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The Use of Experts in Family Law Cases: An Annotated Bibliography

by
Allen Rostron*

This bibliography covers significant issues relating to the use of experts in family law cases. For some topics, like the use of experts in child custody cases, it focuses on literature that is specific to the family law field. For topics that relate broadly to experts in all kinds of legal matters, it includes articles that shed valuable light on issues and concerns about the use of experts in general as well as articles that specifically relate to the use of experts in the family law realm.

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Attorney’s Fees Experts

Scott Brister, *Gatekeeping Attorney’s Fees: How Judges Admit or Exclude Expert Testimony on Attorney’s Fees*, ADVOC. (Texas), Winter 2017, at 27 (reviewing rules that govern the use of expert testimony to prove the amount and reasonableness of attorney’s fees).

Melvyn B. Frumkes & Jack A. Rounick, *An Expert as to Attorney’s Fees*, FAM. ADVOC., Spring 2007, at 12 (discussing situations in divorce litigation where an attorney should be hired to testify as an expert on legal work and attorney’s fees in order to render opinions about the number of hours billed, the complexity of the issues, and the reasonableness of the fee amounts).

Child Custody, Protection, and Support

Jon Amundson & Glenda Lux, *Tippins and Wittmann Revisited: Law, Social Science, and the Role of the Child Custody Expert 14 Years Later*, 57 FAM. CT. REV. 88 (2019) (building on an influential 2005 article by Timothy Tippins and Jeffrey Wittman, which described four levels of inferences made in opinions offered by child custody evaluators, and arguing that evaluators continue to make speculative inferences that go beyond what should be the proper role for mental health professionals in child custody cases).

Stephen J. Anderer, *Working with Your Expert Witness*, FAM. ADVOC., Summer 2000, at 21 (providing a basic primer on the use of experts in child custody cases, from selecting an expert to establishing the admissibility of the expert’s testimony, along with a list of “Do’s and Don’ts” for experts).

Nicholas Bala, *Tippins and Wittmann Asked the Wrong Question: Evaluators May Not Be “Experts,” but They Can Express Best Interests Opinions*, 43 FAM. CT. REV. 554 (2005) (arguing that evaluators in child custody cases should be permitted to express

opinions about what would promote the best interest of children, because family courts should not treat evaluators as experts subject to *Daubert* evidentiary standards and should instead apply more flexible standards that reflect the issues, standards, and goals of the family law context).

Susan J. Becker, *Child Sexual Abuse Allegations Against a Lesbian or Gay Parent in a Custody or Visitation Dispute: Battling the Overt and Insidious Bias of Experts and Judges*, 74 DENV. U. L. REV. 75 (1996) (arguing that heightened evidentiary standards should apply for expert witnesses when a gay or lesbian parent is accused of child sexual abuse and proposing safeguards for preventing the presentation of irrelevant or unreliable expert testimony in such cases).

Richard A. Crain, *Choosing the Best Custody Expert Witness*, FAM. ADVOC., Spring 2008, at 12 (recommending steps that attorneys should take in selecting and working with expert witnesses for child custody cases, including evaluating credentials, considering testimony in previous cases, and providing the expert with supporting facts).

Milfred D. Dale & Jonathan W. Gould, *Science, Mental Health Consultants, and Attorney-Expert Relationships in Child Custody*, 48 FAM. L.Q. 1 (2014) (describing how social science has an increasingly significant impact on child custody dispute resolution and therefore it is important for attorneys to consider the best ways to use mental health experts as evaluators, instructional experts, non-testifying consultants, or reviewers of other experts' work product).

Edward F. Dragan, *How an Education Expert Can Assist with Child Custody Solutions*, 27 CHILD L. PRAC. 76 (2008) (describing the role of an education expert in a typical case and explaining how attorneys can use education experts to help parents and courts make informed decisions about child custody).

Marian D. Hall, *The Role of Psychologists as Experts in Cases Involving Allegations of Child Sexual Abuse*, 23 FAM. L.Q. 451 (1989) (looking at the proper role for a practicing psychologist in cases involving alleged child sexual abuse and questioning

whether progress can be made in overcoming the divergences between the conceptual frameworks of the legal and psychological fields).

Kirk Heilbrun, *Child Custody Evaluation: Critically Assessing Mental Health Experts and Psychological Tests*, 29 FAM. L.Q. 63 (1995) (discussing how to evaluate whether a mental health professional has the necessary expertise to be an evaluator in a child custody case and how to determine whether psychological testing was used properly in an evaluation).

Stephen P. Herman, *Child Custody Evaluations and the Need for Standards of Care and Peer Review*, 1 J. CENTER FOR CHILD. & CTS. 139 (1999) (discussing the increased importance of mental health experts serving as evaluators in child custody cases, proposing the use of peer review and other reforms to raise standards for evaluators, and describing common pitfalls in custody evaluations such as wearing “two hats” by serving simultaneously in therapeutic and evaluative roles, acting as a “hired gun” who gives one-sided evaluations, and misusing data and literature).

Jaime B. Margolis, *Two Divorced Parents, One Transgender Child, Many Voices*, 15 WHITTIER J. CHILD & FAM. ADVOC. 125 (2016) (discussing important considerations in selecting a medical or mental health professional who can serve as an expert witness on the best interests of a transgender child).

Mary Johanna McCurley, Kathryn J. Murphy & Jonathan W. Gould, *Protecting Children from Incompetent Forensic Evaluations and Expert Testimony*, 19 J. AM. ACAD. MATRIM. LAW. 277 (2005) (describing criticisms and concerns about evaluators in child custody cases, including failure to adhere to professional standards and ethical guidelines, failure to follow proper scientific methodologies, and failure to satisfy legal evidentiary standards for expert opinions).

Dana E. Prescott, *Forensic Experts and Family Courts: Science or Privilege-by-License?*, 28 J. AM. ACAD. MATRIM. LAW. 521 (2016) (arguing that family courts have been too willing to allow forensic experts, such as social workers and psychologists, to testify in child custody cases and introduce social science research

without adequately testing its reliability, validity, and relevance, with an examination of Parental Alienation Syndrome as an example of this problem).

Dana E. Prescott & Diane A. Tennies, *The Lawyer as Guardian Ad Litem: Should “Status” Make Expert Opinions “All-In” and Trump “Gatekeeping” Functions by Family Courts?*, 30 J. AM. ACAD. MATRIM. LAW. 379 (2018) (discussing how attorneys acting as guardians ad litem for children frequently write reports that provide expert opinions and that are admitted into evidence at trials without being subjected to the usual standards of qualifications and foundation for providing expert opinions in litigation).

Margaret “Pegi” Price, *The Use of Experts in Custody Cases*, 42 FAM. ADVOC., Winter 2020, at 23 (explaining how experts can be used effectively in custody litigation concerning children with special needs, particularly as a means of educating judges about a child’s medical condition and how that condition justifies departures from the customary approaches to custody and visitation).

Arnold H. Rutkin & Sarah S. Oldham, *Examining the Mental Health Expert*, FAM. ADVOC., Spring 2008, at 36 (discussing strategies for direct and cross examinations of mental health experts in contested child custody cases and providing lists of key questions to consider).

Daniel W. Shuman, *The Role of Mental Health Experts in Custody Decisions: Science, Psychological Tests, and Clinical Judgment*, 36 FAM. L.Q. 135 (2002) (observing how the general trend toward having more rigorous legal requirements for admission of expert testimony has not had a significant impact on child custody cases, where reliance on mental health experts has increased dramatically, and arguing that legislatures should enact measures setting higher standards for the work of experts in custody litigation).

Robert A. Simon & Daniel H. Willick, *Therapeutic Privilege and Custody Evaluations: Discovery of Treatment Records*, 54 FAM. CT. REV. 51 (2016) (explaining important considerations for mental health professionals with involvement in family law litigation).

tion, including issues about therapist-patient privilege, discovery of treatment records, and informed consent for disclosure of confidential therapy information).

Jacqueline Singer, Matthew Sullivan, Belinda Hanson & Jane Caroline Taylor, *Beyond the Guidelines: The Use of Mental Health Experts in Determining Appropriate Levels of Child Support for Affluent Families*, 32 J. AM. ACAD. MATRIM. LAW. 145 (2019) (describing how wealth can be a double-edged sword for families, because affluence provides advantages but also can have pernicious effects that increase the risk of children having social or emotional development difficulties, and explaining how mental health experts can assist in determinations about appropriate levels of financial support for children in wealthy families).

Timothy M. Tippins & Jeffrey P. Wittman, *Empirical and Ethical Problems with Custody Recommendations: A Call for Clinical Humility and Judicial Vigilance*, 43 FAM. CT. REV. 193 (2005) (critiquing the role of psychological evaluators in child custody cases, arguing that evaluators should not be opining about the ultimate issue of what specific plan for child custody and access should be implemented by the court, and urging that evaluators should seek to develop better empirical bases for the opinions they render).

Joanne Ross Wilder, *Religion and Bests Interests in Custody Cases*, 18 J. AM. ACAD. MATRIM. LAW. 211 (2002) (discussing the use of experts in cases where a parent's religious beliefs or practices are a factor affecting the parent's custodial rights).

Computer or Digital Forensics Experts

Scott Carlson, *New Challenges for Digital Forensics Experts and the Attorneys Who Work with Them*, ASPATORE, Aug. 2013, at 1 (discussing the basics of working with digital or computer forensic experts and how lawyers can successfully manage investigations conducted by these experts).

Joan E. Feldman, *The Expert's Role in Computer-Based Discovery*, PRAC. LITIGATOR, Jan. 2003, at 37 (explaining how attorneys increasingly rely on computer forensic experts for assistance with technical issues in discovery).

Gaetano Ferro, Marcus Lawson & Sarah Murray, *Electronically Stored Information: What Matrimonial Lawyers and Computer Forensics Need to Know*, 23 J. AM. ACAD. MATRIM. LAW. 1 (2010) (providing a comprehensive overview of issues raised by electronic information in family law cases, including what attorneys need to know about selecting and working with computer forensic experts).

Daniel B. Garrie, *Digital Forensic Evidence in the Courtroom: Understanding Content and Quality*, 12 NW. J. TECH. & INTELL. PROP. 121 (2014) (discussing how the *Daubert* standard for admissibility of expert testimony and reports applies to experts presenting digital forensic evidence).

Daniel B. Garrie & William R. Spernow, *A Guide for the Bench and the Bar on How to Evaluate a Digital Forensics Report*, 67 CONSUMER FIN. L.Q. REP. 449 (2013) (explaining what digital forensic experts do and providing a framework for evaluating a digital forensic report).

Sean L. Harrington, *Collaborating with a Digital Forensics Expert: Ultimate Tag-Team or Disastrous Duo?*, 38 WM. MITCHELL L. REV. 353 (2011) (discussing ethical rules and obligations governing attorneys using experts in digital forensics investigations, including possible ethical pitfalls relating to the work product doctrine, attorney-client privilege, and information security).

Jason Krause, *In Search of E-Expertise*, A.B.A. J., Nov. 2006, at 60 (noting the importance of finding the right expert on digital forensic issues).

Paul G. Lewis, *Data Forensics: The Smoking Gun May Be a Click Away*, N.J. LAW., Aug. 2004, at 41 (explaining the kinds of information that can be uncovered by a data forensics expert).

Sharon D. Nelson & John W. Simek, *Ghostbusters: "Who You Gonna Call?"* FAM. ADVOC., Winter 2006, at 40 (reporting that one-third of business for smaller computer forensics companies now comes from family law attorneys and providing advice for lawyers considering the use of computer forensics experts in divorce cases).

Sharon D. Nelson & John W. Simek, *How to Select Your Digital Forensics Expert: Finding Wyatt Earp*, OR. ST. B. BULL., June 2018, at 36 (explaining key factors to consider in choosing a computer forensics expert).

Jack Seward & Daniel A. Austin, *E-Sleuthing and the Art of Electronic Data Retrieval*, AM. BANKR. INST. J., Feb. 2014, at 14 (first of a three-part series of articles on how digital forensics experts can use sophisticated e-data retrieval technology to locate hidden or transferred assets in bankruptcy proceedings).

Jack Seward & Daniel A. Austin, *E-Sleuthing and the Art of Electronic Data Retrieval*, AM. BANKR. INST. J., Mar. 2004, at 14 (second part of the series).

Jack Seward & Daniel A. Austin, *E-Sleuthing and the Art of Electronic Data Retrieval*, AM. BANKR. INST. J., Apr. 2004, at 14 (third part of the series).

Concurrent Presentation (or “Hot Tubbing”) of Experts

Adam Elliott Butt, *Concurrent Expert Evidence in U.S. Toxic Harms Cases and Civil Cases More Generally: Is There a Proper Role for “Hot Tubbing”?* 40 HOUS. J. INT’L L. 1 (2017) (analyzing the potential adoption of Australia’s “hot tubbing” or “concurrent evidence” model, which means having each side’s expert testimony presented simultaneously during a joint session during the trial rather than having each expert separately subjected to direct examination and cross examination, and drawing on interviews conducted with senior U.S. and Australian judges, lawyers, experts, and academics to assess whether this reform would be preferable to the traditional adversarial methods for presentation of expert testimony in American courts).

Edie Greene & Natalie Gordon, *Can the “Hot Tub” Enhance Jurors’ Understanding and Use of Expert Testimony?* 16 WYO. L. REV. 359 (2016) (applying a social psychology framework to consider how well jurors can understand and assess expert testimony and discussing the potential risks and benefits of a “hot tubbing” or “concurrent evidence” approach).

David Michaels & Neil Vidmar, *Merton and the Hot Tub: Scientific Conventions and Expert Evidence in Australian Civil Procedure*, 72 LAW & CONTEMP. PROBS. 159 (2009) (exploring the models of science that underlie Australia's concurrent evidence approach and concluding that this approach has a modest potential to improve communication and comprehension in the courtroom but its potential benefits have been exaggerated).

Dana E. Prescott & Tim Fadgen, *Adversarial Systems and Forensic Experts in Child Custody: How About Adding a Hot Tub?*, 32 J. AM. ACAD. MATRIM. LAW. 117 (2019) (proposing that family courts can improve decision making in child protection and custody cases by adopting a "hot tubbing" or "concurrent evidence" approach for forensic evaluators).

Elizabeth Reifert, Comment, *Getting into the Hot Tub: How the United States Could Benefit from Australia's Concept of "Hot Tubbing" Expert Witnesses*, 89 U. DET. MERCY L. REV. 103 (2011) (recommending Australia's "hot tub" approach, where expert witnesses testify together at trial and can question one another, as a solution to the problem of adversarial bias of paid experts).

Megan A. Yarnall, *Dueling Scientific Experts: Is Australia's Hot Tub Method a Viable Solution for the American Judiciary?*, 88 OR. L. REV. 311 (2009) (evaluating the strengths and weaknesses of Australia's "hot tub" model for use of experts, identifying features of the American legal system that might affect the applicability of that model in the United States, and suggesting ways to modify the hot tub method for American courts).

Consultants (Non-Testifying Experts)

Gemma B. Allen, *The Changing Role of Consultants in Family Law*, FAM. ADVOC., Winter 2014, at 10 (discussing the types of assistance that non-testifying expert consultants can provide in divorce cases, with a particular focus on how using them can be consistent with the emerging view that the goal of divorce practice is to help the parties minimize their losses and harm rather than to "win" the case and defeat the other side).

Kathleen Michaela Brennan, Note, *Must the Show Go on? Defining When One Party May Call or Compel an Opposing Party's Consultative Expert to Testify*, 78 MINN. L. REV. 1191 (1994) (analyzing the risk that a consulting expert could voluntarily agree to testify for the opposing party or be compelled to do so).

David S. Caudill, "Dirty" Experts: Ethical Challenges Concerning, and a Comparative Perspective on, the Use of Consulting Experts, 8 ST. MARY'S J. LEGAL MALPRACTICE & ETHICS 338 (2018) (exploring potential ethical issues raised by the use of consulting experts who are not disclosed or subject to discovery, and comparing the U.S. approach to that of Australia).

Eric Y. Drogin, *Just the Two of Us: Privity with Your Consulting Mental Health Expert*, CRIM. JUST., Summer 2018, at 36 (examining how a criminal prosecutor might benefit from using a forensic psychologist as a consultant in order to get advice and information without presenting the psychologist as an expert witness in the case).

Maria E. Rodriguez, *Political Cover and Consulting Experts*, LITIG., Winter 2015, at 8 (explaining how a consulting expert can be a safe, non-discoverable way to get expertise and advice without the need for the expert to be identified and deposed).

Cost of Experts

Alexander Hayes, *Buying Justice: The Cost of Expert Witnesses in Jurisdictions Across the World*, 12 IDAHO CRITICAL LEG. STUD. J. 1 (2019) (comparing how the United States, Germany, and Columbia deal with issues raised by the high cost of retaining expert witnesses).

John H. Minan & William H. Lawrence, *The Personal Liability of an Attorney for Expert Witness Fees in California: Understanding Contract Principles and Agency Theory*, 34 SAN DIEGO L. REV. 541 (1997) (discussing the trend toward courts holding attorneys personally liable for fees owed to experts, and explaining how an attorney can avoid personal liability for unpaid expert fees by contractually disclaiming responsibility for the fees at the time the expert is retained).

Dana E. Prescott, *Interim Attorneys' Fees and Expert 'Costs' in Divorce: Ask and Your Client May Receive*, ME. B.J., Winter 2003, at 40 (discussing the provisions of Maine law under which a party in a divorce case can seek interim court orders allocating funds to cover attorney's fees and costs of expert witnesses).

Court-Appointed Experts

Anthony Champagne, *Are Court-Appointed Experts the Solution to the Problems of Expert Testimony?*, 84 JUDICATURE 178 (2001) (reporting results of a focus group study of the use of court-appointed experts in Texas family law cases, which found that judges and experts generally have a favorable impression of the effectiveness of court-appointed experts, while attorneys expressed concerns about court-appointed experts not being as neutral as they should be, costs not being reduced because parties retain private experts even when the court appoints an expert, and court-appointed experts reducing attorneys' ability to control the presentation of facts in their cases).

Ellen E. Deason, *Court-Appointed Expert Witnesses: Scientific Positivism Meets Bias and Deference*, 77 OR. L. REV. 59 (1998) (asserting that court-appointed expert witnesses blur the line between courts and advocates and suggesting measures to reduce the risk of bias and improper deference to court-appointed experts).

Stephanie Domitrovich, Mara L. Merlino & James T. Richardson, *State Trial Judge Use of Court Appointed Experts: Survey Results and Comparisons*, 50 JURIMETRICS J. 371 (2010) (reporting the results of a survey of state trial judges, including family court judges, about their use of court-appointed experts, with results suggesting that many judges believe increased use of court-appointed experts would be beneficial but that many also have concerns about the cost of such appointments, potential bias of court-appointed experts, and litigants' perceptions about the procedural fairness of using court-appointed experts).

Geoffrey M. Howard & Elizabeth A. Ybarra, *Court-Appointed Experts*, PRAC. LITIGATOR, Jan. 2001, at 55 (exploring why court-

appointed experts are seldom used but may become more common in the future).

Tahirih V. Lee, *Court-Appointed Experts and Judicial Reluctance: A Proposal to Amend Rule 706 of the Federal Rules of Evidence*, 6 YALE L. & POL'Y REV. 480 (1988) (proposing ways to enhance the legitimacy of court-appointed experts by adopting procedures that would minimize the aura of enhanced credibility that judicial appointment may bestow on the expert witness).

Karen Butler Reisinger, Note, *Court-Appointed Expert Panels: A Comparison of Two Models*, 32 IND. L. REV. 225 (1998) (recommending the use of court-appointed expert panels in pretrial admissibility hearings, in order to guard against the use of bad science while maintaining true adversarial presentation of the issues at trials).

Donna Tumminio, Student Note, *Breaking Down Business Valuation: The Use of Court-Appointed Business Appraisers in Divorce Actions*, 44 FAM. CT. REV. 623 (2006) (recommending that family courts expand their use of neutral business appraisers and addressing important practical issues that arise from the use of such experts, including how the neutral expert is chosen and who pays for the cost of the expert's work).

Joanne Ross Wilder, *Evaluating the Evaluator*, FAM. ADVOC., Summer 2000, at 25 (discussing the use of mental health experts in child custody cases, including the need to hire an expert to neutralize or discredit a damaging report by a court-appointed expert).

Dementia

Sharon B. Gardner, Catharine Coble Armstrong & Denise Rashti, *Dementia and Legal Capacity: What Lawyers Should Know When Dealing with Expert Witnesses*, 6 NAELA J. 131 (2010) (providing a basic explanation of dementia from a medical perspective and advising attorneys about the use of medical experts on dementia in probate, guardianship, and estate matters).

M. Frank Greiffenstein, *Selecting a Neuropsychologist as an Expert Witness*, MICH. B.J., Sept. 2002, at 45 (proposing a method

for grading the qualifications of prospective neuropsychology experts).

Adam F. Streisand, *A Lawyer's Guide to Diminishing Capacity and Effective Use of Medical Experts in Contemporaneous and Retrospective Evaluations*, 33 ACTEC J. 180 (2007) (discussing the use of experts on dementia in cases about matters such as conservatorships, wills, trusts, and contracts).

Employee Benefits and Pension Experts

David Clayton Carrad, *An Expert Witness on QDROs*, FAM. ADVOC., Spring 2007, at 34 (providing advice about the use of actuaries or qualified pension attorneys on the pension and other employee benefits issues that can arise in divorce cases).

James T. Friedman, *Questions to Trap the Expert*, FAM. ADVOC., Fall 1985, at 24 (listing questions for direct and cross-examination of actuarial experts opining about the valuation of defined benefit pensions).

Sandor Goldstein, *Put Your Actuary to Work: Valuing the Pension*, FAM. ADVOC., Fall 2001, at 26 (providing advice, from an expert who assists attorneys with pension valuations in divorce cases, about how to select an actuarial expert, what information the expert will need, and special issues to watch for).

Foreign Law Experts

Alejandro J. García, Note, *Lex Incognita No Longer: Making Foreign Law Less Foreign to Federal Courts*, 108 GEO. L.J. 1027 (2020) (arguing that the use of expert testimony to define the content of foreign law should be discouraged, except in rare situations where foreign law is unusually complex or not addressed in published sources, and in most instances parties should simply integrate experts' advice into their ordinary pleadings and filings).

Frederick Gaston Hall, Note, *Not Everything Is as Easy as a French Press: The Dangerous Reasoning of the Seventh Circuit on Proof of Foreign Law and a Possible Solution*, 43 GEO. J. INT'L L. 1457 (2012) (criticizing Judge Richard Posner's view that

courts generally should be reluctant to rely on affidavits or testimony from paid experts opining about foreign law).

Peter Hay, *The Use and Determination of Foreign Law in Civil Litigation in the United States*, 62 AM. J. COMP. L. 213 (2014) (discussing the complicated and varying rules or standards that apply to proving foreign law in American federal and state court proceedings, explaining that obtaining opinions from experts designated by the parties is still the most common way of proving foreign law, and assessing attempts in some states to pass legislation that would limit or prohibit reliance on foreign law).

Marcus S. Quinanilla & Christopher A. Whytock, *The New Multipolarity in Transnational Litigation: Foreign Courts, Foreign Judgments, and Foreign Law*, 18 SW. J. INT'L L. 31 (2011) (predicting that the use of expert testimony about foreign law will remain a common and important practice, notwithstanding criticism of the practice from Judge Richard Posner and some others).

Louise Ellen Teitz, *Determining and Applying Foreign Law: The Increasing Need for Cross-Border Cooperation*, 45 N.Y.U. J. INT'L L. & POL. 1081 (2013) (discussing the controversy over reliance on experts in determining foreign law and proposing that free trade agreements could address the problem by including provisions for certification of questions to foreign courts, direct communication between judges of different countries, or some other form of cross-border cooperation between American and foreign courts).

Matthew J. Wilson, *Demystifying the Determination of Foreign Law in U.S. Courts: Opening the Door to a Greater Global Understanding*, 46 WAKE FOREST L. REV. 887 (2011) (discussing how the use of experts remains the primary method for establishing foreign law, but over-reliance on paid experts can be biased, so alternative approaches should be considered such as relying more on court-appointed masters or creating methods for certification of legal questions to foreign courts).

Matthew J. Wilson, *Improving the Process: Transnational Litigation and the Application of Private Foreign Law in U.S. Courts*,

45 N.Y.U. J. INT'L L. & POL. 1111 (2013) (observing that the use of party-hired foreign law expert witnesses can be adversarial, expensive, time-consuming, and unreliable, but courts can reduce these problems through creative approaches such as using court-appointed neutral experts).

Forensic Accounting Experts

David H. Glusman, *Why Use a Forensic Accountant?*, FAM. ADVOC., Spring 2007, at 20 (explaining how a forensic accounting expert can assist an attorney with financial issues such as finding hidden assets or income or detecting manipulation of expenses).

Bruce L. Richman, *Valuing the Cash Business*, FAM. ADVOC., Winter 2003, at 17 (explaining how a skilled business evaluator with expertise in forensic accounting can find the hidden income of small, closely held companies).

Robert S. Steinberg, *Controlling Forensic Accounting Costs*, FAM. ADVOC., Spring 2007, at 38 (recommending ways that attorneys can limit costs of forensic accounting experts by communicating more effectively with the expert and providing specific instructions about the expert's work).

General Considerations for Use of Experts in Family Law Cases

Stephen G. Dennis, *Selecting and Using a Capable, Ethical Financial Expert in Dissolution Practice*, 45 FAM. L.Q. 5 (explaining the major ethical issues that family lawyers need to address with their financial experts in divorce cases, such as conflicts of interest, objectivity, and confidentiality).

Melvyn B. Frumkes & Jack A. Rounick, *Hiring an Expert*, FAM. ADVOC., Spring 2007, at 8 (providing a basic introduction to the use of experts in family law matters).

Carl W. Gilmore, *Those Priceless Experts: Factoring Their Fees and Costs into the Case*, FAM. ADVOC., Fall 1999, at 26 (offering practical advice about how to determine when to hire experts in family law matters and suggesting ways to be cost effective in cases where experts are used).

Suzanne Harris, *The Art of the Expert*, FAM. ADVOC., Fall 1998, at 30 (providing advice on how to select, prepare, and depose an expert, as well as how to lay waste to the opposing expert's opinion).

James J. Jimmerson & Jennifer Leonescu, *Cross-Examining the Opposing Expert*, FAM. ADVOC., Fall 1998, at 34 (recommending ways to succeed in cross-examination of experts in family law cases, including outlining the examination, mining the expert's prior depositions or testimony from other cases, and controlling the witness during the examination).

Joan F. Kessler & Allan R. Koritzinsky, *Guide Your Expert Through the Thicket*, FAM. ADVOC., Summer 1996, at 29 (explaining the basic principles for effective preparation and presentation of expert witnesses in family law cases, with checklists of items to remember in engaging the expert, taking depositions, and examining the witness at trial).

Impact, Reliability, and Bias of Experts

Ronald J. Allen & Joseph S. Miller, *The Common Law Theory of Experts: Deference or Education?*, 87 NW. U. L. REV. 1131 (1993) (contending that the fundamental underlying question in debates about the role of experts in the civil justice system is whether judges and juries should defer to experts or instead treat them as a source that can provide education but should not supplant the judges' or juries' decisional role).

David E. Bernstein, *Expert Witnesses, Adversarial Bias, and the (Partial) Failure of the Daubert Revolution*, 93 IOWA L. REV. 451 (2008) (discussing how the risk of adversarial bias is the primary rationale for tightening standards for admission of expert witness testimony, but those tighter standards do not change the general adversarial structure of litigation that creates the underlying problems with reliability of experts selected and paid by the litigants).

Itiel E. Dror, Bridget M. McCormack & Jules Epstein, *Cognitive Bias and Its Impact on Expert Witnesses and the Court*, JUDGES' J., Fall 2015, at 8 (discussing steps to ensure that expert evidence is as objective and impartial as possible).

Richard A. Epstein, *Judicial Control over Expert Testimony: Of Deference and Education*, 87 NW. U. L. REV. 1156 (1993) (suggesting reforms that might help to strike a balance between giving too much or too little room for use of expert testimony).

Jeffrey L. Harrison, *Reconceptualizing the Expert Witness: Social Costs, Current Controls and Proposed Responses*, 18 YALE J. ON REG. 253 (2001) (proposing ways to deter expert witnesses from giving partisan, biased, and dishonest testimony and to make them more accountable for the social costs of their conduct).

Bernalyn D. Mcgaughey, *The Role and Responsibility of an Expert Witness*, 3 DRAKE J. AGRIC. L. 227 (1998) (offering advice for experts, from the perspective of an expert witness, on billing practices, marketing, and maintaining integrity).

Oren Perez, *Judicial Strategies for Reviewing Conflicting Expert Evidence: Biases, Heuristics, and Higher-Order Evidence*, 64 AM. J. COMP. L. 75 (2016) (reporting results of an empirical study of strategies that judges use to deal with conflicting expert evidence and arguing that the civil law model of court-appointed experts has significant advantages over the adversarial model of multiple experts selected by the parties).

Impeaching Experts

Alan R. Carlson, *Discovery of Expert Witness Income Tax Forms and Other Information*, 2 J. LEGAL ECON. 67 (1992) (discussing when an expert witness can be impeached with evidence about the amount of fees earned by the expert in prior cases).

Susan B. Dussault, *Cross-Examining and Impeaching Expert Psychiatric Witnesses*, COLO. LAW., Nov. 1997, at 75 (analyzing whether an expert psychiatric witness can be cross-examined about whether the expert knows about certain prior conduct of the individual about whom the expert is offering an opinion).

Edward J. Imwinkelried, *Rationalization and Limitation: The Use of Learned Treatises to Impeach Opposing Expert Witnesses*, 36 VT. L. REV. 63 (2011) (reviewing the extent to which an attorney can impeach an expert witness using a text or article written by someone other than the witness).

Richard T. Jones, *The Defense: Impeaching Your Opponent's Expert*, BRIEF, Summer 1985, at 42 (reviewing basic strategies for impeachment of expert witnesses).

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Jill Seaman Plancher, *Evidence Without Expensive Experts: Custody*, FAM. ADVOC., Fall 2013, at 31 (explaining the key methods used by legal aid lawyers to prepare and litigate child custody cases without the financial means to retain experts, such as rely-

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Instructional Use of Experts

Steven N. Peskind, *Using Experts as Educators*, FAM. ADVOC., Winter 2014, at 14 (explaining how family law attorneys typically use experts to evaluate the particular facts of the case before the court, but they should also consider using experts to educate courts about important information relevant to a case, such as the contents of professional literature or empirical studies)

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Thomas E. Baker, *The Impropriety of Expert Witness Testimony on the Law*, 40 U. KAN. L. REV. 325 (1992) (criticizing the trend toward courts permitting law professors to testify as legal expert witnesses).

Kathryn E. Barnett, *Limiting the Testimony of Legal Experts*, TRIAL, Jan. 2001, at 55 (providing advice to attorneys filing motions to exclude the testimony of experts on law).

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be appropriate to use expert testimony on law, such as in cases involving foreign legal procedures or particularly complex areas of domestic law).

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Gerald S. Clay, *Complex Disputes: Outside Experts Can Simplify and Focus Mediations*, DISP. RESOL. MAG., Fall 2003, at 19 (explaining how chances of a successful settlement may increase if the parties agree to share the cost of an expert who can advise the mediator about the strength of the parties' technical and legal positions).

James E. McGuire, *Expert Roundtable in Mediation*, DISP. RESOL. MAG., Spring 2005, at 21 (discussing how an expert roundtable approach, where experts meet directly together without parties or attorneys by their sides, may be an effective way for decision makers in mediation to gather information).

Mark Zukowski, *The Expert Witness May Improve Your Mediation Success*, ARIZ. ATT'Y, Mar. 2018, at 28 (assessing the pros and cons of bringing expert witnesses to mediation).

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David S. Dolowitz, *Why You Need a Tax Expert*, FAM. ADVOC., Spring 2007, at 28 (explaining why it is important for family law attorneys to seek expert assistance with tax issues arising in most divorce cases).

Steven N. Peskind, *No Expert, No Problem: Strategies for Admission of Tax Evidence Without Expert Testimony*, FAM. ADVOC., Fall 2014, at 37 (recommending ways that family law attorneys can introduce information about tax issues without using an expert witness, including entering into stipulations, asking the court to take judicial notice of information, presenting IRS publications, and reframing the issue as a legal argument rather than a factual question).

Edward L. Winer, *Cross-Examining the Accountant, the Routine Case*, FAM. ADVOC., Spring 1986, at 20 (offering advice on impeaching an accountant's expert testimony about the income tax effects of alimony payments).

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Jon D. Edelman, *An Appraising Look at Coins and Paper Money*, FAM. ADVOC., Spring 2007, at 18 (discussing the use of experts in divorce cases to appraise the value of coin or paper money collections).

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Michelle F. Gallagher, *Cracking the C-O-D-E*, FAM. ADVOC., Spring 2009, at 34 (reviewing the key considerations for business valuation reports, including proper qualification of the expert and compliance with appropriate business valuation standards).

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Robert E. Kleeman, Jr. & Gerald N. Weaver, *When to Use an Appraiser*, FAM. ADVOC., Spring 1995, at 20 (providing advice about when the use of a valuation expert is necessary, recommending ways to reduce costs when using an expert, and suggesting alternative ways to value assets and reduce costs for the client).

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Cindy Perusse, *Evidence Without Experts: Property Issues*, FAM. ADVOC., Fall 2013, at 22 (suggesting how family law attorneys can obtain accurate valuations of marital property through "do-it-yourself" methods, such as relying on websites with home sales data or online auction results, when the client cannot afford the cost of hiring a valuation expert).

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Andrew Z. Soshnick, *Challenging Expert Valuation Opinions in Divorce Cases: An Oasis or Mirage in the Trial Desert?*, 30 J. AM. ACAD. MATRIM. LAW. 455 (2018) (advising attorneys about potential challenges to valuation expert reports, opinions, and testimony in divorce cases and suggesting how family courts can become more diligent and consistent in assessing the admissibility of expert financial opinions).

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Robert J. Durst II, *Maximizing the Impact of a Vocational Expert*, FAM. ADVOC., Spring 1999, at 30 (listing questions to ask a vocational expert on voir dire, direct examination, and cross examination).

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BETTY KOHLENBERG, *WORK & DIVORCE: VOCATIONAL EVALUATION IN FAMILY LAW* (2013) (providing guidance for attorneys and clients on the use of vocational evaluations in divorce cases).

Martin A. Kranitz, *Understanding the Vocational Evaluation*, FAM. ADVOC., Summer 2012, at 38 (providing a basic discussion, from the perspective of an experienced vocational consultant, of the role that vocational assessments and evaluations can play in family law cases, including advice for clients about how to prepare for an evaluation and what questions to expect to be asked).

Edward M. Mazze & Candace E. Mazze, *Putting a Vocational Expert to Work in a Divorce Case*, FAM. ADVOC., Winter 2014, at 26 (advising family law attorneys about how to select a vocational expert who can provide a useful report and testimony for divorce litigation).

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Thomas C. Ries & Kathryn E. Hummel, *Establishing Earnings Potential & Employability Without an Expert*, FAM. ADVOC., Fall 2013, at 28 (explaining how in some cases where it is not feasible to pay a vocational expert, there may be creative ways to present the information that such an expert's opinion would address).

Robert G. Stanley & Kenneth A. Gordon, *Working with the Vocational Expert*, FAM. ADVOC., Spring 2007, at 14 (explaining how vocational experts in matrimonial cases can provide valuable information on issues about spouses' employment opportunities and earning capacities, but family law attorneys need to be careful in selecting and supervising these experts because there are no clearly defined professional standards that govern the opinions of vocational experts).