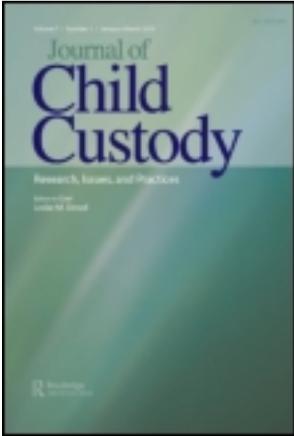


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### The Child Custody Evaluation Report: Toward an Integrated Model of Practice

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## **The Child Custody Evaluation Report: Toward an Integrated Model of Practice**

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*Though child custody evaluations (CCEs) are one of the most important services that guide and inform decision making in many of the most difficult family law cases, the absence of a practical and theoretical framework for report writing is a glaring omission in the field. Current professional practice standards for CCEs emphasize the importance of a scientifically based methodology but offer few guidelines or aspirational principles regarding how a report should be constructed. This article presents a framework for report writing that integrates forensic and clinical perspectives while addressing the multiple client systems served by the report. Emphasis is given to creating a “usefulness” standard that not only serves the court but also enhances settlement possibilities and assists the family to move forward after the completed evaluation.*

**KEYWORDS** *divorce, child custody, forensic psychology, child custody evaluations, family court*

Child custody evaluation (CCE) practices have evolved greatly over the last 10 to 15 years. The development and articulation of a scientifically informed forensic model for conducting CCEs (Gould, 2006; Gould & Martindale, 2007; Martindale & Gould, 2004), along with recent revisions of professional practice standards for custody evaluators (American Psychological Association [APA], 2010; Association of Family and Conciliation Courts [AFCC], 2007), have led to improved methodology and emphasis on empirically grounded

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recommendations in evaluator's reports. Another important development has been an increased focus on attempting to improve the quality of evaluators' reports through the emerging practice of work product review and case analysis (AFCC, 2011; Austin, Kirkpatrick, & Flens, 2011; Kaufman & Lee, 2011).

In spite of these important developments, scant attention has been paid to how a report should actually be written. In the AFCC (2007) model standards for child custody evaluators, less than one page is dedicated to the "presentation and interpretation of data," with no specific guidelines regarding how a report should be written or constructed. The APA (2010) standards for CCEs offer no guidelines or aspirational principles regarding the construction of a report or the presentation of information. While both Gould (2006) and Stahl (2011) do have brief chapters on report writing in their texts on conducting CCEs, there are virtually no published articles specifically focused on custody evaluation report writing in any depth.

The preparation of a CCE report is the culmination of a lengthy, often intense, stressful, and intrusive process for parents and children. The CCE report is the evaluator's work product that presents not only a summary of the information collected, but also the scrutiny and synthesis of all of this data into a cogent analysis of the case. Opinions and recommendations are offered to address the legal questions at hand, namely, a parenting plan to serve the best interests of the children. Unless there is a trial in which the evaluator testifies, the CCE report may be the only means by which the parents, the judge, and the attorneys understand the evaluator's thinking. Though CCEs are one of the most important services that guide and inform decision making in many of the most difficult family law cases, the absence of a practical and theoretical framework for report writing is a glaring omission in the field.

Many in the field of family law view the court as the primary client or consumer of the evaluation report. This view makes sense given that child custody evaluators are appointed by court order (sometimes stipulated and sometimes by direct order from the bench), and evaluations are considered advisory reports to the court. The forensic evaluator's role is to examine the parents and children, to gain collateral information, and to review records for the specific purpose of assisting the court in determining custodial placement of the children (Gould & Martindale, 2007). However, it is estimated that between 80% to 90 % of cases in which a CCE has been conducted settle either outside of court or without a trial (Austin, 2009; Bow, Gottlieb, Gould-Saltman, & Hendershot, 2011; Melton et al., 2007). Thus, in the day-to-day world of family law, custody reports most frequently serve a settlement function.

Because there has been no empirical research on the effectiveness of custody evaluations, we have little idea what impact the report has had on parents, or what factors within the report itself may have contributed to

settlement or to better outcomes for families. R. F. Kelly and Ramsey (2009) have recently highlighted the need to systematically study CCEs as a human service system. These authors propose a research agenda to analyze several outcomes regarding CCEs, such as the factors which lead to settlement, to reduction in parenting conflict following an evaluation, to child well-being following an evaluation, and whether court efficiency and effectiveness is improved as a result of a CCE. One of the independent variables identified by the authors is the “quality of the custody evaluation,” and specifically, whether the evaluation was “high quality” versus “low quality.” However, R. F. Kelly and Ramsey (2009) propose no operational definition of what might actually constitute a “high quality” versus “low quality” CCE report. Along with R. F. Kelly and Ramsey, Austin (2009), and Bow (2006) have also described the need for outcome research in the CCE field, but these authors note the tremendous complexity involved in conducting such research, including using control groups and human subjects concerns, and they point out the need for financial and institutional resources. Bow (2006) in particular stated, “There is a need for outcome research in the CCE field. Only a few studies have examined report quality. While this is a difficult area to assess, it is one of the best means for examining practice issues” (p. 47).

Despite the absence of such research, custody evaluators should consider far more closely and critically how we communicate our observations, analysis, findings, and recommendations to those who can benefit from this information. This article focuses in particular on those features and qualities of CCE reports that not only address the needs of the court but also address other consumers of the evaluation, while enhancing the possibility of settlement. While we understand that a CCE report is a forensic endeavor in which the evaluator is providing information to assist the “trier of fact” in rendering decisions, we challenge the idea that reports should be written only with judges in mind. If 80% to 90% of custody disputes settle following the submission of a report but prior to trial, then far more often than not, it is parents, and if represented by counsel, their attorneys, who are also the primary consumers of the CCE report. In other words, custody evaluators should write reports anticipating multiple clients.

Even within the family court system, there is growing emphasis on facilitating settlement while obviating the need for lengthy and costly hearings and trials. Parents most often still have decision-making power between the time an evaluation report is issued and prior to court action. For example, in some jurisdictions in California, there is actually a judicial settlement conference scheduled following the submission of a report, with an attempt made to settle the case prior to a hearing or trial (Lee & Kaufman, 2010). Therefore, while custody evaluators are court appointees producing a forensic work product geared towards providing information and recommendations in service of the family law court, advisory reports also need to be to

written and constructed in a way that enhances the possibility of settlement, while attempting to leave parents' dignity intact, and that aspires to the Hippocratic Oath of "do no harm."

This article addresses how to craft a high-quality written CCE report that is useful and helpful to the multiclient system served by the report. Among the issues that we cover are: a) the similarities and differences of writing for judicial officers, attorneys, and parents; b) how a CCE report can be executed as an evidence-driven forensic report while enhancing the possibility of parents settling their cases, obviating the need to go to court; c) the ways of responsibly and effectively integrating evidence-driven conclusions with informed clinical inference; and d) how to write reports that may minimize complaints about bias. The approach taken here may re-create the tension previously discussed by Gould and Stahl (2000) regarding whether CCE reports should be seen as strictly a forensic, scientifically based work product, or whether the report should also be constructed in part as a settlement tool. Ultimately, we offer an integrated model for report writing that underscores the importance of a scientifically based methodology and of empirical underpinnings to an analysis and recommendations, with a clinically based sensitivity to constructing reports in a manner that focuses on parental strengths as well as problem areas. This clinical model emphasizes writing the report in such a way so as to preserve the humanity of the parents and children, promoting both settlement and hope for the future co-parenting relationship.

#### CCES IN THE CONTEXT OF FORENSIC MENTAL HEALTH ASSESSMENTS

CCEs fall squarely under the heading of Forensic Mental Health Assessments (FMHAs). As such, they are considered assessments that are conducted to provide clinical and functional information to a legal decision maker about issues that relate to specific psycholegal questions (Heilbrun, Marcyk, DeMatteo, & Mack-Allen, 2007). This would be in contrast to evaluations performed in clinical contexts that are specifically intended to provide diagnostic information and to inform treatment planning. Thus, FMHA reports memorialize findings and offer a consulting and educational function for the courts (DeMier, 2012).

In several articles and books, Heilbrun and colleagues developed principles to guide FMHAs that encompass four broad areas: *preparation*, *data collection*, *data interpretation*, and *communication* (Heilbrun, 2001; Heilbrun, Marcyk, & DeMatteo, 2002; Heilbrun, Grisso, & Goldstein, 2008). These principles can be applied to the range of legal issues and populations that occur in forensic assessment. Communication and analysis of findings in forensic cases has long been an anticipated result of the FMHA, and this was

noted in the initial Specialty Guidelines for Forensic Psychologists (APA, 1991). This expectation has been maintained and expanded upon in the most recent revision of the forensic guidelines (APA, 2012). While communication of findings may be written or oral, it is assumed that the child custody evaluator will provide a written report of his/her findings and recommendations.

Of the 29 specific guiding principles that fall into the four broad categories noted above, Heilbrun suggests that 22 of them apply to forensic report construction. In his 2007 article, Heilbrun highlights what he considers to be standards that most directly apply to report construction and writing:

- *Identify relevant forensic issues:* The forensic mental health professional (FMHP) should report on what capacities are to be assessed and what psycholegal questions should be answered.
- *Obtain proper authorization:* Under what agreement or request was the assessment performed? Was it court ordered or was it conducted at the request of an attorney?
- *Use multiple sources of information for each area being assessed:* This might include self-report, psychological testing, review of records, reports from collateral sources, and direct observation.
- *Obtain relevant historical information:* This includes not only providing historical context in the report, but also specifically focusing on historical information that is relevant to the legal issue at hand.
- *Use third-party information in assessing response style:* The FMHP should report on the extent to which third-party information is consistent with the self-report of the individual being evaluated.
- *Do not answer the ultimate legal question:* Heilbrun acknowledges that there is ongoing debate on this issue.
- *Attribute information to sources:* FMHPs should report the source of all data relied on in the assessment. This makes the process more transparent and shows how conclusions flow from the data gathered.
- *Use plain language; avoid technical jargon:* This principle acknowledges that most individuals who read FMHA reports are not trained in mental health and are frequently laypersons.
- *Write the report in sections, according to model and procedures:* An organized structure to the report allows the reader to understand the questions at hand, the natures of the data obtained, the history, the observations, and the assessment of functional abilities.

These standards have laid the groundwork for others, such as Gould and Martindale (2007), who have outlined their views of the principles inherent in a forensic and scientifically informed model of child custody report production:

- *Identification of psycholegal questions to guide investigative process*
- *Multiple interviews with relevant parties and their children*

- *Use of valid and reliable tests and measures*
- *Direct behavioral observations, including parent–child interactions*
- *Review of relevant historical and current records*
- *Interviews with collateral sources*
- *Inclusion of references to the empirical literature to justify and ground recommendations as having some empirical validity; application of reliable and relevant research*

Among the kinds of FMHAs performed by qualified professionals, CCEs hold a unique position. In virtually every area of forensic psychology, professionals are evaluating individual competencies and functional capacities (Grisso, 2002, 2010). For example, this is so in the range of criminal cases where forensic psychologists are engaged (e.g., competence to stand trial, Miranda rights waiver, criminal sentencing, juvenile commitment, and mental state at the time of the offense), as well as in civil matters (e.g., civil psychological injury, guardianship, worker's compensation, risk assessment, malpractice, and termination of parental rights). CCEs are unique in that *multiple individuals* are assessed. In addition, *multiple interpersonal relationships* and the *family system are also subjects of examination*. Evaluations invariably include at least two parents and one child. It is incumbent on the custody evaluator to report on the parenting competencies of each parent and on the functioning of each child. In addition, each parent–child relationship must be understood and discussed along with the co-parenting relationship with respect to how any parental conflict impacts the child. Typically, step-parents also are interviewed, and their relationship to the child is also considered by the evaluator. Needless to say, many families arrive in our offices with more than one child and more than two parents, making a complex task only more demanding.

The standard of practice in forensic psychology is to employ data gathering methodology and data interpretation techniques that are as soundly grounded as possible in current science and research. This practice is central to meeting standards of admissibility in the courtroom. In matters where one individual is to be evaluated, and the scope of the assessment is more narrowly defined, specific instruments and protocols that directly assess those competencies can more easily and validly be relied upon than in a CCE. An example of this is when a forensic psychologist is asked to evaluate an individual with regard to their competence to stand trial. Guidelines for determining competency are well documented in relevant literature and case law, and there are several well-regarded and well-validated procedures available to the evaluator, such as the MacArthur Competence Assessment Tool–Criminal Adjudication (Poythress et al., 1999) or the Evaluation of Competence to Stand Trial–Revised (Rogers, Tillbrook, & Sewell, 2004). These instruments can guide assessment and inform recommendations. Even in these kinds of assessments, the forensic psychologist must employ clinical judgment and

other sources of data to determine the utility of test data and to integrate it with clinical impressions and collateral data.

In child custody work, there have been several attempts to develop valid and reliable measures of parenting abilities (Ackerman & Schoendorf, 2000; Bricklin, 1989; Bricklin & Hlabert, 2004). However, these instruments have either not gained acceptance in the forensic evaluation community or have been deemed by multiple critics to be of questionable validity (Medoff, 2003; Otto, Edens, & Barcus, 2000). Regardless, the task of the custody evaluator is so complex that no instrument or set of psychological tests is able to answer the multiple questions that arise in custody evaluations. Thus, evaluators must always exercise considerable clinical judgment when sorting through and integrating data obtained from manifold sources and multiple assessment modalities. For these reasons, we suggest that the need for thoughtful application of clinical skills is greater in CCEs than in most other areas of forensic assessment.

It is also our position that the use of sound and experienced clinical judgment, coupled with a scientifically informed methodology and reliance on the empirical literature, are consistent with high-quality FMHAs. If anything, report writing grounded not only in science, but also in sophisticated and well-reasoned clinical judgment, plays an essential role in helping the court to understand complex and seemingly contradictory reports from parents, complicated histories, and the needs of children who often are too young to articulate feelings and needs at a sufficient level of emotional maturity. As such, the child custody report should be viewed as a FMHA report and should adhere to guidelines that have been evolving over the last 20 years or more.

### CREATING A HIGH-QUALITY CCE REPORT GEARED TOWARDS MULTIPLE CLIENT SYSTEMS

The CCE report is a forensic work product that addresses the legal questions posed by the court. Child custody evaluators are court appointed, so they are the court's experts. Therefore, because there is not a "client" as in clinical work, the court is typically considered to be the primary consumer or client served by the report. In reality, however, the CCE report serves multiple clients who will not only read the report, but hopefully who also will benefit from its analysis and recommendations. Such clients include not only the court, but also the attorneys representing the parents or the child and the parents and children who are evaluated. In addition, therapists, mediators, and parenting coordinators may also be an integral part of a parenting plan and may rely upon specific recommendations or guidelines to assist them in providing follow-up services to the family following the completion of a CCE. Next, we provide an analysis of the different client systems served by

the report, while specifying a complex array of elements of report writing that are geared toward creating a useful and helpful report to those who will potentially benefit from it.

### The Court as Client

From the point at which a mental health professional accepts the assignment to conduct a CCE, he/she has entered into the legal arena. As the literature on forensic psychology is replete with descriptions and definitions of the differences between clinical and forensic roles (S. A. Greenberg & Shuman, 1997; Shuman & Greenberg, 2003), it may seem obvious to state that the court is the primary consumer of a child custody report. While evaluators work under the guidance of models of practice (APA, 2010; AFCC, 2007) as well as of state laws and local rules, the specific demands on the custody evaluator in terms of addressing the court's needs are worth enumerating.

Though custody evaluators are frequently appointed via stipulation of the parents, and though it is the parties who are most often paying the evaluator's fees, the evaluator's primary purpose is to assist the court, the legal decision maker. Every day, family court judges and commissioners make decisions that affect the lives of families, and they often must do this with relatively limited information and limited resources. Though many, if not most, decisions can be made under these circumstances, there are times when the court requires information that cannot be obtained by presentation of evidence in the courtroom. Melton et al. (2007) note that the court needs mental health professionals to be *investigators* who can report data that will assist judges to determine children's best interests. Custody evaluators can provide the court with the breadth and depth of information that the court either does not have the time to gather or does not have the expertise to obtain in a reliable fashion. As such, it would appear that the court is not only one of the evaluator's clients in this multiclient system, but also it is the primary client or consumer. Shear (noted in Gould & Martindale, 2007) even suggests that a better way to describe the relationship is that the custody evaluator is an extension of the court. Custody evaluators most often describe themselves as consultants to the court.

Custody evaluators can be helpful to the court well beyond the specific timeshare recommendations that the court values. Judges and attorneys expect and rely on custody evaluators to provide specific recommendations regarding custody matters and timeshare plans (Quinnell & Bow, 2001 and Bow & Quinnell, 2004). Additionally, the court needs information regarding key psychological and relational issues that weigh in decision making including:

- social and emotional functioning of each of the parents,
- social and emotional functioning of the minor(s),
- the specific developmental needs of the minor(s),

- the nature of the specific parent–child relationships, and
- the nature of the parents’ relationship with each other, especially as it pertains to the ability to co-parent.

Among the things that the court wants to know are the relative strengths and weaknesses of various parenting plans as they apply to children of different ages and developmental stages. This is input that a custody evaluator, who is well versed in current research, can offer a judge, significantly adding to the data upon which decisions are rendered. An example of this would be a discussion of the potential merits and risks of approaches to overnight visitation with infants and toddlers.

Relatively few custody matters are referred for an evaluation; however, the vast majority of the cases that do go through comprehensive assessment involve issues associated with high conflict or challenging circumstances. These cases may include issues such as serious parental psychiatric disturbance or substance abuse, families with special needs children, allegations of abuse and domestic violence, or issues regarding alienation and children who resist contact with a parent. Some cases referred to evaluation may not include high conflict or even significant differences between parents about the care of the child but require third party decision making due to problematic circumstances. An example is when parents are functioning well with an undisputed custody arrangement, but one parent seeks to relocate with the child, necessitating a substantive change in the custodial timeshare. In all of these instances, custody evaluators can bring valuable information to the court on the state of knowledge in specific content areas (such as relocation or domestic violence) and its applicability to the specific family involved in the evaluation.

All of these are examples of the *incremental* or *additive* knowledge and understanding that custody evaluators bring to the court. Further, this information is often critical, as the trier of fact must exercise considerable judgment when applying the Best Interests of the Child standard. The model standard of the Uniform Marriage and Divorce Act offers judicial officers guidance on what to consider when determining the child’s best interests, but it leaves the relative importance of the various factors to a specific case up to the discretion of the court (Melton et al., 2007). It is in these areas that judicial officers turn to custody evaluators to provide data and acumen.

Knowing what might be helpful to the court is not the same as understanding *how* to be helpful to the court, given that a poorly crafted or poorly written custody evaluation report can become an unwelcomed distraction at best and the focal point of controversy and litigation at worst. Custody evaluators should not only understand the foundations of forensic evaluations and how they differ from purely clinical assessments, but also they should demonstrate that understanding in their reports. Specifically in terms of report

writing, we believe that courts can make use of evaluations that adhere to some basic guidelines:

- *Define the specific questions upon which the court seeks input in the particular case:* While broad or generic issues may pertain to almost any custody case (i.e., what timeshare plan will address the children's best interests, how the health and safety of the children are being addressed by each parent), the court must typically address specific allegations and assertions (i.e., Is alienation present? Is supervised visitation between a parent and child needed?). Before even accepting a case, we believe that evaluators, in consultation with the attorneys or upon the input of the court, should delineate the specific questions about which the court seeks input. Those questions should help frame the evaluation report and should be noted specifically when reporting the reasons why the family was referred for evaluation. Those same questions should then be addressed clearly in the case analysis of the family in the context of the evaluation findings.
- *Understand and address the underlying psycholegal issues:* Though custody evaluators are not expected to be attorneys or to have the depth of legal knowledge of a bench officer, they are expected to be educated in the workings of the legal system in the areas in which they practice. This is spelled out in the most recent revision of the *Specialty Guidelines for Forensic Psychology*:

Forensic practitioners recognize the importance of obtaining a fundamental and reasonable level of knowledge and understanding of the legal and professional standards, laws, rules, and precedents that govern their participation in legal proceedings and that guide the impact of their services on service recipients. (APA, 2013, p. 9)

Furthermore, custody evaluators should be well versed in the legal standards, case law, and clinical issues that apply to the specific cases on which they are asked to work. Examples of this include current standards for weighing factors in relocation cases or assumptions under the law pertaining to findings of domestic violence. Referencing these standards in case discussions lends support for the conclusions and recommendations of the evaluation and demonstrates to the court a depth of knowledge commensurate with the gravity of the issues at hand. Ultimately the court may or may not agree with an evaluator's conclusions or even with his or her analysis. However, the court will know that the evaluator has weighed evidence and data in its proper context.

- *Apply sound methodology and seek out multiple sources of data:* Particularly in the past 10 to 15 years, much has been written about the scientific approach to conducting custody evaluations (Gould & Martindale, 2007). A *scientifically informed* approach is necessary while making room for experienced and well-reasoned clinical judgment and unavoidable lack of

precision inherent in our field. The custody report should demonstrate and detail methodology grounded in sound professional practice and up-to-date relevant research. To the extent that evaluation reports outline sound methodology, they will be seen by the court as meeting forensic standards and considered seriously.

- *Use of valid and reliable psychological tests that meet admissibility standards:* Cautions abound regarding the use and potential misuse of psychological testing in custody matters. Both the APA Guidelines for Child Custody Evaluations in Family Law Proceedings (2010) and the AFCC Model Standards of Practice for Child Custody Evaluation (2007) note that psychological testing is a potentially informative component of CCEs. However, these guidelines stress that evaluators should be adequately trained in administering and interpreting the instruments and that they should exercise considerable caution in applying test findings to custody-related matters. Still, it is common practice among custody evaluators to administer psychological tests and report on findings in their written reports (Flens, 2005; Gould, 2006). Evaluators should keep in mind that while judges may have limited exposure to or appreciation for the nuances of psychological test construction and the data that may be derived from the tests, judges remain gatekeepers of evidence that can be considered in custody matters before the court. Hence, evaluators are well advised to select tests that meet admissibility standards based on their established validity and reliability. This should be noted in the custody report. It is imperative that evaluators report the specific validity of the individual test protocols obtained as well as the limitations of the test data. Additionally, it is essential that evaluators who use psychological testing clearly explain the relevance of test data to custody-related issues beyond the presence or absence of psychopathology or the details of individuals' psychological functioning.
- *Outline in detail an analysis and synthesis of the data and provide empirical support for recommendations:* In our experience, custody reports are becoming longer and longer. At least in the jurisdictions in which we practice, this trend is perhaps a response to more detailed standards of practice now published and widely accepted and due to increased scrutiny of reports by forensic mental health consultants who are hired to review and critique evaluation reports. Interestingly, reports that we have reviewed primarily include far more detailed history, accounting of allegations by one parent with the other parent's response to the claims, and direct observations and reports from collateral sources. Ironically, what has not grown proportionally is the analysis and synthesis of the data acquired. Far too many reports may contain scores of pages of "what was said" and "what was seen," but with remarkably brief critical synthesis and rationales for recommendations. The court has many ways of obtaining background information and details of allegations and assertions, as litigants and/or their attorneys typically file declarations and briefs to support custody

motions. What the court cannot obtain on its own is a three-dimensional view of the family. Thus, to address the needs of the court, evaluators should focus their attention on reporting how they are distilling and synthesizing the considerable data that they typically obtain. The evaluator's thinking process should be apparent to all, and especially to a judicial officer. It should not be an argument but, rather, a road map of how evaluation data leads to accepting some hypotheses while rejecting others, and how recommendations flow directly from the evidence obtained. To the extent that recommendations are well grounded in evaluation data, they may seriously be considered as viable solutions for families.

- *Document the source of hypotheses, analysis, and conclusions:* Custody evaluators draw on multiple sources of data, some of which are derived from direct observation or documented reports by third parties. Skilled evaluators also employ clinically based analysis and inference. In the CCE report, it is helpful to the court to identify the source of hypotheses and conclusions, denoting whether ideas and/or analysis come from specific data points or via an amalgam distilled by the evaluator. We find no fault in an evaluator generating hypotheses or offering opinions based largely on clinical inference, so long as this is clearly noted in the CCE report. For example, evaluators are asked to assess and describe specific parent–child relationships, yet there are no established specific “tests” or protocols for doing so. Assessment of these relationships comes from direct observation, history, reports from the parties and the children, and third party reports, and it also may be informed by psychological testing. The evaluator, in part, exercises clinical judgment to determine the relative value of the data obtained and to draw conclusions about the relationships. When the evaluator outlines in the CCE report the sources and relative value of the data, the court is able to draw its own conclusions as to the reliability of those conclusions.
- *Detail limitations of the evaluation; show that you know what you don't know:* Not all data is created equal. Not all parenting plans can be recommended with equal assurance. Judges must be aware of the confidence that the evaluator has in the recommendations submitted to the court. This information is conveyed when evaluators write about the limits of their family assessments. The limitations may be procedural (e.g., an individual was not available for a visit or interview), or there may have been gaps in data that the evaluator was able to obtain (e.g., records of a psychiatric hospitalization or a report from Child Protective Services). Parties are not always optimally cooperative; children are sometimes wary to speak their minds or too young to verbalize experiences. In our experience, judges appreciate knowing the quality of the information they are reviewing and respect evaluators for their honest perspective taking, not to mention their humility.

It is imperative that evaluators recognize their close relationship to the court and their responsibility to write comprehensive yet concise and

incisive custody reports. Though most custody cases settle, often without the judge ever reading the written report, the custody evaluator must always write with the judicial officer considered the primary consumer.

### The Attorney as Client

While family law attorneys are not the custody evaluator's direct clients, they are important consumers of the report and further play multiple important roles in the family law system. Hence, providing the attorneys with a thoughtful, clear, and carefully constructed evaluation report can make an important difference between cases that settle versus those that proceed with protracted litigation. A well-crafted custody report can be educational for an attorney and can help him or her explain evaluation findings and recommendations to the parent—even findings that are not experienced by the parent to be especially favorable to their point of view. Quality work is not only respected by attorneys but is experienced as helpful to the work that attorneys perform for their clients.

In many ways, attorneys' roles in the family law system go far beyond that of being a strong advocate for their client. Attorneys are liaisons or intermediaries between the parent/client and other facets of the system. In their role as educators, family law attorneys are the link between their client and the law. They are charged with explaining the specifics of a particular branch of the legal system to individuals who oftentimes have never required legal representation before. Often parents are surprised to hear about legal guidelines for how the court views various custody matters. At the same time, the attorney is the functional link between the client and the court itself. This, of course, may include drafting and filing motions, interacting with court personnel, and providing in-person representation in court. Perhaps more germane to mental health professionals, family law attorneys are typically a connection between the parent and the custody evaluator. Most often, attorneys will be part of the vetting and selection process whereby the custody evaluator is appointed, and they may have some further involvement during the evaluation process.

Finally, the family law attorney is a link between the client/parent and the evaluation report itself. Attorneys assist their clients to understand and absorb the custody recommendations and the reasoning behind them. Particularly given the nature of the cases that eventuate in custody evaluations, it can be expected that parents will have strong reactions to the custody report, whether those reactions are positive, negative, or mixed. Attorneys must manage the parent's responses to the report and work with their clients to look towards the future after the submission of the report. While a well-written evaluation report cannot ensure that a parent will accept the recommendations submitted, it can go a long way towards a parent experiencing that he or she has been evaluated fairly and thoughtfully and

that any expressed concerns regarding the children were taken seriously. Furthermore, a well-written report can enhance a parent's ability to keep their children's needs as the primary focus (as opposed to angrily focusing on the other parent) and entertaining the possibility of settling a case.

Over the past decade, several authors have solicited attorney views on what makes for a quality CCE report (Bow, Gottlieb, & Gould-Saltman, 2011; Bow & Quinnell, 2004). In their initial survey, Bow and Quinnell (2004) noted that although attorneys were most concerned about the length of time it took evaluators to complete assessments, the second most frequent complaint was that evaluators lacked objectivity and were prone to biased attitudes, which were apparent in their reports. In Bow, Gottlieb's, and Gould-Saltman's follow-up survey (2011), the authors reported that the most frequent complaints focused on evaluators' indecisiveness and coming to illogical conclusions. Attorneys were further troubled by what they considered to be evaluators' lack of understanding of the Best Interest of the Child standard and by problems with recommendations. Additional concerns included:

- the use of unscientific methods;
- failure to cross-check data;
- overreliance on psychological testing;
- failure to obtain adequate collateral information; and
- failure to perform appropriate parent-child observations including home visits

From a more positive point of view, attorneys expressed the opinion that high-quality evaluations:

- are fair, unbiased, and objective,
- are sound in terms of methodology and adherence to standards of practice,
- describe both parenting strengths and weaknesses,
- report on information obtained from the children,
- offer logical and reasonably considered custody recommendations, and
- pay attention to the best interests of the children.

The legal professionals in these surveys also offered recommendations for improving CCEs and the most frequently cited suggestions were for evaluators to:

- pay attention to CCE guidelines, with particular emphasis on use of collateral source information;
- offer recommendations that are "understandable, logical, and pragmatic"; and
- improve the quality of report writing.

A very compelling finding of the last survey was that “the attorneys in this study almost universally agreed that detailed reports facilitated settlement of cases” (Bow, Gottlieb, & Gould-Saltman, 2011, p. 308) and that “an overwhelming majority felt that recommendations should be made regarding parenting time” (Bow, Gottlieb, & Gould-Saltman, 2011, p. 309). The finding that most attorneys look to custody evaluators to provide specific recommendations with regard to custody and access is particularly interesting in light of recent debate and controversy as to whether enough empirical support exists in the child custody field for evaluators to make “ultimate issue” recommendations (Grisso, 2005; J. B. Kelly & Johnston, 2005; Tippins & Wittmann 2005).

With specific regard to report writing, attorneys emphasized that reports should not employ professional “jargon” but should use “plain English,” making the report more readable and understandable. In addition, the attorneys asked for more detailed information to bolster reasoning and recommendations. Lastly, they suggested that custody reports be organized into sections according to discrete topics, again improving readability. Examples of such topic areas included: parenting skills, the nature of the parent conflict, parent–child attachment, and environmental stability.

A high-quality evaluation and report can assist an attorney in several key ways. The well-written report can educate the attorney and help him or her understand the case better, as the attorney now has access to information that he or she would not have been able to obtain on his or her own. This includes a more textured understanding of the assets and liabilities of the attorney’s client and the other parent as well as a professional’s assessment of the best interests of the children. In turn, this puts the attorney in a far better position to educate the parent/client and also to keep controversial topics and questions in better perspective.

It is clear that evaluation reports with ample detailed analysis and cogent weighing of data also assist attorneys with their efforts to settle cases. In the event that settlement is not possible, the well-executed report will also be useful for trial preparation. At worst, an inadequately prepared custody report draws attention to itself in negative ways, as it invites criticism, which can then be the basis of litigation. A quality custody evaluation report will support attorneys’ attempts to keep their clients focused on solving the problems and conflicts in the family.

### The Parent as Client

It is important for evaluators to keep in mind that parents will read and react to custody reports. Given that custody evaluations take place in the midst of contentious litigation, it is natural for parents to fixate on an evaluator’s recommendations when the CCE report is generated. Still, there are many parents who express genuine interest in learning more about their children

from a professional's point of view and who seek information about how to parent more effectively. Especially given the fact that custody evaluators often must assess very serious allegations about parents' shortcomings, a major challenge in writing effective and useful CCE reports is to identify and address weaknesses of each parent while still being cognizant that the family must move on, hopefully in a healthier direction. To support these efforts, emphasizing individual strengths can facilitate the parents' openness to professional input and support optimism and good will in moving forward.

In 2006, the *Journal of Clinical Psychology* (Groth-Marnat, 2006b) dedicated an entire issue to the writing of psychological test reports. The field of forensic psychology practice in the child custody arena has much to gain by incorporating some of the recent advances that have been made in the area of psychological test report writing. Harvey (2006) and Groth-Marnat and Horvath (2006) highlight the need to improve the readability of reports. Most reports are difficult for nonpsychologists to understand. Many psychological reports lack clarity because their reading level is too advanced for the "typical" reader. Harvey notes that reports need to be written using shorter sentences while minimizing words that average readers would find difficult to comprehend. Reports with more subheadings and less jargon, acronyms, and passive verbs tend to be more effective. Overuse of psychological jargon was the most frequent complaint found in past research on consumer satisfaction with psychological test reports (Brenner, 2003). Harvey suggests that practicing psychologists should obtain feedback about the readability of their own writing through supervision or peer review. In addition, Harvey recommends obtaining consumer feedback. Custody evaluators would do well to follow these suggestions. While this may seem like an awkward task in a custody dispute, evaluators can certainly obtain feedback from attorneys and even bench officers after litigation is over.

In his discussion of psychological assessment report writing, Groth-Marnat (2006a) cautioned that reports that focus primarily on client pathology, without adequate discussion of individual strengths, are often not well received by clients. This same critique is frequently levied against custody evaluators when reports are seen as focusing exclusively on the negative, dysfunctional aspects of parents. This is especially so when evaluators describe psychological test results. When a client reads such a negative report, it can be demoralizing, often causing the parent to feel alienated and angry with the psychologist. In the process, the client may not hear important information gleaned in the evaluation. Groth-Marnat (2009) and others (Snyder, Ritschel, Rand, & Berg, 2006) argue for a more balanced approach, actively incorporating the strengths in a client's psychological make-up and functioning in reports, in addition to their weaknesses.

Recent contributions from positive psychology can also be instructive. In writing about the efficacy of psychotherapy, Seligman and colleagues (Seligman, 2002; Seligman, Steen, Park, & Peterson, 2005) are shifting the

paradigm away from pathology and mental illness to cultivating the qualities that benefit health, relationships, parenting, and careers. Research in therapeutic approaches utilizing positive psychology have found that emphasizing a person's strengths may provide as many therapeutic benefits as trying to fix what is wrong with them, and this approach is now being applied to psychological assessment (Lopez & Snyder, 2003). Furthermore, Snyder et al. (2006) have described the benefits of utilizing hope theory as a framework for report writing. Snyder's (1994) theory posits that hope is a cognitive variable that consists of three components: goals, agency, and pathways. The theory emphasizes that humans are predominantly goal-directed beings, and that reports can be effective when they generate distinct strategies and clear pathways to assist clients in achieving their goals.

So how does positive psychology relate to the crafting of a CCE report? First, when evaluators write reports, it is helpful to assume that most parents want to do what is best for their children and improve upon their parenting skills. Parents may just not know how to do it, particularly in the high-conflict climate of custody litigation. Parenting strengths should be clearly denoted in reports. When discussing weaknesses, evaluators should do so in a way that utilizes what Appelbaum (2010) described as "forensic empathy." Emphasizing parents' concerns, suffering, and needs humanizes their experience and perspective, helps parents to feel that they were heard and understood, and supports openness to hearing about how to orient better to the best interests of their children. Most parents have developed problematic approaches to their children as a by-product of how they were parented early in their lives or because they truly believe that these methods are effective and best for the children. When highlighting ill-advised or ineffective parental approaches, it should be done from a non-judgmental stance. Suggestions and strategies for improvement should be specified, thereby increasing hope and emphasizing the parent's own desire to enhance his or her skills.

Secondly, when describing psychological test findings, evaluators should be careful not to fall prey to the common tendency to point out only psychological weaknesses and deficiencies. This is especially so when evaluators rely primarily on computer-generated testing reports, as they fail to exercise the necessary clinical judgment regarding what to include and what not to include from such reports. Interpretive statements should be framed in a useful and beneficial way while attempting to maintain the integrity and humanity of the parent being described. Test findings should also capture the parent's psychological dilemma or struggle in a humane way.

Even with tests like the MMPI-2, which was specifically designed to identify psychopathology, results do not have to be exclusively negative. Levak, Siegel, Nichols, and Stolberg (2011) provide wonderful examples of descriptive statements that are related to specific clinical scale elevations and two-point codes, which highlight not only the psychological difficulties inherent in

the test findings, but also emphasize the strengths and positive traits and behaviors of the individual. Though the presence of social and emotional problems should not be ignored, it can also be described in conjunction with the more adaptive aspects of the parent's personality functioning.

For example, individuals who have a clinically significant elevation on the Paranoia (Scale 6) scale of the MMPI-2 are most frequently described as suspicious, hostile, and unwilling to accept responsibility and projecting blame, with possible paranoid ideation. However, such individuals may also be very rational, fair-minded and loyal, while having very high personal standards and working hard to be above criticism or judgment. Such individuals, because they are their own worst critics, work hard to "do the right thing." Similarly, individuals who have a significant elevation on the Depression scale (Scale 2) may struggle with depressed mood, poor concentration, dissatisfaction with life, and possibly sleep disturbance. It can also be useful to point out that such individuals are often quite thoughtful, responsible, cautious, conscientious, and dutiful. Lastly, while individuals with a significant clinical elevation on Psychasthenia (Scale 7) may be anxious, obsessive, self-critical, ruminative, and perfectionistic, on the positive side, these individuals are frequently conscientious, methodical, organized, thoughtful, softhearted, and analytical.

Lastly, evaluators should avoid writing reports that can readily be perceived as being "black and white." These are reports that describe parents in dichotomous terms, where one parent is seen as exceptional and the other as exclusively deficient. While parenting liabilities must always be described and discussed, when the approach to characterizing the parents is so disparate, parents are far less likely to absorb the content of the report and will shift focus onto complaints about the report or the evaluator. Maintaining the mindset that the report can be a "settlement tool," and not just a "litigation tool" helps the evaluator avoid extreme portrayals of the parents, thereby mitigating risk of further parental polarization, litigation, or even a licensing board complaint against the evaluator.

### The Child as Client

In most respects, children are the most important consumers served by the CCE report, even though they will not read it. Ultimately, children must accept and adapt to specific parenting plans that are adopted by the court or agreed to by the parents. As such, custody evaluators must not lose sight of the fact that children are not only bona fide clients in the family law system, but perhaps the most critical ones. Increasingly, children have a right to play an active role in decisions about their future. Thus, children's perceptions of parents, as well as their input and wishes about parenting plans, are relevant pieces of data and important to custody recommendations and determinations. Kuehnle, Greenberg, and Gottlieb (2004) noted that many evaluators

undervalue the rich and important information that children can provide. These authors further point out that most often, the “best interests” of a child cannot be fully understood unless information and perceptions are directly obtained from the child. Furthermore, the Model Standards of Practice for Child Custody Evaluation (AFCC, 2007) specify that “evaluators shall consider the stated wishes and concerns of each child as they relate to the allocation of parental rights and responsibilities if the child is of sufficient developmental age to independently express informed views” (Standard 5.8a). When children experience that the information they provide to an evaluator is valued and they feel social support, the quantity and quality of the communicated information may be improved (Bottoms, Quas, & Davis, 2007). Of course, the quality of the information may be related to a child’s developmental age and to the extent to which it is free of suggestion, bias, and pressure (Saywitz, Comparo, & Romanoff, 2010). Children must also not feel pressured to choose between parents and must be given the freedom to not have to respond to questions regarding living preferences.

By legal and ethical standards, the needs and interests of the children should take center stage in a CCE. The custody evaluator, by way of his or her report, can serve as an effective voice of the child. Research in the child custody arena (J. B. Kelly, 2008) indicates that a large majority of school-age children and adolescents in separated and divorced families want their voices to be heard and their needs and opinions to be considered. Indeed, in many states, recent legislation has been enacted to ensure that children’s preferences are taken into consideration in custody decisions. In California for example, as a result of the Supreme Court decision in *Elkins v. Superior Court* (2007), the California Family Code (2011) was revised, specifying that “if a child is of sufficient age and capacity to reason so as to form an intelligent preference as to custody or visitation, the court shall consider, and give due weight, to the wishes of the child in making an order granting or modifying custody of a child” (California Family Code, section 3042, 2011). Further, the code specifies that if a child is 14 years of age or older and wishes to address the court regarding custody or visitation, the child shall be permitted to do so (unless the court determines that it is not in the child’s best interests). There is also provision in the code for children under 14 to address the court directly regarding custody or visitation. When a CCE has been ordered, the California rules of court specify that evaluators need to allow (but not require) children to state a custody preference, irrespective of age. Gould and Martindale (2007) make a useful suggestion regarding organizing the custody report around children’s voices. Children’s voices can best be represented in a report by quoting their actual words regarding their views of parents and custody preferences.

Of course, making known the child’s voice regarding a custody preference does not necessarily mean that a custody recommendation to the court is always consistent with a child’s preferences. Warshak (2003) aptly noted

that children do not always know what is best for them and may be subject to loyalty conflicts, an extreme form of which exists in cases where alienation dynamics are at play. Warshak further underscores that representing a child's voice also entails using the collective voice of children, as revealed in developmental research on children's adjustment to various custody arrangements. Clinical judgment is crucially important in report writing when making decisions regarding what statements from a child to include in a report. Evaluators must carefully weigh the evidentiary value of some direct information or statements made by the child against the potential impact revealing such material might have on the child's future relationship with each parent. When sound clinical judgment is combined with knowledge from currently available research, CCE reports can best serve the interests of children and can assist them in progressing and thriving in the most optimal living situation, in spite of parental divorce. Applying "forensic empathy" for the child is a critical means for capturing and describing what is best for children. By "putting himself or herself in the shoes of a child" and using this approach as a benchmark in the crafting of the CCE report, the evaluator is in a better position to have the child's need acknowledged and understood by the parents.

### Other Clients Served by the Report

Other consumers of CCE reports, albeit indirect consumers, are the therapists, parenting coordinators, guardians ad litem, and other professionals who will offer services to the family following the evaluation. The involvement of such professionals is not uncommon in the high-conflict cases that are most typically referred for custody evaluations. They are often critical for effective implementation of a parenting plan that is ultimately adopted by the family. The CCE report assists these professionals by identifying problematic parenting approaches and destructive communication and functional patterns between divorced or separated parents. In instances when particularly complex dynamic patterns are present, such as in cases with alienation or domestic violence, the well-crafted CCE report is needed to formulate specific treatment approaches and interventions. Especially in such challenging cases, the CCE report can outline and emphasize the strengths of each parent that professionals can draw on to forge healthier patterns of interaction. In general, these professionals can better assist families when salient dynamics are clearly elucidated in the report. In addition, for the evaluator to be helpful to professionals, specific treatment goals and modalities for each individual should be detailed in the recommendations. Too often, a generic recommendation for individual or family therapy inadequately prepares professionals for working with the family.

Evaluators sometimes do not carefully specify the type of professional qualifications that are needed to provide postevaluation services to the

particular family that has been evaluated. The child's therapist can become part of the problem when a treatment provider neither fully understands the forensic context in which they are working nor has specialized training and experience in issues such as high-conflict divorce, alienation dynamics, domestic violence, or sexual abuse (L. R. Greenberg, Gould, Gould-Saltman, & Stahl, 2003). Among other issues, the CCE recommendations should denote how and whether information in treatment will be shared or communicated with others. Thus, the recommendations should state whether treatment will be conducted in traditional therapeutic confidence or whether there will need to be some exception to confidentiality so that progress in treatment can be reported to the court or to someone who will be managing the case, such as a parenting coordinator. Given many mental health professionals' reluctance to interact with the court system, issues of privilege and confidentiality should be spelled out in the report recommendations.

### CREATING A "USEFULNESS" STANDARD FOR CCE REPORTS

The crafting of a CCE report is one of the most complex, arduous, and time-consuming challenges encountered within the forensic mental health field. The writing of a custody report is not simply the production of an impersonal, objective, and scientific document. Evaluators are contending with multiple voices seeking to be heard and complex family and postdivorce issues in which there may often not be clear research support for a specific custody timeshare arrangement or even a "best direction" that a parenting plan should take. Bow and Quinnell (2002) have cogently noted that "it is essential that the evaluation process minimize the probability of iatrogenic harm, that is, evaluator's precipitating or aggravating injury to the parties because of their attitudes, actions, or comments" (page 164). These authors suggest that this can best be attained if the report data is handled in a sensitive manner. Whereas an important goal of a report is to provide the necessary information to the court to assist the "trier of fact" in decision making, a secondary but equally important goal must be to assist families to move forward in a way that best addresses their children's needs after the evaluation is complete.

What does it mean to create a "high-quality" CCE report? In part, this is an empirical question not yet researched. Both Gould (2006) and Stahl (2011) offer some practical guidelines regarding this question. Both suggest that reports should be clearly written and well reasoned, employing little jargon, and be thorough enough to explain the data in a logical manner. Reports must also be fair. That is, the advisory report should reflect and communicate balance and neutrality. Recommendations should be child focused and flow from the data gathered in the evaluation.

We propose, however, that any operational definition of a “high-quality” custody report should also include helpfulness and utility to the multiple client systems served by the report. The well-executed and thoughtfully prepared report not only answers the legal questions at hand and provides empirically based supporting data and recommendations, but it is also written in a way that assists all consumers of the report to work towards addressing children’s interests in a progressive direction. We suggest that this is most likely to be achieved when the evaluator writes reports with a strong voice that keeps the prospect of settlement in mind. A high-quality report should integrate scientific knowledge and methodology (i.e., especially documenting the use of valid and reliable forensic methods that are consistent with current professional standards and guidelines) with the use of sound clinical judgment.

### THE PLACE OF CLINICAL JUDGMENT

In our opinion, clinical judgment should not be viewed as something to be avoided or minimized. Nor is it something that is necessarily in conflict with data derived from more formal forensic inquiry. Not only is there a place for clinical inference in CCE reports, but we further contend that there has always been such a place in forensic evaluations. The FMHPs are always exercising clinical skills and judgment. Clinical skills are critical to establishing a sound working relationship with the client. In turn, this enhances the scope of and reliability of the data reported from evaluation participants. While there are important differences between clinical and forensic roles, and these roles should not be confused, clinical skills are needed in both arenas. Indeed, clinically based decision making is necessary during the evaluation process and in crafting the CCE report. During the assessment process, the evaluator routinely makes decisions, such as what information requires corroboration, how best to schedule meetings and sessions, and how to interpret the expressed wishes of children. Similarly, evaluators must exercise clinical judgment related to what is essential to include in the custody report and how to craft a narrative that, in addition to addressing the referral questions, attempts to preserve the dignity of the parties, creates a sense of hope, and provides a roadmap for improving parenting skills and the co-parenting system. As an example, clinical judgment is essential when an evaluator decides what intimate or highly sensitive information to include in the written report to justify conclusions and recommendations. Cases referred for evaluation typically include such high levels of conflict and serious allegations that the risk of causing “iatrogenic harm” is high. Including nonessential detail that causes parents to experience embarrassment or shame can escalate conflict and polarize parents further.

Thus, we believe that the apparent dichotomy between the “empirically driven” and “clinically informed” report is a false one. At the same time, it is critical that all consumers of the CCE report understand when, and to what degree, the evaluator has drawn on clinical inference. In the CCE report, it is helpful to the court for the evaluator to identify the source of hypotheses and conclusions, denoting whether ideas and/or analysis come directly from specific data points or via an amalgam distilled by the evaluator. Especially given limitations in the evolving science of child custody work, it is inevitable that issues such as the description of family dynamics and parent–child relationships will rely on a range of data collected, some more “verifiable” than others. We find no fault in an evaluator generating hypotheses or offering opinions based in part on clinical inference, so long as such inferences are clearly noted in the CCE report. In doing so, the court is then able to draw its own impressions as to the reliability and utility of those conclusions and recommendations.

### BIAS AND THE PERCEPTION OF BIAS

The perception that CCEs are a high-risk area of practice for psychologists has been borne out over time. Two surveys (Bow & Martindale, 2009) revealed that half of the custody evaluator respondents had experienced a licensing board complaint. Additionally, in a more recent survey, Bow, Gottlieb, Siegel, and Noble (2010) reported that almost two thirds of respondents had had at least one such complaint. These authors also found that the most frequent type of complaint filed against custody evaluators was that of “bias,” an allegation that was lodged 49% of the time. While complainants prevailed in only a small percentage of cases, the emotional distress that was experienced by the evaluators having to defend against the allegations was considerable. Bow et al. (2010) underscore that court-appointed evaluators must be aware of the various types of personal and cognitive biases that can impact their work, such as countertransference bias (Pickar, 2007) and confirmatory bias (Martindale, 2005). It is true that “bias” is a common charge levied against evaluators by parents who feel that the report did not support their position. Additionally, no practitioner can completely insulate himself or herself from such complaints. Nonetheless, complaints will likely be less common when parents read a report that they feel was completed in an objective manner and experience that they were treated fairly and honestly, in as a compassionate manner as possible.

It may appear to be a given that conducting a methodologically sound evaluation is at the heart of avoiding allegations of bias, whether they come from parents, attorneys, or colleagues who are hired to conduct work product review. However, even employing sound and balanced procedures can be undermined by a report that does not reflect such an even-handed approach.

Perhaps in an effort to not appear to be weak or wishy-washy, evaluators can be reluctant to discuss the relative merits of competing hypotheses and the potential shortcomings of the parenting plans recommended. We believe that revealing the process of weighing data and evidence, which then leads to ultimate conclusions, communicates to all clients that the evaluator considered carefully what was presented to him or her. This should include reporting data that *does not* support the evaluator's ultimate recommendations.

## UTILIZING RESEARCH IN THE CCE REPORT

With the evolution of scientifically informed methodologies has also come an emphasis on custody evaluators keeping current with the growing body of research in the field. Concurrently, several authors suggest that relevant research literature should be referenced and cited in custody reports (Kuehne & Drozd, 2012; Gould & Martindale, 2008). Reasons for citing research studies are compelling. They provide an educational or instructional service to the court by highlighting the state of knowledge in the custody field in general, as well as in areas related to specific issues discussed in the evaluation. Such practices can also affirm that the analysis of data was linked to such scientifically grounded research. In turn, this supports the notion that forensic practices were employed.

The aforementioned authors also caution against amorphous reference to “the research” to substantiate opinions and recommendations. Rather, they suggest that citing specific studies and articles from the peer-reviewed literature is needed to comply with Federal Rules of Evidence with regard to relevance and reliability. Most recently, researchers in child custody and related fields are reminding practitioners that not all research is “created equally.” That is to say, not all research is high quality, so evaluators must become educated on how to read the research literature to identify studies that have been well designed, executed, and are truly pertinent to the case they are evaluating (Drozd, Olesen, & Saini, 2012)

We add several cautions and suggestions. Almost by definition, quantitative research involves group normed or “nomothetic” data. Findings from such research describe probabilities in groups with respect to behaviors and/or outcomes. Even when probabilities are high, the evaluator must keep in mind that a relationship must be drawn between the nomothetic data of any given study and the “ideographic” nature of a single case study—namely the subject of his or her specific custody evaluation. Thus, findings from research studies may be extremely valuable and shed considerable light on issues in the evaluation. However, they are never sufficient to justify a finding in a specific case.

Citations for specific studies and articles in CCE reports should be included, but it is imperative that the evaluator discusses the relevance of the

research findings to the psycholegal issues and to the specific analysis of the family. It is also helpful to the court for evaluators to identify areas in which relatively little research exists or in which controversies are acknowledged. One need only look at two areas that commonly arise in custody evaluations to see the variability with which the evaluator can (or cannot) rely on current research to guide custody recommendations. Relocation cases are often referred for evaluation. In states like California, case law defines specific areas that should be considered when the court makes determinations as to whether children will move with a relocating parent (LaMusga, 2004). There has been a well-received model for assessing risk in relocation cases that is grounded in multiple research studies and that can guide an evaluator's data analysis (Austin, 2008). At another end of the spectrum, however, there is much controversy regarding at what point infants and very young children can benefit from overnight visitation with the noncustodial parent without experiencing undue distress. In fact, sharp disagreements regarding the appropriate application of attachment research to child custody samples were recently presented in multiple volumes of the *Family Court Review* (McIntosh, 2011; Shepard & Emery, 2012). These are also cases that frequently are referred for evaluation. Despite the best efforts of the most renowned researchers in the field of attachment, it remains difficult to identify clear trends in the literature. Thus, the evaluator should always state the relative confidence with which he or she is able to rely on the existing state of research in areas related to the questions being examined by the extant custody evaluation.

### AN INTEGRATED MODEL FOR CCE REPORTS

The intention of this article is to add to the development of a model of practice for CCE reports. While a substantial literature on CCEs does exist, it largely addresses methodological issues regarding how a responsible practitioner should conduct a CCE. Current model standards of practice (APA, 2010; AFCC, 2007) almost entirely address training and competency issues, methodology, procedural and data gathering considerations, interpretation of data, avoidance of role conflicts, and other ethical issues. The APA guidelines offer no specific guidelines regarding report writing, with the exception of Guideline 13, which notes that report recommendations "should be derived from sound psychological data and address the best interests of the child" (p. 866). The AFCC standards of practice offer minimal—at best—guidance regarding report writing and presentation, mainly noting that evaluators, in their reports, "shall explain the relationship between information gathered, their data interpretation, and opinions expressed concerning the issues in dispute" (Standard 12.2). Also, the AFCC standards specify that evaluators should articulate limitations to the evaluation with respect to methodology, procedures, data collection, and data interpretation (e.g., Standard 12.4).

As noted earlier, the paucity of conceptual and practical guidelines for report writing has been a problem in the larger arena of FMHA. It is only very recently that efforts have been made to address this issue, as the link between competent forensic practices and production of high-quality forensic reports is “undeniable” (DeMier, 2012, p. 117). Perhaps the closest attempts to articulate standards for the actual CCE report can be found in recent articles addressing the emerging forensic role of “work product review,” whereby a forensic mental health consultant is retained by an attorney to critique a colleague’s child custody report (Austin, Dale, Kirkpatrick, & Flens, 2011; Austin, Kirkpatrick, & Flens, 2011; Kaufman & Lee, 2011). AFCC recently formed a task force, which attempted to develop some best practices and ethical standards regarding mental health consultant roles in child custody cases. While no standards have been developed as yet, the task force published a white paper (AFCC, 2011) describing some implied practice standards for custody reports. They include that the report is expected to contain evidence that the evaluator adhered to generally accepted guidelines, practice parameters, and standards regarding forensic assessment and CCEs. In addition, the custody report should reflect that generally accepted methods were utilized and that opinions offered by the evaluator were congruent with relevant research findings and logically consistent with the data gathered in the assessment. Gould and Martindale (2008) had previously emphasized this last point by recommending that in establishing the scientific basis for expert opinions, CCE reports should contain citations to the literature that provide a scientific foundation for opinions expressed in the report.

Austin et al. (2011), also writing on the topic of forensic work product review in the child custody arena, noted that an overriding principal for both evaluators and reviewers is to be helpful to the court. These authors suggest that “getting it right for the court” entails accurately assessing the issues and the data and arriving at conclusions that reasonably predict a parenting plan that will meet the child’s psychological best interests. Austin et al. offered several questions for forensic mental health consultants to consider when reviewing a colleague’s CCE report. Inherent in some of the questions posed by these authors are ideas that could possibly serve as standards or guidelines for report writing, which we have framed as the following:

1. CCE reports should address the psycholegal questions asked by the court.
2. A transparent methodology, generally accepted by the field, should be obvious from reading the report. This would include that psychological tests used by the evaluator meet current evidentiary standards (i.e., Daubert and Frye tests).
3. Reports should provide evidence of relying on current social science research, and opinions offered in the report should be consistent with the research literature.

4. For comprehensive CCEs, the report should demonstrate that a breadth of data was gathered (i.e., collateral informants and documents; test data and observations, in addition to parent and child interviews), and convergent validity exists in the data that underlie opinions and best interests recommendations.
5. The report should make it clear that alternative hypotheses were considered.
6. The report should address any limitations to the evaluation that need to be understood by the court, the attorneys, and the parents.
7. Reports should demonstrate that a thorough analysis of special issues is addressed (i.e., relocation, alienation, domestic violence). Utilizing a conceptual framework for addressing special issues will enable the report to provide and enhanced educational function to the court.
8. The report should make it apparent that the evaluator has appropriate knowledge of applicable laws, rules, and applied case law relevant to the case.

These suggested guidelines, however, are primarily aimed at meeting the needs of the court, and do not specifically address what would make a report most useful and valuable to parents, children, and the other professionals who will seek guidance in assisting families following completion of the evaluation. We have addressed this question to some extent by noting that reports will be useful to parents when they are more readable and accessible to laypeople. Writing at a level that an average reader can comprehend and that is relatively free of jargon goes a long way towards parents experiencing that the evaluator is including them in the discussion and not talking above them.

We are particularly troubled by many evaluators' tendencies to write reports that focus almost exclusively on parental weaknesses or negative, dysfunctional aspects of parenting without highlighting parental strengths. Evaluators are sometimes prone to confusing the desire to state a strong case for their analysis with an overemphasis on psychopathology. This is especially prevalent when evaluators report findings from psychological tests. Evaluators would do well to heed some of the recommendations from positive psychology, which notes that test results can also highlight the strengths in a parent's psychological make-up, which exist even in the midst of noted problems.

Both authors have had experience as reviewers of colleagues' reports, where the evaluator does seem to "get it right" by providing best interest recommendations that flow logically from the data, but where the written reports were so overwhelmingly negative or presented parents in dichotomous portrayals, that parents were unable to see the wisdom in the recommendations. While it is true that a custody report is not constructed to appease parents, it will not meet a helpfulness or usefulness standard from a parent's perspective unless he or she feels that they have been treated fairly

and respectfully. Again, this can be achieved when parenting strengths are appreciated and noted, even though weaknesses must be delineated. In some of our reviews of colleagues' reports and from conversations with the attorneys who retained each of us, it was clear that the "unfavored parent" might have accepted recommendations that they did not like, and perhaps even agreed to a settlement, had the report been written in a way that had not been so exclusively critical of them.

With these considerations in mind, we offer the following guidelines for crafting reports that not only will be useful for the court, but also will address the "voice of the child" and will be helpful to parents and the professionals striving to assist divorced families after the evaluation is completed. While empirical research is needed to further understand exactly what about a CCE report leads to settlement, we contend as a testable hypothesis that following the following guidelines helps to produce reports that enhance settlement of custody disputes without trial, once the evaluation is completed.

1. *Readability of the report:* CCE reports should be written at a reading level that the average reader can understand. Jargon should be avoided, and multiple subheadings should be utilized to improve organization and readability.
2. *Presentation of psychological test results:* Evaluators should not rely heavily on computer-generated test report interpretive statements, which, among other things, often emphasize pathology. Clinical judgment and skill are necessary when deciding what to include and what not to include from such computer-based reports. Evaluators who utilize psychological tests should be trained in independent interpretation of scores. Attempts should be made to frame interpretive statements of test findings in a useful and beneficial manner, attempting to maintain the humanity and integrity of the parent being described. In addition to highlighting problematic aspects of psychological functioning that could negatively impact parenting, reports should also describe the strengths in a parent's psychological make-up and functioning that positively impact parenting.
3. *Denote parental strengths as well as weaknesses:* Reports should not only attempt to specify areas of parental weakness needing improvement, but parental strengths also should be clearly highlighted for both parents. When describing parental weaknesses, evaluators should use appropriate clinical judgment (i.e., forensic empathy) by carefully attending to the manner in which such weakness are described, seeking to present such concerns in a nonjudgmental manner. Sensitive feedback should be written in such a way as to enhance a parent's ability to receive the information in a nondefensive manner.
4. *Avoiding bias in reports:* Evaluators should carefully review their reports prior to final submission, to self-screen for various kinds of bias (i.e., confirmatory, countertransference bias). Such biases may be evident when parents are presented in a polarized fashion (one parent is "all good"

- while the other is “all bad”). However, other forms of bias are more subtle. Evaluators should seek consultation, if necessary, to control for biases.
5. *Maintain a “settlement” mindset:* Report writing should be approached with a mindset and awareness that a CCE report most often serves as a “settlement tool” rather than as a “litigation tool.” Though the custody report is an advisory report to the court and must meet the standards of forensic evaluations, it is most helpful when it includes information and recommendations that can be applied pragmatically by the family.
  6. *Presentation of recommendations for parents:* Recognize that most parents want to do what is best for their children, even if it means needing to take steps to improve upon their parenting skills. Provide report recommendations for enhancement of parenting or co-parenting skills in a manner that increases hope. This can be accomplished by generating specific strategies and pathways for improvement and by noting the advantages, not only to the child but also to the parent, of improving ineffective parenting and co-parenting approaches.
  7. *Incorporate the “voice of the child” into reports:* CCE reports should present information regarding children’s stated or inferred custody preferences. If child custody plan recommendations drastically differ from a child’s stated preferences (especially for a teenager), clearly articulated reasoning should be contained in a report noting that a child’s input and preferences were carefully considered, but the evaluator deemed that their stated wishes were not in their best interests. Where appropriate, include children’s actual words in a report. Clinical judgment is crucial, however, in making decisions regarding what to include and not include about a child’s concerns about a parent. Therefore, evaluators must be attentive to how such child-generated information is described in the report due to the impact such sensitive information might have upon the child’s future relationship with each parent.
  8. *Demonstrate careful, fair-minded weighing of the data:* Evaluators should pay particular attention to how their analysis of the case is presented. It is important to discuss various hypotheses and parenting plans that were under consideration. Not only should evaluators discuss limitations of their assessments, but they also should reveal data that did not support their conclusions and the present reasoning for rejecting some hypotheses but adopting others. Among other things, this demonstrates fair-mindedness.
  9. *Presentation of recommendations regarding postevaluation services by divorce professionals:* CCE reports need to be useful not only to the courts and to parents, but also to professionals (i.e., child’s or parent’s therapist, co-parenting therapist, parenting coordinators, guardians ad litem) providing services to the family as part of a comprehensive parenting plan. Thus, reports should clearly articulate the purpose of each recommended intervention, while enumerating the stepwise goals for the manner in which these various services should be provided to the family.

## SUMMARY AND FUTURE DIRECTIONS

This article presents a framework for CCE report writing that integrates forensic and clinical perspectives, while addressing the multiple client systems served by the report. Table 1 summarizes the key recommendations that are described in the body of this article for gearing the CCE report towards the multiple client systems served by the evaluator's work product. The CCE report is first and foremost a forensic document requested by and intended to serve the court. However, the CCE report will be the most useful and beneficial communication tool if it is constructed in a manner that not only answers the legal questions at hand, but also assists all consumers of the report to work towards addressing the children's needs and best interests in the future. The best reports should be easy for all consumers (except the child) to read, understand, and absorb.

Our hope is that this article begins to fill a significant gap in the field of CCEs, as so little has been written regarding a practical and theoretical approach to CCE report writing. The CCE report not only provides the scientific evidence base of our analysis and recommendations, but also the report is typically the only medium (unless there is a trial) by which the court, the parents, the attorneys, and the postdivorce professionals receive guidance and education stemming from the evaluator's intensive study of the family. While always being cognizant of assisting the trier of fact, evaluators must always strive to support the best interests of the children and to help the family move forward in a positive direction. The vast majority of cases referred for a CCE settle outside of court. Keeping the prospect of settlement in mind when crafting a custody report helps maintain a respectful tone, helps preserve the humanity of parents and children, and conveys a sense of humility in an enormously demanding endeavor. It also enhances the prospect that parents will either adopt report recommendations or will work constructively to adopt some version of the recommendations and obviate the need for protracted and potentially polarizing litigation. The use of sound clinical judgment in the forensic context, or perhaps more appropriately termed "forensic judgment," is an integral part of FMHAs in CCE report writing. It does not compromise scientific methodology, but rather it enhances it. There are few areas where it is needed more than in family law.

The model we propose integrates forensic and clinical approaches to the crafting of CCE reports. The use of sophisticated and well-reasoned clinical judgment plays an essential role in helping the court understand contradictory reports from parents, complicated histories, and the needs of children who may be too young to articulate their feelings and needs at a sufficient level of emotional maturity.

There continues to be a need for ongoing empirical research in the child custody field, especially with respect to the impact of the CCE report on settlement rates and the reduction of parenting conflict and child

**TABLE 1** Gearing the Child Custody Evaluation Report Toward Multiple Client Systems**A. The Court as Client**

1. Define the specific psycholegal questions that the court wants addressed.
2. A transparent methodology, generally accepted by the field, should be obvious from reading the report.
3. Note in the report that valid and reliable psychological tests that meet admissibility standards were utilized. Note limitations of other instruments not meeting admissibility standards.
4. Outline in detail an analysis and synthesis of the data and provide empirical support for recommendations by referencing appropriate research.
5. The report should make it clear that alternative hypotheses were considered.
6. Reports should demonstrate that a thorough analysis of special issues was addressed (i.e., relocation, domestic violence, alienation dynamics). Utilizing a conceptual framework for addressing special issues enables the report to provide an enhanced educational function to the court.
7. Address any limitations to the evaluation that need to be understood by the court.
8. The report should demonstrate that the evaluator has appropriate knowledge of applicable laws, rules, and applied case law relevant to the case.

**B. The Attorney as Client**

1. Reports must be fair, unbiased, and objective.
2. Provide sufficient detail in a report, which is preferred by attorneys in survey research.
3. Use sound methodology consistent with current professional guidelines for CCEs (i.e., parent-child and in-home observations, valid and reliable psychological tests, collateral source information).
4. Describe the strengths and weaknesses of each parent.
5. Attorneys want logical and thoughtfully considered recommendations.
6. Address legal standards and psycholegal questions.
7. Use plain English; avoid jargon.
8. Organize the CCE report into sections according to topics (psychological stability of parents, environmental stability, parenting skills, attachment issues; special topics such as domestic violence, alienation dynamics, move away issues).

**C. The Parent as Client**

1. Specify psychological strengths as well as weaknesses.
2. Caution should be taken to not overpathologize parents when reporting psychological test findings.
3. CCE reports should be written at a reading level that the average reader can understand.
4. Avoid jargon; use multiple subheadings to improve organization and readability.
5. Use sound clinical judgment when deciding what to include and what not to include from computer-based reports.
6. Use sound clinical judgment when deciding what intimate or potentially harmful information to include in a report, if it is not relevant to the recommendations.
7. Attempt to maintain the humanity and the integrity of the parent being described by using "forensic empathy."
8. Avoid bias by carefully reviewing a report in draft form; seek consultation, if necessary, in controlling for biases; avoid the "black and white" report.
9. Maintain a "settlement mindset" with the recognition that the CCE report most often serves as a "settlement tool" rather than a "litigation tool."
10. Provide report recommendations for enhancement of parenting or co-parenting skills by generating specific strategies and pathways for improvement.

**D. The Child as Client**

1. Where appropriate, include children's actual words in a report.
2. Clinical judgment is crucial when making decisions regarding what to include and what not to include about a child's expressed concerns about a parent.

*(Continued)*

**TABLE 1** Continued

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3. Evaluators must use sound clinical judgment when describing in reports information that is gathered from children, with attention paid to how child-generated information may potentially impact the child's future relationship with each parent.
  4. CCE reports should present information regarding a child's stated preference or inferred custody preference.
  5. If parenting plan recommendations drastically differ from a child's stated preference (especially for a teenager), clearly articulated reasoning should be contained in a report noting that a child's input and preferences were carefully considered, but the evaluator deemed their stated wishes were not in their best interests.

**E. Other Clients Served by the Report**

1. Provide specific recommendations to assist the postevaluation divorce professionals who will provide services to the family following the evaluation (i.e., parenting coordinators, child or family therapists, co-parent therapists, guardians ad litem).
  2. The report should clearly articulate the purpose of each recommended intervention while enumerating the stepwise goals for the manner in which these various services should be provided to the family.
  3. When recommending professionals to provide postevaluation services, denote the specific type of professional qualifications needed to provide services to the particular family that has been evaluated (e.g., must have training in alienation, domestic violence, or high-conflict divorce).
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well-being following an evaluation. These topics for future research have been proposed by R. F. Kelly and Ramsey (2009) and still remain salient. Such research may also shed further light on what makes for a "high-quality" and effective CCE report.

The CCE field might also benefit from survey research with parents who have undergone CCEs. This would be a complex undertaking, as parental responses may be dependent, to some extent, on whether the outcome favored their position. Nonetheless, there may be much to gain from such an empirical inquiry.

Lastly, current standards for CCE (APA, 2010; AFCC, 2007) offer little in the way of specific guidelines or aspirational principles regarding the construction of a report or the most beneficial way to present information to the multiple client system served by the report. Thus, we recommend that future revisions to professional standards for CCEs incorporate more principles and guidelines regarding report writing.

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