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Child Custody Evaluation and Relocation, Part I of III: Forensic Guideposts for the Evaluator and Court

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This is a three-part article on the issue of how to best to conduct child custody evaluations for the relocation case and how to review the quality of relocation-custody reports and evaluations. The article should be useful as a forensic and theoretical tool for custody evaluators, but it also should inform attorneys and judges as to what to expect in a high-quality custody evaluation involving a relocation dispute.

The purposes of Part I are threefold. First, the psycho-legal dilemmas associated with relocation are discussed. The legitimate wishes of a parent to relocate with the child away from the home community and other parent is juxtaposed with the other parent's intense wish to remain highly involved with the child in a "local parenting plan." This is the relocation conundrum. The nonmoving parent is often convinced his (or her) relationship with the child will be irreparably harmed if the court allows the child to relocate. The moving parent will assert that it is grossly unfair should the court deny the relocation request and she (or he) cannot reap the benefit from the purported reasons for the move, for example, a new marriage, a job, or to receive support from extended family in the community of origin.

Second, the nature of relocation and child adjustment are discussed in the context of the relevant theory and research. A large body of literature shows that relocation is a general risk factor for children of divorce just as is divorce itself.¹ It

follows that if relocation of the child should occur, then the evaluator needs to address how to contain the risk of potential harm to the child–nonmoving parent relationship.

Third, 15 "guideposts" for evaluators are presented as a general guide or perspective on the challenges that face evaluators in relocation cases, as well for judges to consider.

Relocation cases are difficult to settle because there generally is not a way to compromise on the ultimate issue. Either the moving parent moves with the child, or not. As a result a high percentage of relocation cases are litigated and will require a child custody evaluation. There are exceptions, however. The nonmoving parent also can move to the new location, or somewhere closer, if the court

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permits relocation. Another option, when the moving parent is moving to join a new spouse, is to ask whether the new spouse can move instead of the parent. If there is going to be relocation, then the structure and specifics of the long-distance parenting plan can be negotiated and agreed upon.

Part II presents two alternatives to using a systematic approach to the relocation evaluation. One is the widely used relocation risk assessment forensic model.² The other is an efficient, practical, straightforward approach to this complex type of child custody dispute, or a psychological cost/benefit analysis that identifies the relative advantages and disadvantages of the two proposed alternative residential living environments associated with a potential long-distance parenting arrangement. It is an effective approach to the complex problem created by a potential relocation of the child. The evaluator can describe the pros and cons of relocation versus the court denying the parent's motion for the child to move.

Relocation is one of the complex issues that courts and evaluators encounter as defined by the *Model Standards for Custody Evaluation* by the Association of Family and Conciliation Courts.³ Other complex issues include cases involving allegations of intimate partner violence, child sexual abuse, or alienation. The *Model Standards* call for custody evaluators to adopt a systematic approach when they encounter one of the complex issues. Part II presents two systematic approaches for organizing data collection and interpretation for the relocation case to assist the evaluator in making recommendations to the court.

A high percentage of relocation cases are litigated.

Part III discusses the process of forensic consultation and expert testimony in relocation cases. Due to the complexity of relocation cases it is not uncommon to encounter child custody evaluations that have significant deficiencies, thus making forensic consultation services an attractive option for attorneys. The attorney who encounters an unfavorable recommendation by the court-appointed evaluator and believes there are significant issues with the quality of the evaluation may want to address the issue by requesting the forensic consultation services of a work-product review for a potential rebuttal expert witness. The

consulting forensic psychologist should strive to conspicuously adhere to ethical guidelines to conduct an objective review of the custody evaluation and report; be balanced in his or her analysis; be aligned with the data and application of the professional literature; and follow the oath to tell the truth. Otherwise, the testifying rebuttal expert will be viewed by the court as not credible. A consulting forensic expert provides a type of checks and balances in the family court to examine whether the court's expert evaluator was providing reasonable and accurate analysis. The stakes are high in custody disputes, especially in relocation cases, in which the child's future and best interests are under the evaluator's (and judicial) microscope with the potential that a long-distance parenting plan will be put into place.

CURRENT MOBILITY CENSUS DATA

The latest US Census data show that the overall rate of mobility remains high in the United States, although recent data indicate a decline in mobility over time. Of individuals aged one year and over 35.9 million moved to a different residence in the United States between 2012 and 2013. This is an annual "mover rate" of 11.7 percent of the total population,⁴ a significant decline from 15.9 percent in the 1998–1999 census.⁵ The 2010 census survey data indicates that 100 million people moved, but this was a decline from 107 million in the 2000 census. There were fewer inter-county and interstate moves over the five-year period, 2005–2010. The overall mover rate shows a downward (but still high) trend with 45.9 percent (1995–2000), 39.5 percent (2000–2005), and 35.4 percent (2005–2010). The census bureau publications do not differentiate inter-county and interstate moves; they comprised 15.7 percent in 2010.⁶

Nonresidential/noncustodial parents move with considerable frequency.

Not surprisingly, separated individuals were the most mobile group, 55.1 percent,⁷ and this mirrors previous census data.⁸ Never married individuals were similarly very mobile (44.2 percent). As with previous estimates, the latest data show that young children have a high mobility rate, at 44.7 percent for five- to nine-year-old children,⁹ similar to that found in an Australian study.¹⁰ It seems reasonable

to conclude that this rate reflects both the high divorce rate and the high mobility rate among both young adults and separated or divorcing individuals. The age groups that are more likely to have younger children have higher moving rates, for example, 25–29 years, 65.5 percent and 30–34 years, 45.5 percent. The divorced group has a relatively low rate (26.1 percent) probably reflecting that part of this cohort had been divorced for a number of years and had largely already transitioned into new housing and post-divorce life.

THE RELOCATION CONUNDRUM

Relocation cases are some of the most challenging that judges and evaluators face. Both professionals are presented with a conundrum of competing interests, constitutional rights, and practical challenges on how to craft a workable long-distance parenting plan, if the result of litigation would be the implementation of a long-distance parenting plan. One state high court referred to such disputes as “the most vexatious,” in their nature.¹¹ When custody disputes are litigated and go to trial, judges inevitably will feel as though they are wielding the proverbial “Solomon’s sword”,¹² but the judicial task is even more daunting when the outcome may be the establishment of a long-distance parenting arrangement.

Relocation often turns a cooperative co-parenting relationship into high conflict.

The psycho-legal relocation dilemmas concern the conflicting social policy goals and constitutional rights of parents to both have the right to travel (and implicitly pursue personal, social, vocational, or educational goals in order to improve one’s quality of life) and to have access to and involvement with one’s children. On common sense, intuitive grounds for most persons, laypersons as well as professionals, it does not feel right or comfortable for there to be a voluntary separation between a parent and his or her child. This is why for both evaluators and judges the problem of anti-relocation bias is such a real problem in contested relocation cases, as discussed later.¹³ There is some indication that as a result of the last downturn in the economy relocation seemed to become more frequent in the hardest hit states, for example, Michigan.¹⁴

Children and parents both adjust to divorce with time, but separation in a “local” parenting time arrangement poses fewer obstacles in maintaining the parent-child “reciprocal connection.”¹⁵ Motivated, responsible nonresidential parents generally are able to stay highly involved with the child and to sustain a meaningful relationship. In contrast, in a long-distance parenting arrangement, it is much more challenging to sustain quality and a meaningful parent-child relationship.

Commonly, the moving parent will present a “maximum access plan.”

Authorities point out the reality that relocation, especially with an interstate move, inevitably will alter the quality of the nonresidential/distant parent-child relationship. Even a local move can substantially alter the ability of the nonresidential parent to be involved if there is a conservative parenting time plan in place.¹⁶ This will be the reality with a “substantial local move” in a large urban metropolitan area.

Case law and “relocation statutes” in many states (at least 37 states) show that every state recognizes that a parent’s desire to relocate is legitimate and needs to be fairly examined, even when it is an interstate or international move that is being proposed. States do not have case law that requires a “necessity test” to justify the proposed move.¹⁷ Herein lies the psycho-legal dilemma created by relocation. There are two competing, legitimate policies, and realities in post-divorce families. In some instances, albeit infrequently, when a relocation request (for example, a motion to the court) is denied, and the parent (usually the mother) feels she has no choice but to move without the child, then the same risk and challenge for long-distance parenting is created. That is, there will be an extended separation from a parent. It should also be kept in mind that nonresidential/noncustodial parents move with considerable frequency, thus also creating risk for the child. The distance creates the psychological risk to the child. Research shows that considerable geographical distance does indeed negatively affect parent involvement¹⁸ and poses long-term adjustment issues when geographical separation is created by either parent moving.¹⁹

The challenge for both parents is how to manage the risk of harm to the parent-child relationship and then indirectly to the child when there is a long-distance parenting plan. The research described

below clearly demonstrates both the potential harm to the child of divorce associated with relocation and the importance and benefit to the child's development and well-being when there are quality relationships with both parents, and with fathers.

The author proposed two types of potential "theoretical harms" associated with relocation and the resulting situation of long-distance parenting.²⁰ There is potential "relationship harm" associated with less involvement and a qualitative negative shift in the relationship due to the practical limitations for involvement associated with long distance. Second, there is potential "developmental harm" to the child due to less involvement by the distant parent and all the psychosocial resources and assets that the parent brings to the table (for example, "parent capital").²¹ Children also are placed at risk of adjustment difficulties due to being exposed to the parental conflict that relocation inevitably produces, or "relocation engendered conflict." Relocation often turns what was an existing, established cooperative co-parenting relationship into one characterized by high conflict and mistrust.

Relocation can be considered a general risk factor for children of divorce.

The psycho-legal dilemmas associated with relocation inevitably cause angst, and sometimes, moral outrage in the parents' expressions and behaviors. The nonmoving parent's perspective (usually the father) inevitably will be that relocation will severely damage the quality of his relationships with the children. He often asserts the moving mother is trying to "alienate" the children from him. This will seldom be the case, but the proposed relocation is appropriately analyzed in terms of how supportive the moving parent has been (and will likely be in the future) of the other parent-child relationships, or a parental gatekeeping analysis.²² The moving parent often will genuinely maintain that she will be supportive of those important relationships. Or, the moving parent's lawyer will advise her (or him) that it is important to appear supportive. Commonly, the moving parent will present a "maximum access plan" for the other parent's parenting time and contact in a proposed long-distance parenting arrangement to demonstrate her support. This may do little to assuage the other parent's sense of anticipatory loss and panic about "losing his child."

From the moving parent's perspective, if the relocation request is denied, she will also experience a sense of emotional loss related to lost opportunity related to the reasons for the move. She will assert the court's decision to deny relocation of the child will be unfair both to her and the child. The reasons for wanting to relocate usually will be legitimate. The most frequent reason for moving is for a mother to want to return home to her community of origin to receive support (for example, social, emotional, financial, and child care) from parents, extended family, and friends. However, courts often are disinclined to approve moves when this is the only reason.²³ Moves due to economic opportunity or remarriage may be more persuasive to the court because of the perception that the parent has little "realistic flexibility" on the moving issue.²⁴

Effective parents learn to compartmentalize negative, nonsupportive attitudes.

RELEVANT RESEARCH ON DIVORCE AND RELOCATION

Effects of Relocation on Children of Divorce

Extensive research from sociology and demography shows that residential mobility (or relocation) is a strong predictor of the long-term adjustment and well-being for children of divorce.²⁵ The research is so impressive that relocation can be considered a general risk factor for children of divorce just as divorce itself is. More moves create more risk, but one high-quality study with a large sample found the "relocation effect" was associated with just one move. There were significantly more emotional and behavioral problems at school for children of divorce compared to children in intact families who moved.²⁶ As a result of this research, the challenge for custody evaluators is to recommend parenting plan options that will address the issue of managing the risk and mitigating the potential harm associated with long-distance parenting.²⁷

Importance of Both Parents

Another substantial research literature shows that children of divorce show better long-term adjustment and well-being when they enjoy quality relationships with both parents, especially if the exposure to

parental conflict can be contained.²⁸ Similarly, research has demonstrated the importance of fathers for children's development and adjustment,²⁹ even when there is significant parental conflict.³⁰

Social Capital Analysis

Social capital is a widely used concept in the social sciences³¹ to explain the way social resources enhance how well individuals cope and succeed. In the context of divorce, social capital refers to the psychosocial resources that children receive from the important relationships and experiences in their lives. Parents are the most important source of social capital, especially for young children. This concept serves to explain why children do better when there are two involved parents following separation and divorce, or the benefits known to be associated with shared parenting time arrangements.³² Prominent researchers have relied upon the concept of social capital to explain the benefits to children of divorce from continued father involvement.³³ Social capital helps explain the common empirical finding that children in two-parent intact families show better long-term outcomes and well-being compared to children raised in other family structures.³⁴

There is great variation in state relocation law.

Parental Gatekeeping

The focus of relocation disputes inevitably is on the potential damage to the nonmoving parent-child relationship. The research-based parental gatekeeping forensic model addresses this issue.³⁵ Gatekeeping refers to the attitudes and actions of a parent that affects, or can be expected to have an impact on the quality and involvement of, the parent's relationship with the child, either positively or negatively. Research shows maternal gatekeeping is significantly associated with the father's actual involvement and child adjustment.³⁶

Thirty-two states have a statutory best-interest factor that can be considered a "gatekeeping factor." This factor takes on added meaning in the context of a relocation dispute. The court will want to know whether the moving residential parent is likely to be supportive, and probably proactively supportive, of the nonresidential, nonmoving parent-child relationships.

The gatekeeping continuum ranges from positive, facilitative, inclusive co-parenting on one end to very restrictive, inhibitory gatekeeping on the other. Severe parent alienating behaviors would exemplify very restrictive gatekeeping. While using other descriptive terms, nonmoving parents routinely assert, in effect, that relocation represents very restrictive gatekeeping by the moving parent.

One could argue that a parent's motion to relocate with the child a very long distance away from the other parent or an interstate or inter-country move, represents restrictive gatekeeping. The question for the evaluator and the court, then becomes one of determining whether the proposed relocation can be justified in light of the context, circumstances, and fact pattern in the case, or reaching the conclusion that relocation would be justified restrictive gatekeeping.³⁷

Colorado has eleven best interest factors and nine relocation factors.

Both parents often engage in restrictive gatekeeping following separation and divorce. It is part and parcel of parental conflict. Effective parents learn to compartmentalize their negative, non-supportive attitudes about the other parent from their gatekeeping behaviors so that both parents can be active participants in the parenting and co-parenting process, or a constructive shared parenting arrangement. This process of compartmentalization is part of functional co-parenting in spite of residual hostility and resentment that still may be brewing. When the nonmoving parent can demonstrate that the other parent has shown a history of restrictive gatekeeping, then it probably will carry much weight with an evaluator (and judge) on the relocation issue.

Research Factors to Consider

Another source of research that is relevant to approaching the relocation dispute comes from the research literature on child development and the effects of divorce on children. The research-based relocation risk assessment forensic model³⁸ was extrapolated from this research literature to provide a framework for custody evaluators and courts to use. It is a first step in organizing the data in the case in terms of risk and protective factors. The factors are research-based, and some of the factors

resemble common statutory relocation factors such as gatekeeping, past involvement by the parents, age, and distance. The research-based factors can be used for organizing the data and relocation analysis in a way that is complementary to the consideration of the legal relocation factors found in the state's statutes and case law. The forensic model is described at length in Part II.

Families Involved in Relocation Custody Litigation

Several creative research projects on relocation have been conducted in several other Western countries. Cashmore and Parkinson and Taylor studied the real life experiences of parents who were involved in relocation custody litigation, both in instances in which relocation was approved by the court and in which it was denied and usually the parent did not move without the child.³⁹ They have studied a limited number of children to try to ascertain how they adjusted to relocation. All of the relocating parents were mothers.⁴⁰

Facilitative gatekeeping can mitigate relationship harm.

The research is qualitative and descriptive so the findings must be considered preliminary and only as a basis for multiple, interesting hypotheses on relocation issues. Cashmore and Parkinson had a sample of 40 fathers and 40 mothers and they were studied over a period of years. About an equal number of cases resulted in relocation or a denial of relocation. A high percentage of the cases had a child-custody evaluation conducted. A high percentage of fathers (but limited in actual number) followed relocating mothers and children to either live in the new community or to be closer to them. A few mothers moved without the child; one moved back. When relocation was allowed, the left-behind fathers were (not surprisingly) generally still quite distressed after several years. Mothers who were allowed to relocate were the most satisfied and thought the move had turned out well for the children. Only a small number of children were interviewed and assessed on a behavioral measure, but they seemed to have adjusted reasonably well to the move, fit in at school, and made new friends. They reported missing their friends. These are not surprising results, but they are preliminary and suggestive.

Mothers who stayed in the home community after relocation was denied were disappointed, but generally came to value the contributions of the father.

The research is useful in revealing many of the practical realities associated with relocation. Children did not like long auto rides to spend time with the distant fathers. They preferred air travel. Many fathers could not exercise all of their court-awarded parenting time due to time constraints and cost. The researchers found that many of the moving mothers had not thought through their proposed move very well and the cost of litigation. When remarriage, re-partnering is the main reason for the move they emphasized that moving parents should consider whether the new partner could move instead.

THE RELOCATION PARADOX

A legislation declaration that can be found in the domestic relations statute in many states announces a social policy to encourage the continuing involvement by both parents in the lives of the children.⁴¹ The research cited previously shows there is scientific support for this pronouncement. Because relocation poses huge obstacles to the continuing involvement by the nonresidential parent, it creates the "relocation paradox." State relocation statutes and case law in effect create the competing social policy of recognizing the legitimacy of a parent's intent to relocate with the child, and hence, the paradox or dilemma found in all contested relocation cases, for example, relocation is likely to diminish involvement and relationship quality.

Summer can become "compensatory parenting time."

The challenge for the court and evaluator is to consider how to manage the risk of relationship harm should there be a long-distance parenting arrangement. There can be a high-quality, noncustodial parent-child relationship with long distance, but it will be a qualitatively different type of relationship.

VARIATIONS IN THE LAW

Unlike other types of custody disputes, relocation cases require evaluators to have an advanced and nuanced understanding of the controlling

state law. In other cases, an evaluator may need to understand the controlling legal standard for a modification of an existing parenting plan and permanent court order and the best interest factors, but it is unlikely that there will be a lot of legal nuances. An evaluator might need to know how to gather data to help the court understand whether there had been a substantial change in circumstances since the previous order was issued, or, what the standard for modification might be if there had been an equal parenting time plan in place. An evaluator might need to know the state's definition of domestic violence if there had been allegations so as to assist the court in making a finding on the issue. Knowing the definition would be necessary to guide data gathering on the issue.

The author's experience is that anti-relocation bias is commonplace.

Professional guidelines and standards direct psychologists and custody evaluators to have an adequate understanding of the law. Both the ethics code for psychologists⁴² and the model standards for custody evaluation⁴³ contain such provisions.

Relocation cases are much more challenging for evaluators to understand the law. There may be many nuances and ambiguities. For example, California and Colorado (pre-decree cases only) require evaluators and the court to assume that each parent will actually be living in the location that they designate for the litigation. This is an ambiguous issue in the law of most states. Surprising, in a recent survey of evaluators⁴⁴ the majority of evaluators thought their state law required them to make this assumption about location. It often is ambiguous whether an evaluator can consider if a moving parent would actually move without the child if the relocation motion was denied. California explicitly forbids the court from considering such information. Conversely, it usually is unclear if the evaluator and court could consider if the nonmoving parent could or would follow the moving parent and child. However, the state of Washington explicitly directs the court to consider this information.⁴⁵ It may be unclear under state law if the court can simply deny a relocation motion without being prepared to change the residential parent in a post-decree modification case.

Evaluators certainly need to be aware of and measure data on any relocation factors that are present in statute and case law. Some states assign a burden of proof to one of the parties that then may shift when a *prima facie* case is made on the reasons and context for moving, or opposing the child's relocation.⁴⁶ The evaluator can assist the court with relevant data so the legal standard can be applied. Typically, the moving parent will have the initial burden of proof to show the move is a reasonable one⁴⁷ and sometimes with also providing a "reasonable financial security."⁴⁸

There is great variation in state relocation law⁴⁹ with 37 states having relocation factors in a statute (in 2010). Other states, such as California, New York, North Carolina, have relocation factors found only in case law. Some states, such as Colorado and Illinois, have relocation factors in both statute and case law. North Carolina doesn't have best interest factors in either statute or case law, but has relocation factors in case law.

The prevailing trend for a legal standard for relocation among the US states, for many years, has been a "best interest of the child" standard with a list of relocation factors.⁵⁰ Only a few states, such as New Jersey, have a presumption either for or against relocation by a residential parent, but not if there is equal parenting time. California has a statutory presumption, but it is overcome by a showing of substantial harm to the nonmoving parent-child relationship.

15 IMPORTANT GUIDEPOSTS FOR EVALUATOR TO CONSIDER

The following starting points or "guideposts" are proposed for child custody evaluators to consider as part of their systematic approach.

- (1) *Knowledge of law, importance of legal context for fact pattern, and nuances in the law.*

As noted previously, evaluators will be wise to have a solid foundation in their knowledge of the nuances and differing contexts on the application of relocation law in their state. They should know what legal standard applies and when. They need to assess all of the best interest and relocation factors in statute and case law. The pre-decree vs. post-decree context may be important. The evaluator needs to know if the court should

assume that the parents will be living in the location they designate. It is important to know if there is a bar to considering information on whether the moving parent would move without the child, if relocation were to be denied, or, if information could be considered that the nonmoving parent would also move if relocation were to be approved, as in the state of Washington. When there is ambiguity about the law, the evaluator would be wise to ask the attorneys, who in turn, may need to ask the court for clarification to assist the evaluator.

- (2) *What are the moving parent's stated reasons for relocation and the reasons for opposing relocation by the nonmoving parent?* This factor is almost always found in the list of factors found in US states. Sometimes it is referred to as the "motives" for wanting to move, or opposing the move, for example, as in Illinois. The stated reasons for the parents requesting or opposing relocation is almost always found in the pleadings. Judges always want to know if the proposed move makes sense for improving the parent's quality of life and for the child's best interests. The evaluator can assist the court by collecting details on the reasons and whether the data correspond with the parents' stated reasons. The evaluator can assist the court on the issue of whether there appears to be "bad faith" or showing "vindictive motives" in the relocation scenario. These terms are sometimes found in state high court opinions and often have to do with retaliation (for example, a relocation motion in response to a change in custody modification motion) or with trying to minimize the other parent's role in the life of the child (for example, restrictive gatekeeping or alienation). In a well-known California case that was upheld on appeal, the trial court found that the mother's purported intent to receive training in parapsychology in a Florida program was insufficient and suspect as a reason to justify relocation.⁵¹ In a recent New York case⁵² the appellate court cited the relocation factors from case law⁵³ and then performed a factual and practical analysis to determine whether relocation would be in the child's best interests. The mother wanted to move to Texas to be near her family and work in a family business.

The court questioned whether there really would be much financial improvement, and the mother was unclear exactly what her salary would be. The court was swayed by the father's degree of involvement and also by that of the paternal grandmother on a regular basis.

- (3) *Fundamental comparison and importance of investigation of the facts and issues.* All litigated custody disputes require the evaluator and court to consider data or evidence on what the quality of life will be like in two alternative residential placements or parenting arrangements. In the relocation context, the evaluator needs to be especially vigilant in assembling the necessary data to help the court understand the advantages and disadvantages for the child associated with the alternative living scenarios. The evaluator's duty to be a thorough investigator takes on added meaning and responsibility in the context of relocation. The evaluator needs to help the trier-of-fact visualize what life will be like for the child if he is living primarily with the moving parent versus continuing to live in the home community with the nonmoving parent as the residential parent. With a relocation analysis, the evaluator needs to gather sufficient data to conduct this comparative analysis for the court *as if* there was going to be long-distance parenting in place. Best practice would require the evaluator to conduct a site visit to the proposed new community where extended family can be interviewed, the school examined, and so forth, but it may prove too expensive.

In some states, relocation law is set up so the evaluator needs to explicitly make predictions about the child's outcomes and best interests as if the child would relocate with the moving parent. The fundamental comparison, or comparative analysis, would also require the evaluator to do the same if there was a change in custody (or the residential/custodial parent) due to the parent moving. It appears to be more often the case that the judicial relocation analysis allows the relocation to be denied without addressing the issue of a change in custody and assuming the mother would not move with the child. It appears that the majority of evaluators

assume they need to make the comparative analysis,⁵⁴ but it is probably the case that judges routinely turn down a relocation motion without ever addressing the issue of a change in custody. In the New York case reviewed previously⁵⁵ the appellate court simply concluded that relocation would not be in the child's best interests. A possible change in custody from the mother to the father was never addressed.

When the state's relocation law permits the court to deny relocation without addressing the issue of a change in residential/custodial parent, this would appear to be a theoretical internal inconsistency in the law. It also functions as a *de facto* presumption against relocation when there is a competent, involved nonmoving, nonresidential parent. The comparative analysis is not how the child's best interests would be served when living in the two communities with the respective residential parent. Instead, the analysis becomes how the child would fare while living in the new community with the moving, residential parent versus the status quo with both parents continuing to live in the home community with continuity and stability in school placement, friends, extended family, and extracurricular activities. This situation is an unfair comparison that will almost always favor the scenario on the child not moving.

- (4) *Evaluators should utilize a systematic approach to the case and fact pattern to guide the design and implementation of the forensic evaluation, as suggested by the AFCC Model Standards (2006/2007).* Two options for a systematic approach are discussed in Part II. They include, first, the relocation risk assessment forensic model,⁵⁶ and second, describing the relative advantages/disadvantages of the child relocating versus not moving, or a psychological cost/benefit analysis⁵⁷ applied to the fundamental comparison.
- (5) *Assess the factors from the statute and case law, and other relevant factors.* A majority of US states require evaluators and courts to consider specific relocation factors in addition to the basic best interest factors that may be listed in the statute and case law. For example, in Colorado the court and evaluator must explicitly consider all 20 statutory factors, 11 best interest factors and nine relocation factors.⁵⁸ In California, the controlling case law lists nine factors for courts to consider, but indicates there may be other relevant factors.⁵⁹ Common relocation factors would include the child's age; the distance of the move; the past pattern of involvement by both parents, including whether there has been a primary caregiver parent; the impact of the move on the child; and whether a suitable alternative parenting time schedule can be created to sustain the continuing involvement of the nonresidential parent.
- (6) *Past and projected pattern of parental gatekeeping by both parents⁶⁰* as this factor holds the key to maintaining quality in the parent-child relationships in the context of long-distance parenting. The ability of the moving parent to support the other parent-child relationship will be a focus of most litigated relocation cases as the nonmoving parent will assert that the move will damage his relationship with the child and thereby harm the child. Facilitative gatekeeping provides the family with resources for mitigating relationship harm. Does the moving parent's proposed parenting plan for long-distance represent cooperative co-parenting and facilitative gatekeeping? Will the resident parent be inclusive and proactive on promoting the distant parent-child relationships? The gatekeeping factor is a common statutory best interest and relocation factor in case law.
- (7) *What is the degree of realistic flexibility on the moving issue for the moving parent, and if allowed by law, for the nonmoving parent on the option of also moving and following the child?* This is an important consideration for the court in determining whether the move makes sense or is a cogent move. Remarriage, a unique employment opportunity, or the need to care for an aging parent may be examples on the degree of realistic flexibility. The evaluator can gather valuable data for the court on this issue.
- (8) *Based on the investigation and forensic assessment, is the nonmoving parent a viable candidate to be a resident parent?* Only if the state

law clearly has to consider a change in custody as an option as part of the relocation analysis is this necessary. If the law places both parents on an even playing field, then this step in data gathering in analysis is necessary. If the nonmoving parent is not a “viable candidate” to be the primary and residential parent in a long-distance parenting arrangement, then the task for the evaluator becomes limited to recommending alternative parenting time or access arrangements and schedules in a new long-distance parenting plan.

- (9) *Practical and logistical questions and issues.* More so than in other types of custody disputes in which parents live locally, evaluators need to carefully examine issues of time, travel, and the financial resources of the parents. In an interstate, long-distance arrangement with limited financial resources and flexibility on getting time off work, a nonresidential parent simply may not be able to travel to the child’s new community. In the case of a young child, a parent would need to accompany the child with air travel. Custody evaluators seldom need to (and should not) address financial issues between the parents. With relocation, evaluators will want to address the issue of travel costs, but should not make recommendations about who should be responsible for travel costs as this is a matter of equity for the court to consider. Evaluators should not take at face value a nonmoving parent’s assertion that he simply cannot afford to travel.
- (10) *What do model parenting plans offer in considering alternative parenting plans should there be relocation and long-distance parenting?* Arizona may be the only state that addresses the issue of appropriate or alternative model parenting plan options to consider for long-distance parenting.⁶¹ Evaluators need to have an understanding about what types of plans and schedules will be developmentally appropriate with the overarching consideration of how to sustain quality in the nonresidential parent-child relationships. This is obviously more important for younger children. With an involved nonresidential parent, older children would be expected to spend long blocks of extended parenting time with the distant parent in the summer and for many of the school vacation times.
- (11) *What future access schedules should be anticipated to reflect the changing developmental needs of the children?* If there is to be a long-distance parenting plan with younger children, then evaluators can be helpful to the court by considering gradual increases in parenting time for the nonresidential parent. With younger children the best parenting time schedules may be those with frequent shorter parenting time blocks. Practical realities may preclude this from occurring. With advancing age and developmental maturity, longer blocks of time become appropriate. Summer can become “compensatory parenting time” for the diminished involvement of the nonresidential parent during the school-year months.
- (12) *Does the law allow or require that indirect as well as direct benefits associated with relocation be assessed?* Many state relocation laws address whether relocation will improve the quality of life for the parent and child. Evaluators may want to address the issue of indirect benefits to the child separately from the direct benefits to the moving parent, or an expected “trickle-down effect.” Several states, including California, Colorado, and Illinois, make this explicit. A moving parent will argue, for example, that an expected improved financial situation associated with relocation (for example, a new job or less expensive housing) and support from extended family are expected to benefit the child. The evaluator with adequate investigation can provide specific data on these details.
- (13) *Evaluators can be helpful to the court by presenting data on a “cogency test” for relocation so the court can determine whether the proposed move makes sense for the child’s best interests, and also what will be the least detrimental alternative decision.* The cogency test consists of consideration of the reasons for the move; the relative advantages and disadvantages; and the degree of realistic flexibility for the parent on the issue of moving.⁶² For example, with a two-year old child a least detrimental approach to the issue would be to ask if the move could

be delayed until the child was five years old, when the child's cognitive development was more mature and the child could more easily retain memories of the distant parent and reap more benefit for electronic communication. Evaluators should address the issue of and make recommendations for "virtual parenting time" (for example, Skype) in every case, if relocation is approved by the court.⁶³

- (14) *Evaluators need to not view proposed relocation as showing the moving parent is not putting the needs of the child first*, which is a common statutory best interest factor in the U.S.. This is due to the fact that all states recognize a social policy that relocation is a legitimate choice for parents to make in order to better the quality of their life and that of their children. The author's experience in reviewing colleagues' child custody reports and evaluations is that it is not uncommon for evaluators to view relocation in this way. Even though almost all proposals for relocation reflect the wishes and interests of the moving parent, rather than those of the child,⁶⁴ case law has described how the child's interests are expected to be intertwined with that of the moving parent.⁶⁵
- (15) *Evaluators need to be vigilant about avoiding bias in relocation cases more so than in other types of custody dispute cases*. The author's experience is that anti-relocation bias is commonplace.⁶⁶ This is understandable in light of the strong research on the importance of both parents' involvement for the child's best interests. In one case, the judge in ruling against relocation from the bench stated that any relocation case in her courtroom would not be approved "as long as the dad can get up in the morning and look in the mirror." The case was a difficult one with two different fathers for the two young children (ages five and seven years) with a proposed move to China for two years. The move made sense as the primary caregiver mother had a new husband whose job with Intel had ended locally, and he was offered the opportunity to open Intel's first manufacturing plant in China. In another recent case, the evaluator successfully talked the mother out of wanting to move from Colorado to Montana

because he thought the children were too young. Making such an intervention might be tempting with very young children, but it would not be ethical to do so.

SUMMARY

Most Western countries have a high divorce rate and concomitant high rate of residential mobility. Young parents with young children may be the most mobile group of parents. This formula makes for child custody relocation disputes with considerable regularity. The difficulty in settling such disputes through negotiation and mediation makes it fairly likely that such disputes end up in the courtroom and for a child custody evaluation to be ordered by the court.

The complexity of relocation disputes and the presence of countervailing social policies require custody evaluators to receive extensive advanced training. They need to adopt a perspective so that value judgments about relocation are checked; bias is controlled; and the parents are viewed as on equal footing on the relocation issue. This is a challenge for many evaluators, especially when a proposed relocation involves a long distance move and a very young child.

The complexity of relocation cases creates psychological dilemmas that face the evaluator in every relocation dispute. Research and common sense point out the risk of potential harm to parent-child relationships and the child's overall adjustment and development. The risk of harm associated with relocation, from the literature on the effects of residential mobility on children of divorce, should not be interpreted to mean that most children who relocate will suffer irreparable development harm and will have a low long-term sense of well-being. The risk perspective should not be used as a deterministic view to oppose cogent relocation petitions to the court. Case law points out that some detriment to the nonmoving parent-child relationship is inevitable, but if all a parent had to do was to demonstrate some modest degree of detriment, or relationship harm, then no relocation motion would ever prevail.⁶⁷ With resilient children and a resourceful, competent, and nurturing residential parent it can be predicted there will be adequate coping, adjustment, and well-being. Evaluators need to take a risk management approach to try to sustain quality in the nonresidential, distant parent and child relationships. Evaluators need to be mindful of the dangers associated with restrictive gatekeeping in a

parent who wishes to relocate. A practical and creative approach to crafting a long-distance parenting plan is needed to keep the distant parent involved, if there is to be a long-distance arrangement.

The research on parent involvement and child well-being following divorce supports the social policy of encouraging the continued involvement of both parents following separation and divorce. The competing social policy of recognizing that it is a legitimate life decision for a divorced parent to wish to relocate with his or her child makes it difficult for the other parent to stay meaningfully involved. This situation is the relocation paradox that is inherent in such cases.

This article presented 15 forensic guideposts to alert custody evaluators to general issues and questions associated with relocation to guide the design and implementation of their evaluation. The guideposts can be used with the forensic evaluation models to be described in Part II that provide structure for the gathering and analyzing data. The guideposts can be considered by attorneys as they scrutinize the quality of a child custody evaluation and recommendations to the court.

There is a large amount of research literature that is relevant and can be directly applied to relocation cases. Some of this research literature is captured in the relocation risk assessment model that will be presented in Part II.⁶⁸ The complexity involved in the relocation conundrum allows the custody evaluator to be more scientifically grounded in his or her approach. However, the evaluation process in relocation cases also can illustrate both the art and science of custody evaluations that authorities describe as a useful perspective.⁶⁹ The research allows for useful hypotheses to guide data collection and interpretation. At the same time, the realities of relocation disputes and the possibility of long-distance parenting and co-parenting require extensive practical analysis and problem solving.

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