The Purpose of This Book

Divorce is a fact of life. We do not advocate for or against divorce but instead acknowledge that when divorce happens and children are involved, it is the children who are the most vulnerable.

We advocate for parents making their own decisions about their children, but we recognize that when parents divorce, conflict and disagreement may follow. While most parents reach their own self-determined conclusions about what is best for their children, this goal is very difficult for other parents. When parents divorce and they are not able to reach agreement on the decision-making and parenting plans for their children, they end up placing these issues before the court.

When this happens, mental health professionals (MHPs) frequently become involved. The involvement of MHPs varies from case to case and jurisdiction to jurisdiction. Sometimes, the MHPs work in confidential roles—as therapists, confidential mediators, parent educators, and conflict-resolution specialists. Other times, the MHPs are called upon to provide advisory input to the court as the court attempts to make decisions and issue orders that foster the best interests of the children.

When MHPs are called upon to advise the court with regard to the best interests of children, these professionals carry a great deal of responsibility, influence, and, yes, power. It is not a trivial thing to weigh in on the lives of someone else’s children. When the court issues orders with regard to matters of child sharing, parenting, decision making, and so forth, these orders have a lifelong impact on the lives of children. When the court takes guidance from MHPs, it is incumbent upon the MHPs involved to do their best work and to do work that not only proves useful to the court but also benefits the children.

All too often, however, we have observed that courts and attorneys tend to accept the work and opinions of advising MHPs without significant inquiry and scrutiny regardless of whether or not the work product has been well done. We have focused our professional lives on learning how to do child custody work well and, now, how to review the work of others to help assure that the guidance relied upon by the court is guidance that is worth relying upon. The narrow purpose of this book is to provide attorneys with a primer on how child custody
and parenting reports should be viewed, understood, reviewed, and critiqued. It is our hope that this will help raise the bar and promote better outcomes for each child and each family. The broad purpose of this book is to advance the quality of forensic psychology work to enhance the well-being of children whose parents struggle and disagree over custody and parenting after the nuclear family is dissolved.

An Emerging Field

Forensic psychology consulting is a young and emerging field. Indeed, forensic psychology as an organized discipline is a young but maturing field. When most of today’s child custody evaluators began conducting evaluations, they worked from a clinical model. They had to “retrain” themselves as forensic psychologists, a transition that was challenging yet energizing because of the ways in which it allowed for new learning and for professional redefinition.

The viewpoints, opinions, and concepts advanced in this book should be regarded as state of the art insofar as the art has advanced to this day. In fact, on the day we wrote this preface, a new California Court of Appeals case focused on a particular child custody evaluation set as public policy in California whereby child custody evaluators need to stay within the scope of the court order, act in an unbiased way, and avoid multiple roles at the same time.¹ This decision resulted from process errors by the evaluator and judicial discretion errors by the judge. In this book, we address, among other issues, the issues presented in this case.

It is our hope that, more than anything, this book promotes discussion, vigorous debate, and even fervent disagreement about such processes because we believe that through such debate and some consensus, new knowledge and points of view will emerge. We have thought carefully and comprehensively about the elements of this book and the points of view put forth. At the same time, we acknowledge that in the years to come, what we have advanced today as elements of best practice may turn out to be partially or fully erroneous. To the extent that revised versions of this book contain substantially new information or even information that contradicts some of what is in this book, we will see the field and ourselves as having succeeded.

Advantages and Disadvantages

As you will observe reading this book, we approach our work as forensic psychologists and forensic psychology consultants from a plus/minus, or benefit/risk, point of view. With any case fact or set of facts and with any assertion, strategy, tactic, or assessment technique, advantages and disadvantages (strengths and weaknesses) are present. We wrote this book with this mind-set, discussing within the book how it is important that forensic psychologists bring a balanced, unbiased, and professional approach to their work. Thus, we advise that rather than taking specific positions on most issues, the skilled consultant will illuminate the issue with a discussion of the advantages and disadvantages of whatever is being discussed or whatever is the focus of inquiry.

In like fashion, we are aware that there are advantages and disadvantages to the entire enterprise of forensic psychology consulting and review of the forensic work product of other professionals. We are motivated to do this work because we recognize that it is important that judicial officers have the necessary knowledge when they decide whether and how much they should rely on a child custody evaluation work product. When we testify, our job is to educate and assist the court. Through all of the testimony, including expert testimony, the court is able to learn about relevant issues in a particular case. We also hope that judges can carry this learning forward in subsequent matters. We are committed to advancing the science and art of child custody work and believe that one of the positive outcomes of the work we discuss in this book will be improvements in the practice of child custody evaluation.

At the same time, we are sensitive to the fact that the use of consultants creates more cost for the litigant and may draw out the course of the litigation. We acknowledge the concern of some that professionals will stop doing evaluations or will choose not to enter the field because of concerns about having their work reviewed and litigated and the potential risk that the work of consultants might lead to a licensing board complaint or other harm to the evaluator.

As an evolving field, we must acknowledge, discuss, and ask ourselves questions about what we are doing and what are the advantages and disadvantages of our work. Doing so is not only consistent with one of the basic tenets of our work, it is the optimal way to advance the field in directions that maximize benefit and minimize risk.
It Depends . . .

We believe that “It depends . . .” is a proviso for attorneys and for all professionals who work in the area of family law. In most situations, there is not a single best answer for any situation; and there are few, if any, absolutes when it comes to understanding the best interests of children. Even the concept of best interests is debated and considered too vague by many; though in some jurisdictions, the legislature has provided specific factors to try to reduce the ambiguity of the concept.

Similarly, there is no one way to carry out the complex and multifaceted task of child custody evaluations. We caution against an overreliance on blanket rules, proscriptions, and lists of rights and wrongs, though we certainly adhere to professional standards and give deference to guidelines in our work. Excellent custody evaluators will use overlapping methods and techniques, but they may also have methods and approaches to the evaluation process that will differ. So, although there certainly are general rules of “do’s and don’ts,” there is a lot of gray area. However, when questioned, the skilled and forensically aware evaluator will articulate a clear rationale for the choices made and will also be able to describe the potential risks and benefits of the choices that were made. We work hard to avoid approaching the critique of forensic work products from formulaic notions. We advise attorneys and our colleagues to think similarly.

Language Used in This Book

On a final note, we have attempted to avoid two main problems with writing texts such as this, both dealing with terminology.

First, we don’t want to presume a particular gender for attorneys, evaluators, behind-the-scenes consultants, judges, parents, or testifying experts. We also do not like to use the terms s/he or he/she or anything else like that. Instead, we have periodically alternated between the use of he and she throughout the book. We thank you, the reader, for indulging us in this choice.

Second, there are a few special terms used throughout the book, but two in particular need defining. In the early portions of the book when we discuss general elements of the work of a forensic consultant and refer to consulting in general, we are referring to either a behind-the-scenes consultant or to a testifying expert. Later in the book, we focus specifically on those two subsets of that consulting work: (1) the behind-the-scenes consultant, or strategic consultant, who will not be testifying, and (2) the testifying expert, who will not be as much of a consultant. As you will see, there may be some overlap between the two; but in a pure way,
we suggest, when possible, splitting these roles. This will be made clear throughout the book, but at this early stage of the book, we want to alert you to this issue.

A Final Note

We urge you, the reader, to consider topics that you wish we had discussed, problems you encounter as you read this book, and suggestions that you have for our next edition of this book. As noted, the field of forensic consulting in child custody is barely beyond infancy. Please feel free to contact either of us if you have dilemmas, problems, ideas, suggestions, or practical experiences that you would like to share so that we can continue to help those in the field grow and learn from our early writing. Thank you in advance for your contributions to our next project.