

# Conducting Child Custody Evaluations

From Basic to Complex Issues

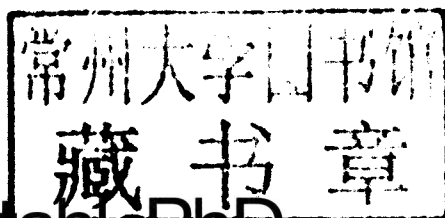


Philip M. Stahl, PhD



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From Basic to Complex Issues



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Los Angeles | London | New Delhi  
Singapore | Washington DC

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# Conducting Child Custody Evaluations

*To Damon—May the Force Always Be With You.*

*With Love, Your Saba*

# Preface

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This is my third book on child custody evaluations. In the more than 25 years that I have done child custody evaluations, and in the 15 years since publication of my first book, *Conducting Child Custody Evaluations: A Comprehensive Guide* (Stahl, 1994), there has been considerable research on divorce, children's adjustment to divorce, parenting plans, domestic violence, alienated children, and relocation. Along with *Complex Issues in Child Custody Evaluations* (Stahl, 1999), there has been a growth in the literature associated with child custody and child custody evaluations. Much of this literature has been in books by Ackerman (2001), Gould (1998, 2006), and Gould and Martindale (2007). Additionally, there has been considerable writing in *Family Court Review*, the journal of the Association of Family and Conciliation Courts (AFCC), and a new journal which was first published in 2004, the *Journal of Child Custody*. AFCC has issued new *Model Standards for Child Custody Evaluations* (2006), and the American Psychological Association has issued new *Guidelines for Child Custody Evaluations* (2009) to help guide the practice for child custody evaluators. Additionally, the state of California (Rule of Court 5.220) has promulgated rules designed to improve the quality of child custody evaluation work.

During this time, I have been fortunate to present at and attend many multidisciplinary conferences, legal conferences, and judicial education programs across the country. I have presented numerous workshops on a variety of topics associated with child custody and child custody evaluations. I have benefited from exposure to thinking in the field from across the country and around the world. I continue to do evaluations and learn from the families, judges, attorneys, and other evaluators with whom I work. In recent years, I have had an opportunity to critique many evaluations conducted by child custody evaluators across the country. I have seen many excellent evaluations and, unfortunately, some very poor ones. All of this has continued to inform my thinking about child custody and child custody evaluations.

In some ways, however, the more things change, the more they stay the same. Families continue to be complex, as are their child custody issues. Judges increasingly look for multiple ways to help families solve their problems, and practitioners in the field continue to look for ways to ease the



burden of litigation for families. Whereas mediation was in use in a limited number of jurisdictions in 1994, nearly all states now have authorized the use of mediation to help families solve their differences around child custody. There has been growth in collaborative law, in which attorneys and parents use a collaborative approach with mental health and other experts to help coach families through the difficult times. Even with these beneficial changes, however, many families continue to struggle and litigate their way through child custody cases. Family violence continues to be problematic and occasionally misunderstood, some parents have substance abuse problems, some children become alienated or estranged from one parent, and some parents remain in high conflict, often the result of significant personality traits exhibited by one or both parents. In spite of continued support for shared custody, parents continue to argue over and have difficulty resolving disputes about custody and parenting of their children.

With the many changes, new research, and a continued focus on helping families resolve their differences, it is time to update my books. Whereas my first book focused on basic “how to” issues in conducting evaluations and my second book focused primarily on more “complex” issues in child custody evaluations, this comprehensive book addresses all of these significant issues for child custody evaluators. This book is presented in four parts. Part I is focused on critical professional and ethical issues. This includes:

- The purpose of the evaluations, practice standards, confidentiality, and bias (Chapter 1)
- The mental health expert’s many possible roles (Chapter 2)
- Fundamental questions that surface in nearly all evaluations (Chapter 3)
- General divorce-related research (Chapter 4)
- Children’s developmental needs (Chapter 5)

Part II focuses on the basic tasks of conducting the child custody evaluation. This includes:

- Observations and techniques with adults (Chapter 6)
- Observations and techniques with children (Chapter 7)
- Psychological testing (Chapter 8)
- Gathering collateral data (Chapter 9)
- Sharing the results of the evaluation—The evaluation report (Chapter 10)

Part III focuses on complex issues, including:

- Nonviolent high-conflict families (Chapter 11)
- Domestic violence (Chapter 12)
- The alienated child (Chapter 13)
- Relocation evaluations (Chapter 14)

Part IV focuses on two other critical tasks facing the evaluator, including:

- Tackling the terror of testifying (Chapter 15)
- Critiquing child custody evaluations—the good, the bad, and the ugly (Chapter 16)

Along with this, as in my first book, I will include appendixes. These appendixes include sample forms and informed consent documents, sample questions to ask parents and children, sample report analysis and recommendations in alienation and relocation cases, and recommended reading that is not included in the references.

As before, this book will focus on the complexities involved in conducting child custody evaluations. I still believe that many areas need to be explored in every evaluation, including the psychological functioning of each parent; the history of the parents' relationship; the parenting skills and relative parenting strengths and weaknesses of each parent; the attachment and quality of the relationship between the child and each parent; the child's relationships with siblings, peers, and others; the existence of family violence and the intensity of the parents' conflict and the degree to which the child is exposed to it; the child's temperament and developmental needs; logistical issues, including parents' work schedules and the distance between parents' homes; and the ability (or inability) of the parents to work together to meet their child's needs.

As I stated in my previous books, all of these issues must be addressed and integrated into a discussion related to the "best interests of the child." Each evaluation must be guided by the statutes of the state in which the court orders the evaluation. The evaluator must also know relevant case law pertinent to specific evaluations. For example, in Arizona, the "best interests of the child" statute is found in AZ 25-403, which defines the factors associated with that particular state's definition of best interests. This is different, for example, from either Michigan's best-interests statute or California's best-interests statute. Similarly, if doing a relocation evaluation in Arizona, the evaluator must know the factors outlined in AZ 25-408, but if doing a similar evaluation in California, there is considerable case law that must be understood (e.g., *LaMusga [In re Marriage of LaMusga]*, 2004).

Since my last book, I continue to recognize that some people do not understand how complex and difficult child custody evaluations and child custody litigation can be. I have seen evaluators write very brief reports, oversimplifying the family's issues and failing to provide a rationale for the evaluator's recommendations. I also continue to see legislators try to oversimplify the issues in ways that might interfere with the evaluators doing the complex task in front of them. I continue to worry when courts try to oversimplify family issues by encouraging evaluators to be short and brief in their reports or by making rulings that tend to polarize family problems. I continue to worry when judges, attorneys, and evaluators do not understand



the limitations of an evaluator's knowledge, pushing experts to reach conclusions and make recommendations beyond what the data will allow.

I am concerned when evaluators have little or no training in child custody evaluations yet believe they are qualified to perform such evaluations simply because they have read a book or two, know how to perform family interviews, and perform psychological testing. Novices need experience gained by work in the field, an understanding of the research, participation in continuing education workshops, and the assistance of consultation and supervision by more experienced evaluators. I also worry that licensing boards continue to be overwhelmed with complaints by angry litigants and yet do not understand the complexity of child custody evaluation work and do not have the ability to differentiate between ethical and competent evaluations and evaluations that may be below the standard of care.

Finally, I continue to worry about the children of divorce, for whom many decisions are being made that are based on research that still has limitations. I worry about the lack of appropriate integration of children's voices in the courts. At the time this book is being written, the United States still has not ratified the UN Convention on the Rights of the Child (1989). Article 12 of that Convention requires that children's voices be heard when courts will be making decisions that affect children's lives. It is critical, in my opinion, to have a forum in which children's voices are heard when court proceedings will be affecting the children. Other countries are doing a much better job of including children's voices in court proceedings (R. M. Stahl, 2007). I also worry that children do not get adequate information about their parents' divorce, decisions of the court, or other relevant information that affects their lives. Regardless of where parents live and the nature of family problems, we still must understand the family divorce through the eyes of the children. As I stated in my first book,

We must understand how the children feel, what they fear and wish, and what makes conflict resolution difficult to achieve. We need to stay focused on the needs of the children, who are vulnerable to the actions of their parents, and who have the most to gain with a healthy resolution of the divorce conflict. (P. Stahl, 1994, p. x)

With this book, I hope to bring greater understanding of these multiple issues so that child custody evaluators, attorneys, and family law judges can better understand the complexities associated with child custody and continue to improve the lives of children caught in the middle of their parents' divorce.

## **A Note on Language Used in This Book** \_\_\_\_\_

Throughout this book I will be addressing the issues associated with children whose parents live apart. Some parents were never married, some barely knew each other, and some were married for many years. Some children are

the result of a heterosexual relationship by their parents and some children are born in same sex unions and marriages. While there may be issues unique to each of these circumstances, I will use the term *divorce* to address all of these families.

Similarly, I will interchange genders throughout the book, recognizing that both mothers and fathers can contribute to their child's alienation from the other parent and both mothers and fathers can be violent or engender conflict. Additionally, though there are differences found in the way mothers and fathers generally raise children, I recognize that both mothers and fathers are important to children and that both will have relevant strengths and potential weaknesses in their parenting capacity and functioning.

Finally, even though I do not like the language of custody, I will be referring to it in this book. Most states continue to use the language of custody, while some are shifting to a more appropriate focus on parenting rights and responsibilities (see, e.g., Florida Statute 61.13, enacted in 2008). I will not use the word *visitation*; instead I will use the words *access* or *parenting time* to refer to each parent's time with their children, except when referring to a parent's contact as supervised visitation, since that is the general term used in such circumstances.

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