



# **Association of Family and Conciliation Courts**

## **Guidelines for Parenting Plan Evaluations in Family Law Cases**



# Guidelines for Parenting Plan Evaluations in Family Law Cases

Prepared by the AFCC Task Force for the Revisions of the Model Standards for the Practice of Child Custody Evaluation

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## Foreword

These *Guidelines for Parenting Plan Evaluations in Family Law Cases (Guidelines)* are the product of the Association of Family and Conciliation Courts (AFCC) Task Force for the Revisions of the *Model Standards of Practice for Child Custody Evaluation (Model Standards)*. In July 2019, then AFCC president, Matthew Sullivan, PhD, appointed a multidisciplinary task force to revise the *Model Standards* which were published in 2006.

The Task Force began its work at the AFCC Fall Conference in Pittsburgh, Pennsylvania in November 2019, and proceeded to focus on two broad tasks: 1) establishing a set of values and principles to guide the practice of parenting plan evaluations, and 2) gathering information to guide the revision process, including conducting an extensive survey of mental health and legal professionals, judges, and others. Subcommittees then examined sections of the *Model Standards* and proposed revisions, including new guidelines for virtual evaluations. The Task Force met online two dozen times for half-day meetings, and in person at the AFCC Fall Conference in Cincinnati, Ohio in November 2021. AFCC membership provided feedback during open forum meetings at both the Pittsburgh and Cincinnati conferences. AFCC posted a draft of the *Guidelines* for public comment February 1-March 1, 2022. The Task Force thoroughly considered and discussed the comments before making final revisions and presenting the *Guidelines* to the AFCC Board of Directors in May 2022.

Most of the 2006 *Model Standards* have stood the test of time and remain important and necessary. Building on those *Model Standards*, the Task Force made significant revisions, updates, and expansions. First, the *Model Standards* have been renamed *Guidelines*, highlighting that AFCC does not intend them to define mandatory practice or to be used to create rules or standards of liability. Rather, these *Guidelines* offer clear, specific, and detailed guidance for the competent and responsible practice of conducting parenting plan evaluations. Jurisdictional laws and rules dictate mandatory aspects of parenting plan evaluations; these *Guidelines* provide guidance for practice.

The term *Child Custody Evaluations* has been replaced with *Parenting Plan Evaluations*. This reflects an important shift away from the term “child custody,” which connotes possession and control of children rather than responsibility for their care. *Child Custody Evaluations*, *Parental Responsibilities Evaluations*, *Best Interest Evaluations*, *Custody and Access Evaluations*, *Parenting Time Evaluations*, or similar terms are used in various jurisdictions. These *Guidelines for Parenting Plan Evaluations in Family Law Cases* refer to evaluations that address parenting time, parental decision-making, and related issues, regardless of what they may be called in a particular jurisdiction. These *Guidelines* use the term “parent” throughout, but recognize that in some settings, it will include non-parents acting in parenting roles.

The Task Force has added a section on guiding principles and values; expanded and clarified evaluator education and training; expanded and clarified recommendations about evaluators’ legal knowledge; revised the guidelines on interim recommendations to address situations involving safety and special circumstances; expanded the section on team evaluations to include various models of training; embedded cultural and diversity considerations throughout, and added a

section on guidelines for virtual evaluations. These revisions expressly recognize that evaluations do not take place in a vacuum, and address, where appropriate, the roles of courts, attorneys, and others in the conduct and use of parenting plan evaluations in the family court setting.

Consistent with renaming the *Model Standards* as *Guidelines*, the term “shall” has been replaced with “should.” The term “should” means that the guideline is highly desirable, strongly recommended, and should be followed unless the evaluator can articulate good reasons for deviating from the guideline.

The *Guidelines for Examining Intimate Practice Violence: A Supplement to the AFCC Model Standards of Practice for Child Custody Evaluation* becomes a supplement to these *Guidelines* as they replace the *Model Standards*. The *AFCC Guidelines for the Use of Social Science Research in Family Law* provide guidance for the use of social science in family law-related practices, including parenting plan evaluations. The *AFCC Guidelines for Brief Focused Assessments* provide guidance for narrowly defined, issue-specific, descriptive assessments in family court cases, which are distinct from comprehensive parenting plan evaluations.

These *Guidelines* have been developed at a time when serious systemic issues are affecting the practice of parenting plan evaluations. These issues include the growing unaffordability of evaluations, dwindling numbers of qualified evaluators, and rising concern about professional risk and personal safety among evaluators. Amid these vexing problems, there remains a constant and critical need for competent practice. Competent practice minimizes professional risk, reduces cost, and serves consumers of parenting plan evaluations. While there is a trend toward briefer and settlement-focused models, the need for comprehensive parenting plan evaluations endures, especially in cases involving numerous and complex issues in highly conflicted legal disputes. These *Guidelines* provide important practice guidance for this specialized type of forensic evaluation.

These *Guidelines* are based upon the guiding principles and values articulated below, years of accumulated research and professional literature, other professional guidelines and ethical codes, and the *Model Standards* of 2006. They are built upon the wisdom and experience of all who have participated in current and past task forces, commented on drafts, and contributed to the process.

# Introduction

## I.1 Purpose

AFCC developed and adopted these *Guidelines for Parenting Plan Evaluations in Family Law Cases* to promote competent practice of parenting evaluations in the family court setting, provide information to those who use parenting evaluations, and increase public confidence in parenting evaluations.

## I.2 Enforcement

AFCC encourages members to conform their practices to these *Guidelines*; however, AFCC does not have an enforcement mechanism and membership in AFCC does not compel them to do so. These *Guidelines* may communicate expectations that exceed those established by law or regulatory bodies, and where they do, AFCC encourages members to conform their practices to these *Guidelines*. In other cases, established law or regulatory bodies may have expectations that exceed or conflict with these *Guidelines*. Where conflict exists, laws, rules of the court, regulatory requirements, or agency requirements supersede these *Guidelines*.

## I.3 Scope

These *Guidelines for Parenting Plan Evaluations in Family Law Cases* address the processes by which mental health professionals gather and evaluate relevant information about the family and formulate and communicate opinions that relate to the task of developing parenting plans and related court orders. These *Guidelines* are directed at evaluations performed by family court services, public agencies, and by mental health professionals in private practice appointed by the court or jointly engaged by parents. They also may be broadly applicable to other neutral practitioners who offer an opinion for use in developing parenting plans and related orders in the family court setting.

These *Guidelines* are not intended for evaluation models that are collectively referred to as briefer models, such as issue-focused evaluations and early neutral evaluations, nor do they fully apply to hybrid evaluations that are specifically designed to incorporate a settlement component. Furthermore, these *Guidelines* do not apply to investigations and evaluations in child protection, adoption, or probate guardianship proceedings.

AFCC recognizes that it may not be possible to fully adhere to these *Guidelines* in jurisdictions where the laws, regulations, or policies of the jurisdiction conflict with these *Guidelines*. For example, in jurisdictions where there is a paucity of mental health professionals, and resources are severely limited, the guidelines for qualifications and training may not be possible to fully meet. In those cases, evaluators are urged to comply with these *Guidelines* to the extent they are able, recognizing that the adequacy and sufficiency of their reports may be judged accordingly. Similarly, some jurisdictions permit each side to hire their own evaluators who are free to have



one-sided communications with the attorneys who hired them. While this approach conflicts with these guidelines, evaluators in such jurisdictions are encouraged to comply with the *Guidelines* to the extent they are able within the confines of their jurisdictional rules.

## **I.4 Forensic Evaluation**

Parenting plan evaluations are forensic evaluations for use in developing court orders rather than clinical evaluations. Forensic evaluations involve the application of knowledge and skills from the mental health professions to the resolution of legal matters, whereas clinical evaluations aid in the diagnosis of psychological disorders for mental health treatment. In some jurisdictions, parenting plan evaluations may be mistakenly referred to as a “clinical” evaluation in orders of appointment. This is problematic because, unlike clinical evaluations, forensic evaluations are performed for the express purpose of assisting the parties and courts in reaching legal determinations that affect the rights and liberties of individuals. The admissibility, weight, and sufficiency of the information gathered and opinions expressed in forensic evaluations depends on compliance with legal standards and are subject to legal scrutiny. Even when evaluations are used for settlement purposes, it must be kept in mind that the parties are affected by the weight they expect the judicial officer would give to the evaluation, and therefore, adherence to legal standards and practice guidelines remains necessary.

This emphasis on the forensic nature of parenting plan evaluations is meant to encourage evaluators to adopt a forensic mindset about this area of practice. This mindset involves remaining aware that although every evaluation has its shortcomings and limitations, evaluations can significantly affect the lives of families, and should reflect the highest standards of practice, including recognition that scrutiny of the admissibility, weight, and sufficiency of the evaluator’s work is an inherent part of the process.

## **Guiding Principles and Values**

These guiding principles and values identify the philosophical foundations for these *Guidelines*. They highlight issues of particular importance when conducting parenting evaluations and serve as an anchor for ethical practice and a lens through which the rationale and interpretation of each guideline should be viewed.

### **A. Informed Practice**

Evaluations are informed by the governing legal standards and public policies of the relevant jurisdiction and the best available social science.

### **B. Objectivity**

Evaluations are independent, impartial, free of material conflicts of interest, fact-based, methodologically balanced, and culturally informed.

## **C. Just and Equitable Processes**

Evaluation methods are sensitive to and avoid worsening societal inequities, including, but not limited to, those related to social status, ethnicity, religion, race, language, gender, gender identity, sexual orientation, ability status, age, education, and wealth disparities.

## **D. Transparency and Accountability**

Evaluations are conducted using transparent procedures, contain sufficiently relevant case information, and clearly articulate the reasoning for how conclusions and opinions were reached to allow full review by courts, attorneys, other professionals, and parties.

## **E. Respect for Scope and Boundaries**

Evaluations are conducted within the confines of the appointment. The evaluator, as an extension of the court, respects the rights and interests of the family members, and avoids unnecessary intrusion into family life.

## **F. Balancing Thoroughness with Avoidance of Unintended Harm**

Evaluations are conducted, written, and used in a manner that balances the amount of information gathered, and duration of the process, with unintended stressors on the family, including prolonged conflict, scrutiny, uncertainty of outcome, and demands on economic resources of the family and legal system.

# **Section 1: Education, Training, and Competence**

## **1.1 Evaluation as a Specialization**

- (a) Evaluators should have both broad education and training as well as specialized knowledge and training in a wide range of topics related to child development, family systems, parenting, parent-child relationships, and family law.
- (b) Evaluators should engage in regular ongoing education, training, and self-study to stay abreast of ever-evolving research in the field and to maintain competence.

## **1.2 Education and Training**

- (a) Evaluators should have a minimum of a master's degree, or a regionally recognized equivalent, in a mental health field.
- (b) Because of the many complex issues that arise in family law cases, evaluators should have education and training in the following foundational areas:

- (1) child development, including physical, cognitive, emotional, language, and social development, gender identity, sexual orientation, and the impact of parenting practices and other influences on children's development;
  - (2) family systems, including parent-child relationships, sibling relationships, extended family relationships, stepfamilies, and diverse family structures;
  - (3) culture and diversity and their significance in the lives of adults, children, and families;
  - (4) effects of racism, sexism, poverty, and other socio-cultural issues in the lives of adults, children, and families;
  - (5) impact of parental separation, divorce, family restructuring, and interparent conflict on children, adults, and families;
  - (6) impact of relocation on children, adults, and families;
  - (7) family violence patterns and coercive controlling behaviors, the connection between intimate partner violence and child maltreatment, and the effects of exposure to family violence and coercively controlling behaviors on children;
  - (8) child maltreatment, including child neglect and physical, psychological, and sexual child abuse; the connection between child maltreatment and other adverse childhood experiences, and factors associated with resiliency from trauma and adversity;
  - (9) parent-child contact problems and resist-refuse dynamics, including possible underlying causes such as parental alienating behaviors, compromised parenting, child maltreatment, and exposure to intimate partner violence, among other causes;
  - (10) child and adult psychopathology, including mental health disorders, learning disorders, and developmental disorders;
  - (11) developmentally appropriate and empirically informed parenting plans, long distance parenting plans, methods of facilitating transitions between homes, and communication and information exchange;
  - (12) evaluation of the effectiveness and appropriateness of interventions to address parenting, coparenting, children's adjustment, strained parent-child relationships, and parent-child contact problems;
  - (13) evaluation of risk and protective factors for children with moderate to severe special needs conditions; and
  - (14) applicable legal and ethical requirements of evaluators.
- (c) In addition to the foundational areas of training, evaluators should gain additional training in the following areas:
- (1) investigation of allegations of child abuse and intimate partner violence;
  - (2) evaluation and treatment of problems in parent-child relationships;

- (3) children’s best interests in the context of a relocation request;
- (4) evaluation and treatment of substance misuse and mental health issues;
- (5) forensic interviewing of children;
- (6) evaluation of diversity, equity, and inclusion issues;
- (d) Evaluators should also have education and training in forensic evaluation methods, including:
  - (1) evidence-informed methods for interviewing adults and children, observing parent-child interactions, applying balanced procedures, maintaining objectivity, and interpreting data
  - (2) recognizing the limits of reliability and validity of various sources of information;
  - (3) report writing for the court; and
  - (4) preparing for and giving testimony at deposition or trial.

### **1.3 Competence**

- (a) When beginning to conduct evaluations, evaluators should obtain consultation, supervision, or other forms of guidance, and continue supervision until they have met any supervision requirements in their jurisdiction and achieved a level of competence sufficient to work independently.
- (b) Evaluators should use supervisors, consultants, and mentors who meet the education, training, and competence requirements of this section.
- (c) When evaluators lack specialized expertise and experience about a significant issue in the case, they should obtain supervision or consultation from professionals who have specialized expertise and experience, and briefly describe that person’s role in the evaluative process.

## **Section 2: Knowledge of the Law**

### **2.1 Sufficient Legal Knowledge**

- (a) Evaluators should have sufficient working knowledge to function effectively within the legal system. They are not expected to have the same degree and depth of legal knowledge as lawyers and judges. As statutes, court rules, and case law change, evaluators should keep their legal knowledge current.
- (b) Evaluators should have a working knowledge of the governing laws, regulations, and procedures in their jurisdictions and understand the legal standards regarding the central issues in the evaluation.

- (c) Evaluators should understand the legal criteria for original determination of a parenting plan, criteria for modifications of a parenting plan, use of parenting plan evaluations, jurisdictional requirements concerning qualifications of evaluators, and legal requirements governing the evaluation process in the jurisdiction in which they work.
- (d) Evaluators should have a fundamental and reasonable level of knowledge and understanding of the legal rights of those whom they are evaluating and others who may be affected by the evaluative process or work product.

## **2.2 Working within Legal Parameters**

Evaluators should seek consultation when necessary to understand governing legal parameters. If formal clarification from the court is necessary, evaluators should ensure that all parties or their attorneys are included in the request for clarification. Courts, judicial officers, and lawyers help ensure that evaluators work within those parameters by framing the purpose and scope of provisions of appointment orders or agreements to include information about the governing legal standards, and by detailing requirements for the evaluation process in the appointment order or agreement.

## **2.3 Law, Legal System, and Family Court**

Evaluators should have a working understanding of the law, legal system, and family court as outlined in Appendix A.

# **Section 3: Multiple Relationships and Role Conflicts**

## **3.1 Definitions**

- (a) “Multiple relationships” refers to past, current, and anticipated familial, social, fiscal, or professional relationships between an evaluator and the parties, children, attorneys, or judicial officer involved in a case. Multiple relationships can occur between the evaluator and those being evaluated, or between the evaluator and those representing or making decisions about the family.
- (b) “Multiple roles” refers to performing multiple different professional functions in the same case.
- (c) “Conflicts of Interests” refer only to multiple relationships that could compromise an evaluator’s independence, objectivity, competence, and effectiveness.
- (d) “Role conflicts” refer to the same professional performing incompatible roles in the same case, such as moving from providing therapy for a family member, or the entire family, to serving as an evaluator.

### **3.2 Avoiding Multiple Relationships and Roles**

- (a) Evaluator independence, objectivity, competence, and effectiveness may be compromised when they currently have, have had, or expect to have another relationship with those involved in the litigation. Evaluators should be attentive to, and carefully assess the potential for those roles to impair their ability to be sufficiently impartial. Some additional roles may be judged, after careful consideration, to be unlikely to impair impartiality or to be unavoidable. Evaluators should decline cases where there is a significant conflict of interest arising from multiple relationships.
- (b) In some geographic areas, particularly rural areas, evaluators may be unable to avoid multiple roles due to a shortage of qualified professionals. When avoiding multiple relationships is not feasible, evaluators should be alert to the ways in which their independence, objectivity, competence, and effectiveness may be affected. Evaluators should consider that, in most situations, they have the right to refuse to be involved in an evaluation when multiple roles are involved.

### **3.3 Disclosures of Potential Conflicts of Interests or Role Conflicts**

- (a) Evaluators should disclose any role conflicts or potential role conflicts with the parties, attorneys or judicial officers involved in the proceeding prior to beginning the evaluation or as soon as the role conflict arises. Relationships between an evaluator and the parties, children, attorneys, and judicial officers are relevant when the nature of the relationship has the potential to be viewed as compromising the evaluator's impartiality and objectivity.
- (b) Prior to accepting an appointment involving multiple relationships, evaluators should provide a reasonably detailed written disclosure of current, prior, or anticipated relationships and obtain a written waiver of specific potential conflicts of interests or role shifts before proceeding. Disclosures should be made before the evaluation begins. If conflicts arise during the evaluation, the evaluator should immediately disclose them to the parties and their attorneys.

### **3.4 Avoidance of Therapeutic Intervention During Evaluation**

Evaluators should refrain from offering therapeutic advice or intervention during an evaluation until the analyses have been completed, unless there is credible risk of imminent physical or emotional harm to the parties, children, or others involved in the evaluative process.

## **Section 4: Communication Between Evaluators, Parties, Attorneys, and Courts**

### **4.1 Appointment Orders and Agreements**

- (a) Evaluations should begin with a written court order appointing an identified professional as the evaluator in jurisdictions where such orders may be obtained. Where an appointment order is not feasible, evaluations should begin with a written agreement jointly engaging the evaluator.
- (b) The appointment order should designate the name of the evaluator as the court's neutral expert. It should define the court's expectations and the obligations of the evaluator, parties, and attorneys, including the purpose and scope of the evaluation, and use of the evaluator's report, records, and testimony.
- (c) Evaluators should not begin substantive work until they have received a valid appointment order or engagement agreement.
- (d) Evaluators should seek clarification when the appointment order is not specific enough or when a modification is necessary due to the presence of directives with which the evaluator cannot comply, such as an order to simultaneously evaluate and treat.

### **4.2 Written Information to the Parties and Attorneys**

- (a) Evaluators should provide detailed written information to the parties and their attorneys concerning evaluator policies, procedures, and fees. Evaluators should recognize that the existence of a court order does not eliminate this responsibility. Evaluators should ensure that the content of the written information is consistent with the appointment order. Information should be written in plain language and provided in the parties' native language if not English-speaking, if possible, or through an interpreter.
- (b) The written information should specify the intended uses of information obtained during the evaluation, to whom the evaluator will release their report and records, and the process by which the report and the evaluator's records will be released.
- (c) This written information should be provided to the parties and to their attorneys in advance of the first scheduled session so that the parties may obtain advice of counsel and be able to examine the written information in an unhurried manner and in an atmosphere free of potentially coercive influences. When the parties are not represented by counsel, the written information should be given to them prior to initially meeting each party.

### **4.3 Reviewing of Policies and Procedures**

- (a) At the first meeting with each of the parties, evaluators should review key elements of the appointment order, their policies, and procedures, respond to any questions, and seek assurance that the policies and procedures are understood.
- (b) Evaluators should inform children of the limits of confidentiality using language that is developmentally appropriate.

### **4.4 Ex Parte and One-sided Communications**

- (a) Ex parte communication refers to communication between an evaluator and a judicial officer without including the parties or their attorneys in the communication.
- (b) Evaluators should refrain from ex parte communication with the court unless the appointment order or local rules contain provisions for emergency ex parte communication with the court, such as to request an emergency hearing.
- (c) Evaluators and attorneys representing the parties should avoid one-sided communication about the substance of a case unless a circumstance arises involving the imminent safety of the parties or children and contemporaneous involvement of all attorneys is not feasible.
- (d) If an attorney initiates one-sided communication with an evaluator, the evaluator should take all reasonable steps to limit the communication to administrative or procedural matters and avoid discussion of any substantive issues. Evaluators should inform the attorney for the other party of the one-sided communication as soon as it is reasonably possible to do so in writing.
- (e) Evaluators should memorialize any one-sided communications in their record.
- (f) Evaluators should adhere to local rules or court orders with respect to one-sided communication with attorneys and others representing children or their interests.

### **4.5 Interim Recommendations**

- (a) An interim recommendation is any recommendation made by an evaluator to the parties, attorneys, or the court during an evaluation.
- (b) To maintain objectivity, evaluators should refrain from offering interim recommendations, and decline requests from the parties, attorneys, and the court to make interim recommendations, except as follows:
  - (1) the evaluator deems it necessary to recommend or refer to services to ensure the emotional or physical safety of the parties or the children; and



- (2) the evaluator determines the evaluation needs to be postponed for reasons such as to allow time for an intervention or specialized assessment to occur, or to allow time for the immediate impact of an unexpected significant event to pass.
- (c) When an interim recommendation is made, evaluators should inform the parties, the attorneys, and the court as soon as it is safe and reasonably possible to do so. Evaluators provide an explanation of their reasons for providing the recommendation and possible consequences on the evaluation procedures and evaluator's objectivity.
- (d) In lieu of an interim recommendation, evaluators may provide descriptive information about a child, parent, or family functioning to assist the court in making decisions during an evaluation.
- (e) Evaluators should refrain from negotiating settlements with the parties or their attorneys unless an evaluation model has been formally agreed upon or ordered prior to beginning the evaluation that includes a settlement component.

## **Section 5: Record-keeping and Release of Records**

### **5.1 The Record**

- (a) The term "record" includes, but is not limited to:
  - (1) reports, letters, affidavits, and declarations;
  - (2) notes, recordings, and transcriptions that were created before, during, or after interactions with persons in connection with the evaluation;
  - (3) fully or partially completed assessment instruments;
  - (4) scored and unscored raw test data, scoring reports, and interpretations;
  - (5) billing, expense, and income records pertaining to the services provided;
  - (6) physical or electronic print, film, photocopy, tape, audio, video, or photographic records; and
  - (7) all other notes, records, copies, and communications in any form that were created, received, or sent in connection with the evaluation.
- (b) Records may be stored electronically and do not have to be maintained as a hard copy or in its original state.
- (c) Evaluators should not make separate files meant for their own review and not available for inspection by those with the legal authority to inspect or possess copies of their records. Any notes made by the evaluator are part of the record and should be made available to those legally entitled to them.

## **5.2 Record-keeping Obligations**

- (a) Evaluators should create, maintain, and retain records in a manner that is consistent with their jurisdictional laws, rules, and regulations and safeguard privacy, confidentiality, and legal privilege.
- (b) Evaluators should take reasonable care to prevent the loss or destruction of their records.
- (c) Evaluators should expeditiously note all aspects of the evaluation in their records and record their notes legibly and in reasonable detail. Evaluators should consider the potential advantages and disadvantages of recording their interviews with parties, children, and collaterals.
- (d) Evaluators should retain copies of information or items submitted during the evaluation.
- (e) Evaluators should store records in a manner that makes prompt production possible.
- (f) Evaluators should have knowledge of their jurisdiction's regulations regarding record destruction. It is recommended that evaluators retain records at least until the youngest child has reached the age of majority.
- (g) If the policies of private agencies and evaluators conflict with the requirements of law, rules of the court, directives from the court, or rules set by regulatory bodies, the role of private agency policies are subordinate.

## **5.3 Release of Records**

- (a) Evaluators should have knowledge of the most recent and applicable judicial decisions on the release of test materials and respond to requests for test materials in a manner that is consistent with those decisions.
- (b) To maintain the security of tests administered during the evaluation, before releasing materials, an evaluator may need to seek an order for confidentiality, protective order, or other jurisdictionally based order that prevents the dissemination of test materials outside of the immediate case while allowing for proper examination of the information within the immediate litigation.

# **Section 6: Data Gathering**

## **6.1 Gathering Relevant Information**

- (a) Evaluators should determine what information to gather based upon the issues and questions identified in the appointment order, factors defined by jurisdictional statutes and case law, and factors extrapolated from peer-reviewed published literature that are pertinent to the purpose of the evaluation.

- (b) Evaluators should be aware of jurisdictionally relevant requirements for evaluations and able to articulate the pertinent factors from professional literature that played a role in the information-gathering process.
- (c) Evaluators should gather sufficient information to weigh multiple plausible explanations regarding the central issues in the evaluation and provide an adequate foundation for their opinions.

## **6.2 Commitment to Competent Methods**

- (a) Evaluators should use methods that are likely to yield accurate, objective, balanced, and independent data, and should be able to articulate the reasons for the methods they use.
- (b) Evaluators should strive to limit their activities and contacts to the minimum necessary to meet the goal of gathering sufficient and reliable information to address the purpose of the evaluation.

## **6.3 Multiple, Diverse, Reliable, and Valid Methods**

- (a) Evaluators should use multiple and diverse methods of data gathering to tap divergent sources of information to facilitate the exploration of multiple plausible explanations regarding the central issues in the evaluation.
- (b) When gathering information, evaluators should be mindful that increasing the number of instruments, or number and length of interviews, does not necessarily yield more reliable and valid information. This is particularly true when instruments are of questionable reliability or validity, and when interviews do not focus on relevant and useful information.

## **6.4 Methodological Balance**

- (a) Evaluators should use a balanced process to enhance objectivity and equity. Interviewing procedures, assessment instruments, and evaluative criteria should be substantively similar for all parties; however, when greater exploration of an issue is necessary with one of the parties, a difference in time and procedures may be justified. Evaluators should always be mindful of the potential biasing influence of spending more time with one party than the other or using different procedures with the parties.
- (b) Evaluators should ensure that significant issues and allegations raised by one party are brought to the attention of the other party or parties and they are given the opportunity to respond so the evaluator has balanced information about the issue.

## **6.5 Evaluation of all Adults in Parenting Roles**

- (a) Evaluators should seek the voluntary participation of any adult who performs a parental caregiving role, even if the individual is not a party to the case, such as stepparents and significant others. This includes adults living in, or expected to be living in, the home with the children and performing ongoing care of the children.
- (b) This section is not intended to apply to nannies, daycare providers, or other employed caregivers, who may be important collateral sources of information, but not subject to evaluation.
- (c) Evaluators should conduct forensic interviews and assessments of adults in a culturally sensitive and trauma-informed manner.
- (d) Evaluators should clearly articulate the limitations of their data and opinions when nonparties decline participation.
- (e) When an appointment order specifies the individuals to be evaluated but does not include individuals the evaluator believes are appropriate to evaluate, evaluators may:
  - (1) seek the court's authorization to evaluate the additional individuals;
  - (2) seek the consent of the nonparties to be evaluated;
  - (3) decline the appointment;
  - (4) clearly articulate the limitations of their data and opinions in light of being unable to evaluate the individuals.

## **6.6 Evaluation of Children**

- (a) Evaluators should interview children in a developmentally appropriate, culturally sensitive, trauma-informed manner using empirically informed interview techniques. If an evaluator chooses not to interview a child, the evaluator should explain the reason for this decision in the report.
- (b) Evaluators should interview all children who reside in the home, including stepsiblings, half-siblings, foster siblings, or other children, if appropriate given the issues under evaluation.
- (c) Evaluators should obtain written authorization to interview children who are not subjects of the evaluation prior to conducting the interviews.
- (d) In their reports and testimony, evaluators should describe the factors that influenced the weight that was given to the child's input and expressed wishes, including, but not limited to the child's developmental stage, emotional and cognitive maturity, independence, temperament, impact of trauma, experiences, cultural considerations, and role in family dynamics.

## **6.7 Evaluation of Relationships**

- (a) Evaluators should assess and describe:
  - (1) the relationships between each child and all adults living in a residence with the child and performing a parental caretaking role;
  - (2) the nature of the co-parenting relationship between the parents;
  - (3) sibling relationships; and
  - (4) children's relationships with extended family members and significant others.
- (b) Evaluators should gather data sufficient to reach an adequate understanding of cultural issues in families that are relevant to the assessment of relationships.

# **Section 7: Interviewing of Children**

## **7.1 Competence in Forensic Child Interviewing**

- (a) Evaluators should have knowledge of evidence-informed forensic child interview procedures and be able to articulate the evidence-informed strategies they used to elicit information from the child, such as the use of free recall methods.
- (b) Evaluators should have knowledge of the numerous factors that can affect the reliability and validity of children's statements, such as the effects of various forms of questions, multiple interviews, repeated questions, the presence of others.
- (c) Evaluators should be skilled in conducting culturally sensitive and trauma-informed interviews with children.

## **7.2 Structuring of Child Interviews**

- (a) Evaluators should recognize that the purpose of interviews with children is to gather information from the child about the nature and quality of a child's relationships, life and family experiences, perspectives on family issues, wishes, and preferences;
- (b) Evaluators should plan and structure interviews with their purpose in mind, and consider the child's age, developmental stage, language abilities, culture, any disabilities, and any known traumatic or adverse experiences;
- (c) Evaluators should inform children in a developmentally appropriate manner of the purpose of the interview and that what they say is not confidential.
- (d) Evaluators should strive to gather sufficient information to be able to consider a range of hypotheses about the issues central to the evaluation.

## **Section 8: Observational-Interactional Assessment**

### **8.1 Conducting Parent-Child Observations**

- (a) Evaluators should observe each parent and their children together, regardless of the child's age, unless doing so creates a significant risk to the child's physical or emotional safety or when such observations are impossible, such as when a parent is incarcerated or otherwise unable to participate in a parent-child interactive session.
- (b) Evaluators should conduct their observations to view samples of interactions between and among the children and their parents and to obtain data reflecting on each parent's skills and ability to respond to the children's needs and manage their behavior. In assessing each parent's skills and abilities and the reciprocal relationship between parent and child, evaluators should be attentive to:
  - (1) signs of reciprocal interaction and attention;
  - (2) parent's communication skills with the child;
  - (3) methods by which parent manages the interaction and influences the child's behavior, thoughts, attitudes, and feelings;
  - (4) parent's demands and expectations relating to developmentally appropriate behavior;
  - (5) the appropriateness of any materials brought to the interactive sessions; and
  - (6) developmental appropriateness of child's language, behaviors, and reactions in the presence of each parent.
- (c) Evaluators should be mindful that their presence and the presence of others in the same physical environment as those being observed may influence the behaviors and interactions that they are observing.
- (d) Evaluators should specifically describe the behavioral interactions between parents and children and differentiate their impressions and opinions from their observations.
- (e) When parent-child observations have not been conducted based on risk to the child, or when conducting such observations are impossible, evaluators should clearly note this in the record and articulate the basis for their decision to not conduct parent-child observations in their report.
- (f) Evaluators should articulate the limitations of their opinions and recommendations when observations of each parent with the children have not been completed.

## **8.2 Procedural Issues Regarding Parent-Child Observations**

- (a) Evaluators should give the parties information regarding the purpose of the parent-child observation, the way observational sessions differ from interview sessions, and any guidelines or instructions for the observation before the meeting takes place.
- (b) Evaluators should schedule all observational visits with advance notice to the parents. Unannounced or covert observations, such as use of hidden cameras or microphones, are inappropriately intrusive. This is not intended to apply to unintentional observations such as those that may occur in a waiting room or in public areas in which evaluators and participants may encounter one another.
- (c) Evaluators should create a detailed record of the observation session. If neither audio nor video recording is done and contemporaneous notetaking is difficult, notes should be entered as soon as possible following the session, and the time and date that the notes were made should be recorded in the record.

## **Section 9: Collateral Sources of Information**

### **9.1 Collateral Sources**

- (a) The term “collateral sources” or “collaterals” refers to individuals or institutions who provide information to the evaluator as part of the evaluation process who are not parties, attorneys, consulting experts in the case, or the court.
- (b) “Collateral materials,” sometimes referred to as “ancillary materials,” refer to any materials provided by the parties or attorneys as supporting documentation.

### **9.2 Quality and Relevance of Collateral Information**

- (a) Evaluators should use their best efforts to gather relevant, reliable, and valid information from collaterals to aid in exploring multiple hypotheses under consideration.
- (b) Decisions regarding the management of submissions from parties or attorneys can be challenging. Evaluators should develop a policy addressing such submissions and should include a description of that policy in the information furnished before evaluations are undertaken.
- (c) Evaluators should be knowledgeable about jurisdictional laws, case law, rules, and regulations concerning the review of child protection records, prior evaluation reports, and exceptions to the release of formerly protected information which may appear in an evaluation report and released as part of record production.

- (d) Evaluators should be judicious in determining which confidential records to request and should consider the potential impact of intrusions on privacy, repercussions on the family, and deterrent effects on obtaining mental health care.
- (e) Evaluators should consider collaterals' relationships with and allegiance to the parties when assessing the accuracy and reliability of the information they provide and should be prepared to explain their opinions concerning the accuracy and reliability of the information.
- (f) Evaluators should recognize that collaterals may have relevant information about issues central to the evaluation but not be willing to disclose it. When collaterals decline to provide information, evaluators should note it in the record, including any reasons given by the collateral for declining to participate or answer questions.
- (g) When important sources of collateral information are not available, evaluators should make this known to the court in their report.

### **9.3 Communication with Collaterals**

- (a) Evaluators should inform the parties of whom they will be contacting for collateral information and obtain written authorization from the parties when necessary for the release of protected information.
- (b) Evaluators should inform collateral sources in writing of the general purpose of the evaluation, how information they provide will be used, and that the information discussed between the collateral source and the evaluator is not confidential.

## **Section 10: Use of Formal Assessment Instruments**

### **10.1 Deciding to Use Formal Assessment Instruments**

- (a) The term "formal assessment instruments" includes tests that are scored using a standardized process as well as structured procedures and instruments that are scored using non-standardized procedures. It does not refer to assessment procedures and data-gathering techniques that are not scored.
- (b) Evaluators should recognize that the use of formal assessment instruments is within their discretion and is not always necessary in a particular evaluation.
- (c) When evaluators are qualified to use formal assessment instruments and elect not to do so, they should recognize that they might need to articulate the basis of that decision.
- (d) Evaluators should recognize that data received from standardized formal assessment instruments have known reliability and validity statistics. Unstandardized formal assessment instruments lack the power of those statistics and provide a different type of information that may be less reliable.



## **10.2 Evaluator Background and Qualifications**

- (a) Evaluators should be trained and experienced in the selection and administration of formal assessment instruments. Additionally, evaluators should have sufficient knowledge to independently interpret test data and to integrate test data with other information gathered.
- (b) If use of formal assessment instruments is deemed advisable, and if the evaluator does not have sufficient education, training, and expertise to use the appropriate formal assessment instruments, the evaluator should refer the administration and scoring of the formal assessment instruments to an expert who has sufficient training and experience, including education and training in the interpretation of formal assessment instruments within a forensic context.

## **10.3 Selection and Use of Formal Assessment Instruments**

- (a) Evaluators should be prepared to articulate the bases for selecting the specific formal assessment instruments they use and the limitations of those instruments. Whenever possible, evaluators should use instruments that have been normed on child custody litigants or for which there are comparison group data. Likewise, evaluators should use instruments that are normed on the race/ethnicity group and language of each party, or on an appropriate representative sample, whenever possible.
- (b) Evaluators should use formal assessment instruments in accordance with the instructions and guidance contained in the manuals that accompany the instruments. When using formal assessment instruments, evaluators should not make substantial changes in format, mode of administration, instructions, language, or content because violations of standard administration procedures can invalidate results. When such changes have been made, evaluators should articulate the rationale for having made such changes.
- (c) Evaluators should be mindful of the potential impact that cultural and language diversity may have on test performance and results and be prepared to explain the possible impact. Evaluators should also recognize that disabilities may not directly impair parenting but may impact test results.
- (d) Evaluators should recognize that formal assessment instruments carry an aura of precision that may be misleading. For this reason, evaluators should not assign greater weight to data from formal assessment instruments than is warranted, particularly when their opinions have been formulated on some other bases.

## **10.4 Inclusion in Reports of Data from Previous Reports**

Evaluators should consider including formal assessment data from previous evaluations in their reports. In doing so, evaluators should examine 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.

## **10.5 Use of Computer-Generated Interpretive Reports**

Evaluators should exercise caution in the use of computer-based interpretations and prescriptive texts. Statements from computer-generated reports should be clearly identified as such in reports and records. Evaluators should consider how interpretative statements are derived, and whether that method creates reports that are empirically reliable enough for a forensic context.

# **Section 11: Presentation and Interpretation of Data**

## **11.1 Presentation of Information and Opinions**

- (a) In reports and when offering testimony, evaluators should strive to be accurate, objective, fair, and independent, and avoid presenting information in a manner that may be misleading. Evaluators should include in their reports a listing of every contact, date, and duration of contact with individuals involved in the evaluation. Evaluators should specify the sources of information collected during the evaluation and relied upon in formulating their opinions.
- (b) Evaluators should refrain from offering opinions regarding parenting plans when they have not evaluated all of the parties, including the children.
- (c) Evaluators should expressly link the data presented in the report to their analysis of the issues being evaluated.
- (d) Evaluators should strive to rely on the best available peer-reviewed literature and research when interpreting data and formulating their opinions. Evaluators should provide citations for specific literature to which they refer in their reports and should be prepared to discuss any such research to which they refer, its quality and limitations, and its relevance to the individual family, as well as literature that offers differing perspectives, and why they chose to rely on one set of data over another.
- (e) Evaluators should recognize that use of diagnostic labels to describe the functioning of the parties can divert attention from the focus on their abilities and capabilities as parents. For these reasons, evaluators are cautious when using diagnostic terms, and should provide behavioral descriptions of any significant personality characteristics they note that bear upon the issues before the court.
- (f) When proposing different parenting time schedules or arrangements for siblings, evaluators should clearly articulate the advantages and disadvantages of each proposed plan.
- (g) Evaluators should not include information in their reports that is not relevant to the issues before the court and that does not provide a substantial basis of support for their opinions. Evaluators should retain all information gathered, comply with lawful requests to produce that information, and be prepared to discuss their reasons for including or not including certain information in their reports.

- (h) Evaluators should provide an evidence-informed basis for their opinions and be prepared to discuss case information and peer-reviewed literature that led to their opinions. Evaluators should inform the court when a particular psycho-legal question cannot be answered due to an insufficient basis for an opinion.
- (i) Evaluators should disclose in their report when there is known incomplete, unreliable, or missing data, and articulate the implications of this on any opinions offered.

## **11.2 Articulation of the Bases for Opinions Expressed**

- (a) In reports, evaluators should differentiate information gathered from interviews, observations, and other data from their inferences and opinions.
- (b) In reports, evaluators should explain the relationship between information gathered, their data interpretations, and opinions expressed concerning the issues in dispute. There should be a clear correspondence between the opinions offered and the data contained in both the report and case file.
- (c) Evaluators should only provide opinions that are sufficiently based upon facts or data, reliable principles and methods, and principles and methods that have been applied reliably to the facts of the case.

## **11.3 Recognition of the Scope of the Court Order**

Evaluators should avoid offering opinions to the court on issues that do not directly follow from the order of appointment or engagement agreement or are not otherwise relevant to the purpose of the evaluation as articulated in the court order or engagement agreement. If new substantive issues arise during the evaluation, the appointment order or engagement agreement should be modified to encompass the additional issues.

## **11.4 Adequacy of Data**

Evaluators should provide opinions about the behaviors and personality characteristics of a particular individual only when the evaluator has conducted a direct examination of that individual and has obtained sufficient data to form an adequate foundation for the information provided and opinions offered. Evaluators should connect these data to the specific issues guiding the evaluation.

## **11.5 Identification of Collateral Sources**

Evaluators should list the collateral sources with whom they had contact in their report whether or not the information obtained was utilized in formulating their opinions. When unsuccessful attempts have been made to contact collaterals, those collaterals should be identified, and an appropriate notation made in the report.

## **11.6 Formulation of Opinions**

Evaluators should explain in their report, or otherwise be prepared to explain, how different sources and types of information were considered in the formation of their opinions.

## **11.7 Articulation of Limitations**

In reports, or if requested during testimony, evaluators should articulate limitations to the evaluation with respect to methodology, procedure, data collection, and data interpretation. Additionally, evaluators should acknowledge any biases and how those were addressed.

# **Section 12: Approaches Involving Multiple Evaluators**

## **12.1 Types of Team Evaluations**

Some evaluators work in a setting where multiple individuals work together to complete an evaluation. Examples include:

- (a) training or supervision models in which an experienced evaluator provides supervision, support, or assistance to a less experienced evaluator, or more than one evaluator, as part of formal training or formal peer consultation.
- (b) use of a remote or adjunct evaluator in which there is a primary evaluator, and the additional evaluator conducts a specific component of the evaluation, such as a home visit in a remote area, or a specialty assessment, such as neurological testing or assessment of a special needs condition.
- (c) full team-conducted evaluations with two or more evaluators working together, such as in agencies and educational institutions.

## **12.2 Evaluator Responsibility**

Evaluators should identify the professionals who have participated in the evaluation in the report. All evaluators involved may be answerable to the court regarding their contribution to the report. A primary or lead professional should be identified to provide substantive accountability for the evaluation.

## **12.3 Additional Considerations for Evaluators in Training**

- (a) The use of any supervision or training model should be noted in the appointment order or engagement agreement with all trainees and the supervisor named in the order or agreement.
- (b) Evaluators who include a trainee as a non-contributing observer of the evaluation should inform the parties and attorneys, in writing, prior to the trainee's participation.

- (c) Evaluators providing supervision should provide the parties, attorneys, and the court with a clear written description of the work that the trainee will be conducting, including who will be responsible for the integration of data, final analysis, and opinions expressed in the report.
- (d) Evaluators providing supervision for a trainee should sign the report with both answerable to the court.
- (e) Evaluators-in-training should follow the same guidelines for parenting evaluations as experienced evaluators.

## **Section 13: Virtual Evaluation**

### **13.1 Use of Technology**

- (a) For reasons including health, cost, convenience, and access to service, evaluators may conduct components of an evaluation, or the entire evaluation, using communication technology.
- (b) Prior to beginning the evaluation, evaluators should inform the attorneys and the parties of any components of the evaluation that will be conducted virtually and obtain either an agreement between the attorneys and parties or an order from the court that virtual methods may be used.
- (c) Evaluators should be competent in the use of communication technology, including knowledge of telehealth practice guidelines, laws, and regulatory rules in their jurisdiction that may be applicable to the use of communication technology in evaluations.
- (d) Evaluators should have access to a secure and stable communication platform and establish a back-up method of communication, such as telephone, in the event the technology fails.
- (e) When technology communication is used, evaluators should use it in a balanced manner with both parties.
- (f) Evaluators should describe their policies and procedures for conducting virtual evaluations in their written information to the parties and attorneys prior to beginning the evaluation. They should include instructional protocols, including technology requirements, any rules and procedures regarding interviews, observations, and formal assessment, as well as any rules and procedures to reasonably ensure privacy and the integrity of the process, such as scanning the room for the presence of others.
- (g) When deciding whether to conduct any or all of an evaluation using communication technology, evaluators consider factors that may negatively affect the parties' ability to participate or the integrity of the process, including, but not limited to:

- (1) the parties' access, ability, and willingness to use technology;
  - (2) potential technology difficulties and interruptions that may significantly compromise the process;
  - (3) limitations in maintaining privacy and minimizing influences during interviews;
  - (4) limitations in rapport-building and observing behavior during interviews;
  - (5) limitations in observing interactions;
  - (6) mental health conditions, developmental limitations, or other disability that may significantly affect the process;
  - (7) concerns about intimate partner violence, child maltreatment, or substance misuse; and
  - (8) evolving research regarding the validity and reliability of remote methods.
- (h) If an evaluator determines that virtual methods are contraindicated after an evaluation has begun, the evaluator should inform the parties, attorneys, and possibly the court, so a new methodology or evaluator can be agreed upon or ordered.

### **13.2 Virtual Interviews with Children**

- (a) Evaluators should consider the child's age and stage of development when determining if a virtual interview is appropriate.
- (b) Evaluators should establish protocols to assess whether the child is in a private setting, how the child will receive assistance, if needed, and how the interview will be ended if the child's interest wanes or safety has been compromised.

### **13.3 Reporting Virtual Components**

- (a) In their reports, evaluators should provide a description of any virtual methods used, including a description of any protocols used to reasonably ensure integrity of the process.
- (b) Evaluators should note in their reports where the parties and children were located during virtual interviews and observations.
- (c) Evaluators should note in their reports if any person who was virtually interviewed or observed appeared uncomfortable or behaved in a manner that might suggest the environment was not private and free of influences.

## **APPENDIX A: Understanding of the Law, Legal System, and Family Court Setting**

Evaluators are most effective when they possess a working knowledge of the family court setting and the law governing parenting plans. Evaluators can work to develop their understanding of the family court setting by attending continuing education programs (including continuing legal education programs), observing other cases tried in the courts where they work, consulting with legal professionals and more experienced evaluators, supervision, mentorship, reading, and experience. Evaluators can also learn about the family court setting from the information available for self-represented parties that many family courts post on their websites. Legal communities can enhance the competence of evaluators by offering them training in the laws, rules, and practices governing family courts in that jurisdiction.

As they develop a growing working knowledge of the family court setting over their years of practice, evaluators can reduce the risk that their work product is excluded from evidence or given reduced weight. When they are uncertain about the governing law, evaluators should request guidance from the court (with copies of the written request to the parties and their counsel) or consult legal professionals who are not involved in the case.

This appendix (and the accompanying glossary) can help evaluators identify the areas of legal knowledge that will enhance their competence and value working in the family court setting.

### **I. The Civil Legal System**

Evaluators should develop over time a working understanding of the civil legal system and its operation in each of the jurisdictions within which they work, including:

- A. fundamental principles and operation of the civil legal system, including the role and function of family courts;
- B. sources of governing law (constitutions, statutes, state rules, local rules, key case law);
- C. use of evaluations in developing court orders through negotiation, mediation, and other consensual dispute resolution processes, and by adjudication;
- D. how access to justice is facilitated in the family court setting, especially for self-represented parties;
- E. interplay between the laws governing domestic violence and the laws governing child custody determination;
- F. interstate and international child custody jurisdiction; obstacles to interstate and international enforcement; and assessment of abduction risk and abduction-prevention measures;
- G. legal terms of art and legally defined terms in the family court setting (see glossary of legal terms in Appendix B).

## **II. Legal Standards for the Issues Being Evaluated**

To identify, gather, and analyze relevant data, evaluators should develop a working knowledge of their jurisdiction's legal standards and principles for

- A. burdens of proof governing determination of the issues presented for evaluation;
- B. adoption and modification of temporary and permanent orders governing parenting rights and duties;
- C. the extent to which prior factual findings of courts (for example, findings that an act or pattern of abuse occurred or did not occur) are binding and must be treated as established facts for purposes of the evaluation.

## **III. Components of Orders Governing Parenting Rights and Duties**

- A. Evaluators should understand the components of parenting plan and related orders, including but not limited to provisions governing:
  - 1. communication and information exchange;
  - 2. allocation of decision-making authority;
  - 3. parenting time schedules;
  - 4. deviation from schedules for holidays, vacations, and special days;
  - 5. geographic restrictions on child's place of residence without further court order (relocation); and
  - 6. educational, therapeutic, and consensual dispute resolution services.
- B. Evaluators should be mindful that their work product may be used both for consensual resolutions and adjudication. Evaluators should also understand the extent to which the parties may have a broader range of choices about those provisions in an agreed-upon order than the law gives courts adjudicating these issues in contested hearings and trials.

## **IV. Law Governing the Conduct and Use of Child Custody Evaluations**

Evaluators should have a working understanding of the laws, regulations, and best practices in the governing jurisdiction, including:

- A. appointment or engagement of the evaluator and termination of the evaluator's appointment;
- B. conflicts of interest and how the role of the evaluator as a neutral officer of the court differs from other practice roles;
- C. the compulsory nature of court-ordered evaluations;
- D. required, discretionary, and prohibited child custody evaluation procedures and methods;



- E. privacy/liberty/dignity interests of family members and others participating in evaluations (including confidentiality and privilege);
- F. preconditions for and permissible methods for substance abuse testing;
- G. requirements and expectations for written reports and testimony;
- H. compensation of the evaluator;
- I. court supervision and discipline of court-employed evaluators, and related matters;
- J. general professional ethical and legal standards for evaluators and other mental health professionals;
- K. restrictions on dissemination of reports, testimony, and evaluator records.

## **V. Procedural Law and Practices in the Jurisdiction's Family Court**

Evaluators should have a working knowledge of family court procedures, policies, and practices as they impact use of the evaluator's work product in adjudication. These include:

- A. requirements for responding to subpoenas or requests for reports, files, and testimony transcripts;
- B. protocols for testifying witnesses;
- C. evidentiary rules governing consideration of reports, and admissibility of written reports;
- D. evaluator duties in discovery proceedings (including records production and evaluator deposition testimony); and
- E. professional etiquette for communications with counsel and the court, for depositions, and for the courtroom.

## **Glossary of Legal Terms Commonly Used in the Family Court Setting**

This glossary provides brief definitions of some key legal terms that are commonly used in the family court setting. (Note that each jurisdiction may have local variations of these terms.)

**Adjudication:** Giving or pronouncing a judgment, order, or decree by a court. Also the judgment, order, or decree given. The adjudicative process typically includes such events as motions, evidentiary hearings, judicial conferences, trials, and appeals.

**Appointment order:** An order of the family court appointing an evaluator to conduct a full or limited scope parenting evaluation. An appointment order makes the evaluator a person acting on behalf of the court and, as a matter of best practice, sets forth such matters as the purpose and scope of the evaluation, provides directions to the parties, their lawyers/attorneys, and the evaluator concerning the evaluation process, admissibility of any written report, and compensation of the evaluator.

**Burden of proof:** Burden of proof means the obligation of a party to establish, by evidence, a requisite degree of belief concerning a fact in the mind of the trier of fact (judicial officer or jury or arbitrator).

**Case law:** Written decisions of courts that are precedents and thus have either binding or persuasive authority for that jurisdiction.

**Civil legal system:** The system of laws and procedures for adjudication of non-criminal cases. Family law is a branch of the civil legal system.

**Child custody and visitation order:** A court order allocating responsibility for the care of a child (physical custody) and authority to make decisions about the child's life (legal custody). The term "parenting plan" is gradually replacing the terms child custody and visitation (access). Jurisdictions will have their own definitions of joint and sole legal custody, and joint and sole physical custody, and visitation (access).

**Consensual dispute resolution (CDR):** (Also known as Alternative Dispute Resolution or ADR.) A method of dispute resolution instead of adjudication. The most frequently seen models of CDR/ADR in the family court setting are negotiation; mediation; arbitration; mediation-arbitration; and parent coordination.

**Constitution:** A body of fundamental legal principles for the governance of a nation, state, province, or similar governmental entity.

**Court order:** A formal edict or direction issued by a court that has binding legal effect upon a party or parties, or as to all matters coming before that court.

**Criminal/penal justice system:** The system of laws and procedures for adjudication of government prosecutions for crimes. Some issues encountered in parenting cases, such as family abuse and child abduction, may involve criminal prosecutions.

**Discovery:** Procedures before trial or hearing by which the parties can obtain evidence and testimony in preparation for settlement or contested adjudication. Forms of discovery can include subpoenaed evidence, demands for production of documents and records; oral testimony (depositions), written interrogatories, requests for under oath admissions, etc. In some jurisdictions, evaluators may be required to sit for oral depositions before a matter is settled or adjudicated.

**Evidence:** Information presented in testimony, written declarations, or affidavits, and exhibits that is used by the fact finder (judicial officer or jury or arbitrator) to decide the case for one side or the other. “Admissible evidence” is evidence that the law permits factfinders to consider. “Weight and sufficiency of the evidence” refers to the persuasiveness of particular evidence in the mind of the fact finder in light of the burdens of proof.

**Governing legal standard:** The law governing what orders courts can make, and what facts and factors may or may not be considered in adjudicating a particular issue.

**International custody jurisdiction:** Power to make, modify, and/or enforce orders in cases involving more than one nation. Jurisdictional law governs which of several jurisdictions has that power over a particular case, subject, and parties.

**Interstate/interprovincial custody jurisdiction:** Power to make, modify, and/or enforce orders in cases involving more than one state or province within a nation. Jurisdictional law governs which of several jurisdictions has that power over a particular case, subject, and parties.

**Jurisdiction:** The power or authority of a court to hear and try a case; the geographic area in which a court has power; the types of cases it has power to hear; and the types of orders it is permitted to make.

**Mediation:** A type of consensual dispute resolution (CDR)/alternative dispute resolution (ADR) process in which a neutral third party is engaged to facilitate the parties in self-ordering; i.e., developing binding agreements and court orders. A hallmark of mediation is that the third party does not have the power to impose a decision upon the parties, although some jurisdictions use “recommending” mediation models. In many jurisdictions, mediation is confidential.

**Negotiation:** A type of consensual dispute resolution (CDR) process in which the parties try to reach binding agreements. Negotiations can be conducted with or without lawyers/attorneys representing one or more of the parties.

**Permanent orders:** A form of court order issued (typically in the form of a judgment) at the end of a case. In family law, orders for parenting plans and child support are typically modifiable, subject to the jurisdiction’s requirements for post-judgment modifications. Many jurisdictions will not modify a parenting plan without a showing of a material change of circumstances.

**Privilege:** Statutory and common law protections for confidential communications (such as attorney-client, psychotherapist-patient) which prevents or limits the power of courts to compel disclosure and admission of the confidential communications into evidence. Some jurisdictions have laws creating an exception to certain privileges in child custody cases. Waiver of privilege may occur by tendering the issue of physical or mental health in the litigation, by disclosure, or by a knowing, intelligent and voluntary waiver.

**Regulations:** Court rules or other rules that are subordinate to legislation. In the family law setting, there are often state (or provincial) and local court and other rules that augment the statutes and case law.

**Self-represented party/self-represented litigant (SRL):** A person appearing before a court or other tribunal without legal representation from a lawyer, attorney, or other agent. Also known in some jurisdictions as a “pro se litigant” (pro se from the Latin “for oneself”) or a litigant who appears “in propria persona” or “pro per.”

**Standard of proof:** In a civil court case, including a child custody/parenting determination, a party usually must prove a fact and/or issue in dispute is true by the “preponderance of the evidence” or on a “balance of probabilities,” etc.; i.e., anything more than 50% certainty. However, some issues may require a higher standard of proof, such as “clear and convincing” evidence. In criminal and quasi-criminal cases (in family law this may include contempt of court matters), typically the facts and/or issues must be proven to be true “beyond a reasonable doubt.”

**Statute:** A law adopted by the legislative body of a nation, state, province, or other entity.

**Stipulation:** In some jurisdictions, an agreement between the parties which, with the approval of the court, becomes a court order.

**Subpoena:** A court order or other document with legal force that requires or compels a person to attend at a hearing or at a discovery event (such as a deposition), or to deliver up certain documents or other things. A Latin term, meaning literally for “under penalty.” In some jurisdictions a subpoena is referred to as a “summons” or “summons to witness.”

**Temporary order:** A form of court order that lasts for a limited period of time. Also known as “interim orders,” “interlocutory orders,” *pendente lite* orders” or “holding orders.”

**Testimony:** Sworn evidence (oral or written), or else evidence made under oath or affirmation to tell the truth, given in a legal proceeding by a witness. Testimony takes the form of direct testimony presented by the party calling the witness, and cross-examination conducted by the opposing party. There are rules governing the form of the questions that may be asked on direct and cross-examination – with greater leeway for questions asked on cross-examination.

**Witness:** Person who gives testimony in an adjudicative proceeding. Lay witnesses typically are percipient (fact) witnesses as to matters within their personal knowledge. Expert witnesses may give opinion testimony where their subject matter expertise and foundational information meet the standards of the jurisdiction for such opinion testimony.