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Protocol For Conducting Brief Focused Assessments (BFAs)
San Mateo County California

Outline of Materials Included:

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-Areas of Inquiry/Focus that are not appropriate for BFA

2. The Order to conduct a BFA (with language for San Mateo County)

-Rationale and Explanation for Appointment by FL-327 (Order Appointing Child Custody Evaluator)

i) Order for BFA per Paragraphs 9 and 10 of FL-327: Addendum for BFA

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-Format and items to be included in BFA report

-Example of Consent and Agreement for BFA

1. Introduction and Rationale for Brief Focused Assessments

Brief Focused Assessment is a form of a Child Custody Evaluation and may be used when the custody matters to be determined are of a circumscribed nature. The clearly defined focus (or foci when appropriate) shall be spelled out by the Court or the referring attorneys in such a nature that the BFA evaluator will tailor the procedures of the investigation accordingly. It is believed that appropriately conducting BFAs will lead to a clear delineation which separates them from the more comprehensive Child Custody Evaluation (CCE). In addition to the benefit of the investigation of specific issues that lead to specific conclusions and appropriate custodial recommendations it is expected that the time spent on BFAs will be substantially less than that spent on CCEs.

The BFA shall be conducted according to the Guidelines for Brief Focused Assessment developed by the Association of Family and Conciliation Courts and published in 2009 [the Guidelines are found at: <https://www.afccnet.org/Portals/0/PublicDocuments/Guidelines/BFATF2009final.pdf>]. It is expected that all attorneys and unrepresented parties review the Guidelines prior to the appointment of a BFA. All BFA evaluators shall be familiar with the Guidelines.

In San Mateo county BFAs were commenced in mid 2010 and the original "Protocol for Conducting BFAs" was published at that time. This document is an update of that original Protocol and expands on it based on the knowledge gained from the first two years that BFAs were done in San Mateo County. In January 2012 Ken Perlmutter, Ph.D. conducted a Survey of the judiciary, Family Court Services, attorneys and professionals who perform BFAs. The results were published in Issue #5, March 2012 of the AFCC-CA Newsletter (see pages 4-6). Requests for a copy of the Newsletter can be sent to Dr. Perlmutter at drperl@earthlink.net. The response to BFAs was quite positive and reveals that at least 25 BFAs were commenced or concluded in 2010-11. The article details the responses of the various professions.

In the Order for BFA (see below) many examples of appropriate areas of inquiry or focus are provided. The attorneys and parties or the Court may designate those or different areas of inquiry. Recently, with the commencement of California Rule of Court 5.250 and the assessment of issues related to children testifying in court and to be heard on their custodial preferences, this is a new area for which BFAs appear particularly well suited.

Further, it is clear that some areas of inquiry or focus are not appropriate or suitable for a BFA. These are:

- initial custody determination
- move-away custody evaluation (when one parent requests to move the primary residence of the child(ren) to a distance which makes the current time share plan untenable)
- investigation of issues that require home visits (e.g. to determine the nature of the parent-child relationships at each home (with the exception of the specific issue "conducting a home study to determine the appropriateness and safety of a parent's home")
- allegations of substantial, complex and severe estrangement, disaffection and alienation issues
- certain types of domestic violence issues (e.g. when there has not been a finding) or to make a determination of domestic violence (a BFA may be possible in matters when the court has issued a finding)
- very high conflict matters with multiple accusations by and concerns about the parents
- 3118 custody evaluation with claims of sexual abuse evaluations
- allegations of physical/emotional abuse of a child that have not been investigated by Child Protective Services

2. The Order to conduct a BFA

Rationale & Explanation for Appointment by FL-327 (Order Appointing Child Custody Evaluator (Rev. 2021): As with CCEs the BFA evaluator will be appointed by the court and/or stipulated to by the parties.

There will be two aspects to the legal appointment. First with the use of Form FL-327 (last revised January 1, 2010 and attached with these materials) which is the Order Appointing Custody Evaluator. This form specifies who will do the evaluation and for a BFA in paragraph 1(f) it will be marked as a “partial child custody evaluation.” The “statutory authority” shall be under FC 3111 and EC 730. The BFA evaluator will have quasi-judicial immunity as stated in the Addendum for Brief Focused Assessment (BFA). This is done by checking box 10 (“Additional orders attached.) and stating in Paragraph 9 Other “Additional orders attached in the form of “Addendum for Brief Focused Assessment (BFA).” The “Additional Orders” provide for conducting the BFA by existing statutes. A separate standardized “Addendum for BFA” which provides for the BFA will be executed and attached. Form FL-327 will be signed by the judge and filed with the court.

In Form FL-327 under Paragraph 3 “The purpose and scope of the evaluation is:” box will be checked and it will state “See Attachment specifying “Scope and Issues to be addressed in the Brief Focused Assessment (BFA).” This is the most important part of the Order as all parties must agree to the area(s) of inquiry and understand the areas of inquiry are appropriate for a BFA.

i) Order for BFA per Paragraph 10 of FL-327: Addendum for BFA: Attachment To Judicial Council Form FL-327 (Paragraph 10) - Brief Focused Assessment

Counsel for Petitioner:

Counsel for Respondent:

Counsel shall contact the BFA evaluator within five (5) court days from the filing of this order to have an initial telephone conference with the BFA evaluator. The purpose of said conference is to explain the referral and the scope of the BFA to the BFA evaluator. The BFA evaluator must agree to accept the conditions of the BFA. The attorneys will provide appropriate legal and other documents. If either party or the BFA evaluator contends that a party is unduly delaying the evaluation process, a party or the BFA evaluator may place the matter on the next Case Management Conference calendar for review. The BFA evaluator may write to the Court, with copy to the attorneys, to request clarification of the appointment in writing or in the form of a Case Management Conference.

Each party shall contact the BFA evaluator within five (5) days of the time requested by the BFA evaluator to the attorneys. Each party shall provide any retainers and shall execute the BFA evaluator's Consent and Agreement for Brief Focused Assessment.

The BFA evaluator shall adhere to the requirements of California Rules of Court Rule 5.220 regarding court-ordered child custody evaluations except as otherwise stated herein, Rule 5.225, education, experience and training standards for court-appointed child custody investigators and evaluators, Rule 5.230, domestic violence training for court-appointed child custody investigators and evaluators and Rule 5.13 San Mateo County Family Court Rules.

The BFA evaluator shall, at the commencement of the BFA, provide the parties with a written explanation of the process clearly describing the: 1) procedures which may be used to gather and assess information, 2) limitations on the confidentiality of the process, 3) cost and payment responsibility for the BFA consistent with the terms of the appointing order. The BFA evaluator shall have each parent execute a “Brief Focused Assessment Consent and Agreement.”

The BFA shall be conducted according to the Guidelines for Brief Focused Assessment developed by the Association of Family and Conciliation Courts and published in 2009. The process and elements of the BFA shall follow and include those Guidelines. It is suggested that all attorneys and unrepresented parties review the Guidelines. The Guidelines can be found at <https://www.afccnet.org/Portals/0/PublicDocuments/Guidelines/BFATF2009final.pdf>.

The BFA evaluator shall have the authority to contact any previously court appointed custody/visitation evaluator or assessor and shall have the authority to release case related information to the the BFA evaluator appointed in this order. All information obtained as described above shall be used solely for the purpose of conducting this BFA evaluation.

The BFA evaluator shall complete and distribute the BFA report and recommendations consistent with San Mateo County Rule 5.13 [or insert the local rule for the particular county] and the conditions of the Consent and Agreement for Brief Focused Assessment. It is expected that the report will be completed within 60 to 90 days of the initial interviews. All completed reports shall include the FL-328 Notice of Confidentiality.

The BFA evaluator acts as a quasi-judicial officer in his or her capacity pursuant to the Order for BFA, and as such, the BFA evaluator has limited immunity consistent with California case law applicable to quasi-judicial officers of the Court as to all actions undertaken pursuant to the Court appointment and this Order. Any alleged impropriety or unethical conduct by the BFA evaluator shall be brought to the attention of the Court in writing.

As specified in Form FL-327 (name of evaluator)_____ shall conduct a Brief Focused Assessment regarding the matter of (case name)_____ according to the appropriate Code Sections and Rules of Court. Additionally the BFA shall be conducted according to the Guidelines for Brief Focused Assessment developed by the Association of Family and Conciliation Courts and published in 2009.

The Referral Questions/Areas of Investigation that are appropriate for a BFA are stated in Paragraph 3 of FL-327 in the form of an Attachment. A BFA will most typically address only one or two of these questions. The questions are clearly delineated and agreed to by all parties in advance. Prior to commencement of the BFA the BFA evaluator shall have a conference (typically by telephone) with the attorneys representing the parents to discuss the nature of the referral and the scope of the BFA. Subsequent to the commencement of the BFA in the event the BFA evaluator finds the scope is not appropriate to the BFA model the BFA evaluator shall immediately notify counsel to discuss and resolve the matter. In the event the issue cannot be resolved with counsel, then the Court shall be consulted for input and guidance.

Dated:_____ Petitioner_____

Dated:_____ Counsel for Petitioner_____

Dated:_____ Respondent_____

Dated:_____ Counsel for Respondent_____

Dated:_____ Counsel for Minor Child(ren)_____

IT IS SO ORDERED:

Dated:_____ JUDICIAL OFFICER_____

ii) Attachment for Paragraph 3 of FL-327: Scope and Issues to be addressed in the BFA:

The BFA evaluator will investigate and advise the court with regard to the health, safety, welfare, and best interest of the minor child(ren), and will address the issues contained in the areas of inquiry checked below. In order to still meet the definition of a BFA, the number of areas checked shall not exceed two areas of inquiry.

___ Whether it is in a child's best interests to address the Court under California Rule of Court Rule 5.250(C)(3)A. What are the preferences, if any, of the child regarding custody and/or visitation.

___ Update of a previous custody evaluation done by the same or a previous evaluator with specific areas of focus (e.g. age appropriate time share plan, whether a parent has met certain tasks that were previously required).

___ The legitimacy of one parent's assertion that a child wishes to have a significant change in his parenting time with the other parent. For example, can a child express a developmentally appropriate preference for a particular time sharing plan.

___ Establishing or determining the appropriateness of setting up a reunification plan for a parent who has been absent from the child(ren)'s life. Stating the specifics of the nature of the plan that should ensue including what if any counseling to occur.

___ One parent has been determined by an independent expert to have an addictive disorder, major personality disorder or other mental disorder, and a determination needs to be made of how this condition affects the individual's fitness to parent.

___ What is the developmentally appropriate parenting time schedule for a child who has special needs.

___ Conducting a home study to determine the appropriateness and safety of a parent's home.

___ Examining allegations of a parent coaching, manipulating, biasing or disaffecting a child from the other parent.

___ There have been unsubstantiated allegations of abuse of a young child, and a determination needs to be made of how access can be allowed in a safe and developmentally appropriate manner.

___ It has been determined that a post-divorce relocation will be allowed, and the issue now is what will be the developmentally appropriate access plan.

___ Counseling requirements, and appropriate interventions vis-à-vis domestic violence, substance abuse or mental health issues.

___ Counseling requirements for parenting classes and the specific nature of those classes.

___ What is the developmentally appropriate allocation of parenting time, vis-à-vis specific days of the week, when an overall agreement has already been reached on the percentage of time-share.

___ The need for supervision of visits and if so what manner of supervision shall ensue (to include what steps need to be taken in order to remove the restriction).

___ Determination of school(s) that the child(ren) will attend. Investigation of educational/learning

needs of a child.

___ Bonding and attachment assessments for children from birth to age three. What is the nature and quality of the child's attachment to each parent? What is an appropriate time share plan for the present and what can be projected into the near future/plan for expansion in consideration of developmental milestones.

___ Parenting capacity, when specific concerns have been presented about one (or both) parent's practical skills of providing for the child(ren)'s health, safety and welfare

___ Exchange provisions, to protect the child(ren) from exposure to conflict and other considerations.

___ Legal Custody, vis-à-vis division of authority for decision making/partitioning who will decide what issues (e.g. health care, academics, extracurricular activities).

___ Determining if co-parenting is possible or a family requires parallel parenting. Recommendations for co-parent counseling or other considerations.

___ Initial custody determination if there has been a long standing separation and the family has been following a plan for more than six months, whether that plan should remain in place or how it should be changed.

___ Determination of sharing of holidays/school closure days and summer vacation schedule.

___ Choosing between two similar time sharing plans (e.g. week on/week off vs. 2-2-5-5 or whether a version of a plan that is in place should be increased or decreased in amount of time).

___ Appropriateness of childcare providers (including hired child care and other family members).

___ Assessing a parent's mental health issues (e.g. substance (alcohol or drug (legal/illegal)) abuse, criminal history, personality/mood disorder) and the implication for time share and other custodial issues. This may include psychological testing.

___ Special needs children (e.g. developmental disorder, autism spectrum disorder, learning disabilities). Coordination of information from other sources who have evaluated the child and implications for custodial issues (e.g. time share plan, decision making authority).

___ Other _____