

Custody Evaluations: The Overlooked Harm to Clients, Children, and Families

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When professionals step forward to warn of excesses in their fields, it behooves us to listen. That's what we did when some of the most competent psychologists we know began (1) advocating for serious limits on the use of custody evaluations or (2) even began reporting that they refuse to perform them due to the harm they cause.¹

With all due respect to the psychologists who do these evaluations and to the legal professionals who seek them, there are powerful reasons to doubt evaluations' validity, utility, and (for the children, parents, and relationships involved) even their survivability.

For six reasons, custody evaluations (1) should be limited to cases of serious allegations of domestic and substance abuse and parental psychopathology and (2) should never be used, as is too often the case, in trying to identify the "better parent."²

1. Custody evaluations are too often used where there is no real prospect that they can help children or their parents, oftentimes even where there is no real issue of custody.

We assume that all professionals, in and outside the fields of family law and counseling, agree that unnecessary harm to the consumer/patient should be avoided. But almost all custody evaluations in America are conducted without any prior determination that one is necessary or would likely assist in the resolution of issues or conflict. The Hippocratic injunction to Do No Harm is entirely missing. Rather than inquiring into the nature and level of the conflict between the parents, their use or failure to use problem-solving resources like good co-parent education, counseling, and mediation, most screenings for custody evaluations involve no more than the parents' or an attorney's claim that there is a custody dispute.

Actual practice with families suggests that parent and attorney assumption that there is a custody dispute is commonly mistaken and that only a minority of parents believing they have a custody dispute actually have one. Many are involved in a fear-based battle over "not losing my children," but very few are unable to resolve how their child-related

¹ *Custody evaluation* here refers to the nonconfidential assessment of adults and children in a family for use in a litigated custody contest. A sampling of the psychologists telling us they decline to perform them due to the consequences to families include Dr. Timothy Onkka (South Bend, Indiana), Dr. Deborah Silver and Dr. Robert Silver (Ft. Myers, Florida), Dr. Shay Daley (Lafayette, Indiana), and Dr. Robert Emery (clinician, researcher, professor, and writer from the University of Virginia).

² On these points we're in complete agreement with Dr. Joan B Kelly and Dr. Janet R. Johnston. See Kelly, Joan B., and Johnston, Janet R., "Commentary on Tippins and Wittmann's 'Empirical and Ethical Problems with Custody Recommendations: A Call for Clinical Humility and Judicial Vigilance,'" *Family Court Review*, Vol. 43 No. 2, April 2005, 233.

decisions will be resolved (legal custody) or settle on an arrangement to share parenting time (physical custody). Few even understand that this is what the law means by *custody*.

Many of these parents live minutes from each other and, if extricated from legal battling, are fully capable of reaching resolutions; yet they often have been mired in months (or years) of destructive legal combat “over custody.” In our experience, almost all are motivated by unrecognized and unresolved emotions, detachment and communication issues, and confusion caused by the adversarial system. Virtually none has an actual custody issue.

Certainly, not all the responsibility for this misdiagnosis lies with professionals. Parents in custody battles are often using a custody contest to negotiate or navigate their hurt, fear, or the end of their marriage. What they require from professionals, however, is the information (and sometimes counseling) to understand and succeed in this monumental task, not a dangerous misdiagnosis that they actually have a custody dispute.

Too often, that information is not shared with parents, and, consequently, less invasive, and more promising processes are not offered to parents to improve their co-parenting.

2. Custody evaluations are of doubtful validity.

Ironically, both critics and defenders of evaluations seem to agree on one thing: there has been no empirical showing anywhere that evaluator observations or recommendations correlate with better outcomes for children.³

Just beyond this sobering concession lies an even more sensitive matter: the way in which evaluators’ own financial interests, biases, and personal interests affect their assessments. Indeed, many psychologists (like many in the legal profession) agonize over:

- the unnervingly close connection between some evaluators’ financial interests and their conclusions⁴;

³ Emery, Robert E., *Renegotiating Family Relationships*, New York: The Guilford Press, 107; Tippins, Timothy M., and Wittmann, Jeffrey P., “Empirical and Ethical Problems with Custody Recommendations: A Call for Clinical Humility and Judicial Vigilance,” *Family Court Review*, Vol. 43 No. 2, April 2005, 193; Kelly, Joan B., and Johnston, Janet R., “Commentary on Tippins and Wittmann’s ‘Empirical and Ethical Problems with Custody Recommendations: A Call for Clinical Humility and Judicial Vigilance,’” *Family Court Review*, Vol. 43 No. 2, April 2005, 233; Emery, Robert E., Otto, Randy K., and O’Donohue, William T., “A Critical Assessment of Child Custody Evaluations: Limited Science and A Flawed System,” *Psychological Science in the Public Interest*, Vol. 6 No. 1, 1; Stahl, Philip M., “The Benefits and Risks of Child Custody Evaluators Making Recommendations to the Court: A Response to Tippins and Wittmann,” *Family Court Review*, Vol. 43 No.2, April 2005, 260.

⁴ When one parent pays for the testimony, it “invariably favors the side being represented and if it does not, the testimony is not likely to be introduced in court.” Emery, Robert E., *Renegotiating Family Relationships*, New York: The Guilford Press, 107. Another professor and clinical psychologist has lamented that there is a plain reason the counseling communities have been slow to respond with effective standards to curb the harm caused by evaluations: “[E]thical restrictions sanctions that restrict practice run the risk of impairing psychologists’ livelihoods, [t]hus a profession’s formal restrictions that attempt to

- the array of untested and contradictory evaluator postulates on everything from the primacy of mothers (or essentiality of fathers), to the ubiquity (or nonexistence) of parent alienation syndrome, to the conviction that joint legal custody can be presumed to benefit (or harm) all children;⁵ and
- the ways in which evaluators' own psychological makeup and personal issues are acted out in their evaluations.⁶

3. Custody evaluations are of doubtful utility.

Were one to indulge the speculation necessary to conclude that evaluations are reasonably objective and valid, an even more vexing problem emerges: how exactly do they serve the best interests of children or parents?

In truth, neither custody evaluations nor the judicial decisions they ostensibly assist commonly improve families' functioning or children's protection. It's often overlooked (and rarely explained to parents) that custody evaluations are in no way therapeutic exercises and that their only purpose is to assist litigation and judicial decision-making. But a custody decision is often the furthest things from a solution and, in fact, often actually creates more problems for families.

We have never seen, or even heard of, a judge's custody decision ending or reducing conflict. In our experience, custody evaluations and trials virtually always worsen parent conflict. In our mediation intakes, we ask parents if they have had a custody evaluation and, if so, whether it helped or hurt the family's functioning. No parent has ever reported that the evaluation helped, and most report that it hurt. Some report that it was the single most destructive event in their divorce.

As Sheldon "Shelly" Finman of Ft. Myers, Florida wisely states the matter, "A judge's decision in a custody case is the starter's pistol to the family's odyssey of conflict." Twice we have seen him challenge large groups of judges and other family professionals to name one time that a custody decision ended or diminished a couple's conflict. No one ever could.⁷ The judicial decision offering such dubious help in resolving conflict, it is impossible to hard to justify an invasive, divisive, and expensive process whose only purpose is to elicit that decision.

maintain the integrity of its practitioners can end up putting them out of business." Grisso, Thomas, "Commentary on 'Empirical and Ethical Problems with Custody Recommendations': What Now?," *Family Court Review*, Vol. 43 No. 2, April 2005, 223, 224.

⁵ Kelly, Joan B., and Johnston, Janet R., "Commentary on Tippins and Wittmann's 'Empirical and Ethical Problems with Custody Recommendations: A Call for Clinical Humility and Judicial Vigilance,'" *Family Court Review*, Vol. 43 No. 2, April 2005, 233.

⁶ Myers, Wayne A., *Shrink Dreams: The Secret Longings, Fantasies, and Prejudices of Therapists and How They Affect Their Patients*, New York: Simon & Schuster, 1993.

⁷ Mr. Finman's observation builds on one shared by Notre Dame Law Professor J. Eric Smithburn: "Judges in family cases don't do justice, and they don't help families heal. They merely make decisions for parents who fail to."

It's important to be clear that it isn't judges' fault that their decisions do not yield better outcomes for children, families, or family relationships. By litigating, parents almost always have left all their good options behind in favor of asking a judge to pick from the universally bad options that remain (the children will be with their angry and resentful mother on weekdays and with their angry and resentful father on weekends). It's reliance on custody evaluations and litigation, not the necessarily problematic judicial decisions they produce, that merits criticism.

4. Custody evaluations harm children, parents, and families.

Were custody evaluations merely invalid and unhelpful, they might still be tolerable. But as Mr. Finman's comment suggests, they're often actually much worse. They can badly injure the very people they are supposed to help.

Dr. Timothy Onkka sums up his reasons for refusing to do evaluations with this statement: "They're borderline processes." To make a lay use of a psychological term, no one is so compromised as when he's in a borderline mind-set—the view that the world is split into two irreconcilable halves, one of which (mine) is all good and the other (yours) all bad.

Yet this is precisely the mind-set that evaluations necessarily engender. Rather than helping parents acknowledge and coordinate their respective strengths, evaluations virtually require them to recall, imagine, and commit to memory the worst in each other—and to assume the impossibility of cooperation. Once the possibility of cooperation is discarded and replaced with the uniquely frightening prospect of "losing custody" of one's children, all that's left is to ferociously defend oneself and savage one's co-parent. (In a recent evaluation received in our office as part of preparation for mediation, the parents had traded almost 100 accusations in their evaluation and not a single concession of parental capability.)

When the first round of attacks is complete, both parents read what has been said about them, and the process predictably degenerates into a defense-counterattack phase. It is no exaggeration to say that this represents a descent from which many family relationships never emerge.

Evaluations also often include invasive psychological testing from which the most personal and dubious speculations are indulged. Typical statements may include, "Mr. Nelson's tested profile is suggestive of someone guided by self-interest and inclined toward using others to meet his needs" or, "Mrs. Nelson tests in a manner consistent with someone who is guarded and attempting to look healthier than she is." (The haziness built into these therapeutic-sounding statements is often lost on litigating parents and their attorneys and in the context of custody litigation. Dad *is* selfish and self-absorbed. Mom *is* a hopeless liar about her psychological deficits.)

Some evaluators even include statements from computer-graded standardized tests into their reports. While the validity of such a practice is seriously questionable, the far

greater problem here is that already vulnerable parents are rendered much better armed to attack and discount one another, much more defensive, and much more polarized.

We must remember that “there is generally no basis in psychology or law for choosing between these [good enough] parents.”⁸ Unfortunately and ironically, it is in just such cases of relatively equally matched “good enough” parents that custody evaluations can become the most destructive; with no professionally principled way to choose between the parents, the already invasive process often becomes more aggressive and destructive.⁹ This drive to excess can no doubt be fueled by parents’ and attorneys’ wish to receive a favorable (or at least definitive) evaluation, as well as by evaluators’ wish to be helpful and definitive.¹⁰

Naturally, no evaluation would be complete without interviewing and evaluating the children. This is undertaken with no apparent awareness or concern that many children blame themselves when, after being interviewed, they see their parents as wounded, depressed, and angry as before (or in their guilt-absorbent eyes, even more so).¹¹ The injection of children into these forensic evaluations can be no less than an attack on their right and need to be free of any sense of responsibility for the family’s circumstances.¹²

The damage to families from evaluations almost always involves a further dimension: enticing extended family members and close friends into an expanded level of family warfare. Sadly, the future functioning of the extended family and other support systems—often vital to the wellbeing of children of divorce—commonly receives virtually no consideration.

We’re indebted to Dr. Onkka for the additional clarifying observation that when good therapists work with divorced parents, they know that *their real client is the future*

⁸ Kelly and Johnston go further to raise even a constitutional issue: why divorcing parents should be evaluated and held to a higher standard of care than parents in abuse, neglect, and dependency cases. “The result,” they write, “is that custody evaluators are now producing exhaustive, intrusive, negatively biased assessments, psychological testing, and written reports in which separating parents are scrutinized and held to a higher standard of accountability than those in nondisputing divorces and intact families.” Kelly and Johnston, 238.

⁹ Mnookin, R. H. (1975), “Child-Custody Adjudication: Judicial Functions in the Face of Indeterminacy,” *Law and Contemporary Problems*, Vol. 39, 226; Emery, Robert E., *Renegotiating Family Relationships*, New York: The Guilford Press, 107.

¹⁰ Occasionally we’ve heard attorneys complain that an evaluator refused to designate someone “the better parent.” Of course, our position is that the evaluator’s demurrer came too late: when it was apparent (as it probably was from the start) that neither parent was a danger to the children, the justification for any custody evaluation disappeared.

¹¹ “Children believe they are responsible for all the major occurrences in their lives—including parental fighting.” Teyber, Edward, *Helping Children Cope with Divorce*, San Francisco: Jossey-Bass, 1992, 82.

¹² One couple our office saw in post-divorce mediation reported (1) that their custody evaluation injured their family worse than anything else and (2) that the worst part was the deep sense of fault their child, a nine-year-old boy, took away from being interviewed and feeling he didn’t say the right things to end the bickering. The parents said that their son had literally begged both of them, “Please don’t make me go.” The psychologist’s defense of his work was telling. When asked what good he thought was coming from these evaluations, he replied, “I never said anything good comes from them. Someone got an order from the judge for an evaluation, and I just followed the order.”

parenting relationship. Indeed, that relationship will have to make thousands of child-related decisions for years—and for years after the professionals regard the case as closed. That parenting relationship will determine most about the quality of life for the children. Yet evaluations often sacrifice that future parenting relationship (something of vital and irreplaceable worth) for a judicial decision (something most often quite useless and even destructive).

As advocates for wider and more sensible use of therapeutic professionals in cases of divorces, we feel compelled to offer a final word of caution. As custody evaluations grow more common, it's inevitable that evaluators will be sued in significant numbers. These lawsuits against evaluators will likely touch on errors and misjudgments in the evaluations, but they may all succeed because of a more basic problem for evaluators: the evaluations should not have been done at all, given (1) their predictable harm to children, (2) the failure of evaluators to make a reasonable inquiry or decision that the evaluation process was indicated, (3) the failure to refer parents for more promising alternatives first, and (4) the failure to give complete advice about the harm of and alternatives to the evaluations. Most states toll the statute of limitations on children's malpractice claims until age 20, and good defenses to these suits are difficult to discern.

5. Custody evaluations are conducted without informed consent.

All professionals, of course, owe their clients meaningful advisements on the benefits, costs, and risks of their processes and the opportunity to make an informed decision to submit to those processes. With all due respect to psychologists who perform evaluations (and who must believe they are observing their duty of securing informed consent), we do not see this standard in action. This failure is part of the reason we think that evaluators are going to be the subjects of numerous professional liability suits.¹³

There's no doubt that the advisements and warnings necessary to support informed consent would have to be quite comprehensive. But that is a function of the dubious cost-benefit balance involved in custody evaluations, not any hypertechnicality on the part of future plaintiffs and their counsel.¹⁴

¹³ Much as these suits may redress some of the injury to children who, upon reaching the age of 18 bring them, we do not look forward to them. It's avoidance of those injuries, not their compensation, that we seek.

¹⁴ A fair advisement to parents would likely have to include at least the following.

- A. A custody evaluation is not therapeutic and not necessarily in the best interests of the parents, their children, or the functioning of the family. Its purpose is not to improve functioning between parents.
- B. The process is not confidential. The notes, audiotapes, videotapes, and reports made in the course of a custody evaluation are in no way confidential and will be made available for viewing by all attorneys, judges, and parties.
- C. A custody evaluation does not in any way guarantee an end to the parents' conflict. The evaluation is for the sole purpose of producing a report that will be used by the parents, attorneys, and the judge in the parents' litigation against each other.
- D. Being part of the legal proceedings between the parents, the custody evaluation and resulting report can actually cause further conflict and, thus, further harm to children. The evaluation may

6. Custody evaluations displace better alternatives.

In law, as elsewhere, bad processes drive out good ones.

St. Joseph County, Indiana has for two decades routinely referred custody disputes to its Domestic Relations Counseling Bureau (DRCB) for evaluations. Our DRCB's current director, Beth Kerns, has astutely and courageously observed that in 80-90 percent of cases those evaluations actually harm families and children more than help them.¹⁵ But they likewise harm professionals' effectiveness as well, turning their attention away from promising measures parents could be referred to.

On the "Professionals Corner" link of www.UpToParents.org, our foundation has posted an article on cooperative family law and several measures the family law system could put in place to help parents build cooperation. In almost none of the cases we've seen that were sent for evaluations has there been a fair sampling of such measures, and in many cases the couple has been forensified¹⁶ by various adversarial processes and language.

Instead of using these invasive, expensive, and divisive evaluations, what if couples received aid actually calculated to assist their co-parenting?

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- encourage parents to amplify the bad and forget the good in each other. They will be allowed to read what they have said about each other and then make a new round of claims and responses.
- E. There is little chance that a custody evaluation or a judge's decision based on it could be as beneficial as agreements reached by parents; a judge can only pick from the bad choices left in the midst of parents' conflict, while parents can actually create better choices by ending conflict.
 - F. Custody evaluations can be lengthy and expensive. They can dramatically delay the time when parents choose to reach those agreements, and they can divert money that separating, divorcing, and divorced parents need for other family expenses.
 - G. Custody evaluations probe into some of parents' and children's most personal makeup, thoughts, feelings, and actions. Once this probing is done and a report is written, parents will have no control over how it or the evaluator's notes or tapes will be used. They will be released to the attorneys, to the judge, to the parties, and to anyone who receives them from any of those persons.
 - H. Custody evaluations are done by fallible persons whose judgment and objectivity may be affected by a number of conscious and unconscious factors, including financial motives, personal and professional prejudices, and plain human error.
 - I. A custody evaluation can put the children in the middle of their parents' fight. The children will be interviewed, even if the interviews are against their best interests. The placing of children in this witness role can be a serious attack on their right to be free of any sense of responsibility for their parents' conflict.
 - J. For all these reasons, a custody evaluation is intended to be used only in those rare cases in which the parents are unable to develop their own parenting plans, not in cases where parents simply have not as yet agreed on a parenting plan.

Clearly, any advisement would also have to include a thoughtful review of all viable alternatives (including counseling, mediation, and high-conflict classes).

¹⁵ Ms. Kerns deserves considerable credit for initiatives under way that may shift DRCB's work to more educational, mediation, and resource-building matters that no doubt stand to assist many families.

¹⁶ This is our office's term for variety of iatrogenic measures in the law that push parents into unnecessarily seeing themselves as legal adversaries and then having to rely on legal proceedings to sort out personal affairs.

- (A) An early and clear introduction (by a pamphlet, judge videos, or a website such as www.FamilyCourtWebsite.org, or both) of judicial expectations of cooperation, courtesy, and a child focus.
- (B) The early use of resources like www.UpToParents.org and the best possible co-parenting class to clarify the advantages, even outright necessity, of cooperation in family transitions.
- (C) Education of parents about what is actually meant by “custody”—and the advantages of joint legal custody and cooperative child-rearing.
- (D) A high-conflict class.
- (E) A system that designates the parents in cooperative terms like “Mother and Father” instead of “Petitioner and Respondent” or “Plaintiff and Defendant.”
- (F) Professionals’ modeling of cooperation (illustrated well in the *Attorneys’ Pledge of Cooperation* signed by over 50 family attorneys in St. Joseph County).¹⁷
- (G) Child-focused mediation opportunities.
- (H) A system that requires attorneys to speak and cooperate before filing nonemergency motions—and to report their progress in any motion that remains necessary.
- (I) The wisdom and cooperation engendered by short monthly meetings (rewarded with CLE and CEU credits) of all family law professionals—with a specific agenda of creating cooperative alternatives for clients and their families.

The law needs to do much more to educate parents on the overwhelming legal, financial, personal, and parental advantages of cooperation. Before adding to parents’ confusions and injuries by a referral for a custody evaluation, the legal and therapeutic professions should systematically define and use processes that will help parents understand the actual challenges before them and the resources they can use to meet those challenges.

But if we focus on involving parents in polarizing processes like evaluations, our professions will remain as dangerously stuck as our clients.

One last word about alternatives. Psychologists interested in helping families through difficult transitions like divorce need not indulge custody evaluations. Families in these circumstances require confidential guidance, not invasive, public, and humiliating judgments. Parents require help in acknowledging and combining their strengths, not discounting and pathologizing each other. Attached is a sample engagement agreement for a psychologist to offer what parents actually need during divorce: confidential assistance and recommendations to the parents and their counsel. Sadly, this kind of specialty has been underutilized precisely because of the overuse of the nontherapeutic custody evaluations in place today.

Conclusion

Custody evaluations are no more justified for every custody dispute than bypass surgeries are justified for every chest pain. They have a legitimate place in cases of serious allegations of domestic and substance abuse and parental psychopathology; *they have no*

¹⁷ See the “Professionals Corner” link of www.UpToParents.org for a copy.

place in finding the mythical “better parent” or writing parenting plans for the vast majority of separating couples.

And they have no such place for one reason above all others: a professional process that destroys children’s best interests in the name of finding those best interests is both illogical and indefensible.

It is vital that judges and lawyers (and psychologists) ask of themselves what they ask of surgeons and all other professionals—that every procedure be limited to the instances where its anticipated benefits outweigh its harm, something that cannot plausibly be said in the case of most custody evaluations.

Most divorces, despite the excessive claims of some (understandably) emotionally stressed parents and some overzealous attorneys, do not involve psychopathology. They involve angry, hurt, but “good enough” parents who need help to rediscover their moorings, in particular their commitment to protect their children from adults’ conflict. None of these parents will be disappearing from their children’s lives, nor relieved of the responsibility of raising their children. What they require is precisely the opposite of what custody evaluations provide; they require assistance in making a child-focused transition from an intimate spousal relationship to a nonintimate cooperative parenting relationship.

Custody evaluations are too often fatal obstructions to those parent tasks—and just as often obstructions to the law’s duty to intelligently define and use processes that actually help clients and their families.¹⁸

¹⁸ Of the many suggested measures included in the article on cooperative family law posted on the www.UpToParents.org “Professionals Corner,” perhaps the most important is the last: monthly breakfasts (or other short monthly meetings) among family law professionals to define these processes and serve family clients better. Our office would highly recommend to that group what we recommend to many parents: Dr. Robert E. Emery’s *The Truth about Children and Divorce*. Not only is the book a highly readable and usable guide through the tasks that separating parents must negotiate, but it offers sensible demarcations of where various professionals can, and cannot, be expected to help. It clarifies that “custody” issues must be understood as bearing only on decision-making and parenting time schedules (172f.), that good parenting is often the best therapy for children (216), and that serious hazards can follow from asking children their opinions on parental divorce issues (273f.).

Agreement for Confidential Co-Parenting Consultation *Revised December 11, 2006*

- A. This Agreement between Dr. Lawrence Carlson and _____ and _____ (“the Parents”) is for the exclusive purpose of assisting the Parents in making good decisions for the benefit of their child(ren) and their co-parenting partnership on behalf of their child(ren).
- B. The Parents wish to have the advice of Dr. Carlson in developing a Parenting Plan to co-parent, protect, and raise their child(ren). The Parenting Plan may include:
1. How to spare the child(ren) the damage of ongoing parent conflict,
 2. How the Parents will talk and make important decisions for their child(ren),
 3. Where the child(ren) will live and stay and on what schedule,
 4. How to ensure the child(ren)’s good ongoing relationships with both Parents,
 5. How the Parents can support each other’s relationships with their child(ren),
 6. How to respond to any special needs of the child(ren), and
 7. Any other matters that either Parent or Dr. Carlson believes would be important to the child(ren)’s best interests.
- C. The Parents also wish to spare themselves and their child(ren) the cost, divisiveness, and turmoil of litigation and ongoing conflict. They, therefore, agree to use communication, cooperation, and their love and affection for their child(ren) as their guides in reaching agreements on any issues they face. They will have different opinions, but their common goal and focus will remain their child(ren)’s protection.
- D. The Parents’ intent is to reach their own agreements about what arrangements will be best for their child(ren). Dr. Carlson may offer options and express opinions about those options and other matters, but all decisions, like the protection of the child(ren) involved, must rest with the Parents and their love for their child(ren).
- E. Dr. Carlson and the Parents expressly agree that their relationship with Dr. Carlson will be confidential, that Dr. Carlson will discuss this matter with other persons only with the consent of both Parents, and that neither Parent will ever seek to have Dr. Carlson give any information or opinion to a court or any other investigative person or entity.
- F. Dr. Carlson will, with the consent of the Parents, speak with their attorneys to gather information and to explain his recommendations. If the parents each have attorneys, Dr. Carlson will not speak with them separately. All discussions with counsel (except for procedural and scheduling matters) will be joint discussions.
- G. If Dr. Carlson and the Parents agree, there will be a closing meeting with both parents (and, if the Parents and Dr. Carlson all agree, their counsel) to memorialize a Parenting Plan in the best interests of the Parents’ children.

- H. Dr. Carlson will be compensated at the rate of \$175 per hour for all work in consulting and advising under this agreement. The Parents will be sharing responsibility for that retainer on the following percentage: _____.
Parents agree to pay a retainer of \$3,500 before the first meeting with Dr. Carlson to cover the first 20 hours of professional time.
- I. While it is not possible to predict exactly how much professional time will be required of Dr. Carlson, in general 20 hours is sufficient to advise families. This work typically includes:
1. A joint conference with counsel.
 2. An initial joint interview with the Parents.
 3. Reviewing Parents' intake work, including their completed work from the www.UpToParents.org website in the case of divorcing or divorced parents and from the www.ProudToParent.org website in the case of never-married parents.
 4. Review of any collateral information.
 5. If both Parents and Dr. Carlson are in agreement, an interview with the children.
 6. Preparation of a set of recommendations and suggested parenting plan.
 7. A final meeting with the Parents (and, if the Parents and Dr. Carlson all agree, their counsel) to hear and, if the Parents are in agreement, begin implementing any recommendations.
- J. If less than 20 hours is required, any unused portion of the retainer will be returned to the Parents in the proportion that they contributed to the retainer. If additional time is required, that will be billed and must be paid prior to the conclusion of the case.
- K. Both the Parents and Dr. Carlson intend this Agreement as *confidential* and *therapeutic* assistance to the family. They also intend Dr. Carlson's work to help avoid litigation, not be part of it. They expressly agree that it would be a breach of this agreement for a Parent, either directly or through counsel, to subpoena Dr. Carlson to give any information or opinion, whether in or out of court. They further agree that any Parent who personally or through counsel attempts to subpoena or compel Dr. Carlson's appearance or opinions in court, deposition, or otherwise will be responsible to compensate Dr. Carlson for his time and attorney fees in enforcing the confidentiality and nondisclosure portions of this agreement, beginning with an immediate payment of an additional retainer of \$5,000.

Parent signature (with date)

Parent signature (with date)

Dr. Lawrence Carlson signature (with date)