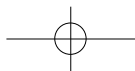
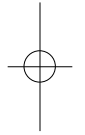


MENTAL HEALTH ASPECTS OF CUSTODY LAW



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NATIONAL INTERDISCIPLINARY COLLOQUIUM ON CHILD CUSTODY LAW

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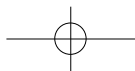
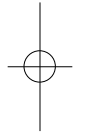
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*To all those judges, lawyers and mental health professionals
who strive endlessly to ease the pain of divorcing parents
and enhance the healing of their children*



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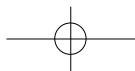
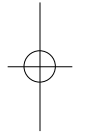
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FOREWORD

This book is the result of an unusual collaboration and a series of meetings over more than five years, of an independent group of practicing and academic lawyers, mental health professionals and judges. We designated ourselves a “National Interdisciplinary Colloquium on Custody Law”—in part, of course, because we liked the acronym “NICCL.” More crucially, we began the enterprise as a discussion group of professionals concerned about the quality of professional mental health consultations to practicing lawyers and their divorce clients and anxious to improve mental health advice to and testimony in family courts across the country. We decided to produce a book of commentary, analysis and advice after a couple of years of quarterly meetings (which were financially aided from sources listed below) only when we concluded that our collective judgments on legal issues and professional mental health styles could be useful to judges and those judgments could be brought to the attention of many judges without cost to them. Our periodic meetings over several years uncovered our policy disputes, distilled our perceptions of the issues and appropriate approaches (if not always solutions) to them, and approved the formal definitions of policy disagreements among us which are identified in several of the chapters.

Our task, and travel expenses to our meetings (available only to academic members of the Colloquium), were aided by generous contributions to the University of Minnesota Foundation by the following individuals and Foundations, listed alphabetically: American Psychiatric Foundation, Frederikson & Byron Foundation, Murray L. Galinson, Vance K. Opperman, Space Center Company Foundation, Johnny B. Good Foundation, Trillium, and the West Group. NICCL’s initial publication, designed as a desk book for judges, contained contributions from and the collective (or disputed) judgments of four practicing divorce lawyers, two judges who were exercising or had exercised divorce jurisdiction (one of them with a Ph.D. in Psychology), six child psychiatrists, a social worker, and an academic psychologist (also a member of the bar). One member of the original group died and one withdrew after making an important contribution to the original publication.

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The original volume was designed to aid judges in processing and deciding divorce-custody disputes; because the endeavor proved to be of great interest to practicing lawyers and the mental health professionals who advise lawyers, counsel divorcing parents and testify before judges, NICCL decided to prepare and publish this more inclusive volume for a broader audience. Several members of the original group—Elissa P. Benedek, M.D., Ellen J. Efron, Esquire, Raymond M. Lazar, Esquire, Herbert S. Sacks, M.D., and Barbara F. Nordhaus, M.S.W., L.C.S.W.—have not been able to join the deliberations and writing which produced this volume.

This document is the product, then, of a continuing discussion by judges, academic and practicing lawyers, and mental health professionals, about the legal and mental health aspects of custody law and practice. Our initial conclusion required little effort: a great many important and difficult divorce-custody legal and psychological issues have not been objectively and thoroughly explored in the literature and in courtrooms—indeed, many of them have been the subjects of misleading and sometimes ignorant reports and testimony—and judges and children and their parents have been the losers. It is especially important that the issues be clarified and the ignorance dispelled to the extent possible because mental health expert advice and testimony have become common aspects of contested custody contests.¹

The book has been designed to provide a sort of glossary—an objective description and analysis—of the underlying mental health aspects of legal issues, and mental health professionals' concerns about how those issues are approached and resolved, in divorce-custody cases. We hoped, and we believe, that the book is truly interdisciplinary.

It should come as no surprise that from time to time our professional theories and views were not in agreement; and we have tried throughout the volume to reflect outright disagreements as well as shadings of our consensus. Despite our effort to reach agreement or to report disagreements about every issue in every chapter, issues of “tone” and final editing judgment were left to the “General Editor.” This is *not* to say that we refuse to take individual responsibility for the positions we assert; rather, it is simply to advise readers that the book is a collective product, and like most collective products its language may unintentionally hide subtle variations of opinion among the product's creators.

1. See, e.g., M. Mason and A. Quirk, *Are Mothers Losing Custody? Read My Lips: Trends in Judicial Decision Making in Custody Disputes 1920, 1960, 1990, and 1995*, 31 *Fam.L.Q.* 215, 231 (1997) (from 1920 to 1960, use of experts, usually psychologists, increased to 10 percent of the cases in a national sample of appealed contested cases in 1960, to 32 percent in 1990, and to 38 percent of the cases in 1995).

We know, of course, that we are addressing very disparate professionals among the groups (lawyers, judges, mental health professionals) likely to examine and make use of this book. Some judges are old hands, have decided matrimonial and child custody disputes for years, perhaps decades; some clinicians, new to the field, will pick up this book for the first time as a part of a “get acquainted” tour of the territory; some lawyers will seek the book’s help to address a particular judge or cross-examine a particular mental health professional witness. We believe that reviewing the first chapter, and using the rest of the book as a reference guide when the issues arise, will be of benefit to professionals of diverse experience with divorce issues. We are hoping that the chapters will help judges to review litigants’ briefs with additional knowledge and insight, and will aid lawyers to prepare or cross-examine expert witnesses with greater sophistication and personal comfort, perhaps even aid in isolating legal and mental health issues that their opponents in individual cases have failed to identify. We also hope that our analyses will help mental health professionals to testify with more modesty while predicting future individual and family behavior and with greater comfort as they face cross-examination. In short, we would like this book to be a compendium of careful analysis of divorce-custody related legal and mental health issues and to improve the performance of lawyers, mental health professionals and judges—all to the advantage of divorcing parents and their children. Throughout the book, we tried to emphasize insights about the law and its practice as we have acquired them from judges, practicing lawyers, and mental health professionals.

Significant contribution was made to Chapter 11, and to the authors’ consideration of the issues surrounding noncustodians’ visitation with infants, by Thomas Horner, Ph.D., a clinical psychologist in private practice and former Director of the Infancy and Early Childhood Clinic in the University of Michigan Department of Psychology and Psychiatry. The lengthy quoted section which makes up a large part of the chapter, beginning at p. 158, is taken from Dr. Horner’s unpublished manuscript, “Infant-Parent Contact and Infant Custody: Developmental and Decision-Making Considerations.” In addition, valuable research was done for this volume by Jonathan Wolfe, Esquire and Karen Rose, Esquire, both members of the New Jersey Bar, and Aaron Marcus, Esquire, a 2004 graduate of the University of Minnesota Law School.

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