

Child Custody Evaluation and Relocation, Part II of III: Options for a Systematic Approach to Forensic Evaluation

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Part I of this three-part article (which appeared in the last issue of the *American Journal of Family Law*) ended on a note that the complexities involved in child custody relocation cases presented an opportunity for custody evaluators to be more scientifically-grounded in their approach to the case and that relocation cases require both the art and science approach to custody evaluation.¹ An extensive research literature exists that is relevant to the issues elicited in a relocation dispute, yet every such case requires extensive practical analysis and problem solving on whether a long-distance parenting plan is feasible and workable. Case law and state statutes identify specific relocation factors for courts and evaluators to consider. Yet, state high court opinions emphasize that a best interest of the child analysis must inevitably be fact-intensive that derives from the context and circumstances of the case, that there is “no bright line” on how to apply relocation factors and no substitute for the sound application of judicial discretion.²

Part I described the psycho-legal dilemmas that are inherent in the conundrum posed by relocation disputes. Social policy dictates it is a legitimate, understandable life decision for a parent to wish to relocate with his or her child while pursuing new opportunities and circumstances to achieve a higher quality of life for parent and the child. There is a countervailing social policy of the other

parent’s wish to exercise “care and control” of his or her child through active parenting. Both policies are captured by competing constitutional rights that some appellate courts have addressed³ This tension in the law and the resulting questions that courts and custody evaluators must address creates the relocation conundrum.

This second part describes two complementary approaches that allow the evaluator to take a systematic approach to the design and implementation of a comprehensive child custody evaluation for the relocation dispute. One approach is the well-established relocation risk assessment forensic evaluation model.⁴ The second approach is a

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straightforward psychological cost/benefit analysis of the relative advantages and disadvantages associated with the child relocating with the parent versus staying in the home community with the other parent designated as the custodial parent. It is referred to as the Social Capital approach.

GUIDEPOSTS FOR CUSTODY EVALUATION IN RELOCATION CASES

Part I presented 15 “forensic guideposts” for custody evaluators to keep in mind as they design and implement their relocation evaluations. The guideposts can help provide structure to the evaluation process and can be combined with the systematic approaches to relocation custody evaluation described below. For example, one of the guideposts is for the evaluator to always gather sufficient data that will allow for a *comparative analysis* of what the quality of life and well-being will be like for the child in the two alternative residential living arrangements, or family environments, should there be a long-distance parenting arrangement. This is always the prime task for the custody evaluator in every case, but it is much more salient in a relocation dispute. The court may allow the child to relocate with the moving parent, or a parent may relocate without the child in the event that the court denies the relocation motion. This analysis comprises the *fundamental comparison* that is salient in relocation cases as the court ponders relocation and the possibility of implementing a long-distance parenting plan.

There is no “bright line” on how to apply relocation factors.

Another guidepost is for evaluators to gather data on the *degree of realistic flexibility* the moving parent has on the issue of moving in light of the facts and circumstances. There may be a remarriage, job transfer, need to return home to care for an aging parent, and so forth, so the parent perceives it is just not possible to not relocate. The author, in his forensic evaluations, has heard the moving parent (almost always the mother) say “I don’t even want to go there,” or “not moving is just not an option.” It may be that she has a new husband or the job offer of a lifetime. Or, less compelling, but very common, the moving-mother may simply want to return to her

home community to receive support from her family. These facts help the evaluator and court determine the degree of *cogency* in the proposed move, or whether “it makes sense” and is not part of a strategy to inhibit the involvement of the other parent under the guise of relocation.

Quality of Gatekeeping

Yet another guidepost is for the evaluator to assess the past, present, and likely future quality of co-parenting and *gatekeeping* by the moving parent, and the nonmoving parent as well, should he or she be designated as the residential/custodial parent in a long-distance parenting and co-parenting arrangement. The evaluator will want to assess how responsible a moving parent is likely to be as the parental gatekeeper in a long-distance arrangement. Will the parent be proactive and inclusive of the other parent? Or, will she be a facilitative gatekeeper to keep the other parent involved with the child? A track record of being nonsupportive of the other parent, or a restrictive gatekeeper, does not bode well for sustaining a quality parent-child relationship in a long-distance arrangement. The court will want to know how well each parent would be expected to *manage the parental gate* should he or she be the custodial parent in a long-distance arrangement. The author proposes that the quality of parental gatekeeping is the key to the child having a “successful relocation,” or how to keep the other parent close in his heart even though the parent is distant in location. Case law emphasizes the goal of trying to sustain closeness in the noncustodial parent-child relationship should there be relocation and geographical separation.⁵

RELOCATION AND LONG-DISTANCE PARENTING SCENARIOS

The “true relocation” case and dispute involves a post-decree, modification case in which a residential parent wishes to relocate with the child a substantial geographical distance thus making a modification of the parenting time plan necessary, if the court would approve relocation, or if the parent would have to relocate without the child. A long-distance parenting plan would need to be crafted in such a relocation scenario. It sometimes will be the case that there is an equal parenting time and shared decision-making plan and permanent order in place. Such a scenario may require a different

legal analysis as the case may be deemed to be the functional equivalent of a pre-decree case in which the court needs to designate a primary residential or custodial parent, as if the litigation was starting over to determine which family unit would best meet the child's interests and needs.⁶

Pre-decree cases at the time of dissolution, when one parent wants to relocate, will be focused on the legal issue of relocation, but the analysis is likely to be different than a post-decree relocation case.⁷ The evaluator may not need to formally consider the state's relocation factors (though it would be a good idea to do so). A straightforward, best-interests-of-the-child legal standard would be the guide for court and evaluator. They would not need to address the issue of showing a change in circumstances for parents and child. The issue of crafting a long-distance parenting plan would need to be addressed by the evaluator as one option for the court to consider. When there is a very young child, even a baby, and a stay-at-home mother who is the primary caregiver, then the circumstances may serve to create a *de facto* presumption for relocation depending on how the nuances of the state's relocation law are interpreted by the judge. If the interpretation of the state's relocation law is one by which the court can deny relocation without being prepared to designate the nonmoving parent as the custodial parent, then the comparison would not be slanted in favor of the moving parent with a baby.

Will a parent be inclusive of the other parent?

Evaluators may encounter other scenarios that involve relocation and long-distance parenting. Nonresidential parents frequently relocate, and for valid reasons. Such cases typically would not involve litigation unless the parents could not agree on a schedule and terms of a long-distance parenting plan. A parent may be transferred with his or her job, but is not contesting custody. A moving nonresidential father, for example, might be asking that his 12-year-old son spend the entire summer and every school spring break with him, and the mother disagrees. Some research suggests that the creation of a long-distance parent-child relationship places the children at risk for long-term detriment, even when it is the nonresidential parent who moves.⁸

Litigation sometimes may be involved when a nonresidential parent who lives a long distance away is asking for a change in custody so that he

or she would become the residential/custodial parent. The legal standard for modification may be a difficult one to meet in some states (*e.g.*, showing endangerment to the child). The noncustodial, distant parent would usually need to show there has been a change in circumstances to justify a change in custody.

Parents Moving or Staying?

After relocation litigation, the moving parent will occasionally decide to move without the child when the court denies the relocation motion. It may involve remarriage. A long-distance parenting plan would need to be developed, but the moving parent (usually a mother) and her new spouse might want to consider whether he could move to the home community so there could be a local parenting plan, and one that might involve the mother still being the residential parent. A Washington state statute requires the court to consider this possibility so the evaluator would need to investigate it. The Australian study by Cashmore and Parkinson found that eight out of 49 fathers followed the moving mother and child to the new community.⁹

The qualitative, small sample research programs in Australia and New Zealand with families involved in relocation litigation found that seven of the 49 mothers who were allowed to relocate with the child moved back; two others decided not to move after a favorable relocation decision; and one other moved back within a manageable driving distance of the father. These data seem to show that the "the grass was not always greener" in the context of relocation litigation.¹⁰ Several of the mothers moved without the child when relocation was denied by the court or when they had unilaterally moved with the child and the court ordered the return of the child;¹¹

The quality of parental gatekeeping is the key to "successful relocation."

The "real life" research in Australia found, not surprisingly, that mothers who were allowed to relocate were the most satisfied with follow-interviewing in this five-year study over time. Also, left-behind fathers in the relocation-allowed group were the most dissatisfied and showed much lower health outcomes. Mothers in the relocation-denied group were initially very dissatisfied, but learned

to cope with their loss and reality. The data showed these mothers on average learned to value the involvement of the father in the lives of the children.

Atypical Long-Distance Parenting Dispute: Restrictive Gatekeeping

In a recent case the parents lived in different states. The father had no relationship with a six-year old son. The father had been in the US Marines, stationed in North Carolina, and the mother moved out of state to Colorado when the father was deployed to Iraq for a second time. The marriage was in trouble, and the father helped the mother move from North Carolina to Colorado when the child was a baby. The father had little contact over the years, but alleged the mother had prevented contact when he would travel to Colorado and would not return phone calls. His father lived in the area. It was confirmed the mother prevented the grandfather with having contact with the baby.

Left-behind fathers were the most dissatisfied group.

The data showed the mother had prevented contact, but at one point there was discussion about the father relinquishing his parental rights so that the mother's fiancé might adopt the child because he felt helpless to be involved with his son. He lived in another state and had little ability with his work schedule with the Marines to get time off to travel; he had little financial resources to travel; the mother was a restrictive gatekeeper; and the father could not afford a lawyer. The mother had another son with her fiancé. The mother then died in a motor vehicle accident. Litigation ensued between the father and maternal grandmother who had been awarded temporary custody of both boys. The father sued for custody and moved to the child's home community with the Marines finding an alternative duty placement in the area in Colorado. He then built a relationship through reunification therapy. It took two years with much resistance and obstacles placed in the path of the father's attempts at involvement, for example, grandparental restrictive gatekeeping, but reunification was established. The father wanted custody of the boy and to move back to his new wife's home community

in North Carolina. He was going to move for work reasons no matter the outcome of litigation. The father and his wife had a new baby, another "half-sibling." The boy was now almost seven years old. A long-distance parenting plan would need to be created. After a custody evaluation, the court eventually awarded custody to the father due to the age of the grandmother, the higher standard of living and quality of life with father's residential environment and extended family support/social capital, and a year-round school "track schedule" with more frequent extended blocks of time off for visiting the grandmother and brother. Due to high conflict, there probably was going to be restrictive gatekeeping by either party as the residential parent, but the father agreed to an ambitious long-distance parenting plan to facilitate access.

PARENTAL GATEKEEPING AND RELOCATION

The concept of parental gatekeeping is a necessary and central part of any relocation analysis. Gatekeeping was presented and defined in *Part I* and is one of the forensic guideposts that evaluators are well advised to consider and assess, as pointed out previously. It refers to the ability of a parent to support the other parent-child relationship. It encompasses a common statutory best-interest factor concerning mutual support between the parents and the goal of cooperative co-parenting. The willingness and propensity of a moving, custodial parent to support the left-behind parent's continuing involvement with the child will invariably be one of the two focuses of the relocation dispute. The other central and related argument against relocation will be the potential harm to the noncustodial parent-child relationship.

The research-based, gatekeeping forensic model for child custody was described in *Part I*.¹² The relevant research shows that children of divorce do better when they have quality relationships with both parents. Second, it shows how cooperative co-parenting by the mother can produce more involvement by the father and better child adjustment.¹³ Third, the relevant research shows the contributions by fathers in the children's well-being and school achievement.¹⁴

The gatekeeping model recommends that the evaluator describe the parent's gate-opening and gate-closing behaviors in detail, or with behavioral specificity. The evaluator will want to describe the quality of gatekeeping attitudes and actions for

both parents in the past and what it is likely to look like in the future. The evaluator will want to avoid the temptation to use the label of restrictive gatekeeper in a loose way just as evaluators sometimes use the alienation label to refer to unsupportive parents who seem to be undermining the other parent's relationship with a child.

The gatekeeping model can be used in a complementary way to the relocation risk assessment model that is described below as the evaluator anticipates how the custodial/moving parent would be expected to manage the parental gate of access to the child in a long-distance parenting arrangement. The two forensic models can be used in tandem. Responsible gatekeeping by the custodial parent in the past will likely go a long way toward opening the possibility that the court would approve relocation, so the evaluator is well advised to describe the behaviors associated with this factor in detail.

He built a relationship through reunification therapy.

One controlling high court decision described in detail the mother's gatekeeping behavior in the past towards the father and his extended family.¹⁵ The court noted the mother's proposal for extensive future parenting time with nine or 10 trips per year between Massachusetts and Illinois as evidence of future support. It noted the mother and her fiancé's pledge to assume all of the financial responsibility for travel costs. The picture was one of describing the mother's past and expected future responsible, facilitative gatekeeping.

OTHER RELEVANT RESEARCH

Part I reviewed the research literatures that are relevant to the issue of relocation and predicting children's adjustment to the decisional alternatives that face the court in relocation cases. The research is relevant to the evaluator's use of the systematic approaches described below. The research shows that relocation stands as a general risk factor for children of divorce and provides support, or scientific-grounding, for the use of the risk-assessment model. In general, relocation for children of divorce, compared to children in intact families, show negative outcomes associated with relocation, especially if they experience multiple

moves.¹⁶ The cohort of mobile children are also at risk for long-term health outcomes as adults.¹⁷

SYSTEMATIC APPROACH TO RELOCATION

Complex Issues in Child Custody

Professional standards strongly suggest that custody evaluators should take a systematic approach to the common "special issues" that custody evaluators frequently encounter.¹⁸ There may be a number of options available to assist evaluators, depending on the issue. Relocation is one of these special and inherently complex issues. Others include cases involving allegations of intimate partner violence, child sexual abuse, parent alienating behaviors, substance abuse, or harsh parenting.

These special-complex issues all share in common the assertion by one (or both) parents about potential risk of harm to the child concerning alleged behavior by the other parent. The alleging parent has in effect conducted his or her own *personal risk assessment* as to the welfare of the child. As a result, the alleging parent may request that the other parent's access to the child be monitored or restricted (*e.g.*, supervised parenting time) or to make an argument to be designated as the custodial parent with the great majority of parenting time. Adding the language of potential harm to the child in addition to that of best interests will be helpful when one of these complex issues is salient so that safety issues can be addressed, such as in allegations of past domestic violence. In the case of relocation, adding the concept of least detrimental placement may be helpful because the legal context may require a determination of which parent should be the custodial parent in a long-distance arrangement with resulting potential harm due to an extended separation between parent and child.¹⁹

Relocation, Risk, and a Systematic Approach

Relocation-Associated Harms. Issues of harm in the context of relocation are different from those in the other complex issues in which the allegations often involve issues of physical safety and emotional abuse. Nonetheless, in relocation cases issues of potential harm are prominent. *Part I* described the research on the risk of harm to the child of divorce associated with residential mobility/relocation. Excellent research on residential mobility and

children's adjustment in intact versus other family structures shows that relocation/mobility can be considered a general risk factor for children of divorce.²⁰

The risk associated with relocation in the context of custody litigation turns the focus to the two types of harm identified in *Part I*. There is the potential for (1) "relationship harm" to the child's relationship with distant parent in the event of relocation (usually the noncustodial parent) and (2) the carry-over effect of relationship harm to the child's adjustment due to the possible diminished level of social capital, or psychosocial resources, in the child's life. The importance of these potential harms in relocation follows directly from the large research literature that establishes that children of divorce show the best long-term adjustment when they can enjoy quality relationships with both parents and fathers/noncustodial parents remain engaged and involved.²¹

Least Detrimental Alternative (LDA) Approach. The application of the LDA perspective and approach was described in one of the articles in the initial presentation of the relocation risk assessment forensic model that is described below.²² The research that establishes the potential risk associated with relocation for children of divorce is why a risk assessment approach to relocation is a prudent one for evaluators.²³ Least detriment along with the language of harm is just a different approach to analyzing children's best interests in custody litigation. Detriment is the conceptual obverse to best interests. That is, least detriment translates to "more best interests" and vice versa (*e.g.*, most detriment equates to "least best interests").

FORENSIC EVALUATION MODELS AND FRAMEWORKS

Forensic Guideposts and Legal Relocation Factors

The forensic guideposts listed and discussed in *Part I* represent salient general issues that custody evaluators may want to address. They can be integrated into or added to the relocation analysis using the forensic model and social capital approaches described below. They can be part of the evaluator's systematic approach to the relocation data gathering and interpretation.

The guidepost analysis should enhance the evaluator's relocation and risk communication to the court. They will allow the evaluator to present a more sophisticated and nuanced report to the court

and help avoid a superficial and static analysis that is seen too often in relocation evaluations and that is not infrequently tainted with anti-relocation bias in a clear preference for the status quo of a local parenting plan with both parents present and involved.

Relocation is a general risk factor for children of divorce.

The guideposts alert evaluators to issues that will be relevant to the psychological and best interest analysis in most relocation scenarios. One of the guideposts is for the evaluator to assess all of the legal factors (*i.e.*, best interest and relocation) found in the state's statutory and case law. The data on legal factors can be combined with the research-based risk/protective factors as described below. Some commentators have recommended against a list of specific relocation factors in a jurisdiction's statute in favor of relying just on the jurisdiction's best interest factors and judicial discretion for resolving relocation disputes.²⁴ However, the clear trend has been for states to pass relocation statutes with a list of factors.

Risk Assessment Forensic Model

Overview. In this article two approaches are described to assist evaluators in organizing a relocation evaluation for collecting and analyzing the data and addressing the issues in the relocation case. The first approach is the Relocation Risk Assessment psychological forensic evaluation model that has been widely used by evaluators for 15 years.²⁵ It is a research-based, actuarial model that consists of identified risk and protective factors that are supported by the research literature on the effects of the factors on children of divorce. A recent survey study suggests that about 60 percent of evaluators use the risk assessment model.²⁶

The factors were derived from the divorce-effects research literature and extrapolated to the context of relocation. It is consistent with the general risk and resiliency approach to the study of divorced families.²⁷ The risk assessment model is a heuristic or framework for organizing the data around factors that will generally be very relevant and also have predictive value. The factors also have a practical appeal on their relevancy, and there is overlap with common statutory relocation factors, such as the gatekeeping factor, age, distance, and relative

past involvement of the parents in parenting. The model allows evaluators to design their evaluation and start their data organization with a scientifically grounded first step in the analysis. As noted, the model is not a “psychological test” or technique that should be subjected to a “*Daubert test*” on admissibility of expert testimony, but it would pass a “*Frye test*” as a commonly used approach to data organization and analysis.²⁸

The Model. The factors in the model should be thought of as continuous variables, or varying in potential degree. For example, the factor of degree of past parental involvement with the child may show the nonmoving parent had been an involved father on the spectrum of parental responsibilities, or there was a traditional marriage with a stay-at-home mother serving as a primary caregiver. The eight factors can serve as either a risk or protective factor, depending on where the data fall along the continuum for the variable. For example, on the factor of past support for the other parent-child relationship, if the data show the moving parent has consistently been very supportive, proposes a long-distance parenting time arrangement that is inclusive and liberal in the amount of access, then it serves a protective function for sustaining quality in the parent-child relationship. If there has been restrictive gatekeeping with limited support and flexibility by the moving parent, then it creates risk, and also is a red flag on potential harm to the parent-child relationship. It may validate the non-custodial parent’s claim that the other parent is trying to marginalize his future role in the child’s life.

The concept of least detrimental replacement may be helpful.

It is important to remember that the risk assessment model and data gathered on the factors are a heuristic for organizing the data and forming “research-based hypotheses” that will be relevant to predictions about the child’s future adjustment to relocation, or not relocating. Use of the model is just a *first step* in the analysis. It would be inappropriate to apply the model in a one-on-one, direct way to make predictions about the child’s adjustment, or to address the ultimate issue. In a recent Florida international relocation case, a consulting expert reviewed documents, interviewed the moving mother, and offered an opinion in favor of relocation by applying the relocation risk assessment

model to the fact pattern.²⁹ This would be a clear misuse of the forensic model as the father’s consulting forensic expert pointed out in an affidavit.

The forensic model in combination with the forensic guideposts can be used in its heuristic function to identify alternative fact patterns that would present a reasonable argument for relocation, or would be a weak case for relocation. For example, a case with a two-year-old child, an interstate move, and past pattern of restrictive gatekeeping would not be a strong case. With an older school-age child, aged nine to 12 years; a pattern of past cooperative co-parenting and a proposed “maximum access plan” for long distance, a high level of individual psychological resources by the moving parent, and a resilient child, then it would be a strong argument for relocation. Other factors would be important as well such as the reasons for the move and financial resources to enable long distance travel.

Risk and Protective Factors. The relocation risk and protective factors consist of the following:

(1) *Age of the Child.* A very young age creates high risk associated with relocation and potential disruption of attachment relationship.³⁰ Attachment theory not infrequently may be overemphasized by evaluators as suggesting traumatic experience due to disrupted parent-child relationships associated with divorce and relocation³¹ because the child’s development is so multi-determined by other factors.³² However, it will be difficult to sustain quality in the nonresidential parent-child relationship when there is disruption and resulting long-distance parenting due to the cognitive limitations of the very young child involving object permanence and memory.³³ Sustaining quality probably would require a minimum of monthly physical contact and probably more often for the child under three years. After the age of three years and the age range of three to six years there is more flexibility due to cognitive growth and expected benefit from “virtual parenting time” (e.g., Skype)³⁴ and resulting less detriment due to extended separation.³⁵

With older school-age children (e.g., eight to 12 years), there is a hypothesis of a “developmental window” to better cope with the physical and psychological separation from the distant/nonresidential parent (Austin, 2008a).³⁶ Children in these years are in developmental stages where their memory capacity and greater cognitive sophistication allows them to efficiently understand their relationship and emotional connection with the distant parent, usually the father. They can regulate their electronic

contact with the father (e.g., using Skype or Face Time). They can enjoy extended blocks of parenting time with the father and separation from the mother (e.g., winter, spring, and summer school vacations).

Older school-age children are a high-risk group for very different reasons. The known difficulties in fitting in with a new peer group and the possibilities of getting involved with more accepting, but potentially problematic, peer groups pose challenges compared to intact families who may navigate the transition much better and establish new, healthy sources of social capital.³⁷ The buffer of the intact family is a protective factor concerning older children when there is relocation and change in schools.

The age factor is complicated further by the reality that there often may be two or more children potentially relocating with the moving parent. The children may be in different developmental stages with quite an age difference between the children (e.g., ages three and nine years respectively).

(2) *Geographical Distance of the Move and Travel Time.* Hetherington, based on her 40-year longitudinal study of a large sample of divorced families, proposed that relocation of a distance that was more than a comfortable day trip by auto would likely severely loosen the parent-child bond and lead not infrequently to the noncustodial parent playing a minimal role in the life of the child.³⁸ Empirical support exists for the correlation between distance and the noncustodial parent's post-separation level of involvement.³⁹

(3) *Psychological Stability of Relocating Parent and Parenting Effectiveness of Both Parents.* Extrapolating from existing literature on parenting and parenting style, it is known that children's adjustment is correlated with parents' mental health and symptomatology, especially research on the effect of the mother's depression.⁴⁰ It is expected that healthy, resourceful moving mothers/parents would be better positioned to help themselves and the child adjust and cope with the changes associated with relocation. Healthy parents would be more likely to more readily establish a new social network and sources of social capital for self and child. Children show better adjustment when they have a quality relationship with at least one parent⁴¹ who shows an effective parenting style that includes showing warmth and responsiveness to the child's needs.⁴²

(4) *Individual Resources/Individual Differences in the Child's Temperament/Special Developmental*

Needs. Research shows that children with "difficult temperaments" are not expected to cope well with the stress of divorce.⁴³ There is a sound theoretical basis for expecting, for example, that children with autism spectrum disorder or attention deficit hyperactivity disorder would be at greater risk to cope with the change and transitions associated both with divorce and relocation. On the other hand, children whose history shows them to be resilient are expected to cope better with relocation.⁴⁴ Higher cognitive ability is the strongest predictor of resiliency in children.⁴⁵

(5) *Degree of Involvement by the Nonresidential Parent.* When nonmoving parents have been highly involved and enjoy a quality relationship with the child, then it creates higher risk due to the loss in social capital and support for the child. Research shows the advantages when the child enjoys quality relationships with both parents⁴⁶ and fathers.⁴⁷ Further, children of divorce benefit from relationships with fathers especially when there has been warmth and responsiveness in parenting style and more intensive involvement (Martinez & Forgatch, 2002; King & Sobolewski, 2006; Fabricius & Luecken, 2007; Sandler et al., 2008).⁴⁸ Although relocation would be expected to create more risk for the very involved father due to loss in social capital, paradoxically, it also becomes a protective factor due to the expectation that the highly involved father with a meaningful relationship before relocation will be motivated to remain highly involved albeit in a long-distance relationship.

(6) *Gatekeeping and Support for the Other Parent-Child Relationship (SOPCR).* As discussed previously, facilitative gatekeeping in a long-distance parenting arrangement is expected to be the main protective factor by helping sustain quality in the child-nonresidential parent relationship. The supportive residential parent with inclusive co-parenting and responsible parental gate management skills can result in effective harm mitigation in the parent-child relationship. Specific gatekeeping behaviors in the context of relocation have been described.⁴⁹ Conversely, restrictive gatekeeping in the long-distance arrangement may lead to the marginalization of the distant parent/father relationship just as the nonresidential parent/father often will be asserting. When the residential parent/mother does not proactively cooperate on electronic communication; keeping the other parent well informed about the child's activities and needs; impeding electronic access; and not facilitating long-distance exchanges for parenting time, then the risk of detriment will

result. Restrictive gatekeeping involving a very young child creates a high risk of relationship harm between the child and distant nonresidential parent.

(7) *Interparental Conflict and Domestic Violence.* This is the most complex factor to apply in the relocation analysis. A high level of parental conflict, and an expected accompanying pattern of restrictive gatekeeping, poses problems for the moving parent to justify relocation. However, it may be a case of the nonmoving parent being the primary instigator of the conflict and exposing the children to it. Substantial research shows that exposure to conflict places children at high risk for developing adjustment problems.⁵⁰ It may be that the moving parent is not terribly supportive of the other parent due to the instigation of conflict, but she does not impede access and cooperates with the court-ordered parenting plan. To wit, the moving parent may have shown a pattern of being able to compartmentalize her negative attitudes about the aggressive co-parent, ex-spouse from her gatekeeping behaviors. If the moving parent in such a fact pattern presents a cogent case for relocation based on reasons, advantages, and limited realistic flexibility on the moving issue, then it could be a strong case for relocation. In some cases, there may be a compelling argument for a “geographical barrier” hypothesis that relocation may shield the children from exposure to enduring conflict between the parents. On the other hand, the moving parent could be the primary instigator of conflict and the data point to the contrasting hypothesis that she does not value the other parent’s contributions to the children without justification for her view. Also, the restrictive gatekeeping may appear to reflect a process of control and marginalization.

Very young age creates high risk relocation.

When there has been a corroborated pattern of intimate partner violence (IPV), for example, domestic violence, with a primary instigator and a substantial level of severity, the relocation issue becomes further complicated. If there has been a pattern of coercive control where the aggressor parent has engaged in controlling, intrusive, authoritarian behaviors during the marriage and continues to show coercive controlling behaviors, then the challenge is for the other parent, usually the mother, to see value in the other parent’s contributions, and there may be significant issues of safety and violence

risk.⁵¹ The evaluator will need to assess the credibility of the allegations⁵² and to consider using a forensic model for assessing the pattern and implications for parenting.⁵³ With substantial IPV the motion to relocate and possibly to return to a home community to receive family support and protection may readily be viewed as understandable and justified. There may be continuing concerns about safety and violence risk. The nonmoving parent’s opposition to relocation may be seen as further evidence of controlling behaviors.

With a pattern of IPV the gatekeeping by the moving parent may be seen as justified restrictive gatekeeping. The gatekeeping analysis needs to be modified when there has been substantial IPV. The victim-parent with substantial IPV, especially the coercive controlling pattern, cannot be expected to be the “friendly,” inclusive co-parent. Commentators have been critical about the way courts (and state laws) fail to modify the gatekeeping analysis in the IPV case.⁵⁴ In other cases, the IPV may be minor in severity, perhaps one incident at the time of separation, and should not be viewed as terribly relevant to creating a parenting plan or the relocation issue. The most frequent pattern of IPV is the conflict-instigated, situational-specific type (I)⁵⁵ that most often would be interactive, or mutual in the dynamics. Evaluators report that the most IPV they encounter is one that is associated with the marital separation.⁵⁶

(8) *Recentness of Marital Separation.* Several highly noted authorities on divorce and child development have proposed hypotheses that either the combination of parental separation and divorce⁵⁷ or cumulative life stressors such as divorce⁵⁸ create more risk for the child. Presumably, the child would likely cope better with relocation if there first had occurred family stabilization following the marital separation and divorce before relocation is considered.⁵⁹ The combination of the two might just be too much to handle, that is, facing the challenges of adjusting to a new community while still grieving for the loss of a parent and the security of an intact family. However, the legal reality is that the parents will often wish to relocate with their child at the time of separation and divorce, and not infrequently will do so unilaterally before the divorce action commences.

Social Capital Approach

The second approach can be described as a social capital approach that has been introduced

to the fields of child custody evaluation and family law,⁶⁰ particularly in the context of relocation disputes,⁶¹ as a practical, descriptive concept for understanding how individuals' quality of functioning depends on the resources available to them in their respective environments. It was described in *Part I* of the article and defined previously in *Part II*.

Social capital is particularly useful as a descriptive concept in the context of relocation disputes as it is intertwined with the concept of gatekeeping. It is a useful way to conduct the fundamental comparison for the court so that the evaluator can better help the court visualize what life will be like for the child if he or she was living primarily in one community or geographic location primarily with one parent versus living with the other parent in the other community. Social capital is part of the gatekeeping analysis. With restrictive gatekeeping, it would be expected to diminish the nonmoving-child relationship and the explanation would be in terms of the child losing out on access to the parent's psychosocial resources and contributions to the child. Gatekeeping and the potential harm to the nonmoving-party relationship will be the central focus in virtually every relocation dispute and debate. Social capital is one available explanatory concept⁶² to address the expected level of the child's adjustment to relocation. It is inextricably intertwined with the gatekeeping analysis. To wit, facilitative, inclusive gatekeeping will open the gate for the distant, nonresidential parent's resources to be available to the child.

Advantages and Disadvantages

With the social capital approach the evaluator assesses the relative advantages and disadvantages (*e.g.*, benefits) expected to be associated with the two options of the child relocating with the moving parent, or staying in the home community with the nonmoving, nonresidential parent becoming the custodial parent. In order to be helpful to the court the analysis needs to describe the advantages in specific terms just as the court's written opinion may be expected to do the same. For example, the custodial report and legal opinion may both describe any apparent differences in the quality of educational opportunities in the two communities.

Part of the social capital analysis will include practical considerations on issues such as the custodial parent (usually mother) being more available to the child with her caregiving due to fewer work

hours with remarriage, or change in work hours with an expected new job. Another part of the analysis will be how there can be a suitable alternative parenting plan (albeit a long-distance one) so that an ample level of the noncustodial parent's parental capital can still be available to the child.

Perhaps more often, the legal context leads the judge to compare the child's best interests with relocation vs. the parent not moving, with the court simply denying the relocation of the child. The parent usually would not move and so the status quo would resume in a local parenting plan still in place. The moving parent usually will encounter an inherent disadvantage in showing the relative advantages and greater level of social capital in the new community and conducting the fundamental comparison. The asserted better opportunities and advantages may be more theoretical than empirically confirmed. The moving parent may not yet have the new job, or an excellent job offer may disappear due to the time delay associated with litigation. The new peer friendships and extracurricular activities or sports teams have not yet been established for the child. The moving parent has not yet established a new social network, though often there will be a ready-made network with expected resources available from extended family.

Realistically, the social capital analysis often will be one that is a somewhat "tilted playing field" in favor of the nonmoving/noncustodial parent for these reasons of being able to better identify tangible advantages with continuing a "local parenting plan" with the court denying the child's relocation. However, in some cases the factual analysis may show that the nonmoving parent is not a "viable candidate to be the custodial parent" (*i.e.*, one of the forensic guideposts). This situation could be due to lack of time availability by the noncustodial parent (*e.g.*, due to work schedule). It could be due to an issue of risk of harm posed by the parent (*e.g.*, a history of substantial intimate partner violence or substance abuse). The presence of explicit or implicit anti-relocation bias also will tilt the social capital analysis so that the parents are not starting out on "equal footing" in the analysis of the facts and circumstance (also a forensic guidepost), or application of a factorial analysis.

Using the Approaches in Tandem

The two approaches can both apply to the two scenarios of the child relocating with the parent, or not relocating. The risk assessment approach is

a research-based approach to examine relevant risk and protective factors. The social capital approach is a practical, fact-based component to the data collection and analysis. They are complementary approaches. Many of the facts gathered in custody evaluation or presented in trial as evidence will be “social capital data,” or related to specific, identifiable advantages or disadvantages associated with the parenting plan options. Examples of specific advantages and disadvantages would be the quality of schools, the degree of support from extended family in one location versus the other, the improvement in the cost of housing and employment opportunities. Together, these factors would be asserted to enhance the overall quality of life for the relocating parent and child. The identified potential advantages of the move will be linked to the stated reasons for the move. Often, the moving parent would assert that direct benefits to her (e.g., remarriage) will have indirect benefits to the child (another forensic guidepost).

The evaluator can gather data on all of relocation risk factors and describe for the court the complex interplay among the factors. Often the gatekeeping factor will dominate the analysis and the gatekeeping forensic model can be used in the analysis. However, in some cases the data may show both parents have engaged in cooperative co-parenting and facilitative gatekeeping until the relocation issue surfaced. Specific description of the restrictive or facilitative gatekeeping behaviors is encouraged. The evaluator can describe a fact pattern based on the risk and protective assessment of the factors.

SUMMARY AND PRACTICE TIPS

The following are some considerations for evaluators (and attorneys) as they attempt to design and implement their systematic approach to the special and complex issue of relocation and child custody/parenting time, and the need to address the possibility of crafting a long-distance parenting time plan:

- Evaluators are challenged to conduct a careful relocation investigation of the facts related to factors (legal and psychological) and social capital components in the case.
- Evaluators are well advised to understand the basics and nuances of their state’s laws on what type of comparative analyses are required or permitted under the law.
- Evaluators may want to consider the forensic guideposts and issues discussed previously and in *Part I*.
- Evaluators should consider as the court might expect them to gather data and offer expert opinion on any and all best interest and relocation factors that may be found in the state’s laws.
- Evaluators can consider using the relocation risk assessment forensic model. The factors provide a research basis for the analysis as a first step and as a heuristic for the evaluator and judge to consider with the relevant data on the factors. They complement any state legal and other relevant factors.
- Evaluators and judges can consider using the forensic parental gatekeeping model to complement the relocation analysis. It is an efficient heuristic to use to look at the gatekeeping portion of the legal relocation calculus because it is always going to be relevant. Gatekeeping will generally be the centerpiece of the relocation analysis.
- Evaluators usually are going to describe—at least informally, but sometimes explicitly—the relative advantages and disadvantages associated with relocation of the child with the parent and the alternative options. If there is a statutory factor that requires the analysis of how relocation would improve the *quality of life* for the parent and child, then this would imply a social capital analysis. Evaluators can consider using the social capital concept to make this portion of the relocation analysis more efficient and easy to understand for the court.

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