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**AFCC MODEL STANDARDS OF PRACTICE
for CHILD CUSTODY EVALUATION**

DRAFT # 6 [120805] <> COMMENT PERIOD ENDS on 1/8/06

Reporter: David A. Martindale

→ **DIRECTIONS FOR SUBMISSION OF SUGGESTED MODIFICATIONS:**

Each sentence in this draft is identified with a letter-number designation. These designations are to be used in order to identify the location of suggested changes, deletions, or additions.

CHANGES > Each suggested change must be sent as a separate post. We are aware that this is cumbersome, but it is only by receiving input in this manner that it is possible for us to direct each post to a folder containing comments on a particular sentence. To suggest changes to a sentence, identify in your subject line the ONE sentence about which you are commenting. Please write "MS6:", followed by the sentence designation. Example: "MS6: I-2d".

DELETIONS > To suggest deletions, identify the ONE sentence that you feel should be deleted. If you are suggesting multiple deletions, send a separate post for each suggested deletion. Please use the format described above.

ADDITIONS > To suggest additions, use the identifier for the sentence that is located immediately before the material that you believe should be added.

GENERAL COMMENTS > General comments should be as brief as possible. Please identify these with a subject line that reads: "MS6: GENERAL"

IDENTIFYING YOURSELF > It will be useful to us to have information concerning those who are offering suggestions. We ask that you provide the following:

1. Your full name
2. Your professional identification [It's useful to know what types of suggestions are being offered by members of the different professions that are represented in the membership of AFCC. Also, since we have invited public comment, knowledge of the professional background of those offering input will be particularly useful.]
3. Your address [Geography is relevant. The procedures employed in adjudicating custody disputes vary widely. AFCC is an international organization and suggestions will be coming from all over the globe.]

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4. The context in which you do your work [Context also matters. It will be useful to us to know what types of suggested changes are being made by private practitioners, by private agency workers, by people working within court systems, etc.]
5. If you are not involved in the resolution of custody disputes but are interested in our developing *Model Standards* for some other reason, it would be useful to us to be informed of the nature of your involvement in and/or interest in the custody dispute resolution process.

All suggestions must be posted to: standards@damartindale.com and a copy of each must be sent to: Lorraine.Martin@jus.gov.on.ca Posts are not to be sent back channel either to David Martindale or to Lorraine Martin.

Please do not anticipate a response to your input. It is likely that advisory input will be extensive and it will not be possible to respond to those who post suggestions.

INTRODUCTION

[I-1a] These *Model Standards* are designed to guide custody evaluators in all practice contexts.

[I-1b] In disseminating these *Model Standards*, AFCC's goal is to contribute to the ongoing education of evaluators, thereby promoting good practice; providing information to those who utilize the services of custody evaluators; and, increasing public confidence in the work done by custody evaluators.

[I-1c] Unless and until these *Model Standards* are incorporated into law, included in the rules of a court system, or adopted by a licensing board or similar regulatory authority, they do not have the force of law.

[I-1d] Nonetheless, the adoption of these *Model Standards* by AFCC, the sponsoring organization, should alert custody evaluators to the possibility that these *Model Standards* may be utilized in developing standards of care for custody evaluators.

[I-1e] AFCC does not have and does not intend to establish an enforcement mechanism.

[I-1f] We believe it to be advisable that our members conform their practices to the standards articulated here, but membership in AFCC does not compel them to do so.

[I-1g] These *Model Standards* may communicate expectations that exceed those established by law or by regulatory bodies.

[I-1h] Where conflict exists, law, rules of the court, regulatory requirements, or agency requirements supersede these *Model Standards*.

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[I-1i] Where the standard articulated herein is higher than the standard required by law or regulation, it is hoped that AFCC members will be guided by the standard articulated here.

[I-2a] These *Model Standards* are intended to address common concerns.

[I-2b] The *Model Standards of Practice for Child Custody Evaluation* are not intended to establish standards for the various components of those custody evaluation models that are collectively referred to as briefer models, such as focused evaluations, mini-evaluations, and early neutral evaluations.

[I-2c] Neither are these *Model Standards* intended to apply to evaluations that may formally incorporate a settlement component and that are, therefore, hybrid models.

[I-2d] It is recognized that reports that are the end products of competently conducted evaluations will often be utilized in a settlement process.

[I-2e] Furthermore, the *Model Standards* are designed to apply only to processes that lead to an analysis of the relative strengths and deficiencies of the litigants or offer an analysis of different parenting plans under consideration by the evaluator.

[I-2f] If, however, a practitioner is offering an opinion regarding parenting arrangements or regarding relative parenting strengths and deficiencies, the underlying principles of the *Model Standards* shall be applicable to the evaluative techniques used by the practitioner.

PREAMBLE

[P-1a] Child custody evaluation is a process through which information and opinions bearing upon the custody of, parenting of, and access to children can be made to known the court, to the litigants, and to the litigants' attorneys in those cases in which the parents and/or other primary caregivers are unable to develop their own parenting plans.

[FOOTNOTE P-1a1 > Because of the frequency with which evaluators' reports are utilized for settlement purposes, evaluators are urged to include in their reports information needed by the families in addition to the information needed by the courts.]

[FOOTNOTE P-1a2 > This includes situations in which disputes arise concerning the need, or lack thereof, to modify an existing parenting plan.]

[P-1b] An evaluation may be requested by the parents or by their attorneys or may be ordered by the court.

[P-1c] Though these *Model Standards* focus on evaluations that are being performed within a court system or for a court, they may be useful in other contexts as well.

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[P-2] Evaluations shall be performed by qualified mental health professionals who are part of a family court system or carried out privately by qualified individuals or teams. [Refer to 1A for information regarding qualifications.]

[P-3] Regardless of the manner in which arrangements for their services have been made and regardless of the source of remuneration, evaluators always function as impartial examiners.

[P-4] Custody evaluators have obligations to consumers of their services (such as the courts that seek their advisory input), to participants in their evaluations (adults and children; parties and non-parties; fee-payers and non-fee-payers), and to affected others (such as people whose privacy rights are affected when the rules of discovery require the disclosure of the contents of an evaluator's file).

[P-5] The application of the knowledge and skills of the mental health professions to the resolution of legal matters is, by definition, a forensic endeavor and these Model Standards have been written from that perspective

[FOOTNOTE P-5 > Use of the term "forensic" > In some jurisdictions, the term "forensic" is not employed in the construction of court orders and the evaluations performed for the courts may be referred to as "clinical" evaluations. Our purpose in emphasizing the forensic nature of the evaluative task is to call attention to two aspects of custody evaluations that distinguish them from other evaluations performed by mental health practitioners. First, because custody evaluations are performed in order that evaluators will be able to assist triers of fact by formulating opinions that can responsibly be expressed with a reasonable degree of professional certainty, sufficiency of information (both qualitative and quantitative perspectives) is judged by a higher standard than that which might be applied to evaluations conducted within a treatment context. Second, notwithstanding the fact that reports prepared by evaluators are used for settlement purposes more often than they are used by the judges who have ordered the evaluations, evaluations must be conducted and reports must be written with the needs of the court in mind.]

[P-6a] Prior to commencing evaluations, evaluators shall take reasonable steps to secure court orders or consent agreements in which they are specifically named and in which their roles, the purposes of their evaluations, and the focus of their evaluations are clearly defined.

[FOOTNOTE P-6a > As used herein, the term "court order" includes so-ordered stipulations.]

[P-6b] Evaluators fulfill a role that is consistent with the needs and directives the court.

[P-6c] When the specified role(s) cannot ethically be accepted and/or when the directives cannot ethically be followed, evaluators shall decline participation and shall articulate in writing the basis (bases) for the decision to decline.

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[P-6d] When evaluators give notice of their intention to decline an assigned evaluation, the written notice shall be provided to the court and the attorneys.

[P-7] Evaluators perform their professional activities with a recognition of the investigative nature of the task, an acknowledgment of the limitations inherent in their evaluative procedures, and an understanding of the distinction between mental health issues and the specific legal questions before the court.

[P-8a] The applicability of these Model Standards is to be determined by the nature of the services performed and not by the evaluator's declared professional affiliation, stated areas of expertise, or customary area(s) of practice.

[P-8b] Specifically, these Model Standards are intended to apply in any situation in which mental health professionals who have foreknowledge that custody and/or access issues are involved in a matter offer recommendations concerning such custody and/or access issues to a court.

1. TRAINING, EDUCATION, & COMPETENCY ISSUES

[1-1] Child custody evaluators shall gain specialized knowledge and training in a wide range of topics specifically related to child custody work.

[1-2] Evaluators shall gain broad knowledge of family dynamics.

[1-3] Evaluators conducting evaluations that raise special issues shall obtain specialized training. [Refer to 1A-4 for a list of areas in which specialized training is required.]

[1-4] Since research and laws pertaining to the field of divorce or separation and child custody are continually changing and advancing, child custody evaluators shall secure ongoing specialized training.

A. Education and training

[1A-1] Custody evaluators shall have a minimum of a master's degree (or its regionally-recognized equivalent) in a mental health field that includes formal education and training in child development, child and adult psychopathology, interviewing techniques, and family systems.

[1A-2] In addition, by formal education or by supervised work experience, evaluators shall possess advanced knowledge of the complexities of the divorce or separation process, a working knowledge of the legal issues in divorce or separation in their jurisdictions of practice, knowledge of the sources of evaluator bias and methods for maintaining neutrality, and an understanding of the many issues—legal, social, familial, and cultural—involved in custody and visitation.

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[1A-3] Areas of expected training for all child custody evaluators:

[1A-3a] The psychological and developmental needs of children, especially as those needs relate to decisions about child custody and visitation;

[1A-3b] Family dynamics, including, but not limited to, parent-child relationships, blended families, and extended family relationships;

[1A-3c] The effects of separation, divorce, domestic violence, child sexual abuse, child physical or emotional abuse or neglect, substance abuse, and inter-parental conflict on the psychological and developmental needs of children, adolescents, and adults;

[1A-3d] The significance of culture and religion in the lives of the parties;

[1A-3e] Safety issues that may arise during the evaluation process and their potential effects on all participants in the evaluation;

[1a-3f] When and how to interview or assess adults, infants, and children; gather information from collateral sources; collect and assess relevant data; and recognize the limits of the reliability and validity of different sources of data;

[1A-3g] The importance of addressing issues such as general mental health, medication use, and learning or physical disabilities;

[1A-3h] How to apply comparable interview, assessment, and testing procedures that meet generally accepted forensic standards to all parties;

[1A-3i] When to consult with or involve additional experts or other appropriate persons;

[1A-3j] How to inform each party, including children and collateral sources, of the purpose, nature, and method of the evaluation and the limits of confidentiality;

[1A-3k] How to assess parenting capacity and construct effective parenting plans;

[1A-3l] The legal context within which child custody and visitation issues are decided and additional legal and ethical standards to consider when serving as a child custody evaluator;

[1A-3m] The importance of understanding relevant distinctions among the roles of evaluator, mediator, therapist, parenting coordinator, and co-parenting counselor;

[1A-3n] How to write reports for the courts to which they will be presented;

[1A-3o] How to prepare for and give testimony at deposition or at trial; and,

[1A-3p] How to maintain professional neutrality and objectivity when conducting child custody evaluations.

[1A-4] Areas of additional specialized training include:

[1A-4a] The assessment of allegations of child sexual abuse issues;

[1A-4b] The assessment of allegations of alienation;

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[1A-4c] The assessment of children’s best interests in the context of relocation (move-away) requests by one parent;

[1A-4d] The assessment of substance abuse; and,

[1A-4e] The assessment of child abuse and domestic violence and the assessment of safety plans for both parents and children.

[1A-5] Experience requirements:

[1A-5a] Since child custody evaluation is a unique specialty area, anyone conducting child custody evaluations shall have obtained appropriate education and professional training prior to offering to perform evaluations.

[1A-5b] Novice evaluators shall obtain supervision or consultation with another professional who meets the education, experience, and training requirements of this section.

[1A-5c] Evaluators who have fewer than 2 years of experience conducting custody evaluations are encouraged to continue receiving ongoing supervision or to arrange for consultation to be available and to utilize the services of a consultant when needed.

B. Knowledge of statutes and legal precedents

[1B-1a] Evaluators shall be familiar with the applicable statutes, case law, and local rules governing child custody.

[1B-1b] These will vary from jurisdiction to jurisdiction, and evaluators must be knowledgeable concerning the criteria for original determination of custody, criteria for change of custody, the use of custody evaluation, qualifications for custody evaluators, and the legal requirements of the custody evaluation process of the jurisdictions in which the evaluators will be performing their evaluations.

2. KNOWLEDGE OF LAW

[2-1] Evaluators shall have a fundamental and reasonable level of knowledge and understanding of the legal and professional standards, laws, and rules that govern their participation as experts in the resolution of disputes concerning the custodial placement of children and specific parenting plans.

[2-2] Even if they are qualified to do so, evaluators shall not provide legal advice to those whom they are evaluating or to others with whom they may interact in the course of an evaluation.

[2-3a] Evaluators shall have a fundamental and reasonable level of knowledge and understanding of the legal rights of those whom they are evaluating and of

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individuals who may be affected by the evaluative process or by the evaluator's report.

[2-3b] Evaluators conduct themselves in such a manner as not to violate or diminish the due process rights of such individuals.

3. RECORD KEEPING AND RELEASE OF INFORMATION

[3-1a] 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.

[3-1b] Evaluators shall create all records expeditiously.

[3-1c] Unless laws, rules of the court, directives from the court, rules promulgated by regulatory bodies, or private agency policy specify otherwise, evaluators shall presume that their records are created, maintained, and preserved in anticipation of their review by others who are legally entitled to possess them and/or to review them.

[3-2] Where the policies of private agencies conflict with the requirements of law, rules of the court, directives from the court, or rules promulgated by regulatory bodies, the role of private agency policies shall be considered subordinate.

[3-3a] Records of all aspects of the evaluation shall be created in reasonable detail, shall be legible, shall be stored in a manner that makes expeditious production possible, and shall be made available in a timely manner to those with the legal authority to inspect them or possess copies of them.

[3-3b] The term "record", as used herein, applies to all notes, documents, recordings, correspondence in any form or on any medium, tangible, electronic, hand-written, or mechanical, that are specifically related to the evaluation being conducted.

[FOOTNOTE 3-3b > Excluded are items that may be protected from disclosure by copyright laws.]

[3-3c] The term "record", as used herein, includes, but is not limited to, all a) reports, letters, affidavits, and declarations; b) notes, recordings, and transcriptions that were created before, during, or after interactions with persons in connection with the evaluation; c) fully or partially completed assessment instruments; d) scored and un-scored raw test data, scoring reports, and interpretations; e) billing, expense, and income records pertaining to the services provided, f) mechanical, digital, physical or electronic print, film, photocopy, tape, audio, video, or photographic record; and g) all other notes, records, copies, and communications in any form that were created, received, or sent in connection with the evaluation.

[3-3d] In creating and organizing their files, evaluators shall conceptualize all items pertaining to a particular case as elements of one file.

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[3-3e] Evaluators shall be mindful of the fact that distinctions often made in clinical contexts between progress notes and process notes or between a client's file and a treating practitioner's personal file are distinctions that are not recognized in child custody work.

[3-4] Evaluators shall maintain active control over records and information.

[3-5a] Regardless of the form in which information is presented, once evaluators take possession of an item, it must be retained and reasonable care must be taken to prevent its loss or destruction.

[3-5b] As but one example, evaluators shall not return items to litigants or others unless such return has been authorized by the attorneys for both litigants or by the court.

[3-6] In describing their policies, procedures, and fees, evaluators shall address all issues pertaining to access to the records that are maintained by them.

[3-7] Evaluators' policies concerning the release of information and/or copies of portions of their files shall be guided by the policies and directives of the courts for which the evaluations are being or have been conducted.

4. COMMUNICATION WITH LITIGANTS, ATTORNEYS, & COURTS

[4-1] Even when litigants are submitting to an evaluation in response to a directive from the court, evaluators shall provide detailed written information concerning their policies, procedures, and fees.

[4-2] In the portion of the document in which fees are outlined, it shall be made clear that the services to be rendered are neither health services nor health service related and that no claims for health insurance reimbursement will be completed by the evaluator.

[4-3a] The descriptive document provided by the evaluator shall specify the intended uses of the information obtained during the evaluation, shall include a list of those to whom the evaluator's report will be made available and the manner in which the report will be released, and shall provide information concerning laws, court rules, and evaluator policies concerning the release of items in the case file.

[4-3b] This information shall be provided to the litigants and to their attorneys in advance of the first scheduled session, so that litigants may obtain advice of counsel and be able to examine the document in an unhurried manner and in an atmosphere that is free of coercive influences.

[4-3c] When the parties are not represented by counsel, the detailed information alluded to herein shall, nevertheless, be forwarded to them prior to the initial evaluative session.

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[4-4] In the initial meeting with the parties, evaluators shall review key elements of their policies and procedures, respond to any questions, and seek assurance that the policies and procedures are fully understood.

[4-5] The obligation to take reasonable steps to avoid harm where it is possible to do so and to minimize harm that is foreseeable but unavoidable extends to all those with whom evaluators professionally interact, to all those who are involved in the evaluative process in any manner, including children, and to those from whom evaluators seek collateral source information.

[4-6] Evaluators shall inform children of the limits of confidentiality, using language that is chosen based upon each child's cognitive capacity and receptive language abilities.

[4-7a] Individuals from whom information is sought shall be provided with written information concerning the manner in which the information provided by them will be utilized and reminding them that information provided by them is subject to discovery. [Refer to 4-7b, directly below.]

[4-7b] The information referenced in 4-7a may be provided orally where time constraints make providing written information not feasible.

[4-8] From the time that evaluators learn of their assignments until the time that their evaluations have been completed and their reports have been submitted, evaluators shall take all reasonable steps to avoid ex parte communication with the court and with attorneys representing the parties.

[4-9] Evaluators shall respect local rules or court orders with respect to ex parte communication with attorneys representing children.

[4-10] Evaluators shall refrain from negotiating settlements with the parties and/or with their attorneys.

[4-11] Evaluators shall refrain from offering interim recommendations or treatment interventions pertaining to custodial placement, visitation, or related issues.

[4-12a] Evaluators shall not present data in a manner that might mislead the triers of fact or others likely to rely upon the information and/or data reported.

[4-12b] In their reports and when offering testimony, evaluators shall strive to be accurate, objective, fair, and independent.

[4-12c] All data shall be weighed impartially.

[4-12d] Evaluators shall resist partisan pressure to report their information and data or to communicate their opinions in ways that might be misleading.

[4-13a] Evaluators are strongly encouraged to utilize and make reference to pertinent peer-reviewed published research in the preparation of their reports.

[4-13b] Where peer-reviewed published research has been alluded to, evaluators shall provide full and accurate references to the cited research.

[4-14a] Evaluators recognize that the use of diagnostic labels can divert attention from the focus of the evaluation (namely, the functional abilities of

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the litigants whose disputes are before the court) and that such labels are often more prejudicial than probative.

[4-14b] For these reasons, evaluators shall give careful consideration to the inclusion of diagnostic labels in their reports.

[4-15] In evaluating a litigant, where significant deficiencies are noted, evaluators shall specify the manner in which the noted deficiencies bear upon the issues before the court.

[4-16a] Evaluators shall recognize that information not bearing directly upon the issues before the court may cause harm when disclosed and may have a prejudicial effect.

[4-16b] For these reasons, evaluators shall avoid including information in their reports that is not relevant to the issues in dispute.

[4-16c] Notwithstanding the foregoing, evaluators shall retain all information gathered by them and shall be responsive to lawful requests for the production of that information.

5. DATA GATHERING

[5-1] In gathering data, evaluators shall be committed to accuracy, objectivity, fairness, and independence.

[5-2] The evaluator shall treat all participants and weigh all data, opinions, and rival hypotheses thoroughly and impartially.

[5-3] Evaluators shall be prepared to articulate the bases for methodological decisions made by them.

A. Multi-Method Approach

[5-A1a] Child custody evaluators shall use a variety of methods to assess personal and interpersonal functioning.

[5-A1b] They shall use methods that are as diverse as possible and feasible.

[5-A1c] The referral questions and issues in the case may be cast as testable hypotheses for the evaluator's investigation.

[5-A2a] Evaluators shall attempt to collect data that are diverse and sufficient to examine the hypotheses relevant to the case.

[5-A2b] In their forensic reports, evaluators shall make known to the court when there are incomplete, unreliable, or missing data.

[5-A2c] Where data are incomplete, unreliable or missing, evaluators shall identify the incomplete or missing data, shall offer an explanation if doing so is possible, and shall articulate the implications of the incomplete, unreliable or missing data upon any opinions communicated in reports or testimony.

[5-A2d] Evaluators shall use multiple methods of data gathering and divergent sources of data to allow for a meaningful exploration of the

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alternative plausible hypotheses concerning the issues that are central to the case.

B. Scope

[5-B1a] Evaluators shall establish the scope of the evaluation as determined by court order or by a signed stipulation by the parties and their attorneys.

[5-B1b] If issues not foreseen at the outset of an evaluation arise and if it is the evaluator's professional judgment that the scope of the evaluation must be widened, the evaluator shall seek court approval prior to going beyond the originally designated scope of the evaluation.

[5-B2] Evaluators shall employ procedures that are most likely to yield the information needed to meet the needs of the court.

[5-B3] Evaluators shall conduct the data gathering phase of their evaluations in a manner consistent with state, provincial, or territorial statutes, or with judicial rules governing such evaluations.

[5-B4] When circumstances demand that an evaluation be limited in scope, evaluators shall take steps to ensure that the boundaries to the evaluation and the evaluator's role are clearly defined for the litigants, attorneys, and the court.

C. Balanced and Standardized Approach

[5-C1a] Evaluators shall endeavor to employ procedures that will create a sense of balance for those involved in the process.

[5-C1b] As one element of a balanced process, the evaluative criteria employed shall be the same for each parent-child combination.

[5-C2] In the interests of fairness and sound methodology, evaluators shall ensure that those being evaluated are made aware of any allegations registered against them and are afforded an opportunity to respond.

[5-C3a] The chosen assessment instruments shall be used with both parties and the interview time with each party shall be essentially the same, except where circumstances warrant a departure from this procedure.

[5-C3b] Where circumstances warrant a departure from standard 5-C3a, the reasons shall be articulated.

D. Reliability and Validity of Methods and Procedures

[5-D1a] Because evaluators are expected to assist triers of fact, evaluators have a special responsibility to base their selection of assessment instruments and their choice of data gathering techniques on the reliability and validity of those instruments and techniques.

[5-D1b] Evaluators shall strive to use methods and procedures of data collection that are empirically-based.

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[5-D1c] In the selection of methods and procedures, evaluators shall be aware that the use of greater numbers of instruments (particularly when some of those instruments may be of questionable reliability or validity) does not necessarily produce more reliability and validity in the data set.

[5-D2] In selecting methods and procedures, evaluators shall be aware of the criteria employed by courts in their jurisdictions in rendering decisions concerning admissibility and weight.

E. Factors to Measure

[5-E1a] Evaluators shall measure factors or variables that are statutorily defined; dictated by case law; presented in the referring questions, court orders or stipulations; and/or deemed to be pertinent on the basis of articles published in peer-reviewed journals.

[5-E1b] If additional factors are brought to the evaluator's attention or emerge during data collection, the evaluator shall use discretion and professional judgment and shall initially seek direction from the attorneys, if needed, as decisions are made concerning the applicability of these factors to the issues before the court. [Refer also to 5-B1b.]

[5-E1c] If the attorneys are unable to agree or if, for any reason, further guidance is needed, the evaluator shall seek direction from the court.

[5-E3a] Except where contraindicated by special circumstances, evaluators shall assess each parent and any other adults who are currently living in a residence with the child(ren) and performing a caretaking role.

[5-E3b] Additionally, except where contraindicated by special circumstances, evaluators shall assess any other adults who are likely to be living in a residence with the child(ren) and performing a care-taking role.

[FOOTNOTE 5-E3b > Two examples of such special circumstances follow. (1) A non-party declines to participate. Ordinarily, individuals who are not parties to the litigation cannot be compelled to participate in an evaluation. (2) a current or potential care-taker is deemed acceptable by both parties. Example: one set of grandparents is actively involved in a child's care; intend to continue being active; and no objections or concerns are expressed by either party.]

[5-E4a] Evaluators shall assess each child whose placement is at issue and shall be attentive to any special developmental needs of the child(ren).

[5-E4b] Evaluators shall consider the stated preferences of children if they are of sufficient developmental maturity to independently express an informed opinion.

[5-E4c] Evaluators shall describe the manner in which information concerning children's stated perceptions and/or sentiments was obtained and shall specify the weight given by the evaluator to the children's stated perceptions and/or sentiments.

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[5-E5] Evaluators shall assess the relationships between children and all adults residing with the children or functioning in care-taking capacities, or reasonably likely to be functioning in care-taking capacities, except when such adults are paid care-takers, or where the circumstances described in 5-E3b apply.

[5-E6a] Evaluators shall assess and describe sibling relationships.

[5-E6b] If a parenting plan that is under consideration involves the placement of siblings in different residences, the advantages and disadvantages of such a plan shall be clearly articulated.

[5-E7] Telephonic communication is an acceptable means for obtaining interview data from collateral sources and as a supplemental technique with primary parties.

[5-E8] Evaluators shall conduct at least one interview with all primary parties in person except under extraordinary circumstances.

F. Assessment of Special Issues

[5-F1a] Evaluators shall have the professional knowledge and training needed to conduct assessments in which special issues are reasonably likely to arise.

[5-F1b] Such special issues may include domestic violence, substance abuse, child alienation, child maltreatment including child sexual abuse, relocation, and gender issues.

[5-F1c] When evaluators lack specialized training in particular areas of concern for the evaluation, they shall either decline the appointment for the evaluation or seek professional consultation in the assessment of that portion of the evaluation.

[5-F1d] Where such consultation has been obtained, this will be noted in the evaluator's report.

[5-F1e] Evaluators shall utilize a generally recognized and systematic approach to the assessment of such issues as child maltreatment, alienation, domestic violence, and relocation.

6. USE OF FORMAL ASSESSMENT INSTRUMENTS

[6-1a] The use of formal assessment instruments is not always necessary.

[6-1b] Some of the Model Standards that follow apply to the use of any formal assessment instruments or procedures; some are applicable only when psychometric testing is employed.

[FOOTNOTE 6-1b > In these Model Standards, a distinction is made between "formal assessment instruments" and "tests". The definition of a test has been taken from the Standards for Educational and Psychometric testing (American Educational Research Association, et al., 1999). "A test is an evaluative device

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or procedure in which a sample of an examinee's behavior in a specified domain is obtained and subsequently evaluated and scored using a standardized process" (p. 3). The term "formal assessment instruments" includes tests but also includes structured procedures and techniques that are not "scored using a standardized process". Terms such as "assessment procedures" and "data-gathering techniques" refer to instruments and procedures the data from which are not scored.]

[6-2] If testing is advisable and if the evaluator does not have sufficient education, training and/or experience, s/he should refer the testing portion of the evaluation to a case consultant who has sufficient training and experience, including education and training in the interpretation of psychometric test data within a forensic context.

[6-3a] Evaluators shall be prepared to articulate the criteria utilized by them in selecting assessment instruments and shall be prepared to provide the bases for their selection of the instruments utilized in a particular case.

[6-3b] 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.

[6-3c] In selecting methods and procedures, evaluators shall be aware of the criteria employed by courts in their jurisdictions in rendering decisions concerning admissibility and weight.

[6-3d] Evaluators shall be mindful of issues pertaining to the applicability of psychometric test data to the matters before the court and shall be familiar with published normative data applicable to custody litigants.

[6-3e] Evaluators shall carefully examine the available written documentation on the reliability and validity of assessment instruments, data gathering techniques, and tests under consideration for use in an evaluation.

[6-4a] Evaluators shall utilize assessment instruments and tests in accordance with the instructions and guidance contained in the manuals that accompany the instruments and tests.

[6-4b] When utilizing tests, evaluators shall not make substantial changes in test format, mode of administration, instructions, language, or content, unless extraordinary circumstances require that such changes be made.

[6-4c] When such changes have been made, evaluators shall have an affirmative duty to articulate the rationale for having made such changes.

[6-5] Evaluators shall not use instruments for purposes other than those for which they have been previously validated.

[6-6] Evaluators shall be mindful of cultural and language diversity and the impact that these may have on test performance and the resultant data.

[6-7a] Evaluators shall give careful consideration to the inclusion of testing data from previous evaluations.

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[6-7b] In doing so, evaluators shall consider how current the data are; the qualifications of the previous evaluator; the context of the previous evaluation; and, the importance of examining the raw data.

[6-8] Evaluators shall exercise caution in the use of computer-based test interpretations and prescriptive texts.

[6-9] In reporting information gathered, data obtained, and clinical impressions formed and in explaining the bases for their opinions, evaluators shall accurately portray the relevance of each assessment instrument to the evaluative task and to the decision-making process.

[6-10a] Evaluators shall recognize that test data carry an aura of precision that may be misleading.

[6-10b] For this reason, evaluators shall not assign to test data greater weight than is warranted, particularly when opinions expressed have been formulated largely on some other basis.

7. THE TEAM APPROACH TO EVALUATION

[7-1a] A team approach to conducting child custody evaluations is acceptable provided that all of the mental health professionals are competent to fulfill their assigned roles.

[7-1b] In jurisdictions where court-appointed evaluations are governed by licensure laws, unlicensed team members shall receive close supervision by a designated licensed team member.

[7-1c] Any team member who signs the forensic report shall be knowledgeable and answerable to the court on all aspects of the final forensic work product.

8. ROLE CONFLICT AND DUAL ROLE ISSUES

[8-1a] The responsible performance of a child custody evaluation requires that evaluators be able to maintain reasonable skepticism, distance, and objectivity.

[8-1b] For this reason, evaluators shall take reasonable steps to avoid multiple relationships.

[8-1c] Evaluators shall recognize that their objectivity is impaired when they currently have, have had, or anticipate having a relationship with those being evaluated, with attorneys for the parties or the children, or with the presiding judges.

[8-1d] Evaluators shall recognize that relationships cannot be time delimited; specifically, prior relationships or the anticipation of future relationships can

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have the same deleterious effects upon evaluator objectivity as current relationships would have.

[8-1e] It is recognized that in some geographic areas evaluators may not be able to avoid professional or social relationships with individuals whom they may subsequently be asked to evaluate, with attorneys for those individuals, or with judges hearing the disputes.

[8-1f] When avoiding multiple relationships is not feasible, evaluators shall be alert to the ways in which their objectivity may be impaired and prior to accepting an appointment, they shall provide a reasonably detailed written disclosure of current, prior, or anticipated relationships with others involved in the litigation.

[8-1g] It is recognized that it may sometimes be necessary to provide both forensic and therapeutic services, such as when another reasonably skilled and competent provider is unavailable to provide either service.

[8-1h] When requested or ordered by a court to provide either concurrent or sequential forensic and therapeutic, mediation, or parent coordination services and when the circumstances described in 8-1g do not apply, the evaluator shall inform the court of the disadvantages of this arrangement and shall decline one of the assigned tasks.

[8-2a] Though therapeutic interventions and the offering of advice are deemed inappropriate under most circumstances, it is recognized that it may be necessary for an evaluator to intervene or to offer advice when there is credible evidence of substantial risk of imminent and significant physical or emotional harm to a litigant, child(ren), or others involved in the evaluative process. [Refer also to 4-11.]

[8-2b] The term "advice", as used in 8-2a is not intended to include offering information concerning appropriate resources or offering a referral to an appropriate resource.

[8-2c] Where therapeutic intervention has been employed or advice has been offered, as soon thereafter as is practical the evaluator shall prepare a description of the intervention or advice and the bases upon which intervention or advice was deemed necessary and forward the description to the attorneys.

[FOOTNOTE 8-2c > The language of the court order, local rule, or local custom will determine whether the informed alluded to in 8-2c shall be forwarded to the court at the same time that it is forwarded to the attorneys or, alternatively, included in the custody evaluator's final report.]

[8-3a] Practitioners shall consider the importance of role delineation in undertaking reviews of the work of evaluators and shall avoid multiple relationships.

[8-3b] Reviewers shall not meet with litigants, family members, or allies of litigants (other than counsel).

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[8-3c] Reviewers shall not have had any prior relationship with any member of the family that is the subject of the evaluation being reviewed.

9. INTERVIEWING CHILDREN

[9-1a] Children who are the focus of custody/access disputes shall be interviewed if they have reasonable receptive and expressive language skills.

[9-1b] When structuring interviews, evaluators shall consider a range of hypotheses and base their interview strategies on an empirical foundation.

[9-1c] Evaluators shall have knowledge of and shall consider the factors that have been found to strongly affect children's capacities as witnesses.

[9-1d] Evaluators shall have knowledge of and shall follow generally recognized procedures in establishing the structure and sequence of interviews with children.

[9-1e] Evaluators shall commence interviews with children by informing them that what they tell the evaluator is not confidential.

[9-2a] All children, including pre-verbal children, shall be observed with their parents, unless verifiable threats to a child's physical or psychological safety will create foreseeable risk of significant harm to the child or where conducting such an observation is impossible (as when a parent is incarcerated or overseas).

[9-2b] Where parent-child observations have not been conducted on the basis of possible risk to a child, evaluators shall have an affirmative obligation to articulate the bases for their decisions.

[9-3] If and when interviews or observational sessions are being audiotaped or videotaped, all introductory comments, all questions, all responses, and all statements made by the evaluator in providing closure shall be included on the audiotape or videotape.

10. OBSERVATIONAL – INTERACTIONAL ASSESSMENT

[10-1] Evaluators shall be mindful of the fact that their presence in the same physical environment as those being observed creates a risk that they will influence the very thing that they are endeavoring to observe.

[10-2a] Observations of parents with children shall be conducted in order that the evaluator may view samples of the interactions between the child, parents, and siblings and may obtain observational data reflecting on parenting skills and on each parent's ability to respond to the child(ren)'s needs.

[10-2b] In the course of such observations, evaluators shall be attentive to (1) signs of reciprocal connection and attention; (2) communication skills; (3)

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methods by which parents maintain control, where doing so is appropriate; (4) parental expectations; and (5) the appropriateness of materials brought by parents for use during the interactive session.

[FOOTNOTE 10-2b (5) > Item 5 in the foregoing list is applicable only where the expectation has been communicated to parents that they are to come to an observational session with suitable items.]

[10-3] Each parent-child combination shall be observed, unless doing so is not feasible.

[10-4] Parent-child observations shall be conducted subsequent to interviews with the parents, unless there are compelling reasons to do otherwise.

[10-5] Evaluators shall refrain from offering custody and/or access recommendations if observations of both parents with all children have not been completed.

[10-6] In formulating their opinions concerning the significance of parent-child interactions, evaluators shall consider religious, cultural, ethnic, and lifestyle factors.

[10-7a] Parent-child observations shall ordinarily be scheduled and overt.

[10-7b] Unannounced observations or covert observations (as with hidden cameras or hidden microphones) are deemed unacceptable unless consent to such observational methods has been given in advance by the parties.

[FOOTNOTE 10-7b > This standard is not intended to apply to unintentional observations such as those that may occur in the waiting room or in public areas in the vicinity of a practitioner's office.]

[10-8] The parties shall be provided with information regarding the purpose of the parent-child observation; the manner in which observational sessions differ from other sessions shall be explained; and, the parties shall be made aware of any special guidelines for the visit before the meeting takes place.

[10-9a] A detailed record of the observational session shall be created.

[10-9b] If neither audio- nor video-taping is done and if, for any reason, contemporaneous note-taking is difficult, notes must be entered as soon as possible following the session.

11. USE OF COLLATERAL SOURCE INFORMATION

A. Convergent Sources of Information

[11-A-1a] Evaluators shall be mindful of the importance of gathering information from multiple sources in order to thoroughly explore rival alternative hypotheses concerning a given issue.

[11-A-1b] Accordingly, multiple data sources shall be employed.

[11-A-1c] 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;

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financial information; and, video and audio data that have been legally obtained.

[11-A-2a] Evaluators shall acknowledge the limits in the ability to discern the truthfulness of oral reports from the primary parties and so shall seek from collateral sources information that may serve either to confirm or to disconfirm oral reports, assertions, and allegations.

[11-A-2b] When assessing the reports of participants in the evaluation, evaluators shall seek from other sources information that may serve either to confirm or disconfirm participant reports on any salient issue, unless doing so is not feasible.

[11-A-2c) Where seeking such confirming or disconfirming information is not feasible, evaluators shall exercise caution in the formulation of opinions based upon unconfirmed reports.

[11-A-2d] Evaluators shall clearly acknowledge, within the body of their written reports, statements that are not adequately corroborated and why it may or may not be appropriate to give weight to such data.

[11-A-3a] Because collateral information constitutes hearsay when included in a forensic work product, evaluators shall be aware of exceptions to hearsay rules and other rules of admissibility of expert opinion that apply to forensic evaluations in a given legal jurisdiction.

[11-A-3b] Evaluators shall also be mindful of the fact that the interpretation of hearsay rules and exceptions may vary considerably from judge to judge and as a function of the unique elements of the case.

[11-A-4a] Decisions made by evaluators concerning the weight assigned by them to information from participants in the evaluation and from collateral sources shall be articulated in the evaluators' reports.

[11-A-4b] In utilizing collateral sources, evaluators shall seek information that will facilitate the confirmation or disconfirmation of hypotheses under consideration.

[11-A-5a] Evaluators shall list all collateral informants who were contacted and all data sources that were utilized, whether or not the information obtained was utilized by the evaluators in formulating their opinions.

[11-A-5b] Where unsuccessful attempts have been made to contact collaterals, those collaterals shall be identified and an appropriate notation shall be made.

[11-A-6] All collateral sources who, in the judgment of the evaluator, have access to salient and critical data shall be interviewed.

[11-A-7] When collateral and documentary data are not available, then this limitation shall be made known to the court in the forensic report.

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B. Authorization and Limits of Confidentiality

[11-B-1a] Evaluators shall secure authorization to contact collateral sources who, in the evaluators' judgment, are likely to have information bearing upon the matters before the court.

[11-B-1b] Such authorizations shall be secured from the parties in the legal action, unless such authorization is clearly articulated in the order appointing the evaluator.

[11-B-1c] Evaluators shall clearly explain the purpose of the evaluation and how the collateral's information will be used.

[11-B-2a] Evaluators shall provide potential collateral informants with written information that shall include an unambiguous statement concerning the lack of confidentiality in a forensic mental health evaluation. [Refer to 11-B-2b, directly below.]

[11-B-2b] The information referenced in 11-B-2a may be provided orally only where time constraints make providing written information not feasible.

[11-B-2c] Evaluators shall not promise confidentiality to collateral sources who volunteer to contribute information for the evaluation, including children, unless there is a legal exemption by statute, case law, judicial administrative rule, or court order.

12. DATA INTERPRETATION AND ACKNOWLEDGMENT OF LIMITS

[12-1] Evaluators shall only offer opinions to the court in those areas where they are competent to do so, based on adequate knowledge, skill, experience, and education.

[12-2] Evaluators shall only provide opinions and testimony that are a) sufficiently based upon facts or data; b) the product of reliable principles and methods; and c) based on principles and methods that have been applied reliably to the facts of the case.

[12-3] In their reports and in their testimony, evaluators shall be careful to differentiate among information gathered, observations made, data collected, inferences made, and opinions formulated.

[12-4] Evaluators shall be prepared to explain the relationship between information gathered, their data interpretations, and the issues in dispute.

[12-5] Evaluators shall provide written or oral evidence about the personality characteristics of a particular individual only when the evaluators have conducted a direct examination of that individual and have obtained sufficient information or data to form an adequate foundation for the information provided and/or opinions offered.

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[12-6] There shall be a clear correspondence between the opinions offered and the data contained in both the forensic report and the case file.

[12-7] In reports and in testimony evaluators shall articulate any limitations to the evaluation with respect to methodology, procedure, data collection, and data interpretation. [Refer to 5-A2b and 5-A2c.]

[12-8] When the available data do not enable evaluators to opine responsibly on the relative advantages and disadvantages of different parenting plans under consideration, they shall decline to offer an opinion.

[12-9] Evaluators shall avoid offering opinions to the court on issues that do not directly follow from the court order of appointment or signed stipulation or are not otherwise relevant to the purpose of the evaluation.

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