



## BRIEF FOCUSED ASSESSMENTS IN SAN MATEO COUNTY: A PILOT PROJECT

by  
Ken Perlmutter, Ph.D. 1,2

The Forward of the 2009 AFCC Guidelines for Brief Focused Assessment (BFA) provide some context for how and why guidelines were developed for Brief Focused Assessment: "In 2007 then AFCC President Hon. William Fee convened the Task Force on Brief Focused Assessments to study the issues of 'limited assessment' models used in family courts. An online survey of family court practitioners revealed that these assessments are increasingly practiced in a multitude of family court settings, but lack clear definition as well as standardization of methodology and practice. From the many descriptive terms in use in different courts and communities and with appreciation of the language variations in different jurisdictions, Task Force members chose the term Brief Focused Assessment to define assessment of narrowly defined, issue specific questions that arise in family court settings." The Guidelines, which relied heavily on the AFCC's Model Standards for Child Custody Evaluations (2006), delineate best practices for BFAs in terms of referrals, methodology and reporting to the court. After the draft was published, the Task Force received comments about all aspects of the proposed Guidelines for BFAs. Finally, late in 2009, the complete "[Guidelines for BFA](#)" were published.

The BFA is designed to "help better inform specific aspects of judicial decision-making." The BFA typically addresses different types of issues and generally utilizes a more descriptive approach as compared to the analytic mode used in conducting a Child Custody Evaluation (CCE). This process works well and is effective due to the fact that the issues to be assessed are clearly and narrowly defined prior to the commencement of the BFA. There are many advantages to the use of BFAs and these as well as the limitations are discussed at length in the Guidelines. Essentially, the BFA is an efficient and cost effective tool that can be used in the judicial decision-making process. The circumscribed nature of the inquiry is less intrusive and should be completed in less time than a full CCE. A BFA can provide information quickly and assist in making interim custody arrangements or assess acute questions that require a timely response and relatively quick action. The BFA written report is brief, more descriptive than analytic, and the focus is typically on the short term rather than long-term needs of the family. A BFA may also facilitate parents' ability to resolve their differences by providing information about a disagreement that is not delayed over the course of a lengthy evaluation and litigation process.

In 2009 I began to discuss the concept and implementation of BFAs with the Honorable Richard H. DuBois (San Mateo County Commissioner) and Leslie S. Packer, Ph.D. (licensed psychologist in private practice). We reviewed the AFCC BFA draft document and were enthusiastic about the use of the BFA model in San Mateo County. We began a process of drafting our own protocol for conducting BFAs. At that time the final version of the AFCC Guidelines was published. After completion of our own protocol draft we distributed it to many professionals and court personnel for comments, and received a great deal of input. The result was a "Protocol for Conducting BFAs" (May 2010) that has been distributed to professionals and judicial officers in other venues both within and outside of California. The protocol is currently being revised.

The Protocol provides detailed information concerning the rationale for the use of BFAs. It is quite clear that in order to qualify as a BFA and be most effective the BFA should not address more than two areas of inquiry. The 25 areas of inquiry described as likely appropriate for a BFA and listed in the Protocol are not an exhaustive list, and the Order for a BFA may list other areas of inquiry. In addition, the Protocol provides guidance about matters that are likely not amenable to the BFA process. Finally, in addition to the Protocol we have distributed information about the optimum format for a BFA, specifying items to be included in the BFA report, as well as an example of an Informed Consent and Agreement for a BFA.

Once the Protocol was established we embarked on the task of educating those who would be most interested in its use. In July 2010, we first presented the BFA model and the Protocol to the judiciary in Family Court and the mediators at Family Court Services (FCS). As San Mateo County is a "recommending" county we believed that mediators could work with parents to resolve many issues by agreement, and if there were one or two remaining issues those could be referred for a BFA. In October 2010, we presented the BFA model to the Family Law Section of the San Mateo County Bar Association. These presentations were well received. In late 2010, mental health professionals in San Mateo and Santa Clara counties whose practice involves custody related matters were contacted to determine their willingness to learn more about and to conduct BFAs. We provided them with a copy of the Protocol to review prior to their responding to our inquiry.

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**Purpose and Survey Results**

Subsequent to the publication and wide distribution of the BFA Protocol, cases began to be referred for BFA by the judiciary, FCS and attorneys in San Mateo County. Over 2010-11 we had anecdotal evidence that many BFAs were being conducted. In December 2011, I decided to conduct a survey to learn more about the use of BFAs in San Mateo County. There were three foci of the survey: 1) to determine the number of BFAs completed or in progress; 2) to determine the effectiveness of BFAs from the perspectives of the attorneys and FCS mediators; and 3) to learn about the experiences of the professionals who had conducted BFAs. We hoped to use this information to consider what, if any, changes to the protocol and process of BFAs should be considered as its use continues to evolve.

**1. Number of BFAs completed/in progress**

**Attorneys:** Initially we constructed a formal two-page questionnaire (with 11 questions) and distributed it to the attorneys. Approximately 200 attorneys (all members of the Family Law Section) received it by e-mail. Due to the initial sparse response, which we attributed to the lengthy nature of the questionnaire and the difficulty in returning it, we designed a briefer three-question e-mail questionnaire (with one question on number of BFAs and two questions on the process and concept of BFAs). Twenty-two attorneys responded and indicated that 15 BFAs had been completed or were in process.

**Family Court Services Mediators:** We constructed a six-item questionnaire that was distributed by e-mail to the six FCS mediators in San Mateo County. All responded and indicated that they had recommended the use of BFAs in approximately 16 to 26 cases (this number is a range due to their inability to check all case files to note specific recommendations).

**Professionals who conduct BFAs:** In late 2010, of the approximately twenty-five inquiries sent out, twenty professionals responded and expressed a willingness to do BFAs. They had reviewed the Protocol and AFCC Guidelines. Their names were placed on a "list of professionals willing to conduct BFAs" and provided to the court. These professionals were polled in January 2012 and

asked three questions about the number of BFAs completed/in process and five questions about the process and concept of BFAs. We received 18 responses that indicate that six professionals have completed or were in the process of completing 25 BFAs.

**Judiciary:** Finally Commissioner DuBois and Commissioner Kathleen McKenna (also on the Family Law bench) were contacted. Commissioner DuBois indicated that he believed he had either suggested or ordered BFAs in "approximately 25 matters" and Commissioner McKenna has either suggested or ordered BFAs in "approximately 12 matters."

**Conclusion:** At least 25 BFAs were completed or commenced in 2010-11. Careful analysis of the professionals' responses indicates that during this period 21 were completed and four were in progress. This number seems reliable given that the professionals are confident in their caseload and the input from the attorneys, mediators and the bench is consistent with that result.

**2. Feedback on the process, areas of focus, and the concept of BFAs**

**Family Court Services:** When we first explained the concept of BFA to the FCS mediators they were enthusiastic about how they could use this in their armamentarium of techniques to intervene with families. Their responses show that they have found it to be a very viable option in assisting families to narrow the areas of agreement and the areas that remain in dispute. When they write their mediation reports they list the areas of agreement and then state as recommendations the areas still in dispute. The areas that remain in dispute can be referred for BFA. Their responses indicate they have found the BFA option very helpful in two main areas: first as an alternative to a full child custody evaluation when a full evaluation is not needed (four respondents noted this); and second, especially for families with limited financial resources who cannot afford a full evaluation (five respondents noted this).

Some of their comments are useful and instructive regarding areas of focus: "I have used BFAs for updates of previous CCEs", "I have recommended a BFA to address concerns of a parent biasing or disaffecting a child from the

other parent", and "to determine the school a child will attend and assessing mental health issues."

**Professionals:** We asked the professionals substantive questions related to the clarity of the protocol in appointing them to do BFAs and whether there were problems with the scope/referral questions insofar as cases that may not have been appropriate for BFA. We asked about their experience of the BFA process and how they found the client and attorney's acceptance the BFA concept.

Their responses were uniformly positive in all regards. They have definitely appreciated the clarity of scope and the less cumbersome process of the BFA especially as compared to a full CCE. They particularly appreciate the nature of the briefer report as compared to what they would do for a full CCE. There have been some instances when they had to put in a great deal of time at the start of the process working with attorneys to be sure the scope was clear and appropriate for a BFA. However, they believe that this time paid off in the resulting efficiency of the BFA process. They have found that the attorneys appreciate the option of the BFA in order to receive substantive information about a family's custody dispute that they could not get from an FCS mediator's work and report.

Some of their comments are useful and instructive: "they (BFAs) are more streamlined and straightforward than a full custody evaluation" and "most (clients and attorneys) prefer the savings of time and cost." It is notable that some have suggested that there be training for professionals in order to educate them on BFAs.

Following are some examples of areas of inquiry that were addressed in their BFAs: Can a parent's supervised visits be lifted after an allegation of abuse was proved to be fabricated?; Does a parent of a 15 month old have sufficient parenting skills for overnight visits to commence?; What school should children attend (i.e. mother's or father's home school district)?; What is a developmentally appropriate time share plan for a four year old?; Should a "2-2-5-5" schedule be changed to a week-on/week-off schedule?; What

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should the time share plan (both summer and school year) be for a parent who has moved to the east coast?; Is a parent with a verified diagnosis of Bipolar Disorder suitable for overnight visits with a seven year old child?; is psychological testing necessary to assess a parent's emotional well being?; A bonding/attachment study of a two year old with the parents and implications for a time share plan.

**Attorneys:** As with any new set of procedures a period of adjustment will occur prior to its full acceptance by the persons who are using it. We were most concerned about how the attorneys would respond to find the BFA concept and process after being used to full CCEs. As noted above we did our best to educate the attorneys in 2010 and distributed the Protocol to over 100 attorneys. When any new referral came up, and when possible, we provided the Protocol to attorneys and clients.

We have been pleasantly surprised by the very strong positive response from the attorneys. Some of the few concerns expressed reflect a lack of information about BFAs and underscore our need to continue our efforts to educate attorneys about this option in disputed custody matters. One attorney was concerned that it took "a long time to set up." We actually view this as positive given our concern about accepting appropriate cases and worry that if an inappropriate case is accepted and commenced it would take a great deal of time to rectify this problem once in the midst of a BFA. We are working to revise the forms which stipulate/order a BFA and make them clearer and easier to complete.

We are encouraged by the responses of the 22 attorneys that indicate that they like the "quicker process" and noted that "parents experienced less agony" than through a prolonged custody evaluation. They uniformly believed that it was "less expensive and saved money" compared to custody evaluations. One noted "it is an affordable way to get a neutral, in depth view of a family's situation when FCS mediation is insufficient." Attorneys had used the BFA successfully after private mediation failed to address specific issues. They found it "helpful to narrow the issue in emotionally sensitive situations." They also found it helpful in using

the BFA recommendations to settle matters in advance of court hearings. And they found that it "helps clients understand the decision instead of the court or FCS deciding."

The attorneys' comments on areas of inquiry were similar to what we received from the Professionals. This makes sense and should have been the result if both sides were in concert on the areas of focus of the BFA. One area of inquiry noted by an attorney and not seen in other responses was "a determination of local school or boarding school placement" for a child.

#### Findings and Conclusions

The data clearly indicate that BFAs are being completed with good frequency during the initial phase following the publication of the 2009 AFCC Guidelines for Brief Focused Assessment. Further, they are receiving very positive support from the professionals who conduct them, the attorneys who receive them, and the FCS Mediators and Family Law Bench who recommend/order them. It is particularly notable that Commissioner DuBois stated that "in many cases when a BFA has been completed I have used the BFA report to help the attorneys settle the matter in advance of a Hearing, or had a Hearing that due to the nature of the report and the findings and recommendations was completed in less time than would normally be expected." He also noted that the BFAs have been a great help in providing him the information he needed in



Is psychological testing necessary to assess a parent's emotional well being?

order to make informed decisions in these difficult custody matters.

Thus from the sample of BFAs conducted in San Mateo County we conclude that not only is the BFA a viable and effective option but they clearly are accepted by all that have used it to date. The results indicate that the BFA is being used with increasing frequency. We hope this pattern of use will continue and we plan to work on educating all who use it.

As noted we are also in the midst of using this data to revise the BFA Protocol. We realize that we need to do more work on educating parents about the use of BFAs. We believe that we can do more work on how to use BFAs as an option in matters where financial resources are a concern and we hope that due to the reduced time needed for a BFA as compared to a CCE we might attract more professionals who can conduct BFAs for reduced fees or pro bono. We plan to continue to work with other counties to provide the benefit of our experience as they begin to explore the concept and use of BFAs. We know there have been concerns about whether the use of BFAs necessitates a change or modification of the local rules of court and Commissioner DuBois has been confident that this is not the case. However, we must continue to work to standardize the use of BFAs in order for them to be used as effectively as then AFCC President Hon. William Fee envisioned in 2007. ♦♦

#### FOOTNOTES

1 I would like to thank attorneys Nancy Encarnacion and Lydia Crandall for their help in crafting and collecting the surveys to the attorneys. I would especially like to thank Commissioner DuBois and Dr. Packer for their tireless work on BFAs and their support of this Survey and article.

2 Ken Perlmutter is a licensed psychologist in Palo Alto who has been in practice for over 30 years. His work is primarily to assist families of divorce and focuses on child custody evaluations, BFAs, mediation and co-parent counseling. Requests for copies of the Protocol can be sent to [dperli@earthlink.net](mailto:dperli@earthlink.net).