommendations for legal and physical custody. If the evaluator makes specific recommendations, the evaluator shall state the specific reasons for the recommendations.

4. The parties shall participate fully with the evaluator on a timely basis, including retaining the evaluator upon appropriate terms, scheduling appointments, paying promptly, participating in all sessions and in appropriate testing recommended by the evaluator and executing any reasonable consents relating to themselves and their children.

5. The cost of the evaluation shall:

[ ] Preliminarily be allocated between the parties with the plaintiff paying \_\_\_\_%;

[ ] Preliminarily be allocated between the parties with the defendant paying \_\_\_\_%;

[ ] Be borne by the county, subject to reimbursement by \_\_\_\_\_,

without prejudice to the ultimate apportionment of such costs by subsequent agreement of the parties or order of the court.

6. The cost for the evaluator's time for depositions and/or testimony for hearing shall be allocated:

[ ] With the plaintiff paying \_\_\_\_%;

[ ] With the defendant paying \_\_\_\_%;

[ ] To be paid by the party seeking the testimony.

7. The evaluator may consult with and/or interview any person the evaluator reasonably believes can provide relevant information, including other experts and/or fact witnesses.

8. The evaluator may utilize the services of another qualified professional (e.g. to perform additional services) without court approval.

9. Subject to the applicable rules of evidence, the evaluator's file (including notes, exhibits, correspondence, test interpretations and, to the extent it is not a violation of copyright law or applicable professional rules, raw test data) shall promptly be made available to counsel for the parties.

10. Provided that the parties cooperate on a timely basis, the evaluator shall deliver his or her report, at least \_\_\_\_\_ days prior to the first day of trial and shall not be filed of record, to:

[ ] Counsel for the parties;

[ ] Any unrepresented party;

[ ] The guardian ad litem;

- [ ] Counsel for the child;
- [ ] The court;
- [ ] The court only upon its admission into evidence.

11. Prior to and/or subsequent to the submission of the evaluator's written report, counsel for the parties shall not be permitted to communicate with the evaluator as to substantive issues, without the consent or direct participation of counsel for the other party, and [ ] shall [ ] shall not be permitted to prepare the expert for testimony.

12. If the report or any information from the evaluator is provided to the court, the evaluator shall be subject to cross examination by all counsel and any unrepresented party regardless of who obtains or pays for the services of the evaluator.

13. The evaluator shall be provided with a copy of this Order.

14. The evaluator's report shall not be inappropriately disseminated.

#### 10.5 Other provisions:

FAILURE TO COMPLY WITH THE TERMS OF THIS ORDER MAY RESULT IN FINES, IMPRISONMENT OR OTHER SANCTIONS.

BY THE COURT:



## Glossary

**Assessment Instrument** - An evaluative mental health device or procedure in which a sample of an individual's behavior in a specified domain is obtained and subsequently evaluated, whether or not it is scored using a standardized process.

**Best Interests** – Although there is no standard definition of ‘best interest of the child,’ the term generally refers to the deliberation that courts undertake when deciding what type of services, actions and orders will best serve a child as well as who is best suited to take care of a child. ‘Best Interest’ determinations are generally made considering a number of factors related to the circumstances of the child and the circumstances and capacity of the child’s potential caregiver(s), with the child’s ultimate safety and well-being as the paramount concern.

**Caregiver** - Refers to any person or entity providing a residence for a child or any person or entity that provides or secures care for a child, including but not limited to: a parent, guardian, custodian, legal custodian, or relative.

**Court** - Refers to a judge, magistrate, trier of fact, decision maker, tribunal or general entity or individual who makes final custody and parenting plan determinations.

**Court Order** - Refers to an enforceable legal document issued by a court, including judgments, decrees, opinions, and documents that incorporate stipulations, agreements, and consents authorized by the parties.

**Custody Evaluation** - A professional’s process of obtaining information for a report for the purpose of informing a court or attorney that may relate to the parent, caregivers, or child’s characteristics, including but not limited to skills, deficits, values, and tendencies,

relevant to parenting attributes and the child's psychological needs, especially in relation to the availability and use of effective treatment and the effect of additional caregivers on parenting attributes.

**Engagement Letter** - A signed agreement between the custody evaluator and the parties.

**Ex parte communication** - The transmission of evidence, arguments, or other information relevant to a disputed legal issue to a court to the exclusion of or without notice to other parties which renders the information insufficiently open to challenge and test by an adversely affected party or that impairs or appears to impair the decision maker's objectivity.

**Forensic** - The neutral and objective investigation of facts and evidence in a structured manner in anticipation of trial or consideration of a legal matter.

**Informed Consent** - Permission granted by a party or party's parent or legal custodian after the professional performing, or seeking to perform, an evaluation has disclosed and explained all information the standards require.

**Parenting Time** - Any and all arrangements concerning the care and control of the child's time with a parent.

**Parties** - The litigants associated with a specific case.

**Record** - 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 or medium that were created, received, or sent in connection with the evaluation.

**Test** - An evaluative device or procedure in which a sample of an individual's behavior in a specified domain is obtained and subsequently evaluated and scored using a standardized process.



## Appendix 1

<u>AAML Standard</u>	<u>AFCC Standard</u>
I.1	I.1
I.2	I.2
I.3	I.3
1.1	1.1
1.2 (a)	1.3
1.2 (b)	1.2(b)
1.2(c)	1.2(c)
1.2(e)	1.3
2.1 (a) (b)	4.1(a)(b)
2.1(c) (d)	4.2
2.3(a)(b)	11.6(a)
2.3(c)	4.3
2.4(a)	4.4
3	4.5
4.1	5.1(a)(b)
4.2(b)	5.3

4.3(a)	5.4
4.4(a)	5.5(a)
4.5(a)	5.6
4.6(a)	5.7(a)
4.7	5.8
4.8(a)(c)	10.2(a)
4.8(d)	10.2(b)
4.9	5.10
4.10	5.12
5.1	11.1
5.2	11.2
5.3	11.5
6.1(b)	6.1
6.2	6.2
6.3(a)	6.3
6.4	6.4
6.5	6.5
6.6	6.6

7.1	7.1
7.2	7.2
8.1(b) (c)	8.1
8.3	8.2
8.4	8.4
9.1(a)(b)(c)	3.2(a)(b)(c)
9.2	3.3
10(a)(b)(c)	4.6(a)(b)(d)
11.1	12.2
11.2	12.5



## **Appendix 2**

<u>AAML Standard</u>	<u>Specialty Guidelines</u>
1.2(d)	4.02
1.2(f)	4.03
2.2(b)	8.03
2.2(d)	8.03.02
4.2(c)	3.02
4.3(b)	11.02
4.4(b)	13.04
4.6(b)	11.03
6.1(a)	12.02
6.3(b)	12.03
6.3(c)	12.02
8.1(d)	3.03



## **Appendix 3**

A.

<u>AAML Standard</u>	<u>Parental Responsibility</u>
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4.3(c)	10
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B.

<u>AAML Standard</u>	<u>Ethical Principles</u>
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8.1(a)	3.05(a)
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**The AAML Child Custody Evaluation Standards:**  
**Bridging Two Worlds**

**Sacha M. Coupet, Ph.D., J.D.**

**I. Introduction**

The American Academy of Matrimonial Lawyers established an interdisciplinary committee to develop standards for the courts, parties, counsel and mental health professionals for the preparation of uniform child custody evaluations. Noting the significance of child custody evaluations to the judicial decision making process in a number of domestic relations cases, the Child Custody Evaluations Standards committee brought together experienced legal and mental health professionals with the aim of developing uniform standards that might inform both the legal consumers and mental health producers of child custody evaluations of optimal standards of training, communication with parties, and data gathering, among other issues pertinent to the conduct of quality custody evaluations.

In many respects, one overarching goal of the committee was to develop a shared understanding of what constitutes ‘best practices’ in the conduct of child custody evaluations, building on the body of guidelines and standards that have been developed within specific disciplinary domains. I found my own dual disciplinary background in Psychology and Law particularly useful in my service as Reporter for this committee, as I could appreciate the unique challenges of translating mental health practices into relevant, and most importantly, reliable material for legal advocacy. This translation, and the focus on ensuring that the custody evaluations themselves were conducted in a manner most likely to produce the highest quality possible was, indeed, the touchstone of the drafting process. The aim of developing uniform standards, particularly to assist legal consumers in vetting the quality of the evaluators and eventual

evaluations, shaped the interdisciplinary dialogue throughout the entire nearly two year process of developing these new standards.

Not surprisingly, the committee confronted some general interdisciplinary tensions in areas pertaining to the role of the evaluator and the purpose of the standards. Like much expert testimony, mental health evaluations used for legal purposes can sometimes advise the court and at other times answer or testify to ultimate legal questions. So too in the context of child custody evaluations, there are those who see the role of the evaluator as limited to an advisory one and others who do not view the evaluator's testifying to ultimate legal questions as outside their authority nor invasive upon the province of the court. When the committee first met to decide the scope of the project, it was decided that we would not tackle this particularly contentious, and as yet unresolved, issue. Therefore, while the standards focus comprehensively on the conduct of evaluations, the critical question of whether the custody evaluator should advise the court or speak to the ultimate legal issue remains unaddressed as it was regarded as outside the scope of the work of this committee.

The second interdisciplinary challenge concerned the possibility that the document risked being perceived as a set of standards inappropriately developed by legal professionals for mental health professionals. As such, the standards might fail to reach or find wide acceptance within the mental health community as a baseline for the competent practice of child custody evaluations. The presence and participation on the committee of two of the most preeminent mental health professionals in the field of child custody evaluations helped tremendously to bring to the drafting process a mental health practitioner's perspective and, most importantly, the current state of research and practice in the conduct of child custody evaluations. To further allay any concerns that the standards might be perceived as a purely legally based construction, members of the committee took great care to explore and digest the existing standards proposed by the American Psychological Association (APA), the

scientific and professional organization that represents psychology and psychologists in the United States, as well as the Association of Family and Conciliation Courts, a national organization whose membership includes psychologists in addition to other mental health practitioners. It is hoped that the standards will, by virtue of the above, be welcomed by mental health practitioners as a whole as reflective of a shared understanding of the needs of courts, parties, and counsel when answering legal questions pertaining to child custody and the capacities of mental health practitioners to provide material critical to that endeavor.

## II. Evolving Standards Addressing Child Custody Evaluations

Members of the committee began the process well versed about the significance of child custody evaluations to judicial decision-making regarding initial custody decisions, but also to those domestic relations cases where settlement is achieved prior to a final judicial decision as well as cases in which changes to a custodial arrangement are proposed. With an understanding that parental conflict has been shown to predict maladjustment among children whose parents have separated or divorced, quality child custody evaluations were seen as critical to minimizing parental conflict and thus, ultimately serving the best interests of children. Indeed, “[q]ualitative and quantitative research conducted over the past thirty years demonstrates that highly conflicted custody cases are detrimental to the development of children, resulting in perpetual emotional turmoil, depression, lower levels of financial support, and a higher risk of mental illness, substance abuse, educational failure, and parental alienation. The level and intensity of parental conflict is now thought to be the most dominant factor in a child’s post divorce adjustment and the single best predictor of a poor outcome.” It was the hope of the committee that the development of uniform standards aimed at generating comprehensive, quality and neutral child custody evaluations would reduce incidents of interparental discord, which research reveals is pervasively and

consistently detrimental for children and believed to have a broad negative impact on virtually every dimension of a child's long-term wellbeing.

A number of organizations such as the American Academy of Child and Adolescent Psychiatry, the American Psychological Association, and the Association of Family and Conciliation Courts have developed guidelines and standards for child custody evaluations. As noted above, the committee spent a significant amount of time at the outset of the drafting process reviewing previous attempts to establish uniform guidelines within the largest organization of psychologists engaged in child custody evaluations, the APA, and the standards that had been developed within an interdisciplinary law and mental health organization, the AFCC. While the committee found these previous standards useful in establishing consistency within disciplines, the committee believed strongly that the AAML's standards could achieve not only a cross-disciplinary acceptance, but could also educate a broader network of practicing legal professionals utilizing child custody evaluations. Nonetheless, the committee integrated much of the underlying principles evident in the APA and the AFCC documents, tailoring them to the aim of developing standards better suited to their use in child custody court proceedings.

#### A. American Psychological Association Guidelines for Child Custody Evaluations in Family Law Proceedings

Psychologists and other mental health professionals are increasingly called upon to evaluate children and families in custody disputes, due in large part to the growing number of separated, divorced, and never-married parents as well as the subsequent intraparental conflict that often accompanies the breakup of a family and division of time with children. As more mental health professionals have become involved in the process—each with varied training, procedures and applicable constructs—there has been a correspondingly growing need for more exacting

and uniform standards of practice for conducting child custody evaluations. In 1994, the American Psychological Association (APA) developed such uniformity when it drafted the Guidelines for Child Custody Evaluations in Divorce Proceedings. The APA revised these guidelines during the time that the AAML committee was continuing to meet to develop its own standards. The new guidelines, Guidelines for Child Custody Evaluations in Family Law Proceedings, became effective February 21, 2009, and are in effect for the next 10 years. Collectively, the guidelines consist of fourteen individual guidelines that are conceived by the organization as aspirational in nature, and not mandatory upon its members. The APA's Guidelines have as a goal the promotion of proficiency in the conduct of child custody evaluations and accomplish such aims as defining the purpose of the child custody evaluation, highlighting the centrality of the child's welfare as well as establishing education, training and practice requirements.

According to APA guidelines, the purpose of the evaluation is to ascertain the child's psychological best interests, "weigh[ing] and incorporate[ing] such overlapping factors as family dynamics and interactions; cultural and environmental variables; relevant challenges and aptitudes for all examined parties; and the child's educational, physical, and psychological needs." The role of the evaluator is that of a "professional expert" who is expected to be objective and impartial and possess training beyond that of "general competence in the clinical assessment of children, adults, and families." Indeed, the evaluator is expected to possess "specialized competence" that includes knowledge of assessment procedures, as well as specific knowledge of child and family development, psychopathology, and applicable legal standards and laws relevant to divorce and custody decisions. The APA Guidelines admonish psychologists against deviating from their role as impartial evaluators, cautioning them to avoid multiple relationships and rendering opinions in custody and visitation matters, unless ordered by the court. According to the Guidelines, the recommendations made by psychologists pertaining to child custody are to be "based

upon articulated assumptions, interpretations, and inferences that are consistent with established professional and scientific standards.”

According to the APA “the [guidelines] are intended to facilitate the continued systematic development of the profession and to help facilitate a high level of practice by psychologists.” However, the APA’s guidelines are not intended to be either mandatory or exhaustive and, as such, are not expected to apply to every situation in which a psychologist is performing a custody evaluation. The APA stresses that its guidelines are, moreover, not definitive and are not intended to take precedence over the judgment of individual psychologists. In addition, the APA Guidelines acknowledge that the issuing body is without the enforcement mechanism to make the Guidelines mandatory. Similarly, the AAML committee is without the authority to enforce its recommendations or take action against those who fail to meet the outlined standards. However, the AAML committee believed that the use of the term “standards” over “guidelines” would serve to highlight the importance of adherence to an established norm, and, after much discussion, chose to utilize the term Standards to make this point particularly clear.

#### B. Association of Family and Conciliation Courts Model Standards of Practice for Child Custody Evaluation

The AFCC is an interdisciplinary group of attorneys, judges and mental health professionals with a shared interest in matters of family law and child custody. In 1995, the AFCC drafted the original Model Standards for Child Custody Evaluation and, in 2004 began the process of revising those standards. At the time, the existing AFCC standards were regarded as more substantive than the existing APA Guidelines, as they identified particular areas of inquiry in the evaluation process rather than general statements about role definition and competence. By focusing on the substance of the evaluation, they were believed to offer more guidance to custody evaluators than the APA Guidelines.

In 2006, the AFCC published the new Model Standards of Practice for Child Custody Evaluations, from which this committee took significant guidance. The purpose of the AFCC Model Standards is described as contributing to the ongoing education of evaluators, thereby promoting good practice, as well as informing those who utilize the services of child custody evaluators and increasing public confidence in the work done by custody evaluators. In many respects, the purpose of both the AFCC and AAML Standards are identical, with the distinction being the broader reach of the AAML and the focus of the latter on emphasizing a common understanding between the mental health and legal disciplines of those elements constituting an ideal custody evaluation. The AAML's membership is widely distributed across the United States, representing the highest skilled domestic relations practitioners. While the committee utilized the AFCC Standards as a template from which to start its own work, it was the intent of the committee to draft standards that would find acceptance within a wider network of practicing attorneys than those promulgated by the AFCC. Since many of the elements comprising the AFCC Standards were used as a template for this committee's drafting of new standards, I will avoid redundancy by omitting a detailed review of the AFCC Standards.

### C. Wingspread Report and Action Plan

In addition to the previously drafted APA Guidelines and AFCC Standards, the committee also reviewed a prominent commentary regarding child custody evaluations, The Wingspread Report and Action Plan, published in 2001 in a leading family law journal published by the AFCC, The Family Court Review. The Wingspread Report challenged all professionals involved in child custody litigation to respond to the crisis that child custody legal proceedings visit upon families and children, including the conduct of child custody evaluations that often drive the litigation. Many of the themes of the Wingspread Report are reflected in the AAML Child Custody Evaluation Standards. Among the concerns regarding child custody evaluations noted in the Wingspread Report was a

recommendation that such evaluations should be neutral and include evaluations of both parents and all children and be undertaken with the agreement of the parents and the children, if appropriate, or by court order. The Wingspread Report also established a critical distinction between a “child custody evaluation” and what the authors termed a “parental capacity evaluation,” which focuses on one parent instead of both. With respect to the qualifications of child custody evaluators, the Wingspread Report recommended that such qualifications should be uniform, and each state should have a court rule or statute establishing these qualifications. The authors of the report suggested that mental health professionals should develop and adhere to national qualification guidelines for child custody evaluations in divorce proceedings. Included in these qualifications were elements of training and continuing education in relevant areas that would better ensure that evaluators would recognize and appreciate the impact of conflict on child and adult development and functioning, child interview techniques, custody evaluation protocols, domestic violence, child abuse and neglect, substance abuse, and the basic principles of child custody law and procedure. One distinction between the Wingspread Report and the AAML Standards is that the former clearly articulates a position on the role of mental health professionals in the child custody dispute relative to the legal parties, clearly stating that while lawyers advocate for clients, the mental health professional’s role is solely to investigate and make recommendation. Although the committee did discuss this issue, and favored identical limitations on the role of mental health professionals, it was decided that articulating a position on the matter was not central to the task of developing uniform child custody evaluation standards.

### III. The AAML Child Custody Evaluation Standards

#### A. Key Provisions

The AAML Standards begin with a notation about their purpose, which is, in part, to guide custody evaluators, attorneys and the court in the performance of their duties. Like the AFCC Standards, the AAML Standards are designed to promote good practice, provide information to those who utilize the services of custody evaluators, and to increase confidence in the work done by custody evaluators. The AAML Standards make clear at the outset that they are not mandatory, yet are more than merely aspirational. Rather than use of the word “strive” which is reflected in the APA Guidelines, the AAML, like the AFCC Standards, utilizes “shall” in reference to attributes of education, training, competency and the substance of the evaluation itself. Of course, unless and until the AAML Standards are incorporated into law, included in the rules of a court system, or adopted by a licensing board or similar regulatory authority, it is acknowledged that they do not have the force of law. That said, the AAML Standards are intended to guide the practice of custody evaluators who are advised and expected to conform their conduct to these Standards. In addition they are intended to educate the legal consumers who utilize the services of evaluators about best practices and minimal thresholds of competency.

## 1. Training, Education and Competency Issues

Issues regarding training, education and competency of child custody evaluators were particularly challenging in light of the wide range of professionals who have conducted custody evaluations to date, particularly non-mental health professionals, including guardian ad litem. The committee found itself wrestling with the dilemma of “fitting the person to the process or the process to the person” as one member so aptly framed it. On one hand, the committee could approach the task of developing minimal standards of training and education based on a profile of a particular professional engaged in child custody evaluations, most likely a licensed psychologist, or it could establish the minimal standards of practice for all evaluators and see what level of education and training appeared to fit the process defined as ideal or model. The

committee chose to use the latter and recommends in its Standards that custody evaluators possess a minimum of a master's degree in a mental health field or a juris doctorate that includes formal education and training in the legal, social, familial and cultural issues involved in custody and parenting time. In fitting the process to the person, the Standards were developed in light of best practices and aimed principally at establishing an ideal process, such that the person conducting the evaluation has a clear framework within which to conduct an ideal or model evaluation. Still, however, the problem of developing Standards that are reflective of the reality of practice remains. Adoption of the AAML Standards does mean that some non-mental health professionals who, for a variety of reasons in certain parts of the country, presently conduct custody evaluations will fail to meet our established minimal standard of practice unless they also possess extensive knowledge and training in areas of mental health, including, among other areas, psychopathology, psychological assessment and psychological research and evaluation. In addition to an education component, the committee felt strongly that experience conducting evaluations was necessary to demonstrate competence. In what reflects the most rigorous experience recommendation of any published guideline or standard, the AAML Standards establishes an expectation of evaluators of no less than three years of experience conducting custody evaluations and no fewer than 20 custody evaluations. In the absence of this minimal experience, evaluators are expected to seek ongoing supervision from an experienced custody evaluator prior to offering to perform or accepting appointments to conduct evaluations.

## 2. Communication with Litigants, Attorneys & Courts

With respect to communication with parties, the AAML Standards establish an expectation that evaluators will communicate in writing to all recipients of their services their policies regarding their procedures in conducting custody evaluations, including policies, procedures, scope of services, time frame of services, and

fees. Moreover, evaluators are expected to take steps to ensure that parties from whom information is sought know and understand the potential uses of the information they are providing. The committee felt it was critical for this informed consent to extend not only to the parties themselves, but to the collateral contacts that are often utilized in custody evaluations. Lastly, the committee strongly discouraged ex parte communication about a case currently before the court, except in extraordinary circumstances.

### 3. Data Gathering

The committee believed that the process of data gathering commenced with a clear understanding of the scope of the evaluation. That said, the committee recommended that the scope of the evaluation be outlined in a court order or in a signed stipulation by the parties and their counsel. It is hoped that clarity at the very beginning of the process helps to avoid later misunderstandings about the role and purpose of the evaluation. Evaluators are expected to be accurate, objective, fair, balanced and independent in gathering their data with an expectation that they are prepared to defend their decisions regarding the precise methodology employed. Evaluators are, moreover, expected to use multiple data gathering methods, as well as a balanced process, in order to increase accuracy and objectivity, and eliminate possible bias from influencing the evaluation. The committee felt it was axiomatic that evaluators use empirically-based methods and procedures of data collection, including an assessment of each parent, all adults who perform a caretaking role and/or live in the residence with the children, and each child who is the subject of the evaluation. With insight gleaned from the many years of experience of the two psychologists who participated in drafting the Standards, the committee addressed the issue of third party observations by establishing an expectation that third parties should not be present during any portion of a custody evaluation, except under unusual or necessary circumstances.

#### 4. Collateral Source Information

The committee strongly believed that collateral source information was critical to a thorough custody evaluation and usually essential in corroborating participant information. Collateral sources were regarded as both the written sources and people with information relevant to the custody evaluation. Custody evaluators are expected to disclose all collateral sources whether or not the information obtained was utilized by the evaluator in formulating his or her opinion.

#### 5. Formal Assessment Instruments

The committee was cognizant of the significance of formal assessment instruments in the evaluation process, yet cautious of the need to limit their selection and use to evaluators with sufficient training and experience and only for the purpose for which the instruments have been validated. Although the committee generally agreed that formal assessment instruments added tremendously to the quality and thoroughness of evaluations—a belief supported by some of the leading texts on child custody evaluations—it was decided that the use of formal assessment instruments would best be left to the discretion of the custody evaluator. Custody evaluators who do utilize formal assessment instruments are expected to articulate the bases for selecting the specific instruments used. Moreover, they should be aware of the criteria employed by courts in their jurisdiction regarding issues pertaining to admissibility and weight of such data.

#### 6. Role Conflict and Multiple Relationship Issues

With respect to multiple relationships, the committee understood and appreciated the fact that many professionals involved in utilizing and conducting child custody evaluations might have multiple relationships that may give rise to the appearance of bias or conflict. The committee recommended, therefore, that multiple relationships

are to be avoided and that evaluators are to maintain reasonable professional boundaries, a balanced approach, and objectivity. With an understanding that at times professional and social relationships may exist with any party or participant to the evaluation, evaluators are expected to disclose any such relationships.

## 7. Presentation of Findings and Opinions and Interpretation of Data

Lastly among the key provisions of the AAML Standards, the committee reiterated the importance of evaluators striving to be accurate, objective, fair, balanced and independent in their work, and presenting data in both written reports and court testimony in an unbiased manner. Evaluators are strongly encouraged to utilize and make reference to pertinent peer-reviewed and published research in the preparation of their reports. In addition, all opinions expressed by custody evaluators are expected to be supported by reliable and valid principles and methods related to child custody evaluation. Evaluators are to avoid offering opinions that do not directly follow from the court order or are otherwise not relevant to the purpose of the evaluation. As it did when addressing issues pertaining to minimal education and training, the committee confronted the reality of practice when drafting these sections, recognizing that access to and understanding of peer-reviewed and published research will be beyond the scope of custody evaluators who are not qualified mental health professionals.

### B. Child Custody Trends

The committee worked tirelessly to stay abreast of current events in child custody, emerging trends, new scholarship and research, as well as newly released guidelines and standards both addressing child custody evaluations directly as well as psychological evaluations that may have an impact on child custody litigation. These current events were regarded as having a potentially profound impact on the drafting of the AAML standards. One particular challenge that was

confronted early on and throughout the drafting of the Standards concerned the use of the term “custody.” Acknowledging that this term is rapidly becoming replaced with terms such as “parental responsibility” or “parenting time,” the committee went back and forth about which term was most apt, finally settling on the more widely accepted term “custody.” It is hoped that even in jurisdictions where the term “custody” has been replaced with one of the above terms, that the Standards will still find wide acceptance.

#### IV. Conclusion

The AAML Child Custody Evaluation Standards committee is extremely proud of its final product and believes strongly that it will profoundly impact the practice of child custody litigation. It is the committee’s hope that, by establishing uniformity and high quality, these standards will serve to bridge the gap between mental health professionals who conduct evaluations for the purpose of legal decision-making and legal consumers of child custody evaluations. Moreover, we hope that the standards will become a meaningful tool to reduce parental discord in child custody disputes, thereby benefitting all parties involved in custody litigation.