

## Chapter 5

# A Preliminary Validation Study of the Model

Given the importance that child custody evaluations, and the reports created from these, have in the court's decision-making process, it is important to ensure that these evaluations and reports are conducted in a scientifically sound manner, validly assessing empirically relevant constructs and clearly explicating the rationale behind recommendations. The purpose of this study was to preliminarily examine judges' assessments of two different custody evaluations; one based on the Egregious/Promotive Factors Model and the other a more traditional, unspecified constructs model. In addition, this study intended to determine what factors influenced judge's decision making most, and their general feedback regarding the report they received. Family court judges were mailed sample reports that were created based on either the EPFM or an unspecified constructs (UC) report, relying more on clinical judgment. This study will be used to evaluate the impact of the EPFM.

Thus far, literature regarding the past and current state of child custody evaluations, child custody evaluation practices, state statutes regarding factors to consider in determining child custody, and results from longitudinal research regarding risk and promotive factors that predict outcomes for children have been reviewed. In addition, the EPFM has been described. The EPFM attempts to assess for the presence of empirically supported factors that have been shown to be predictive of outcomes for children. In addition, assessment tools that can validly measure these constructs have been discussed, and a structured assessment for the EPFM, designed after the Structured Professional Judgment model, has been developed. The structured assessment of the EPFM is proposed as an alternative to the existing child custody evaluations that appear to often be conducted using unspecified constructs. It is important to keep in mind, however, that the decisions made regarding child custody arrangements ultimately still lie in the hands of family court judges who preside over child custody hearings. Given the assumed importance of the child custody report provided by mental health professionals, it is necessary to review literature examining how custody evaluations impact judges' rulings, and what emphasis they place on the role of the mental health professional in guiding their rulings. Some literature has already been discussed as to why mental health professionals assumed the role of child custody evaluators. Reasons included: the emphasis on the psychological well being of the

child in custody arrangements (Bala & Saunders, 2003; Bolocofsky, 1989; Mason & Quirk, 1997), the ambiguity of the Best Interest of the Child doctrine (Melton, Petril, Poythress, & Slobogin, 1997), and the ambiguous and often complex psychological factors (e.g., allegations of substance use, domestic violence, physical or sexual abuse, and mental illness) that frequently show up in custody evaluations (Bolocofsky, 1989; Mason & Quirk, 1997). Finally, it has been proposed that judges often find custody cases stressful and outside the realm of their profession, and therefore responsibilities are delegated to professionals who appear to have at least some training in psychology, family issues, and measurement (Kushner, 2006).

In an attempt to determine whether judges make use of information that the psychological literature has suggested to be predictive of children's psychological adjustment following divorce, Sorenson et al. (1997) examined case-specific data derived from reports provided to the court by Guardians ad Litem (GALs). GALs are trained professionals or volunteers who provide the court with information regarding the family and make recommendations regarding custody arrangements. The degree to which judges attended to this information versus statutory guidelines in making their decisions was examined, and results indicated that the statutory guidelines were most influential in decision making (Sorenson et al., 1997). Specifically, judges followed state statutes, attended to the nature of family relationships, and did not rely on a preference for one parent. Decision making appeared to be less impacted by information regarding the degree of interparental conflict, parental substance abuse, or the history of child abduction by one parent. Because this was an archival study, however, it is difficult to determine, from the judges' perspectives, what ultimately influenced their decision making.

In a separate study examining judicial decision making, Kunin, Ebbesen, and Konecni (1992) analyzed information from divorce investigation files and court records ( $N=282$ ). Two factors were found to predict judges' decision making: the GAL recommendations and the child's preference. A significant relationship was found between the judges' decisions and the reports provided by the GAL with 60% of reports including specific recommendations. For 75% of the cases in which GALs made specific recommendations, judges were found to agree with these recommendations. In cases where GALs were not appointed, judges' decisions were predicted by the wishes of the child regarding custody placement.

In addition to studies examining archival records regarding judicial decision making, others have polled family court judges to compile a listing of the most important factors to consider for child custody evaluations. Some studies provided lists of factors and had judges rank-order how important they believed these to be in the child custody decision-making process (Lowery, 1981; Reidy, Silver, & Carlson, 1989). The most influential factors in guiding these judges' decisions were the children's age or developmental stage (Lowery, 1981), the wishes of adolescent children, custody investigation reports provided by court personnel, and testimony of parents and a court-appointed psychologist (Reidy et al., 1989). Wallace and Koerner (2003) interviewed family court judges ( $N=18$ ) to determine what factors influenced the judges' decisions in child custody cases. Judges listed factors pertaining to the adjustment of the child, stability of the environment, and risk factors in the parents as

being the most influential. The authors report that judges found recommendations by GALs and mental health professionals valuable, “but do not blindly accept their recommendations” (p. 186).

Waller and Daniel (2004) surveyed 97 judges regarding legal standards and personal biases that influence judicial custody decision making, issues that cause judges to order child custody evaluations, expectations regarding evaluation report components and evaluation procedures, parts of the report judges find useful for decision making, and finally the effect of the evaluation on litigation and judicial decision making. Findings indicated that judges were more likely to order custody evaluations when allegations of child physical or sexual abuse or parental unfitness were present. In addition, judges reported expectations of thorough evaluations and reports reflecting interviews with parents, children, significant others, psychological testing of all of these individuals, assessment of parenting skills, substance abuse, domestic violence, physical or sexual abuse, assessment of the parent–child relationship, and review of pertinent documents. Overall, judges indicated that findings from the evaluation, conclusions made from the psychiatric testing, and specific recommendations made by the evaluator were helpful and had a significant impact on their decision-making process (Waller & Daniel, 2004).

## **Hypotheses**

### Hypothesis 1

Judges provided with the EPFM-guided report will find it more empirically driven, will better understand the rationale behind its recommendations, and will be more satisfied with this report than judges who were provided with the unspecified constructs report.

### Hypothesis 2

Judges provided with the EPFM-guided report will find the empirically based factors most important in determining their custody decisions, ultimately making these decisions in line with empirical literature.

### Hypothesis 3

By better informing judges as to the empirical support for predicting child outcomes, custody decisions made by judges who have reviewed the EPFM-guided report will be more apt to follow recommendations provided by the evaluator, which are guided by empirical literature predicting poorer or positive outcomes in children.