

PSYCHOLOGICAL EXPERTS IN DIVORCE ACTIONS

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PSYCHOLOGICAL EXPERTS IN DIVORCE ACTIONS

Fifth Edition

Marc J. Ackerman
Andrew W. Kane



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Psychological Experts in Divorce Actions

Fifth Edition

By *Marc J. Ackerman and Andrew W. Kane*

Psychological Experts in Divorce Actions is the definitive guide to understanding the role of psychological evaluations in divorce and custody cases. Written with the practicing family lawyer in mind, the book explains how the tests are administered, how their results are commonly interpreted and reported, and how to use the findings to your clients' best advantage. Suggested questions are provided for the effective examination and cross-examination of psychological experts that can be used verbatim or with minor modifications. Helpful checklists and case law summaries are additional practice aids in handling the gamut of client-related psychological issues that arise in divorce and custody cases.

Highlights of the Fifth Edition

Some of the vital legal issues and developing scientific advances discussed include:

- Updated text on licensing and certification across jurisdictions, including a completely revised table of Temporary Psychological Practice in the U.S.A. and Canada (Chapter 1)
- Extensive new material on avoiding biases (§ 2.12), reporting child abuse (§ 2.29), and test integrity (§ 2.30)
- Complete revision of custody evaluation practices (§ 3.24)
- Meta-analysis identifying the standard of practice in performing child custody evaluations (§ 3.26)
- Revision of child custody issues, including move-away (§ 4.10) and overnight placements/access (§ 4.17)
- Current literature on LGBT concerns (§ 4.29)
- Up-to-date information about the reliability of children as witnesses (Chapter 6)
- Discussion of numerous new editions of many tests of cognitive functioning (Chapter 8)
- Complete description and the most recent research about the MMPI-2-RF, including an interpretive strategy (§ 9.21)



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- Recent research about the effects of physical abuse, domestic violence, and emotional abuse (Chapter 12), and sexual abuse (Chapter 13)
- New material on narcissistic personality disorders (§ 14.13) and expanded information on chronic fatigue syndrome and fibromyalgia (§ 14.14)
- Recent writings on children with incarcerated parents (§ 16.1)

A complete table of References and an Index are also included.

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The inspiration for the book comes from helping all those children who have been adversely affected by divorce and helping attorneys and judges to minimize the negative impact of divorce.

As psychologists, we are aware of the fact that one's psychological makeup is a function of a combination of genetic predisposition and environmental influences. Our parents were obviously a strong influence on our development, resulting eventually in our professional choices and the characteristics necessary to be effective clinicians. For that reason, we dedicate this book to our parents, Bette and Donald Ackerman, and Mary and Harry Kane.

ABOUT THE AUTHORS

Marc J. Ackerman, Ph.D., is a licensed psychologist in the state of Wisconsin who has been involved in more than 2,500 family law and personal injury cases in Wisconsin and throughout the United States. He has testified in hundreds of family law, personal injury, and sexual abuse cases in more than 30 states. His practice today is largely one of forensic psychology consulting and assessment. Dr. Ackerman co-developed the Ackerman-Schoendorf Scales for Parent Evaluation of Custody (ASPECT, 1992) and the Ackerman-Schoendorf Scales for Parent Evaluation of Custody-Short Form (ASPECT-SF, 2000), published by Western Psychological Services and authored *Clinician's Guide to Child Custody Evaluations* (Wiley, 2006), *Does Wednesday Mean Mom's House or Dad's?* (Wiley, 2008), and *Essentials of Forensic Psychological Assessment, Second Edition* (2010). In addition, he has coauthored *Psychological Experts in Personal Injury Actions, Third Edition* (Aspen Publishers, 1998), and he is an associate editor of the *Journal of Child Custody*. He has more than 50 publications and has presented more than 150 seminars and workshops throughout the world.

Dr. Ackerman has served as a founding faculty member and Dean of the Wisconsin School of Professional Psychology from 1981 to 1987, and he is the former Director of Clinical Training at the Wisconsin School of Professional Psychology. He is currently a full clinical professor and Chair of the Forensic Psychology Program. He has served as both the president of the Wisconsin Psychological Association and the Milwaukee Area Psychological Association and was a member of the Board of Governors of the Wisconsin Society of Clinical and Consulting Psychologists. In addition, he has served on the Wisconsin Psychological Association's Ethics Committee for seven years, chairing the committee for one year. Current president of the Wisconsin Psychology Foundation, Dr. Ackerman is co-chair of the Interdisciplinary Committee, sponsored by the Wisconsin Psychological Association and the Wisconsin Bar Association.

Until recently, Dr. Ackerman was co-director of North Shore Psychotherapy Associates and is a member of the National Register of Health Service Providers in Psychology, the American Psychological Association, the Southeastern Psychological Association, the Wisconsin Psychological Association, and the Milwaukee Area Psychological Association. He holds a Certificate of Professional Qualification (CPQ) from the Association of State and Provincial Psychology Boards (ASPPB). He has received awards from the Wisconsin Psychological Association for outstanding contributions to the advancement of psychology as an applied profession and for outstanding leadership. Finally, he serves a member of the University of Georgia Graduate Education Advancement Board.

Andrew W. Kane, Ph.D., ABAP, is a licensed psychologist in private practice in Milwaukee, Wisconsin. He is a Diplomate of the American Board of Assessment Psychologists. He is listed in the National Register of Health Service Providers in Psychology, and he is a recipient of the Certificate of Professional Qualification in Psychology of the Association of State and Provincial Psychology Boards. Dr. Kane has been designated as an expert in more than 3,000 cases involving involuntary civil commitment, guardianship, family law, personal injury, children's court, criminal court, and other cases.

Dr. Kane was a founding faculty member of the Wisconsin School of Professional Psychology and is currently a professor at the school. He is also an adjunct clinical professor in the Department of Psychology at the University of Wisconsin—Milwaukee, and an associate clinical professor in the Department of Psychiatry and Behavioral Medicine at the Medical College of Wisconsin. He is the author or coauthor of ten books and more than five dozen professional papers and chapters.

Dr. Kane was a member of the Expert Panel on Psychiatric and Psychological Evidence of the American Bar Association's Commission on Mental and Physical Disability Law. Dr. Kane is a former president of the Wisconsin Psychological Association and of its Division of Forensic and Correctional Psychologists. He is also a former president of the Milwaukee Area Psychological Association. Dr. Kane served as a member of the Board of the Wisconsin Psychological Association's forensic division, and of the Board of Governors of the Wisconsin Society of Clinical and Consulting Psychologists as well. Dr. Kane served as the chair of the Professional Issues Committee, and for ten years as a member of the Ethics Committee of the Wisconsin Psychological Association.

He is the Associate Editor for Psychology and the chair of the Forensic Psychology Section of the journal *Psychological Injury and Law*. He is the Associate Vice President of the Association for Scientific Advancement in Psychological Injury and Law (ASAPIL).

Dr. Kane founded the Wisconsin Coalition on Sexual Misconduct by Psychotherapists and Counselors, a national model program in this problem area.

PREFACE

This book was written for the purpose of aiding attorneys in the difficult task of examining and cross-examining psychological experts in court actions. Attorneys entering into the areas of psychological expertise often find themselves confused and easily led astray. Unfortunately, as a result, much useful testimony is lost because the attorney does not know which questions to ask and how or when to ask them.

The book is not written from the point of view of “how to get the expert.” Instead, it is written to provide “the information that you need” to do an intelligent examination and cross-examination of psychological experts and to address client-related psychological factors.

It is important to note that each chapter of this book is a summary of information used to teach an entire course in the training of psychologists. As a result, the authors selected the information that they felt attorneys were most likely to need in dealing with these matters, rather than including all of the available information. Most chapters are followed by a list of suggested questions for examination and cross-examination. The attorney is cautioned not to assume that every question will apply to every case. The questions are followed by references to the chapters within the book that will help the attorney understand the basis for the question. It is essential to read the chapter and understand the basis for each question, not merely list off the questions in court.

This is the fifth edition of this text. As much time has transpired between the fourth and fifth edition as occurred between the first and third editions. As a result, significant and profound changes have taken place within the field of child custody evaluations. Many of the chapters have been completely rewritten since the fourth edition was published and literally hundreds of new references have been added. Many of the issue areas that were prominent during the tenure of the first and second editions are no longer considered to be valuable components of custody work and have been eliminated from the current text.

Chapter 1 Since the writing of the last edition, the *Daubert standard* has gained a foothold in the area of forensic psychology and has changed the direction and focus of work that is performed in this area. **Chapter 1** provides a lengthy explanation of how *Daubert* is relevant to custody cases.

Chapter 2 discusses the new 2002 American Psychological Association Code of Ethics. In particular, it emphasizes the changes that have taken place between the

1992 and 2002 Code and how they affect the interaction between psychologists and attorneys.

Chapter 3 covers psychological evaluations, test administration and standards, and the most recent research that has been published, since the fourth edition regarding psychologists' practices and family lawyers' and family judges' expectations in child custody evaluations. The standard of practice is identified based on 21 research projects performed by Marc J. Ackerman, Ph.D. and his associates and James Bow, Ph.D. and his associates.

Chapter 4 was almost completely rewritten to identify the variables that need to be considered when addressing how divorce affects families. Developmental milestones, recent research, and gender differences are discussed.

Chapter 5 provides a list of do's and don'ts for attorneys and their clients involved in divorce actions. The attorney can evaluate how many of the do's the client is doing and how many don'ts the client is doing, and make a subjective determination as to how the client is likely to fare in a custody case.

Chapter 6 Children are being asked to serve as witnesses more and more frequently. **Chapter 6** discusses how to prepare a child for court testimony, addresses a child's ability to remember events, and discusses what a child needs to anticipate in a court setting. Major new works have addressed the issue of suggestibility in young children's memory.

Chapter 7 deals with statistical concepts that will help the attorney interpret data from tests used in custody evaluations.

Chapter 8 discusses the major intelligence tests in use today. Since the publication of the last edition, almost all of the intelligence tests have gone through major revisions. The Kaufman Assessment Battery for Children, Wechsler Intelligence Scale for Children-Fourth Edition, the Wechsler Pre-School and Primary Scale of Intelligence-Third Edition, the Stanford Binet-Fifth Edition, and the Brief Intelligence Test all have new editions since the third edition of this book was published.

Chapter 9 The primary emphasis of **Chapter 9** is the utilization of the Minnesota Multiphasic Personality Inventory-Second Edition (MMPI-2). Over 18,000 articles and books have been written about the MMPI/MMPI-2. A summary of these works, in addition to discussion of the Minnesota Multiphasic Personality Inventory-Adolescents (MMPI-A), the Millon Clinical Multiaxial Inventory-Second and Third Editions (MCMI-II and MCMI-III), and other similar tests is presented. Specific discussion centers around the use of the MMPI-2 in custody cases. The controversy about the use of the MCMI instruments in custody

PREFACE

evaluations is addressed. In addition, the new MMPI-2-RF is introduced and discussed in detail.

Chapter 10 covers the projective personality tests, including the Rorschach Psychodiagnostic Series, Thematic Apperception Test (TAT), and the Children's Apperception Test (CAT). In recent years there has been controversy over the use of the comprehensive system for scoring Rorschach. That controversy is discussed in detail in this chapter.

Chapter 11 has been virtually rewritten since the third edition. The emphasis of **Chapter 11** focuses on the utility of custody-related instruments as they apply to the *Daubert* standard.

Chapters 12 and 13 cover physical and sexual abuse in detail. Hundreds of articles are written on these subjects each year. These chapters synthesize that research and quote the most recent findings as they apply to abuse and custody cases.

Chapters 14, 15, and 16 present special considerations involving mental disorders, alcohol and other drug abuse, and criminal history.

Chapter 17 discusses the fourth edition of the *Diagnostic and Statistical Manual* (DSM-IV), prepared by the American Psychiatric Association. It also compares the DSM-IV with the *International Classification of Diseases, 10th Edition* (ICD-10) and describes the advantages and shortcomings of each work. Some discussion about the preliminary work of DSM-5 is included in this chapter.

Most chapters contain case digests that are presented to serve as a guide to relevant cases. The reader is encouraged to go to the original source for a full description of these cases.

Milwaukee, Wisconsin
Marc J. Ackerman
Andrew W. Kane
February 2011

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Because this is the fifth edition of this book, there have been scores of people who have provided support and help over the years in bringing it to this level. They have been previously acknowledged and their continued support is greatly appreciated. In addition, we would specifically like to thank Yosef Ben-Porath, Ph.D.; Donald Bersoff, J.D., Ph.D.; James Bow, Ph.D.; Jay Flens, Psy.D.; Jonathan Gould, Ph.D.; Roger Greene, Ph.D.; Kathryn Kuehnle, Ph.D.; and Leslie Morey, Ph.D.

We discovered that writing this fifth edition was a much more involved task than had been anticipated because we were updating four previous editions. Since the first edition was written over 20 years ago we made a concerted effort to eliminate virtually all of the original works. Amy Whitmer has been enormously helpful and supportive during this process, and she has helped maintain our focus on what is important and what direction we should take in various areas. She was supportive not only in the easy times but also the difficult times. Without her help and support, the fifth edition would not have reached the potential desired.

As noted in previous editions our wives, Stephanie Ackerman and Carole Kane, know better than anybody else the difficulty in preparing a text of this nature and the sacrifices that go along with doing so. In this particular case, producing this volume affected our personal lives, our vacation time, and our professional practices. Our wives' support and encouragement in completing this task has often gone above and beyond what would be expected of any spouse. Mary Neff, a doctoral student at the Wisconsin School of Professional Psychology, served as the project manager for the fifth edition. She worked side by side with us for almost a year and brought her dedication to the task and her perseverance in following through on the assignments given to her. There is no doubt that without her diligent efforts to deal with the pressures of time lines, the mountains of clerical work, and serving as a liaison between the authors and the publishers, this project would not have reached the level desired. Although much of her work was trial by fire, it was sound, complete, and greatly appreciated.

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