DETERMINING CHILDREN'S 'BEST INTERESTS' IN HIGH-CONFLICT CUSTODY CASES: EXAMINING PROGRAM PROCESSES IN CUSTODY ADVOCACY

by

Khalil B. Salim

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Approved by:

_____
Dr. Ryan P. Kilmer

_____
Dr. James R. Cook

_____
Dr. Joanne G. Carman

_____
Dr. Margaret M. Quinlan

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ABSTRACT

KHALIL B. SALIM. Determining Children's 'Best Interests' in High-conflict Custody Cases: Examining Program Processes in Custody Advocacy. (Under the direction of DR. RYAN P. KILMER and DR. JAMES R. COOK)

In recent years, family courts have made increasing use of advisors and/or advocates (e.g., forensic psychologists, social workers, best interest attorneys, guardian *ad litems*, etc.) in determining outcomes in child custody disputes. Evidence suggests that recommendations from advisors and/or advocates carry considerable weight in judges' custody determinations. As a result, the present study examined processes and mechanisms utilized by a custody advocacy program in formulating, determining, and operationalizing the best interests of children, as well as barriers and challenges experienced in doing so. The Custody Advocacy Program (CAP) examined in this study utilizes a unique structured model (within the context of custody advocacy and legal representation), consisting of a staff attorney, volunteer attorney, and a custody advocate (collectively, the "best interest team"). Given the exploratory nature of this study, an ethnography-inspired approach was utilized, with data drawn from interviews and systematic observations (of a CAP staff meeting and a trial). Interviews were transcribed and analyzed using a constant comparative method. Findings indicated that the structural model of CAP yielded several benefits including a representation of a diverse set of perspectives when determining custody recommendations, reduced personal biases, and specialized legal knowledge. Moreover, the study revealed how staff attorneys interviewed for the purposes of the study defined the concept of "best interests," which consisted of children having a relationship with both parents, safety, health adjustment,

satisfactory mental and physical health, and legal custody. Study findings also underscored challenges in custody advocacy, such as families experiencing barriers in accessing recommended services, family noncompliance to investigations and/or recommendations, and difficulty assigning weights to factors in cases when determining custody arrangements. Overall, study findings suggest that a structured model like CAP may be beneficial in improving how children's best interests are represented and advocated for in high-conflict custody cases. Implications from this study include a recommendation for a judicial and legislative response that ensures that *all* aspects of best interests are addressed in state statutes.

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CHAPTER 1: INTRODUCTION

An estimated 50% of children in the U.S. will experience parental divorce at some point during their childhood, an event that affects more than 1 million American children per year (National Center for Health Statistics, 2014). The majority of child custody disputes arising from parental separation and divorce are settled out of court; however, a notable percentage involves protracted litigation, or what is often referred to as "high-conflict" (Ayoub, Deutsch, & Maraganore, 1999; Johnston, 1994; Rohrbaugh, 2008). These cases account for 8-12% of custody disputes and are characterized by: "intractable legal disputes, ongoing conflict over parenting practices, hostility, physical threats, and intermittent violence" (Johnston, 1994, p. 172; Rohrbaugh, 2008).

In cases characterized as "high-conflict," family court judges often assign a best interest attorney to advocate for a child's best interests, given that their interests may differ from those of their parents and/or guardians (American Bar Association's Family Law Section Council, 2003; Bonmil, Freitas, & Freitas, 2011). The duties of a best interest attorney include: conducting investigations (consisting of records review, collateral interviews, and other steps, as needed); developing strategies for the presentation of facts and legal issues related to the case; participating in depositions, hearings, and parent conferences; and filling and/or making petitions, motions, and responses or objections when necessary (American Bar Association's Family Law Section Council, 2003, p. 6).

In some states, family court judges may assign a *Guardian Ad Litem* (GAL) to a high-conflict custody case. The role of a GAL often varies across states, thus complicating efforts to define clearly their role in high-conflict custody cases. The

American Bar Association's Family Law Section (2003) addresses this issue in their Standards of Practice for Lawyers Representing Children in Custody Cases,

> the role of "guardian ad litem" has become too muddled through different usages in different states, with varying connotations. It is a venerable legal concept that has often been stretched beyond recognition to serve fundamentally new functions, such as parenting coordinator, referee, facilitator, arbitrator, evaluator, mediator and advocate (p. 3).

Although some states vary widely in their procedures and programs related to GALs, the literature ultimately describes GALs as investigators, determiners of children's best interests, and advocates for a child (Forman, 2007). Of particular salience here, some research suggests that GAL's investigation and recommendations heavily influence judges' decision-making as it relates to children's best interests. For instance, one effort (Kunin, Ebbesen, & Konecni, 1992), found that in over 70% of cases in which GALs made recommendations, judges agreed and followed their recommendations (as cited in Tolle, 2010, p. 142).

Relatedly, in recent years, family courts have made increasing use of professionals such as social workers, psychologists, and psychiatrists in determining outcomes in child custody disputes (Ackerman & Ackerman, 1997; Ackerman & Pritzl, 2011; Bow & Quinnell, 2001). Typically, recommendations by such professionals are sought to assist judges in making decisions in cases in which they may lack in-depth knowledge of factors and context of specific relevance to the case and feel as though professional input would be beneficial in determining a child's best interests (Rohrbaugh, 2008). Consistent with that notion, the available evidence suggests that, since at least the

1980s, judges have accepted the majority of recommendations from the diverse professionals involved in child custody and access cases (Davidson-Arad & Cohen, 2004). A recent study found that recommendations by professionals were followed by judges in 52% of cases (Semple, 2011).

With that as a backdrop – that is, that advisors and/or advocates[1] recommendations carry considerable weight in custody cases – the present study seeks to examine how a best interest team (consisting of a staff attorney, volunteer attorney, and a custody advocate) working within a custody advocacy program, formulates, determines, and operationalizes the best interests of children, as well as the challenges they face in doing so. Furthermore, given similarities in investigative procedures (e.g., records reviews, home visits, collateral interviews, observations, etc.) among best interest attorneys, guardian *ad litems*, and forensic evaluators, the present study provides an opportunity to not only examine processes in determining the best interests of children, but also to compare how investigative and advocacy processes from a legal perspective and framework (i.e., CAP, best interest attorney, etc.) compare with traditional custody evaluation models (i.e., one grounded in psychology and social work) that employ a number of similar processes.

The best interests of children have been the focus of a noteworthy body of work across disciplines as well as within various statutes across the United States. These writings underscore the substantive challenges facing those who function in this context and seek to make optimal recommendations and/or decisions. For instance, the criteria guiding professionals' and judges' custody decision-making has been described as

[1] "Advisors and/or advocates" broadly refers to individuals who aid and/or support in making decisions and/or arrangements relating to a child's best interests, including but not limited to: forensic evaluators, best interest attorneys, and guardian ad litems.

problematic (Davidson-Arad, Cohen, & Wozner, 2003). Specifically, although the Best Interests of the Child Standard (BICS) is the criterion for awarding child custody in the U.S. (Raub, Carson, Cook, Wyshak, & Hauser, 2013), this standard is operationalized differently across the statutes of many states (Emery, Otto, & O'Donohue, 2005). For example, in South Carolina, BICS takes into consideration the religious commitment of parents while, in states such as Florida and Utah, the standard includes consideration of parents' moral character (Emery et al., 2005). And although case law and precedent help in defining best interests, for some issues, there remains little guidance, which has been described by Harmer and Goodman-Delahunty (2014),

> even though case law and statutes incorporate criteria defining BIC, the criteria tend to be global, and refer to general issues such as "the relationship between the child and parent" without indicating what aspects of the relationship are most important… there is little guidance as to what specific information is most relevant in applying the principle in any particular case, or how its application should be assessed (p. 252).

In summary, the variability across states in how best interests are operationalized, in addition to the lack of clarity regarding BICS, can be problematic given that it leaves room for interpretation as well as judicial discretion (Baker, Asayan, & LaCheen-Baker, 2016; Emery et al., 2005; Settle & Lowery, 1982).

These issues are complicated further by the nature of the guidelines for conducting child custody evaluations, which the literature has described as typically vague and ambiguous (Emery et al., 2005; Herman, 1990). In 1994, the American Psychological Association published guidelines intended to assist professionals in

conducting evaluations in divorce proceedings. However, as noted by Davidson-Arad, Cohen, and Wozner (2003), the guidelines are "less than 200 words long, and only one of the 16 topics they cover deals with factors that assessors should consider in making their evaluations" (p. 12). Because of the ambiguous nature of BICS and lack of professional guidance, judges as well as court-assigned advisors and/or advocates are often left with a great deal of discretion, which may be subject to personal and cultural biases (Coontz, 1995; Sagi & Dvir, 1993). As a result, the present study examined processes and mechanisms utilized by a custody advocacy program using a structured team approach consisting of a best interest attorney, volunteer attorney, and custody advocate in formulating, determining, and operationalizing the best interests of children, as well as barriers and challenges experienced in doing so. Given the exploratory nature of this work, the study employed an ethnography-inspired approach, with data drawn from multiple sources, including interviews and systematic observations (Berg, 2001; Denzin & Lincoln, 1994; Emerson, Fretz, & Shaw, 2011; Van Maanen, 1979).

The following sections provide: (a) a brief historical overview of approaches to resolving custody disputes, (b) background on the formulation of the Best Interests of Child Standard (BICS), (c) criticisms of BICS, (d) proposed solutions to remedy the shortcomings of BICS, (e) an overview of standards and procedures in child custody evaluations and/or investigations, (f) debate regarding the use of child custody evaluations, (g) and the context of the present work: Council for Children's Rights Custody Advocacy Program.

1.1. Historical Overview of Approaches to Resolving Custody Disputes

Over the centuries, legal approaches to resolving custody disputes have evolved

significantly. Until the 19th century, common-law provided fathers with an unqualified right to child custody in the event of separation or divorce (Einhorn, 1986). This law's origin has been traced back to early Roman law, which gave fathers power over their children, including but not limited to, the right to custody in the event of separation or divorce (Derdeyn, 1976; Goldstein & Fenster, 1994).

In subsequent decades, increased awareness of the mother's role in raising children began to affect the issue of child custody in the event of divorce or separation (Derdeyn, 1976; Einhorn, 1986; Goldstein & Fenster, 1994; Rohrbaugh, 2008). Specifically, this increased awareness led to the emergence of what was known as the Tender Years Doctrine, which stated that the mother was the most suitable caretaker for young children (Goldstein & Fenster, 1994; Raub et al., 2013; Santilli & Roberts, 1990). This shift to prioritizing custody with mothers was due to the increased status of women (Marafiote, 1985), the presumption that young children need maternal love and attention above all (Raub et al., 2013), and the movement for the consideration of custody as separate from property ownership. As a result, from the 1850s until the 1960s, judges ruled in favor of mothers in the majority of custody cases (Stamps, Kunen, & Rock-Faucheux, 1998).

1.1.1. Formulation of Best Interests of Child Standards (BICS)

In more recent decades, methods of solving custody disputes have shifted away from gender-based approaches in favor of a case-by-case approach (Baker et al., 2016). This shift in approach was signaled by the development of the Best Interests of the Child Standard (BICS) in awarding child custody (Raub et al., 2013). The BICS was put forth in the Uniform Marriage and Divorce Act in 1973, and renamed in 1996 as the "Marriage

and Divorce Act" (Einhorn, 1986; Goldstein & Fenster, 1994; Raub et al., 2013). The act defines the best interests of the child as a composite of the following five factors: "the wishes of the child's parent or parents as to custody; the wishes of the child as to the custodian; the interaction and interrelationship of the child with the child's parent or parents, the child's siblings, and any other person who may significantly affect the child's best interest; the child's adjustment to home, school, and community; and the mental and physical health of all individuals involved" (Raub et al., 2013, p. 206).

1.2. Criticisms of the Best Interest of the Child Standard (BICS)

Although the adoption of BICS signaled a shift towards focusing on children's well-being, it has not been without criticism (Baker et al., 2016; Charlow, 1987; Emery et al., 2005; J. Kelly, 1994; Maccoby & Mnookin, 1992; Rodham, 1973). One set of complaints involves the vagueness of BICS, which increases the likelihood that decision-makers rely on personal and cultural biases (Baker et al., 2016). Rodham (1973) examined children's status under the law and wrote that the BICS is not "properly a standard. Instead, it is a rationalization by decision-makers justifying their own judgments about a child's future, like an empty vessel into which adult perceptions and prejudices are poured" (p. 513). Over a decade later, legal scholars (e.g., Kelly, 1994) continued to raise this criticism. As one case in point, Charlow (1987) wrote, "because the 'best interests of the child' standard is more a vague platitude than a legal or scientific standard, it is subject to abuse both by judges who administer it and parents who use it to further their own interests" (p. 267). Overall, several authors have criticized the vagueness of BICS because it creates a situation in which a child's future is not necessarily based on what is in the "best interests" of the child, but instead, decision-

makers' subjective interpretation of what "best interests" may mean.

The BICS has also been criticized because of the lack of guidance in state statutes regarding which "interests" should be considered by the courts and the definition and weight that should be assigned to varying factors (Baker et al., 2016). This issue was evident in a study (Lowery, 1981) in which judges reported the relative weights they assign to factors in determining child custody. Not unexpectedly, the findings of the study indicated that judges attach greater importance to some factors than others (Lowery, 1981); however, content analysis of the study's qualitative data yielded a noteworthy result – most judges noted that "after taking everything into consideration, the final decision was made on their gut reaction to the individual case" (Settle & Lowery, 1982, p. 136).

Criticisms have also been raised regarding the difficulty in reconciling competing aspects of the BICS, which places decision-makers in a legal, practical, and ethical dilemma (Baker et al., 2016; Emery et al., 2005). This dilemma is described by family law Professor Robert Mnookin (1992) as follows:

> Deciding what is best for a child poses a question no less ultimate than the purposes and values of life itself. Should the judge be primarily concerned with the child's happiness? Or with the child's spiritual and religious training? Should the judge be concerned with the economic ''productivity'' of the child when he grows up? Are the primary values of life in warm interpersonal relationships, or in discipline and self-sacrifice? Is stability and security for a child more desirable than intellectual stimulation? These questions could be elaborated endlessly. And yet, where is the judge to look for the set of values that should inform the choice

of what is best for the child? (pp. 260–261).

Unfortunately, the standard provides no specific direction or guidance as to how decision-makers should approach, weigh, or consider such competing aspects of BICS (Baker et al., 2016).

Another prime criticism relates to the absence of mention of parental alienation in BICS (Baker et al., 2016). In this context, parental alienation is used to describe a "family dynamic in which one parent engages in attitudes and actions that are likely to result in a child's unjustified rejection of the other parent" (Baker et al., 2016, p. 1011). Research has found that a common symptom of parental alienation is that the child resists contact with the parent and/or guardian being alienated (Bernet, Boch-Galhau, Baker, & Morrison, 2010). If the child does experience contact with the alienated parent, it is typically characterized by anxiety, extreme withdrawal, or gross contempt (Bernet et al., 2010; A. Goldstein, 2003; Rohrbaugh, 2008).

Challenges related to parental alienation are especially problematic in states where a child's stated preference is given deference over the preference of the primary parent and/or guardian (Baker et al., 2016). In cases in which parental alienation is present, children may state a custody preference that is the result of a parent and/or guardian's coaching, rather than a reflection of what is in fact in their best interests (Baker et al., 2016; Bernet et al., 2010; Rohrbaugh, 2008). Given the complexities and impact of parental alienation on a child's well-being, Baker et al. (2016) call for: guidelines to help advisors and/or advocates ascertain whether children's stated preference are of free will or the result of parental coaching; modification of state statutes to explicitly mention parental alienation; and mandates for forensic evaluators to be adept

in conducting parental alienation-informed evaluations.

1.3. The Approximation Rule as a Replacement to Best Interests of the Child Standard (BICS)

To remedy shortcomings of the BICS, the "approximation rule" has been suggested to help enact clear guidelines for determining custody (American Law Institute, 2002; Emery et al., 2005; Kelly & Ward, 2002; Scott, 1992). The approximation rule was first suggested by Elizabeth Scott (1992) and endorsed by the American Law Institute (2002) to govern court decisions in cases in which litigating parties could not agree on a child's custody arrangement. Under this rule, judges as well advisors and/or advocates would determine physical custody[2] by the amount of time each parent and/or guardian dedicated to caretaking functions[3] before separation. Proponents have argued that adoption of the rule would yield a number of benefits, including that parents would be encouraged to invest in pre-separation parenting time (given that the approximation rule draws on historical practices prior to parents' separation; Scott, 1992), children would benefit from the stability and continuity in their parent-child relationships (Kelly & Ward, 2002), and litigating parties would be encouraged to negotiate their own custody arrangements (Emery et al., 2005).

Despite the fact that the approximation rule was developed with the intent that it would help simplify processes for determining custody arrangements, a number of criticisms have been documented (Riggs, 2005; Warshak, 2007a). For instance, some

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[2] Physical custody refers to "the time children actually spend with their parents. In cases of primary physical custody, the children spend the majority of their time with one parent and generally visit with the nonresidential parent on some agreed-to schedule" (Emery et al. 2005, p. 2)

[3] Kelly and Ward (2002) state that caretaking functions include activities such as "feeding, bathing, recreation and play, transportation, discipline, supervision of homework, arranging for education, health care and/or daycare, moral guidance, and so on" (p. 352).

critiques (e.g., Riggs, 2005) note that the approximation rule may introduce bias in favor of mothers, given that fathers are more likely to work full-time than mothers. Others (e.g., Warshak, 2007) argue that prior caretaking is not an "objective index of the strength of the child's attachment to a parent, the quality of the relationships, the competence of the parent, the ability of the parent to meet the child's needs, or the motivation of the parent to do so" (p. 123). In sum, diverse critiques and arguments have pointed to a range of shortcomings in the BICS and the approximation rule.

1.4. Standards and Procedures within Child Custody Evaluations and/or Investigations

In light of the influence of writings in this area, such as Freud and Goldstein's (1979) *Beyond the Best Interests of the Child* – and in the absence of clear guidance from the law – judges have increasingly turned to mental health professionals for assistance in determining children's best interests (Emery et al., 2005; A. Goldstein, 2003; Rohrbaugh, 2008). In turn, mental health professionals serving the courts are often asked to report regarding (a) parent and/or guardians' functioning; caretaking skills; relationship and interactions with the child; approach to discipline; stability (b) the child(ren)'s needs and developmental and emotional functioning; and (c) their professional opinions regarding the arrangement(s) that serve the child's best interests (American Psychological Association, 1994; Bow & Quinnell, 2001; Budd & Springman, 2011; Luftman, Veltkamp, Clark, Lannacone, & Snooks, 2005; Rohrbaugh, 2008). Similarly, GALs as well as best interest attorneys appointed to high-conflict custody cases are tasked with investigating the circumstances of the case, weighing the evidence they have obtained, and then making recommendations and/or positions about custody and visitation (American Bar Association's Family Law Section Council, 2003; Forman, 2011).

Custody evaluation procedures may vary across evaluators, but typically consist of the following elements: administering self-report measures and standardized psychological tests; reviewing records; gathering information from collateral sources; interviewing parents and children; observing parent and child interactions; and writing a report describing findings and recommendations based on the evaluation (Ackerman & Ackerman, 1997; Ackerman & Pritzl, 2011; Bow & Quinnell, 2001; M. Goldstein, 2016; Gould & Bell, 2000; Rohrbaugh, 2008). Relatedly, best interest attorneys and/or GALs also perform many of the same investigative tasks as custody evaluators to determine what is in the best interests of the child. Because of overlap in many of the processes performed by custody evaluators, best interest attorneys, and GALs in determining the best interest of children, the following paragraphs will discuss components of the investigation and/or evaluation together.

1.4.1. Self-report Measures

One of the core data-gathering components of custody evaluations and/or investigations is the use of self-report measures (Bow & Quinnell, 2001; M. Goldstein, 2016; Gould & Bell, 2000; Rohrbaugh, 2008; Forman, 2011). Such measures typically consist of questionnaires, surveys, and checklists designed to assess parenting satisfaction, emotional well-being, and parent-child relationships (Ackerman & Ackerman, 1997; Forman, 2007; M. Goldstein, 2016; Gould & Bell, 2000; Rohrbaugh, 2008). Results from these measures inform advisors and/or advocates hypotheses about each child or parent, as well as the next steps in the investigation (Forman, 2011; Gould & Bell, 2000).

1.4.2. Records Review

Professional records related to the parties involved in a custody dispute serve as a means of verifying or discounting information (Gould & Bell, 2000). In many cases, advisors and/or advocates review available mental health records, medical records, criminal records, and educational records (American Bar Association's Family Law Section Council, 2003; Bow & Quinnell, 2001; Forman, 2007; M. Goldstein, 2016; Gould & Bell, 2000; Rohrbaugh, 2008). Beyond such records, other relevant documents and materials may include legal materials (e.g., pleadings, statements, affidavits), social service agencies' reports (e.g., reports by the Department of Social Services), and personal records (e.g., letters, emails, text messages, journals, and voicemails; American Bar Association, 2003; Forman, 2011; Rohrbaugh, 2008).

1.4.3. Collateral Interviews

Collateral interviews serve as a means of verifying information through, or obtaining the perspective of, independent sources (American Bar Association's Family Law Section Council, 2003; Bonmil et al., 2011; Forman, 2007; Gould & Bell, 2000; Kargman, 1979; Rohrbaugh, 2008). Collateral interviews typically involve third parties (e.g., friends, relatives, teachers, therapists, and extended family; (Bow & Quinnell, 2001; Forman, 2007; M. Goldstein, 2016; Gould & Bell, 2000). Through the use of collateral interviews, advisors and/or advocates can corroborate information or allegations from the case; they can also ask collaterals to describe specific behaviors for insights about the case that cannot be formulated through other investigative procedures (e.g., records review, interviews with parents and children, and self-report measures; Forman, 2011; Gould & Bell, 2000; Rohrbaugh, 2008).

1.4.4. Interviewing Parents and Children

During interviews, advisors and/or advocates are able to establish rapport, collect data, as well as corroborate information from other data sources (American Bar Association's Family Law Section Council, 2003; Forman, 2007; Rohrbaugh, 2008). Information typically collected during these interviews addresses child and family histories, family conflicts, and parenting practices (American Bar Association's Family Law Section Council, 2003; Breeden, Olkin, & Taube, 2008; Forman, 2007).

1.4.5. Behavioral Observations

The American Psychological Association's (1994) Child Custody Guidelines state that a comprehensive custody evaluation should include "an evaluation of the interaction between each adult and child." Observing parent-child interactions allows evaluators to assess parenting behaviors, capacities, and abilities (Rohrbaugh, 2008). Similarly, GALs are provided with special powers by the court to investigate allegations or observe interactions between the child and the parents/guardians in order to inform their recommendations and determinations of custody (Bonmil et al., 2011; Forman, 2007).

1.4.6. Standardized Psychological Tests

The decision to use psychological testing is made based on the factors present in a case (Ackerman & Pritzl, 2011; Rohrbaugh, 2008). In many instances, psychological tests are administered when parents and/or guardians exhibit behaviors that would increase the risk of harm to the child or may interfere with adequate parenting (Rohrbaugh, 2008). Forensic evaluators' choice of psychological tests to be administered depends on the psycho-legal questions being posed, and the tests employed can be grouped into four categories, including measures of: (a) intelligence, (b) academic functioning, (c) personality, and (d) attitudes and behaviors (Brodzinsky, 1993; Gould &

Bell, 2000). One study found that objective personality tests were most commonly used with adults (specifically, the Minnesota Multiphasic Personality Inventory and the Millon Clinical Multiaxial Inventory), while intelligence tests (e.g., Wechsler Intelligence Scale for Children, Stanford-Binet Intelligence Scale, Kaufman Assessment Battery for Children, and McCarthy Scales of Cognitive Abilities) and various projective tests (e.g., Family drawing or Kinetic Family Drawing, or Children's Apperception Test) were most often used with children (Bow & Quinnell, 2001). It is important to note that psychological testing is only administered by forensic psychologists or professionals with the appropriate training. If a best interest attorney and/or a GAL believe that a psychological assessment is necessary in determining a child's best interests, they can request that the court appoint a forensic evaluator to conduct and report the findings of the assessment.

1.4.7. Report Writing

Reports summarize the evaluator's and/or GAL's work, including the procedures and methods utilized, data collected, inferences, and conclusions drawn (Forman, 2007, 2011; Rohrbaugh, 2008). The purpose of the report is to provide information to judges and attorneys to assist in settling[4] or deciding the outcome of the case (Forman, 2011; M. Goldstein, 2016; Rohrbaugh, 2008). Research suggests that reports and/or testimony from a GAL and/or custody evaluator heavily influence judges' custody determinations (Kunin et al., 1992; Lund, 2015).

1.5. Debate Regarding the Use of Child Custody Evaluations in Custody Disputes

Recent research indicates that most child custody reports by forensic evaluator's

[4] A settlement is a resolution between two disputing parties in a legal case that is reached before or after trial begins.

include recommendations for physical custody (92%), legal custody[5] (85%), and visitation (81%), as well as recommendations for psychotherapy for parents (64%); a sizable minority (40%) also recommend psychotherapy for the involved child(ren) (Bow & Quinnell, 2002). Professional guidelines for custody evaluation support the provision of such recommendations by forensic evaluators on the condition that best practices are followed such as meeting all members of the family, utilizing a multi-method process of conducting evaluations (e.g., records review, interviews, collateral interviews, psychological tests), and presenting recommendations with the child's best interests in mind (American Psychological Association, 1994, 2010; Stahl & Martin, 2013). Nevertheless, despite these generally accepted practices and guidelines, recommendations by forensic evaluators have been the subject of criticism among forensic psychology scholars and the legal profession (Rohrbaugh, 2008). The next paragraphs outline some of the most frequent criticisms regarding child custody evaluations.

For instance, forensic evaluators' use of psychological tests in custody evaluations has been the target of frequent criticism (Emery et al., 2005; O'Donohue & Bradley, 1999). According to Brodzinsky (1993), "psychologists routinely overstep the boundaries of their professional roles by offering opinions about custody and visitation matters based to a great extent, and sometimes exclusively, on the results of psychological testing" (p. 214). Furthermore, critics including Emery et al. (2005) argue that psychological tests and measures used in custody evaluations assess "ill-defined constructs" and that "they do so poorly, leaving no scientific justification for their use in

[5] Legal custody refers to parental authority or decision-making. There are two types of legal custody: 1) sole legal custody: one parent has the right to make major decisions about the children's lives, especially related to schooling, elective medical care, and religious training; and 2) joint legal custody: both parents share major decisions, while each parent makes day-to-day decisions autonomously when the child is within their care

child evaluations" (p. 7). Emery et al. (2005) support their claims by highlighting the limitations of some of the most common psychological measures[6] used in child custody evaluations, including: a lack of validity, reliability, and normative data, as well as a lack of clear direction for scoring and administration (Emery et al., 2005).

Despite these criticisms, proponents have argued for the continued use of psychological assessments in custody evaluations when the measures are guided by theory, are related to the psycho-legal questions, and have established reliability and validity (Bala, 2005; Brodzinsky, 1993; Flens, 2005; Gould & Bell, 2000; Gould & Lehrmann, 2002; Horvath, Logan, & Walker, 2002). Moreover, supporters of psychological testing argue that psychological measures provide evaluators with opportunities for hypothesis development, observations of individuals in controlled environments, unbiased data regarding each party's personal strengths and weaknesses, and objective support for the evaluator's opinions and conclusions (Bala, 2005; Brodzinsky, 1993; Flens, 2005; Gould & Lehrmann, 2002; Horvath et al., 2002; Rohrbaugh, 2008). While psychological measures continue to be used in child custody evaluations, they are no longer the primary procedure; instead, they are typically used to supplement other evaluation procedures to test evaluator's hypotheses (Quinnell & Bow, 2001).

Another major criticism or debate is in regard to whether forensic evaluators should make recommendations regarding what is referred to as "the ultimate issue," that is, whether they should make a specific custody recommendation regarding who should

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[6] Emery et al. (2005) discuss the limitations of the following psychological measures used in child custody evaluations: the Bricklin Perceptual Scales (BPS), Ackerman-Schoendorf Scales for Parent Evaluation of Custody (ASPECT), Perception of Relationships Test (PORT), the Parent Awareness Skills Survey (PASS), and the Parent Perception of Child Profile (PPCP).

be the custodial parent (Rohrbaugh, 2008; Tippins & Wittmann, 2005). Critics argue that due to a lack of sound science that is applicable to child custody evaluations, evaluators are unable to point to research that illustrates how children may fare under a specific parenting plan or custody arrangement (Emery et al., 2005; Melton et al., 1987; Rohrbaugh, 2008; Tippins & Wittmann, 2005). However, proponents of custody evaluations (e.g., Kelly & Johnston, 2005) argue that

> while it is true that most empirical research was designed to assess the various impacts of separation and divorce on children's adjustment, rather than test predictive statements about custody or access plans, the results of three decades of increasingly sophisticated research has provided a more complex understanding of variables associated with risk and resilience following divorce to guide the well-informed evaluator (p. 235).

Notwithstanding continued criticism regarding forensic evaluators' providing recommendations about the ultimate issue, research suggests that attorneys and judges support forensic evaluators making recommendations regarding custody arrangements (Bow & Quinnell, 2004). Moreover, that same effort reported a dramatic increase in the number of evaluators who make recommendations regarding custody and visitation, with 94.4% of psychologists making such recommendations, well exceeding the rate of 65% identified in a previous effort (Ackerman & Ackerman, 1997).

In addition to criticisms about the use of psychological testing and forensic evaluators weighing in on the ultimate issue, some have suggested that, in offering their opinions about custody, mental health evaluators are acting as *de facto* judges and, therefore, encroaching upon judicial duties (Rohrbaugh, 2008). To this end, some critics

(Rotman, 2005) assert that evaluators should only serve the court by answering a specific referral question (e.g., whether visitations with a previously abusive parent are harmful to the child's psychological well-being). Others (see Melton et al., 1987) suggest that, in the event that evaluators are called upon in court to provide recommendations for custody arrangements, they should respond that only judges can and should make those decisions.

In response to these criticisms, proponents of child custody evaluations argue that "the role of a court-appointed forensic evaluator is legally and functionally different from the role of the party-retained expert[7]" (Bala, 2005, p. 555). In other words, a court-appointed forensic evaluator serves the court as a "delegated factfinder and opinion former for the court" and, thus, is permitted to provide recommendations, especially given that they are subject to full challenges at hearings (Bala, 2005, p. 556). Moreover, proponents of child custody evaluations such as Justice Linda Dessau (2005) of the Family Court of Australia note that, in dealing with complex custody cases, the combination of a quality child custody evaluation and a good judge is "probably as good as it gets in the present system" (p. 268). Moreover, Dessau (2005) concludes that forensic evaluators should testify regarding the ultimate issue, given that the "dangers implicit in an expert report" are "outweighed by the value of the expert advice" (p. 268).

1.6. The Context of the Present Work: Council for Children's Rights Custody Advocacy Program

The purpose of the Council for Children's Rights' (CFCR) Custody Advocacy Program (CAP) is to represent the best interests of children whose parents are engaged in

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[7] Party-retained expert is a witness who is hired for the purpose of forming and expressing an expert opinion in anticipation of the litigation or in preparation for the trial of the action (Rohrbaugh, 2008). Hired expert witnesses "provide testimony on specialized scientifically-based knowledge and are allowed to express professional opinions as long as they are based on data that have been collected in a scientifically sound manner" (Rohrbaugh, 2008, p. 91).

a highly contested custody case. Family Court Judges appoint CAP to advocate for the best interests of the child when the conflict between parents in a custody case threatens to impede the judge's inquiry and determination of the child's best interests (CFCR, n.d.-a). These cases often involve but are not limited to allegations of substance abuse, sexual or physical abuse, and/or psychological disorder(s) (CFCR, n.d.-a).

In order to represent and advocate for the best interests of children, CAP utilizes a structured team approach. Each case team consists of three members: a staff attorney, a volunteer attorney, and a custody advocate (collectively, described as "the best interest team"; CFCR, n.d.-a). The staff attorney and volunteer attorney perform duties[8] typical to court-appointed best interest attorneys such as: conducting investigations (consisting of records review, collateral interviews); developing strategies for the presentation of facts and legal issues related to the case; attending meetings related to the best interests of the child; participating in depositions, pretrial conferences, and hearings; and filling and/or making petitions, motions, and responses or objections when necessary (American Bar Association's Family Law Section Council, 2003). The custody advocate on the team performs duties typical to a non-attorney GAL involved in custody cases. Specifically, as part of the best interest team, a custody advocate assists the staff attorney and volunteer attorney in the investigation by also reviewing records, conducting collateral interviews, home visits[9], and observing the interactions between parents and children. Additionally, when appropriate, the custody advocate also attends meetings related to the best interests of the child. The custody advocate may also serve as a witness during trial, providing testimony regarding their observations / findings, as well as what they believe to be in the

[8] Please note, the staff attorney serves as the lead attorney on cases, and is supported by the volunteer attorney on some of the activities listed when appropriate.
[9] The volunteer attorney and custody advocate generally conduct home visits together.

best interests of the child.

After their investigation, the best interest team works to negotiate settlements between the litigating parties, given that continued litigation is generally contrary to the best interests of the child. If the litigating parties are unable to settle, the best interest team represents the child's best interests in court and presents what they believe to be in the best interests of the child based on their investigation and/or findings. The best interest team also works to ensure that, if parties do not introduce all the relevant evidence in court about a child's best interests, the information is appropriately introduced. In essence, the best interest team can be thought of as a combination of best interest / friend(s) of the court attorneys[10], guardian *ad litems*, and custody evaluators working to ensure that children's best interests are at the forefront of custody cases.

Although there are several similarities between the best interest team and traditional custody evaluator's processes, it is important to note that there are also several differences. First, unlike traditional custody evaluation models, the best interest team does not conduct psychological tests on children or caretakers. In the event that one is deemed necessary, the best interest team can request the appointment of a forensic evaluator with the necessary training to administer and report diagnoses and/or findings of a psychological assessment. Second, forensic evaluators and the best interest team serve different roles in court. For example, a forensic evaluator serves the court by reporting their findings and opinions regarding what is in the best interests of the child in the form of a report that summarizes their methodology as well as conclusions

[10] Friend of the court attorneys are those assigned by a family court judge to ensure that "all relevant evidence and argument is before the court so that the court can make an appropriate decision" (Bala, Birnbaum, & Bertrand, 2013, p. 683). The model has been adopted in some Canadian provinces as well as American states in representing a child's best interests in divorce cases characterized by a high degree of conflict.

(Rohrbaugh, 2008); they can also be called to court during trial to provide evidence as a fact or expert witness[11] (Haller, 2002). In contrast, the best interest team does not submit a report to the court. Instead, the best interest team advocates and represents what they believe to be in the best interest of the child throughout the case. If a case goes to trial, the staff attorney and volunteer attorney are tasked with presenting evidence, examining witnesses, cross-examining witnesses, and presenting legal arguments. Moreover, the custody advocate is called as a witness to testify and present the team's position relating to custody. In summary, although there is overlap between the duties and responsibilities of the best interest team and traditional custody evaluators, the best interest team's ultimate responsibility is to serve as a legal representative of the child, with an emphasis on representing and advocating for the child's best interests from a legal approach, rather than one grounded in social work or psychology.

The questions guiding the present effort grew out of interviews, observations, and fieldwork conducted during a CAP-focused research practicum conducted in the spring of 2017. The practicum was intended to contribute to strategic and organizational planning and enhance CAP's research capacity. It involved a multi-component scope of work including: conducting interviews with team members about activities, impact, success, measures employed, and potential indicators of effectiveness; developing a logic model for the program; developing surveys for CAP volunteers; and collecting and synthesizing literature regarding best practices in custody or best interest advocacy.

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[11] According to Haller (2002), a fact witness "testifies only to what one has seen, heard, or done, but does not offer opinions," whereas an expert is "allowed to give opinions about matters within his or her area of experience and expertise" (p. 701).

1.7. The Present Study

Given the discretion provided to advisors and/or advocates in determining what is in the best interests of the child and the weight assigned to their recommendations, it is imperative to examine their processes in determining custody recommendations and/or positions related to a child's best interests. The present study examined the processes employed by a custody advocacy team to determine how best interests are formulated, determined, and operationalized in actual practice, and to identify the factors that may impede the efforts of advocacy teams.

As described earlier, CAP's investigative procedures in custody cases are similar to custody evaluation models in many ways – with steps that include reviewing records, conducting collateral calls, and providing recommendations to judges. However, CAP is distinct in its reliance on staff attorneys with legal training, volunteer attorneys with diverse legal backgrounds (e.g., business law, criminal law, real estate law, etc.), and volunteer child advocates. Together, these individuals investigate each custody dispute and develop recommendations and/or positions to the court regarding a child's best interests (CFCR, n.d.-a). The present investigation provides a unique opportunity to not only examine processes in determining the best interests of children, but also provides an opportunity to compare how investigative and advocacy processes from a legal perspective and framework compare with approaches of traditional custody evaluation models that employ a number of similar processes.

Given that the CAP model varies from the procedures typically employed in other localities, this program provides a useful context for exploring the processes and

procedures used in identifying the best interests of a child. Specifically, the current study used a mixed methods approach to examine three main research questions (RQ):

RQ1: What are staff attorneys' (who are working as part of a custody advocacy team) processes for determining the best interests of a child?

RQ2: How do staff attorneys define the best interests of a child?

RQ3: What are the challenges and barriers experienced by staff attorneys in determining and advocating for a child's best interests?

CHAPTER 2: METHODS

2.1. Overview

This study employed an ethnography-inspired approach in which I, the researcher, was engaged within the setting as a participant observer, with prime foci including (a) understanding the processes and mechanisms utilized by staff attorneys in determining and operationalizing the best interests of children, and (b) identifying the challenges and barriers experienced in determining the best interests of the children. The language "ethnography-inspired" was selected to acknowledge that some ethnographers may not agree with my use of the term ethnography, given that I will not be in the present setting for an extended period (Quinlan, 2009). Nonetheless, this approach was selected as a well-suited method of inquiry due to the exploratory nature of the study, as well as the multiple sources of data and settings that were considered.

Consistent with ethnographic principles, interviewing served as the primary qualitative method used to address the research questions (Emerson et al., 2011; Patton, 1990). Data were also drawn from systematic observations and field notes (e.g., during trial, staff meeting; Berg, 2001; Denzin & Lincoln, 1994; Emerson et al., 2011; Van Maanen, 1979).

2.2. Setting and Participants

CAP operates as one of three primary legal programs within the Council for Children's Rights (CFCR), a nonprofit located in Charlotte, NC, with a mission of "improving the lives and futures of children in Mecklenburg County through legal representation, individual advocacy, and by addressing community-wide issues through research and policy work." (CFCR, n.d.-b). For my practicum work, I met with all

individuals employed by CAP, including the director of CAP, 4 staff attorneys, 1 program assistant, and 1 legal assistant. I also interviewed the Executive Director of CFCR for his perspectives and experiences in working with CAP. All participants were white and between the ages of 25 and 70; and most respondents were women. All interviews took place in participants' personal office space or CFCR's conference room.

2.2.1. Participant Recruitment

In the context of my practicum, participants were notified by the CAP director during a staff meeting that a student working with the Director of Research and Policy for the purposes of strategic and organizational planning would be reaching out in the coming weeks to arrange a meeting for an interview to learn about CAP's processes. I followed up via email to individual CAP staff (please see Appendix A for an example email).

2.3. Procedure

In working to complete that practicum's scope of work, I relied on in-depth interviews with CAP staff and CFCR's Executive Director to learn about team members' activities, how they framed successful case outcomes, the tactics they applied to determine final case recommendations, and the barriers and challenges they encountered in determining the best interests of the child. All but one[12] of the formal interviews were conducted face-to-face and digitally recorded[13]. I recorded interviews with staff to

[12] One of the formal interviews was conducted over the phone with a staff member due to logistical constraints in scheduling a face-to-face interview.

[13] Notes from a meeting with the Director of Research and Evaluation, Director of CAP, and program assistant at the beginning of the practicum were used to support some of the findings of the thesis. The meeting served to provide an overview of CAP's role in high conflict custody cases and the processes that the best interest team engages in when determining the best interests of children. This meeting was not digitally recorded – given that it was not a formal interview – and key points were written down in a notepad.

generate in-depth notes to ensure accuracy and support work on the products for my practicum, which included a logic model; a set of recommendations to enhance CAP's database for tracking the outcomes of cases; surveys for CAP volunteers and judges; and a summary of literature on best practices in custody or best interest advocacy. I also reviewed case files, which included: mental health, medical, criminal, and educational records; legal materials (e.g., statements, affidavits, pleadings); social service agency reports (e.g., from the Department of Social Services); staff attorney and volunteer notes (from home visits, parent conferences, and court hearings); staff and volunteer guides (e.g., guides outlining investigation procedures and expectations); the CFCR volunteer database; and personal records relating to cases (e.g., emails, text messages, letters). These various efforts during the practicum led to the development of the central questions guiding this study.

In light of this study's questions of interest, this work utilizes notes and audio recordings from the research practicum. Specifically, for this study I analyzed the transcripts from interviews conducted with program staff during the practicum and coded the field notes from observations of a staff meeting (1.25 hours) and a custody trial (20 hours across 4 days). Given that audio recordings were for the purposes of capturing in-depth notes for practicum and not for this study's purposes, consent to pursue this study's aims was subsequently obtained from CAP staff, the Director of Research and Policy, and the Executive Director of CFCR. The following paragraph outlines the steps taken to obtain informed consent to fulfill Institutional Review Board requirements.

2.3.1. Ethical Considerations: Consent / Confidentiality

Approval for this study was obtained from the Director of Research and Policy at the Council for Children's Rights, the Director of the Custody Advocacy Program, and the Executive Director of CFCR. The full protocol for the study was approved by the UNC Charlotte Institutional Review Board (IRB).

Because the interviews had been conducted to support the practicum work and the organization's strategic and organizational planning, participants had not provided formal informed consent. Specific, detailed notes were taken, and the interviews were recorded to ensure accuracy. Because I sought to draw from those interviews for the present study, the individuals who were interviewed previously were asked to provide informed consent for the use of information from the audio-recorded interviews. The request for consent provided participants with electronic transcripts, as well as audio copies of their interviews. Participants were then given the opportunity to approve the narrative they would like to share and be used for analysis in the study. No information from these recordings was used without consent. The consent documents also requested their participation in additional, follow-up interviews (as needed) and informed them of their right to withdraw from the research at any time.

In reporting information from the interviews or using quotes, I used aliases rather than names to protect respondents' identities. I selected aliases through an online random name generator. I also modified and/or excluded any identifying information (e.g., location, age, selected case characteristics) relating to participants, clients, and families in order to protect their confidentiality and minimize the likelihood of their being identified.

2.3.2. Data Sources

This study relied on multiple data sources, described in the paragraphs that follow.

2.3.2.1. In-depth Interviews

In-depth interviews were conducted with staff attorneys, program assistants, and the director of the program regarding staff activities, their impact, how they define "success," and measures used to assess effectiveness (see Appendix B for interview questions). Interviews ranged from 60 to 90 minutes each. The interviews were semi-structured to allow participants to speak freely about their experiences, with prompts to examine staff's perceptions of what constitutes successful case outcomes, tactics applied to determine final case recommendations, and barriers encountered in reaching successful case outcomes. The general tone of each interview was conversational and informal to facilitate rapport with interviewees. Questions were informed by the literature review, meetings with the Director of Research and Policy, and consultation with faculty practicum supervisors; the nature of the prompts used were also guided by the questions used in the context of another investigation (Jaimelee Behrendt-Mihalski's practicum in the Fall of 2015 with CFCR's Children's Defense Team). Approximately 8 hours of interviews were conducted.

Moreover, member checks were conducted to confirm accurate interpretation of participants' narratives, as well as identify any gaps in the interviews related to procedures, how staff attorneys define best interests, and challenges and barriers in determining the best interests of children.

2.3.2.2. Court Hearings / Observations

I attended and observed most of a trial that lasted several days (i.e., 20 of the roughly 22 hours in total) in which a best interest team presented evidence and a position relating to the best interests of a child to the judge. Arguments, positions, and testimony[14] by the best interest team to the judge were analyzed to identify themes and the rationales provided for each recommendation and/or position. No identifying information from the trial was captured or presented in this thesis. Moreover, I attended a CAP staff meeting to observe and analyze discussions related to the best interests of children and team processes.

2.3.2.3. Memo-writing

To record my observations, thoughts, and questions that developed throughout my practicum, I kept a field journal and took notes electronically, saved in a Word document on my password protected computer. For some interviews, I listened to the recordings immediately after the meetings and made additional notes and observations. Through memo-writing I was able to create a working list of questions to ask during subsequent interviews, which I developed based on the information I learned through interviews, records review, and literature review (see Appendix C for questions developed through memo-writing).

2.4. Data Analysis

Interview data were analyzed using the grounded theory method of analysis (Charmaz, 2006; Strauss & Corbin, 1998). Grounded theory was selected given its flexible guidelines for collecting and analyzing data (Charmaz, 2006). Through a

[14] Testimony was given by the custody advocate (i.e., not the staff attorney or volunteer attorney).

grounded theory approach, I was able to: construct codes and categories from data, rather than from preconceived logically deduced hypotheses; rely on a constant comparative method to carry out a thematic analysis of the data; and write memos to elaborate on themes uncovered (Charmaz, 2006; Emerson et al., 2011; Strauss & Corbin, 1998). In summary, utilizing a grounded theory approach served as a way to learn about custody advocacy practices in CAP and a method for developing theories to understand it (Charmaz, 2006).

2.4.1 Analytic Procedure

Following each interview, I reviewed my notes to ensure that salient points from the interview were captured with depth and detail. For some interviews, I listened to the recordings immediately after the meetings and made brief notes and observations. For in-depth content analysis, interviews were transcribed verbatim using the application *Transcriptions* – a text editor optimized for manual transcription of audio or video material (Haselberger, 2016).

Guided by basic grounded theory principles outlined in Strauss and Corbin (1998), data collected was manually coded to reflect themes emerging during interviews. Coding for themes occurred in two stages. The first involved initial coding (also known as "open coding") through which data were divided into distinct, descriptive microcodes of meaning related to the research questions (Emerson et al., 2011). Beginning the analysis with open coding allowed me to identify preliminary themes present in the data that were then used as a guide for more detailed coding efforts in later analytic stages (Charmaz, 2006). Then, a "focused coding" took place subsequent to open coding, through which data were synthesized and categorized into themes and subthemes related

to the research questions (Charmaz, 2006; Emerson et al., 2011; Strauss & Corbin, 1998). As described by Charmaz (2006) "focused coding means using the most significant and/or frequent earlier codes to sift through large amounts of data. Focused coding requires decisions about which initial codes make the most analytic sense to categorize your data incisively and completely" (p. 57). Through focused coding, I was able to identify patterns and variations in staff attorneys' responses, the barriers experienced, and the ways they respond to contingencies across cases (Emerson et al., 2011).

NVivo software was to organize the data (QSR International, 2012). Emerging themes across interviews were organized into nodes and sub-nodes. Throughout the coding process, transcripts and field notes were read in their entirety, several times, and I wrote memos to record thoughts and observations about codes and emerging relationships evident from the data (Charmaz, 2006; Emerson et al., 2011; Patton, 1990; Strauss & Corbin, 1998).

2.5. Steps to Maximize Credibility of Data / Findings

In order to ensure that my findings are credible and my inferences are accurate, I adhered to a set of procedures used widely in qualitative research. These include a) reflexive practices, b) triangulation, c) saturation, and d) member checks. The next few paragraphs describe these procedures in further detail.

2.5.1. Reflexive Practices

Given that the researcher serves as the instrument for both data collection and analysis, it is important to acknowledge any values, beliefs, or personal biases that may affect the findings or interpretations of the study (Patton, 1990). I personally have not had experience serving as a volunteer or a child advocate for CAP. My graduate advisors

presented this opportunity to me for a research practicum in order to complete one of the requirements for my Master's degree. Before this practicum, I had minimal knowledge of legal processes related to child custody. I took advantage of my naiveté in interviews and interactions with study participants (and meetings with the Director of Research and Policy at CFCR) by asking questions, clarifications, and descriptions of procedures to help contextualize staff attorney processes. In order to maintain as much objectivity as possible during the data collection and analysis process, I employed the strategies described in the following paragraphs.

2.5.2. Triangulation

In this study, I used a variety of data sources (e.g., interviews, staff meeting observation, trial observations) and multiple perspectives (e.g., staff attorneys, program assistant, program director, and executive director) to reach conclusions about how attorneys formulate, determine, and operationalize the best interests of the child, in addition to the challenges or barriers they encounter in determining the best interests of the child. The use of multiple methods and perspectives by qualitative researchers serves as a way of increasing validity, given that the strengths of one approach can compensate for the weakness(es) of another approach (Patton, 1990, pp. 244–246).

2.5.3. Saturation

Saturation refers to the point in which "gathering fresh data no longer sparks new theoretical insights, nor reveals new properties" (Charmaz, 2006, p. 113). In an effort to reach saturation, I collected data in the form of interviews, observations, and document analysis. However, due to logistical and practical constraints, I was unable to collect data

until no new properties or patterns emerged (Charmaz, 2006); my data collection and analysis were limited to my practicum in the fall of 2017, and the spring of 2019.

2.5.4. Member Checks

Member checks serve to allow qualitative researchers to gain feedback and clarity about findings or interpretations of the data (Patton, 1990). In each interview, I asked questions to clarify such as, "What did you mean by this?" "Can you tell me more about this?" or "Did I describe that correctly?" In instances in which I developed conclusions or inferences from observations, case files, or literature review, I confirmed them in subsequent interviews. This was particularly helpful given that I had no previous knowledge of legal terms or processes before the research practicum.

Following the initial interviews, there were multiple ways that the participants were able to provide feedback about their agreement with the recordings or conclusions drawn regarding the information obtained from them. For instance, during practicum, the CAP Director and others provided detailed feedback on iterations of the logic model, which served to elucidate the processes employed by the best interest team during the different phases of the investigation as well as representation of the child's best interests. For the purposes of thesis, follow-up reviews and member checks were conducted with study participants and leadership at the Council for Children's Rights (CFCR). For example, after consultation with leadership at CFCR (see appendix D for email sent to staff), study findings and impressions were provided to participants as summary documents sent via email. This member check process took place over email (rather than in person), given turnover in the department since the initial interviews took place (spring of 2017), and difficulty coordinating a time for a meeting across program staff's

schedules. Findings from the study were summarized with sample quotes and presented electronically to participants to solicit feedback to ensure that the findings and interpretations are accurate, framed appropriately, and are adequate (i.e., do not have any meaningful gaps). Emails were sent to all the participants that provided consent for participation in the study; 6 responded.

As a final step, the CFCR leaders who were involved with this effort (i.e., Executive Director, CAP Director, and Director of Research and Evaluation) reviewed the full thesis document, in part to ensure that the study was not in any way compromising confidentiality or in any way increasing the potential for negative effects or consequences for their involvement. Put another way, these CFCR leaders had to sign off on the document to ensure the appropriate protection of CFCR, its staff, and the children and families served by its programming. Feedback and comments from leadership at CFCR were incorporated in the final version of the thesis.

CHAPTER 3: RESULTS

This section presents the results of the data analyses, representing coding and interpretation of the data collected through interviews, trial observations, a staff meeting observation, and memo-writing. Before discussing the major themes related to how CAP staff attorneys determine, formulate, and operationalize the best interests of children, it is important to note the outcomes that program staff are trying to achieve and what is guiding their custody decision-making. In my interviews and interactions, program staff consistently noted how the "ultimate goal" in each of their cases was to restore harmony in children and families' lives (see Appendix E for a logic model that represents program activities and outcomes visually) or, rather, as described by Livingston (pseudonym used to protect confidentiality), helping families "function in their dysfunction" for the benefit of the child(ren). With that in mind, the following paragraphs will describe how staff attorneys determine the best interests of children, and how their process helps them determine a position and/or recommendations to judges and families that align with a child's best interests.

As noted above, multiple steps have been taken to protect the privacy of CFCR participants and their clients. Pseudonyms are used to protect the confidentiality of respondents. Moreover, in the quoted material below or the description of cases, specific details were modified to minimize the degree to which the individuals described or quoted could be identified and to protect their privacy and confidentiality. Some findings have also been modified based on feedback from participants that occurred when conducting member checks to better reflect CAP processes and perspectives. Some examples of changes to findings based on participants' feedback include: referring to the

staff attorney, volunteer attorney, and custody advocate as the "best interest team" rather than "CAP team," changes to figures to clarify duties and responsibilities of the legal assistant and program assistant in the CAP program, as well as paraphrasing some quotes and making minor edits, such as removing filler words (e.g., um, uh, like, etc.), as requested by some participants.

3.1. How Does the Custody Advocacy Program (CAP) Determine the Best Interests of Children?

To elucidate CAP's processes for determining the best interests of children, I will discuss their processes as two phases: (a) legal appointment and investigation, and (b) determining recommendations (see Appendix F and Appendix G for an illustration of the two phases). My goal in describing CAP's processes as two phases is to illustrate the various "behind the scenes" activities taking place for each case, and the essential role each CAP staff member plays in determining the best interests of a child. The following paragraphs discuss the activities involved in each phase.

3.1.1. Phase 1 – Legal Appointment and Investigation.

The Custody Advocacy Program (CAP) becomes involved in cases when a family court judge needs additional information and/or evidence to determine what is in the best interests of a child, and/or cases characterized by a high degree of conflict (e.g., protracted litigation) between the parents/guardians. In these instances, the family court judge appoints the Council for Children's Rights (CFCR) to advocate and, specifically, to represent the best interests of the child. In representing the child's best interests, the best interest team is tasked with investigating the circumstances surrounding the case and providing recommendations to the litigating parties and, if necessary, to the judge as to what is in the best interests of the child. To that end, the best interest team engages in a

number of activities. First, the CAP Director assigns a staff attorney to a case, based on the caseloads of the staff attorneys working for CAP. Thereafter, the CAP program assistant and legal assistant complete a variety of administrative and preparatory tasks that allow the best interest team to carry out their investigation. These tasks include the program assistant sending parents/guardians an official order informing them of CFCR's appointment to the case, a parent questionnaire, a medical authorization form, and a release of information for a background check; as well as scheduling parent conferences. Next, the legal assistant requests records (e.g., criminal, educational, medical, and mental health records) from a variety of facilities and agencies and assigns a volunteer attorney and custody advocate to the case. Based on the information learned from the parent conference, the best interest team may ask the legal assistant to request additional records. As CFCR receives the records, the best interest team begins reviewing the records, conducting collateral calls, and carrying out home and/or school visits. Appendix F includes more information in regard to the steps taken by the best interest team during *phase 1 – legal appointment and investigation*.

3.1.1.1. Responsibilities of Each Member of the Best Interest Team.

Unlike traditional custody evaluation models, CAP investigative activities are not conducted by one individual (i.e., the custody evaluator); instead, they are carried out by the staff attorney, the volunteer attorney, and custody advocate. Each member has different responsibilities on the case team that are critical in determining the best interests of a child. Table 1 summarizes the roles and activities of each team member. These activities then provide the background information that allow the team to identify a position and/or set of recommendations that are in the child's best interests.

Table 1. *Roles and Responsibilities of Members of the Best Interest Team.*

Volunteer Attorney / Child Advocate	Shared Activities between Volunteers and Staff Attorney	Staff Attorney
Conduct collateral calls Conduct home visits	Investigate cases and gather evidence by reviewing parent questionnaires, criminal / medical / mental health records, and children's educational records Meet with parents or guardians to collect information and identify the goals of each party Recommend services when appropriate Meet with child (either at school or CFCR offices) Participate in pretrial conferences and hearings Determine final recommendations to parents/guardians and/or judges	Conduct interviews with pertinent service providers or professionals (e.g., therapist, doctor, Department of Social Services) Legal tactics (e.g., negotiating orders, mediating, settling cases, litigating) File or make petitions, motions, responses, or objections when necessary Present and cross-examine witnesses Present recommendations to parents / guardians, attorneys, and judges

3.1.2. Phase 2 – Determining Recommendations

CAP takes these really difficult situations where people… can only see what they perceive to be their interests, they can't see their ex-spouse's interests; they can't see their children's interests. There isn't peace. So what they bring to it is trying to figure out, how can you weave all these things together, in a way that creates peace.

– Livingston

Throughout the investigation, the best interest team discusses the evidence gathered. As information is gathered, the best interest team continually conferences to discuss the evidence, as well as what each team member believes to be in the best interests of the child based on their analysis of the evidence. Some staff attorneys noted how these meetings serve as an opportunity to ensure that team members are on the "same page," and if not, to "talk through…and figure out" what is really going on in the cases based on the evidence they have gathered so far. Callow (pseudonym) described how the best interest team examines and discusses the evidence during these meetings:

> We've done all of this, here is sort of what we think is happening in the homes, here is what we think [we] will probably recommend going forward, what do you think about all this? What are your concerns? What are we missing? What else do we need to look into? Oh! We found out that… mom received some mental health treatment that she did not disclose to us earlier. Let's get those records and check in on those.

As noted by Callow, in instances when the team determines that gaps are present in their evidence, or that they need more information, the team outlines next steps for their investigation, which may include additional records requests, collateral calls, and home visits and/or school visits. Conversely, if the team determines they are all on "the same page" and are not in need of more information to determine what is in the best interests of the child, the team outlines a set of recommendations to present to parents/guardians or judges, based on what they view to be in the best interests of the child. In interviews, staff consistently noted how beneficial it was to have three individuals examining the evidence, as well as discussing what is in the best interests of the child. The next section will elaborate on the benefits outlined by CAP staff.

3.1.2.1. "Three heads are better than one" – Rowe

In interviews, CAP staff consistently expressed their appreciation for volunteer attorneys and custody advocates. Rowe (pseudonym) described the volunteers as "absolutely instrumental" in representing the best interests of the children, given their role in investigating and determining recommendations. But more importantly, staff attorneys noted how advantageous it was to have three individuals reviewing the evidence and independently reaching conclusions as to what they perceive to be in the best interests of the child. According to Rowe,

> One of the benefits of having three people working on these cases is that three heads are better than one. We've all got our own life experiences and education, and everything else that we bring into these rooms… Most cases, it's pretty evident to us what needs to happen and we don't have much disagreement, [but] sometimes we do. One of the volunteers will disagree with the other two of us. I had disagreed, sometimes with the volunteers about what ought to happen.

Robinson had something similar to say about Rowe's point that "all people working on the case have their own life experiences and education," and how ultimately, this may impact what each person holds to be in the best interests of the child. Robinson shared an example in which she disagreed with the volunteer custody advocate about some issues in the case. She said,

> I'm not always… exactly on the same page as the volunteers and that's a good time for us to kind of talk through that, and figure out… that's what's so great about these cases. They are really, really tough, and sometimes you feel like you might not be making the right decision, but I have a different perspective than you have and so and so has…
>
> I have… a lot of [specific area]… experience, so I have a certain knowledge that some of the volunteers don't have. But a lot of them have a certain knowledge about parenting that I don't have, so sometimes… having all those perspectives is really good because we can kind of toss around what we are thinking. [For example] I might [say] "… that kid was late 10 times to school," and somebody might [say] "…if they told me they're going to take my kid away from me for how many times he showed up 5 minutes late… and I'm a great parent!"

These examples shared by the CAP staff help illustrate how each person's life experiences, as well as their perspectives, may influence custody determinations and recommendations. However, as described by the staff attorneys, having three individuals investigate and "make their case" as to what reflects the best interests of the child helps counterbalance the potential subjectivity as they consider the data available and reach a consensus.

CAP staff also noted the importance of respecting team dynamics. Specifically, staff attorneys shared that part of their job as the leader of the team is not to dominate the discussion of what recommendations should be made to parents and judges; they underscored the importance of listening and considering what each team member has to say about what is in the best interests of the child. If the team is unable to settle on a set of recommendations, staff attorneys noted that they are intentional in making the judge aware that the team is not "unanimous" as to which arrangement would serve the child's best interests. In the quote below, Rowe described an instance in which the best interest team told a judge that they were not "unanimous" about the recommendations and/or position:

> It wasn't too long ago when I had a volunteer, a custody advocate on the witness stand… and what is our position about what ought to happen in the case, what do you think should happen, I asked. And she testified that this is what our conclusion is. And I said, "we're not really unanimous about that…Mr. and Mrs. such and such feel a little bit differently, is that right?" I get that out in the open. I want the judge to have the benefit of everything that he or she needs.

The best interest team's transparency with judges about when there may be disagreements among the team in regards to what is in the best interests of the child can be extremely beneficial. It allows the judge to hear multiple perspectives and arguments

about what is in the best interests of the child. Furthermore, as with any custody case, parents or their legal counsel also present their evidence and arguments, with each side having an opportunity to question witnesses and challenge evidence. For example, in the trial I observed, the attorney for one parent/guardian challenged an expert witness' testimony, their credibility, and the evidence they had presented. The ability for each party and CAP to challenge evidence or arguments helps ensure that the material presented in court is credible and held to the highest standard, thus allowing custody determinations and recommendations to be more closely based on the available evidence rather than one person's biases. With that in mind, the next section describes the types of recommendations provided by the best interest team to parents/guardians, as well as, judges.

3.2. Types of Recommendations Provided by the Best Interest Team

Typically, to minimize conflict within the family unit, the best interest team attempts to settle the custody dispute with the parents/guardians. These attempts to settle the case often take place in what is called a settlement conference. These conferences are generally scheduled after the best interest team has met and discussed the evidence they gathered throughout the investigation and determined that the team has all the information needed to provide a set of recommendations. Present for these settlement conferences are the best interest team, the parents/guardians, and their legal counsel[15]; the conference itself involves the parties discussing and potentially negotiating the recommendations outlined by the best interest team. If the best interest team and the parents/guardians are able to agree on a custody order, then the custody dispute is settled

[15] In instances in which one of the parents/guardians is *pro se*, that is, they are not represented by legal counsel during court proceedings, the staff attorney only reaches out to that parent/guardian.

without going to trial. Otherwise, the custody case goes to trial, with the judge making the decision(s) regarding the custody determination and the recommendations and/or positions he or she will accept from the best interest team and other parties. The following paragraphs discuss the type of recommendations offered by the best interest team to families and judges.

3.2.1. Short-term Recommendations

The recommendations offered by the best interest team address a host of factors (e.g., legal custody, physical custody, access to school/medical records, communication regarding children) related to multiple domains of the child's life. For example, in some instances, the best interest team provides "interim recommendations," which can be thought of as brief, short-term recommendations to the parents/guardians that are meant to serve the child's best interests. For example, one staff attorney described how in some best interest team meetings the group will decide that it is in the best interests of the child to recommend that the parent(s) engage in reunification therapy, an intervention approach focused on reuniting an estranged parent and child to repair damaged parent-child relationships under the watchful eye of the court. The mental health professional overseeing the reunification therapy reports significant findings (positive or negative) from the reunification therapy to the court, which helps the best interest team as well as the judge determine whether visitation or contact between the child and the estranged parent is in the child's best interests.

An additional example of a short-term recommendation by the best interest team may include referring a parent to a facility where they can receive substance use treatment. It is often the case that the best interest team makes these recommendations in

communications (e.g., emails, phone calls, face-to-face) with parents/guardians, or during review hearings when temporary orders are being put into place by judges. These temporary orders determine a child's custody arrangement pending a final determination of custody. Program staff noted how these interim recommendations serve as a way of determining whether parents will follow their recommendations, and if the recommendations could in fact address the issue or problem that the child or family is facing. One staff attorney described how outcomes from interim recommendations can at times serve as evidence that a parent will not attend to the best interests of a child. The staff attorney Rhodes (pseudonym) said,

> If a parent refuses to do the treatment, or refuses to cooperate with therapy, you can always take it back in front of the judge and say look, "this parent refused to cooperate, or refused to do X, Y, or Z." And then the judge can take that into consideration when making his or her ruling. So we always have the judge as a backup. If [the parents] don't follow what [we recommend]. Everything that happens is evidence for the court… If they don't do it, or if they fail to do it, or if they fail the drug test, or whatever… it's not good for the child, but it is evidence for the judge to ultimately make the decision...

On the other hand, if a parent/guardian follows the short-term recommendations outlined by the best interest team or the judge, it reflects positively on the parent/guardian. The staff attorney Callow described how following recommendations made by the best interest team or the judge can be beneficial to parents/guardian when deciding custody arrangements,

> After the judge hears all the evidence and says.. "okay… this parent did exactly what I told them to do, and [it] seems [as though] their mental health is pretty stable despite my concerns I had prior to this, so we are going to expand this parent's visitation and temporary order and see how it goes."

Together, these two examples help illustrate how the best interest team's investigation is ongoing and necessarily dynamic; events occurring throughout the course of the case may

influence custody determinations. The next section will describe how the best interest team approaches developing permanent custody recommendations.

3.2.2. Permanent Custody Recommendations

In addition to the short-term recommendations, staff attorneys noted how they approach developing permanent custody recommendations. These permanent recommendations are different from temporary recommendations in that they are in effect until the child turns 18 (or one of the parents or guardians files a motion to modify the order). Because the goal is to have the custody order last until the child becomes a legal adult, staff highlighted the importance of "thinking forward" and putting together a custody arrangement that is in fact "attainable" by the families with whom they are working. Regarding this, Callow said,

> So that [putting a custody order in place that will last until the kids are 18] is always the goal… A lot of times you will see people who separate, their kids are babies, [and] they put in the orders stuff about when they start school…this is what the custody arrangement will be. When they start school, this is what the holiday arrangement will be.
>
> We are always thinking forward, and thinking about, is this custody order, or is our position about the custody order what it should be? Is this attainable? And will this family be able to live in this order and follow this order? In their real world? Their real life? Outside of the courtroom?

As alluded to by Callow, the best interest team's recommendations and position about what is in the best interests of the child are always guided by the idea that custody orders should set families up for success. For that reason, the best interest team continually works to ensure that recommendations made to families, or to judges about what parents and children ought to be doing, are aligned with that notion. One staff attorney provided an example of what she does to ensure that they are not setting a family up for failure:

> In my custody orders, I will expect a very detailed holiday schedule. Just so there is no ambiguity. Nobody can argue, "well he had Christmas morning last year, so I want Christmas morning this year." I don't like gray areas in custody orders. And a lot of times in custody orders that parties agree to outside court, there will not be a whole lot of detail. There will be legal custody, physical custody, maybe there will be Christmas and Thanksgiving. Maybe there is not spring break…that is actually explicitly addressed. It's just that "for all [other] holidays, the party will discuss and agree."
>
> That's problematic for me. Because I know that these parties are not very good [at] discussing and agreeing, and so to put that in an order is automatically setting them up for failure.

The examples shared by staff attorneys help illustrate the various factors that the best interest team is considering when determining their recommendations and/or position regarding a child's best interests. That said, the best interest team's determinations as to what is in the best interest of the child are also guided by how they define "best interests." Given that there is necessarily "shared variance" in how they define and determine the best interests of children, I will discuss both concepts together in the following paragraphs.

3.4. How Staff Attorneys Define and Determine the Best Interests of Children

> At the basic level, you are looking at Maslow's Hierarchy… Does this child have shelter and food? Are they safe? Some of our cases are there… some of them we are worried…and the best interest in those cases is that we need to get this child in a place where he or she can have food and be safe… It's so case specific. Some of our cases are at that level… We have other cases where maybe the parties have a lot of money and there are a lot of therapists involved, and maybe the right people have been involved and for some reason, mom and dad are at such odds that they make this child's life miserable… no matter where the child is, the other parent is talking badly and it is just putting this child in this situation… In those cases, best interests to me is putting the child in the best and most loving situation that can be created given those circumstances.
>
> – Levine

In interviews, CAP staff mostly highlighted specific dimensions that they viewed to be core elements of the concept of "best interests," rather than provide exact definitions of "best interests." The following paragraphs discuss the major themes that were found related to how staff attorneys viewed or compartmentalized the concept of best interests, and how that guides their determination of what is in the best interests of the child.

3.4.1. Relationships with Both Parents or Guardians

In almost all of my interviews, CAP staff highlighted the importance of maintaining or restoring children's relationships with both parents. From staff's perspectives and experiences, a relationship between the child and each parent and/or guardian generally promotes healthy and optimal development for a child. When asked what the ideal outcome of a case would be, most staff attorneys had similar responses. Rowe succinctly summarized it as,

> Under normal circumstances, you want the children to have significant and healthy relationships with both parents.

Rhodes even described the lengths to which the best interest team is willing to go to in order to determine if it is indeed in the best interests of the child to have a relationship with both parents:

> We want the children to have good relationships with both parents… To the extent that is possible, I always try and do what I can to try and preserve a relationship between a parent and a child. Even if it's been sort of compromised… In a lot of cases we might recommend… if there has been a huge gap where a parent hasn't seen the child in years, or if there's been some big break in their relationship, we might promote reunification therapy between the parent and that child. I mean, not always. [If] there's been actual serious abuse that we know about for sure, then we might not do that. But, where it's possible, we always try to promote parent-child relationships because we think it is better for kids in the long run… if they have good relationships with both parents. Even if one parent is sort of flawed in some ways.

Staff attorneys also spoke of the need to have both parents/guardians be able to "co-parent" in order for a child to have significant and healthy relationships with both parents. Callow alluded to this when I asked about the ideal outcome of a case. Callow said,

> Get a child placed with a parent who is going to encourage the relationship with the non-primary parent, and the parties are able to co-parent and communicate on their own.

The importance that the best interest team places on co-parenting was further supported in the trial I observed. For example, during the trial, the staff attorney asked the parents questions that would help demonstrate their co-parenting abilities to the judge. During cross-examination, the staff attorney asked each parent to share his or her experiences with visitations, child exchanges, issues that occurred in the past, and how they worked to resolve them. Based on this set of questions it became clear that one parent was well equipped to serve as the primary parent, given this individual's prior willingness to facilitate a relationship with the other parent. Staff attorneys also asked similar questions of witnesses who were present during the trial to corroborate some of the evidence that the best interest team had presented to the judge.

Notably, in the same case, one of the litigating parents requested that a forensic psychologist conduct a psychological assessment on each parent. One of the attorneys subpoenaed the forensic psychologist to stand as an expert witness during trial and present their assessment findings to the court. Given that the court subpoenaed the forensic psychologist, each attorney had an opportunity to cross-examine her. During cross-examination, CAP's staff attorney asked the forensic psychologist for her expert opinion as to whether the child should have a relationship with both parents and, if so,

which parent should serve as the primary parent. The CAP staff attorney asked her to explain why that parent would be better able to facilitate a relationship between the child and the other parent. The forensic psychologist's testimony and professional opinion as to which parent should serve as the primary parent strengthened the best interest team's recommendation/position, which was that the father serve as the primary parent, with the responsibility of facilitating a relationship between the child and the mother. Taken together, these examples illustrate the weight that the best interest team assigns to a child having a relationship with both parents, and how it guides their determination of what is in the child's best interests.

3.4.2. Safety

Not surprisingly, one of the most significant factors that the best interest team considers to be part of "best interests" is the child's safety. For that reason, the best interest team conducts background checks and examines "any and all records" (e.g., medical, mental health, educational, criminal, etc.) that would help inform the best interest team about "what is going on with the child and the family" as well as assess for any potential safety risk. Additionally, the best interest team conducts home visits to determine whether the child's current living arrangement is safe, and to ensure that parents/guardians are meeting the child's needs. For most cases, representatives from the best interest team schedule home visits within 30 days of being appointed to the case. One staff member described the need to give enough time for the parents/guardians to "straighten up their homes," but not too much time that they give the best interest team a "fake presentation of what their house or housing situation may look like." In instances in which one of the parents lives out of state, the best interest team schedules a video call

(e.g., Skype, FaceTime) to view the home. One staff attorney, Robinson, described a video call in which it became clear that a child may be at risk if the judge awarded the father physical custody,

> This is a very straight forward one… A case, where we definitely were going to be recommending that the kids live with dad, which was the right thing to do, but he [lived in a different state], and we could not do an in-person home visit.. So we did a Skype or FaceTime, and we had him show us if there were any weapons in the home, and he showed us where he kept his gun, and it was just on a shelf in the closet…

The best interest team then told the father that he would need to properly store his weapon. The father indicated that the gun was loaded so he could protect his family, and the best interest team responded,

> "but your kid is more likely to shoot themselves than you are to shoot an intruder. So you need to lock [it] up."
>
> Basically within 24 hours, [he] sent us a picture of a lockbox he bought, you know, the code, and all this stuff... So that was good.

This example, shared by the staff attorney, helps illustrate why home visits (even virtual / video ones) are essential when assessing whether a particular custody arrangement places a child at risk. Moreover, as shown by this scenario, the best interest team is willing to work with parents/guardians to try to help maintain their relationship with the child, but under the condition that the child's safety is ensured when in their care.

In another interview, a staff attorney noted how conversations with parents can sometimes be illuminating in regards to whether the child's safety may be at risk while in their care. The staff attorney described a case in which the father admitted to drinking heavily during the week and on the weekends, but did not recognize how his drinking could negatively affect his child. The father had secondary physical custody of the child and saw the child on weekends and holidays. The best interest team was concerned that if an emergency arose, the father might not be able to respond appropriately if he had been

drinking. The best interest team made a recommendation that the father not drink during his parenting time and in the 12-hour period prior to the start of his parenting time. The father in this case agreed to refrain from alcohol use as stipulated, and the court trusted the father's statement that he could refrain from alcohol use while the child was in his care (and 12 hours prior). Furthermore, to help enforce the best interest team's recommendation, the court placed a restriction in the permanent custody order on father's parenting time that he is not able to drink while the child was in his care and the 12 hours leading up to his parenting time. If the father violated this provision of the custody order, the mother would be able to bring forth a contempt action against the father for violating the court order.

In some cases, parents/guardians may not be as forthcoming about their substance use as the parent in this example was. In instances in which the best interest team has suspicions that a parent/guardian is engaging in substance use, the best interest team may request that the parent take a "substance use assessment" to determine whether they are abusing any substances. For parents who may be struggling with drug/alcohol addiction, the best interest team provides them with an opportunity to seek treatment to address the challenge and, in the longer term, help maintain a child-parent relationship. In such cases, rather than provide final custody recommendations meant to last until a child is 18, the best interest team may ask for a temporary custody order pending a final determination of custody. That way, the best interest team can convene a review hearing after a few months to determine whether the parent was able to remain substance-free for that period and to assess the parent's likelihood of remaining substance-free in the future. One staff attorney noted that, in cases in which a parent/guardian is battling a drug addiction and

seeking treatment, it is critical to have cases continue for a longer duration. Rhodes explained why,

> [If] one parent has substance abuse issues but they are in treatment, you want to have the case last enough to see if that treatment works, so that the final order can account for the fact that the parent is now better. Because if they have the hearing when the parent is in the middle of treatment, [they] wouldn't get as much time as ultimately might be good for the child. So, even the timing of it really varies… Short isn't always better, it depends on the factors of the case.

As evidenced by Rhodes' comment, determining recommendations that are in the child's best interests can be difficult, and further complicated by other competing "best interests" factors. On the one hand, the best interest team would like the child to have "healthy and significant relationships with both parents" but, at times, this is complicated by the fact that placement or visitation with a given parent/guardian can place the child at risk. In this case, the best interest team decided it was best to provide the parent with an opportunity to seek help to improve the likelihood that the child could have a relationship with that parent. Furthermore, as described by staff attorneys, some parents with substance use issues are able to get the help that they need in order to have a relationship with their child, while others continue to struggle with substance use challenges. In the end, the best interest team considers such factors when determining the final custody recommendations and/or position to judges.

3.4.3. Healthy Adjustment

In assessing a child's best interests, the best interest team considers a child's current functioning and adjustment across several domains. The following sections will describe three domains that the best interest team considers to be of great importance when determining best interests, including a child's adjustment to home, community, and school.

3.4.3.1. Adjustment to Home and Community

In addition to child's safety (and factors related to child safety), the best interest team considers a child's adjustment in the context of the child's home and community to be an essential component of best interests. In determining the child's best interests, the best interest team considers how the child is performing in the current living arrangement. Similarly, if applicable, the best interest team weighs the positives and negatives of relocating a child.

It is important to note that staff attorney's definitions and/or factors they consider to be of importance when determining best interests are also guided by case law and precedent. For example, in our interview, Levine shared how rulings in prior cases provide factors that must be considered when determining whether a child should be relocated such as "[the] length of time the parties have been [in that location], the child's connections to the city they are already in, and… for the party that wants to move, what are his or her connections in the other city?" Similarly, other staff attorneys interviewed also spoke of the need to consider the potential impact of relocation on a child's schooling and relationships with peers and family members, as well as the practicality of traveling between parents'/guardians' homes.

Relatedly, when assessing the child's adjustment to their home and community, the best interest team considers the quality of the relationships a child has with any individuals who may have a significant presence in the child's life. As a compelling example of the importance of assessing such relationships, one staff attorney shared an example of a case in which a child had a problematic relationship with the mother's significant other, who was living in the home. The staff attorney described this significant

other as a "good guy" but stated that he was "tough as nails" on the adolescent. This was problematic because, during the best interest team's investigation, the adolescent attempted suicide, which the best interest team and the Department of Social Services (DSS) later attributed to the difficult relationship between the adolescent and the mother's significant other. Indeed, the events that occurred during this case highlight how critical it is to consider any individuals to whom the child might be exposed through their parents and/or guardian, and to ensure that the child has healthy relationships with those individuals, and if not, limit any potential contact.

3.4.3.2. Adjustment to School

From interviews, it was evident that the best interest team placed significant weight on a child's performance in school. Many staff attorneys viewed a child's education as setting the foundation for a prosperous future. For that reason, the best interest team viewed the review of educational records as being a central part of determining a child's best interests. Rhodes described how the best interest team evaluates educational records,

> You always want to make sure the child is stable in school. So that whichever parent they are living with is actually getting them to school on time and not having too many tardies, and that the child is doing well in school. So, that's something we look at in every case: objective evidence of how the kid is doing and whether they are getting the support they need at the place where they [are] living on school days.

As alluded to in this statement by Rhodes, educational records can provide relevant indicators regarding the degree to which the primary parent/guardian is fulfilling their responsibilities as a parent and supporting their child's educational needs.

In that same vein, CAP staff viewed educational records as evidence for how a child is adapting to, or functioning in their current custody arrangement. Some staff even

described educational records as serving as a "canary in the coal mine," that is, if a child is performing poorly in school, it may mean that the child is not receiving the support they need from the parent with whom they spend most of their time, which may suggest that alternative arrangements are needed.

3.4.4. Satisfactory Mental and Physical Health of all Individuals Involved

3.4.4.1. Mental Health

From my case file review, interviews, and trial observations, it was clear that mental health issues among caregivers and children were present in many of the cases. It was also apparent that CAP carefully considered the mental health of all individuals involved in each case when considering the best interests of the child. For instance, as described earlier, the best interest team often endorses relationships between the child and both parents; however, in cases in which one of the parents has significant mental health issues, these endorsements become less likely. Depending upon the nature of the mental health concern, members of the best interest team may have concerns related to the "stability" of the parent with mental health issues, leading them to believe that the child might be at risk if left unsupervised with that parent. In discussing these cases, program staff highlighted the need to "protect the child from that parent," which often involves "putting [the child] with the other parent, or the grandparent." One staff attorney even described the emotional burden that the best interest team carries when it comes to making recommendations such that one parent has significantly less time with their child due to mental health issues, but emphasized how important it is to protect the "best interests" of the child. Rowe said,

> Those are sad, but you know… the best interests of the children are what they are. And our view... is based upon.. our investigation and evaluation. And that's in the

> best interest of the child, and if it doesn't produce a happy-feel-good result [emphatically], oh well. The best interest of the child is most important. That is our obligation and responsibility.

One noteworthy benefit of having a best interest team appointed to work on these high conflict custody cases is that, not only are they able to investigate various aspects of the child's life, but they are also able to make recommendations that promote the children's and families' best interests. As one example, many CAP-involved parents and families may not be receiving mental health services, or even be aware that they are in need of mental health services. Because of the families' involvement with CAP, the best interest team can identify this need and recommend that families seek mental health services.

In cases characterized by the presence of severe mental health challenges, the best interest team may call upon a forensic psychologist to conduct an evaluation to supplement the best interest team's investigation. Alternatively, in some instances, one or both litigating parties may request the evaluation. In the trial I observed, the court subpoenaed a forensic psychologist who had conducted an evaluation for the case. After establishing the credibility of the witness, an attorney from one of the litigating parties asked the forensic psychologist a series of questions regarding her evaluation process. The forensic psychologist shared the various activities they conducted for their evaluation, which included interviews with the parents; interviews with the children; observations of the parents' and children's interactions together; psychological tests with the parents (e.g., Minnesota Multiphasic Personality Test [MMPI-2][16]); collateral interviews (e.g., family members, friends, neighbors, coworkers); records review; and a

[16] The MMPI-2 is a standardized inventory of adult personality and psychopathology.

parent questionnaire. The psychologist shared that she spends an average of 40 hours per case to reach a conclusion as to what is in the best interests of the child.

During their testimony, the psychologist shared each parent's results on the MMPI-2. These results portrayed one of the parents as "defensive," "hostile," and "suspicious of others;" the other parent was described as "not showing awareness," "meek," and "unassertive." Subsequent to providing these descriptions, the forensic psychologist listed the strengths and weaknesses of each parent to the courtroom.

The goal of sharing the forensic psychologists report and testimony is to illustrate how the staff attorney I observed used this information to provide evidence to the court to support the team's position regarding what is in the best interests of the child. The staff attorney I observed in trial described how recommendations are at times "fluid," such that the best interest team may go to trial with a specific set of recommendations in mind based on their investigation, but new evidence may emerge in the courtroom that causes the best interest team to reevaluate or modify some of their recommendations. In this particular case, the testimony by the forensic psychologist served to strengthen the best interest team's "position" or "recommendations" to the judge. The staff attorney utilized the opportunity to cross-examine the forensic psychologist and asked questions related to each caregiver's parenting abilities. The attorney later asked the forensic psychologist's expert opinion in regards to the custody arrangement that would serve the child's best interests. In this particular case, having a best interest team, a combination of best interest / friends of the court attorneys, guardian ad litems, and custody evaluators, in addition to a forensic evaluator whose work is grounded in scientific methodologies, made it exceedingly clear which arrangement was in the best interests of the child. Altogether,

these points illustrate how CAP staff and volunteers weigh mental health issues in custody determinations, as well as how they affect final recommendations and/or position about what is in the best interests of the child. This next section will discuss the role that physical health plays in determining the best interests of the child.

3.4.4.2. Physical Health

When determining the best interests of the child, program staff consider the physical health of the parents/guardians, as well as the children. Program staff described the importance of assessing the parents' physical health for multiple reasons. First, if an individual is not managing his or her health, this may raise concerns about the parent's capacity to support the child's healthy development and/or growth. In addition, living with a parent or guardian in poor health or facing physical health concerns may lead to negative effects on a child. For example, one staff attorney described a case in which the father had a chronic disease but did not adhere adequately to his management and treatment regimen, which led him to suffer from a number of health complications. Robinson said,

> I have one dad who has some health issues… he thought he was doing okay managing his [chronic disease], and [we responded], "you need to do better" because… [sometimes] the kids couldn't wake him up, or like he gets angry, or he is so disoriented… so.. part of why we did this, was because DSS too, [was] telling him to... "go and talk to your doctor, and get this sorted out to where this does not happen again."

This example illustrates how a parent or guardian's poor health, and/or inability to manage their health could be associated with negative outcomes for a child.

As for the child's health, program staff reported that they examined medical records and, if necessary, conducted phone interviews with the child's medical provider(s). To assess whether parents are meeting their children's medical needs, the

best interest team examined whether the parent(s) took the child to the doctor or previously made medical decisions that were in the best interests of the child. One staff member said that medical records often hold some of the greatest weight when it comes to the best interest team's decision as to what is in the best interests of the child, because medical records can serve as an objective indicator as to whether a parent is meeting the child's need or following through with recommendations or treatment. Rhodes said,

> It could be that a child has a medical issue, where one parent is doing a good job treating it and one parent is not. Like if a child has ADHD and.. really needs to be on medication, but one parent doesn't believe in medication.

This staff member went on to describe how medical records can help the best interest team determine which parent/guardian is appropriately meeting the child's medical needs. This staff member said,

> In some cases, parents disagree on the medical treatment for the child. And so, in those cases, those records are important.. to show us who is following the medical advice and taking the kids to the appointments, and who is dismissing the medical advice.

In summary, medical records can serve as indicators as to whether a child's needs are being met, and whether a parent is making decisions that promote the child's health and well-being.

3.4.5. Legal Custody

A frequent and reoccurring theme as to what best interest team members viewed to be the most important in children's best interests was legal custody. Some staff described how legal custody provided decision-making capacities that could influence all aspects of a child's life. In particular, a parent with full legal custody has the authority to make decisions about a child's life related to schooling, medical care, and religious or faith-based training. Because legal custody influences multiple domains of a child's life,

staff repeatedly highlighted the importance of assigning legal custody to a parent or guardian who has demonstrated that they can meet the developmental needs of the child, are psychologically healthy, and are capable of parenting in a way that meets the needs of the child.

Staff attorneys also described how, in an "ideal world," parents would share legal custody. Staff believed that this is ideal because parents would then make decisions that impact the child's life jointly, rather than in isolation. For example, in one interview, a staff member described a situation in which a parent or guardian abused her legal decision-making authority. The staff attorney said,

> A lot of times we see situations where… one parent is really shirking their duties as a legal decision-maker. They may… completely eliminate the other parent from cases or from situations where both parents should be making the decisions, [emphasizes] together. Or, they may be making a bad legal decision.
>
> I have a parent right now who had her legal decision-making taken away from her because she refused to give her children [medications recommended and prescribed by a doctor]. The judge [said] "if you are going to sit on the stand and you are going to tell me that you are not going to give your children [medications recommended and prescribed by the child's doctor], then you cannot make those decisions for these children, period." If I hear that a parent is… not doing that, I am going to say "the other parent who has been doing good for this kid, needs to make all the decisions."

Overall, the results – reflecting multiple data sources – illustrate the key dimensions and specific factors that CAP staff view to be core elements of the concept of "best interests." Moreover, the examples shared by CAP staff demonstrate the importance and complexity of weighing all these factors together, and considering how they may affect a child's life. With that in mind, the next section will discuss the challenges and barriers in custody advocacy, as noted by CAP staff.

3.5. Challenges and Barriers in Custody Advocacy

In my interviews, I asked program staff "what barriers or roadblocks stop you from getting to the best-case scenario?" Barriers described by program staff spanned multiple levels, including individual, family, organizational, and systemic. The following paragraphs discuss some of the main themes identified related to challenges and barriers in custody advocacy.

3.5.1. Access to Needed Services

For some children and families, accessing services recommended by a best interest team can be challenging. Staff attorneys often attributed these challenges to costs of services, and health care policies. For example, one staff attorney described how, in some cases, children and families are unable to receive reunification therapy because they do not have health insurance, or their insurance policy does not cover reunification therapy. In turn, reunification therapy is more than likely an out-of-pocket expense for most parents/guardians. This has serious implications for low-income families, given that reunification therapy in Charlotte can reportedly cost upwards of $200 per session and require multiple months of treatment.

Relatedly, a staff attorney also mentioned how, at times, policies from Medicaid or Managed Care Organizations stand in the way of children receiving appropriate services, at a time when they are most needed. This staff attorney said,

> Not having affordable treatment available to our kids is a barrier… a lot of times, our families are paying a lot in attorney fees to their own private attorneys, and getting kids treatment is expensive if they don't have health insurance, or they can only do Medicaid.

> You know, care coordination. Medicaid.. Cardinal[17]… You have to do X, Y, [and] Z before you qualify for the next level of treatment… I have a child client right now who, basically, everybody is saying he needs to go to a wilderness program. He needs to be away from the home, he needs to be in intensive therapy for an extended period of time. But, he's on Medicaid, and Cardinal won't approve it. So what they are approving right now is intensive in-home. And then, if that fails, which it will, then maybe they will approve a higher level of care. But getting care for our kids, getting treatment for our kids, is a huge barrier…

Relatedly, the staff attorney Levine described how a parent or guardian's economic status can also influence whether a forensic evaluator can be appointed to assist in determining a child's best interests. Levine said,

> Systemically, I would say one of the barriers that we see is [that] parties come to us at different levels economically speaking… we have a lot of parties that are well to do, and many parties that are living paycheck to paycheck. In a lot of cases… [a forensic] evaluation would be beneficial and it's just cost prohibitive. Therapy.. a lot times.. we can get that worked out… but if we need [a forensic] evaluation that costs upwards to $5,000… [a] judge is not going to order that.. and frankly nobody can put that burden on the family…

Unfortunately, an inability to appoint a forensic evaluator to a case in which their training and expertise is needed can be disadvantageous to determining a child's best interests. As an example, Levine described a case in which it was suspected that the father was coaching the child to make it appear as though sexual abuse was occurring by the mother. Levine described how the forensic evaluator was critical in providing information to the court that the best interest team was not able to provide given differences in training and expertise. Levine said,

> We had our suspicion, but the forensic evaluation confirmed coaching as did the therapist who we got involved with the child. But these are things that dad was doing so subtly, and I knew I was not qualified to go in and ask the child certain questions… It's cases like that we can't dig into it and I really need somebody who has that therapeutic background or forensic training to figure out what is going on with dad and what is going on with the child. My suspicion was there

[17] Cardinal Innovations is a Managed Care Organization in North Carolina.

> and was correct, but I certainly was not qualified to handle some of those questions.

Fortunately, in this case, the Department of Social Services was able to have a forensic evaluator appointed . However, the challenges described by program staff suggest that disparities exist between lower income and higher income families that are experiencing high-conflict divorce. In this particular context, these disparities relate to families' ability to afford services, or access services when needed. Some of the barriers noted by program staff can be alleviated through changes in health care policy, while others may require changes in state or federal policies. Until then, CAP is limited in its capacity to intervene, or provide recommendations for services that are needed to low-income families, or families that are struggling financially because of divorce/separation.

3.5.2. "Approximation of the truth" – Livingston

From interviews, it was clear that CAP staff prided themselves in their ability to develop a position and/or recommendations that are based on a rigorous investigation. However, some staff noted that in some cases it is difficult to parse out what is fact versus fiction. At times, despite conducting a robust investigation, staff alluded to the fact that some ambiguity can remain about some areas of a child's life. In these instances, staff described the need to "play more of a conservative card," when providing recommendations to judges as to what is in the best interests of the child. Regarding this, Callow said,

> Sometimes we walk into a courtroom and… my volunteer team and I feel that we need to play more of a conservative card. That we feel like if these allegations that are being made in this case are true, then this parent should only have supervised visits with their child. Because, nothing has been substantiated in these allegations. I can't determine whether or not they are true. I am going to go into court and make the conservative recommendation that this parent should only have supervised visits, because there are indicators that this child has disclosed

> that abuse occurred at the hands of one parent, but that abuse was never substantiated.

In the event that the best interest team is unable to confirm or disconfirm some allegations, staff attorneys noted the importance of being direct and transparent with the judge. That way, the judge can take into consideration the fact that some questions about the child and family remain unanswered when determining the final custody determination. For example, Robinson described a case, which involved a mother distancing her children from their father, as well as allegations of abuse against the father. Robinson noted that, in some cases, it can be challenging to determine what is in the best interests of the child, given that allegations against one parent by a child can be due to the other parent's coaching or "brainwashing," or what some in the custody literature describe as "parental alienation[18]." In such cases, Robinson noted the need to be direct and transparent with the judge that although the team is unable to confirm allegations of abuse, they cannot rule out that abuse did not occur.

It is important to note that although Robinson shared that cases in which it is believed that one parent is coaching a child against the other parent are challenging, she also expressed a sense of relief in sharing that "burden" with the volunteer attorney and the custody advocate as it related to determining the best interests of children. Such cases help highlight how beneficial a model like CAP can be, and how the presence of three

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[18] As noted by Nichols (2014), the act of one parent brainwashing or coaching a child against the other parents and/or guardian is common during custody cases. As such, the concept of a diagnosable Parental Alienation Syndrome (PAS) emerged as an attempt to explain this behavior. However, it is important to note that PAS has been discredited by some mental health professionals as well as legal professionals, with some arguing that PAS does not meet the standard for evidentiary admissibility. Nonetheless, PAS and/or alienation related behaviors continue to influence the decisions of family courts and are widely discussed in the divorce and custody decision-making literature (see Baker, Asayan, & LaCheen-Baker, 2016; Rohrbaugh, 2008). As such, this study may describe instances of coaching of children as "parental alienation" for the purposes of discussion and comparisons with the existing custody literature. Please note, the use of this term is not an endorsement by the author or CAP.

individuals evaluating the evidence and the circumstances of the case can be beneficial in determining what is in the best interests of the child.

3.5.3. Deciding Between the "Lesser of Two Evils" – Robinson

During my practicum with CFCR, I reviewed several case files to better understand the best interest team's processes in determining best interests. As I reviewed the case files, I quickly realized how incredibly difficult CAP's undertaking of determining what is in the best interests of the child can be. In reading the case files, it became difficult to understand how anyone could determine what is in the best interests of the child, given the circumstances and information made available to the best interest team. So, I decided to directly ask one of the staff attorneys how they are able to reach a decision as to what is in the best interests of the child in extremely difficult cases,

> Khalil: I'm going through cases, and I'm [wondering] how do you… even come up with a decision on some of these?
>
> Robinson: Sometimes it's definitely [the] lesser of two evils. Which is sad, but every once in a while, I'll get one [where] neither one seems like a bad choice to me, so those are hard too. But some of our cases, it's a lot more clear. Even though it's not clear to the parent, it's a lot more clear to us... this clearly is the better place for these kids… they really run the gamut as far as agonizing over our recommendation versus being very clear on that.

As described by Robinson, some cases do not have a clear answer as to what the custody determination should be. This is often because neither parent is a "great parent," or promoting the child's best interests in a way that a parent should. At times, this is further complicated by the fact that there are no known instances of physical abuse or neglect that would warrant a child being removed from the home and placed elsewhere. For that reason, staff described having to determine a custody arrangement that is simply based on

which parent/guardian or set of living arrangements is "the lesser of two evils[19]." In other words, the parent that seems to be less harmful for the child will more than likely receive primary custody and decision-making authority over the child.

3.5.4. Family or Guardian Non-compliance

Substantial cooperation from both parents or guardians is required for the best interest team to be able to advocate and determine what is in the best interests of the child. However, in light of the broader circumstance that has led to the appointment of the best interest team, cooperation from both parents or guardians does not always occur, which poses significant challenges. For example, at the beginning of a case, CAP sends several documents to parents and requests that they complete and return them promptly. These documents help guide the investigation so the best interest team can identify relevant collateral contacts, determine which mental and medical facilities to contact, and learn about the history of the family. When both parties do not comply, the best interest team is forced to submit a "motion for judicial assistance," which legally requires parents/guardians to comply. However, this approach is non-optimal because it takes time, given that a judge must approve it. Perry (pseudonym) described a case in which the parents or guardians were not complying with the best interest team's requests, which led to negative outcomes for the child. Perry said,

> Here we are three months later, and we haven't been able to begin the investigation.. Because the parties aren't complying.. Which can or make or break a case sometimes. Because in the instance of this case, we are talking about a six-year-old that has already tried to commit suicide. Six years old! We really need to get involved by now. What issues are going on here? [So]… we can make sure that this kid is getting the help [he or she] needs, and is in the environment that

[19] Please note, the use of the phrase "the lesser of two evils" by the staff member is simply common parlance used to describe a difficult choice with no optimal outcome, and is not intended to characterize the parties involved in a given case.

[he or she] needs to be in.

Family non-compliance remains a meaningful barrier even when only one parent does not comply. My initial impression was that in cases in which one parent does not comply, the other parent is awarded custody given that they have demonstrated that they are the parent who is interested in obtaining custody. However, I quickly learned that this was not the case. Perry explained why,

> We can't investigate. We have no idea... we can't recommend visitation; we can't recommend anything. [For example] in one of Robinson's cases… you have mother, who has two kids, from two different fathers…So Samantha has two kids. One with Adams, one with Snyder. She actually married Snyder. Snyder's parents took custody of the two kids while mom is in jail. Snyder is in jail, and Adams has had nothing to do with his child. One father is in jail, mother is in jail, other father has nothing to do with his own child. Grandparents [are] raising them. Mom gets out of jail, [and] wants custody back. They are fighting each other. Adams over here, all of a sudden decides to show up at calendar call one day and is like, "I want to be a part of this, and I want visitation." And we [say], "we sent you documents. You didn't send them back. We did this. You didn't do anything. Right?" So nothing we can do.
>
> It gets rolled into the next calendar because of this guy. We do everything we can to get him to comply. He doesn't fill out the documents. He doesn't let us do a home visit. Nothing! But he shows [up] at the calendar call again. And… at that point… Robinson basically told him, "we can't recommend visitation because you haven't complied in any way whatsoever." But in that case, we had two parties to choose from. We had grandparents versus mother. So, obviously father over here isn't a viable party because he is still incarcerated. The father over here, we can't recommend visitation for you, because you wouldn't comply with us to allow us even [to] consider recommending visitation. So.. there has to be two parties for us to investigate.

Another staff attorney, Levine, described how some parents or guardians will not comply with the best interest team's investigation given that compliance would allow the team to uncover truths that would negatively affect the parent or guardian's image as an adequate caretaker for the child. Levine said,

> I have a case right now where we have been trying and trying for 3 months now to do a home visit and this particular party has been putting us off, saying "no you can't come," "I won't be there," "I'll be at work," "I have renovations going." And finally, we just had to set a time and say this is when we are coming and [the] volunteers went recently and the home was not in good shape at all. [The home was] not safe for the children… and this person knew that, and that was an attempt to hide that.

Other staff members described additional challenges that occur when both parents comply with the investigation, but do not comply with the best interest team's recommendations. Callow said,

> [parents] don't always follow court orders. So we can make whatever position we want to make, and the judge can order whatever the judges wants to order, but if a parent does not want to follow a court order, they are not going to follow it.

Rowe highlighted the same problem noted by Callow, adding how judges' rulings can be limited. Rowe said,

> In some cases… the court system just can't have a positive effect. The judge.. can only do so much. The judge is not going to get in the car with people and make sure they obey orders. We are not going to do that. So… that's an impediment as well.

As noted by some staff attorneys, CAP's ability to help children and families has clear limitations. For example, the best interest team may identify services that children and families need, as well as recommend those services; however, it is up to families to follow through with these recommendations. Indeed, judges can legally order the parents/guardian to comply with some recommendations, but some families may choose not to do so. In these instances, a parent/guardian can file a motion to hold the other parent/guardian in contempt of the court. Thereafter, the court will hold a hearing that provides the parent/guardian who disobeyed the court order an opportunity to explain his or her actions to the judge. The specific penalties for disobeying a child custody order vary, but consequences can include monetary fines, criminal charges, and permanent loss

of custody or visitation. But, even so, the possibility of such consequences does not always deter parents/guardian from choosing not to comply with recommendations made by the best interest team or judges, and ultimately harm the child(ren)'s well-being.

3.5.5. Weights to Assign to Various Factors

To determine custody recommendations, judges in addition to advisors and/or advocates are forced to assign weights to various factors (e.g., religious training, safety, stability, emotional well-being) in a case. This can be a difficult task, given that the Best Interests of the Child Standard (BICS) does not provide any specific direction or guidance as to how decision-makers should approach, weigh, or consider the various and, at times, competing aspects of BICS. Not surprisingly, staff attorneys spoke of instances in which they felt torn when deciding how to weigh some factors when determining a child's best interests. Robinson alluded to this when discussing how at times it can be difficult to determine which parent should have primary custody of the child, but both parents have qualities that make them less than ideal candidates for custody of the child. One may think that it becomes easier to assign weights to these factors based on professional trainings or additional experience in the child custody advocacy field, however, no two cases are alike. For example, a factor that may be weighed heavily in one case may not carry as much weight in another case. This was evident in my interview with Callow, who noted that it was difficult to answer some of the questions that I was asking related to how they determine the best interests of children. Callow explained why,

> It's so case by case, that's the problem! Our cases… we are coming into a different set of facts and circumstances in every child's life.

The process of assigning weights to various factors is further complicated in instances in which members of the best interest team weigh some of the factors differently from one another. Rhodes described a case when this occurred,

> It's just [that] we weigh the evidence in different ways. I've only had that happen once, and it was where I thought the child was doing pretty well where he was, and…the parent he was living with was doing a pretty good job.
>
> But one of the volunteers thought that the parent who the child did not live with – who lived in Winston Salem [would be better for the child]… so it was.. either the child was going to be in Charlotte or Winston Salem. It was going to have to be one or the other. And the child was currently in Charlotte, and I thought [the child] was doing well enough and should stay in Charlotte. And one of the volunteers thought the mom who lived in Winston Salem had the potential to do a better job than Dad. So I guess, I weighed the risk… or the downside of moving the child as more of [a] negative than the volunteer did.

Altogether, these examples highlight some of the challenges that may arise in determining the best interests of a child, and how advisors and/or advocates are forced to assign weights to competing factors of best interests without clear direction or guidance from legal standards, or custody decision-making guidelines.

In summary, interactions with CAP staff helped elucidate CAP's processes for determining the best interests of children. Moreover, interviews clarified the responsibilities of best interest team members and how each person's role contributes to determining the best interests of a child. Discussions with CAP staff also revealed some of the benefits of the CAP model / approach to investigations, which included a representation of diverse perspectives and reduced subjectivity. Furthermore, the present investigation revealed how staff attorneys define the concept of "best interests," which consisted of children having a relationship with both parents, safety, healthy adjustment, satisfactory mental and physical health, and legal custody. Finally, this study illuminated the challenges and barriers faced by staff attorneys in advocating for the best interests of

children. Some of the most notable challenges described by staff were related to parent/guardian compliance to custody orders, families' ability to afford or access services, and substantiating allegations of abuse. With that in mind, the next section will discuss how the findings of this study fit in with the broader literature, as well as their potential implications.

CHAPTER 4: DISCUSSION

This study sought to enhance understanding of how custody advisors and/or advocates and, in particular, a best interest team, formulate, determine, and operationalize the best interests of children, as well as the challenges they face in doing so. The sections that follow will consider the major findings – and their implications – that correspond to the study's three guiding research questions (RQ) : (1) How do staff attorneys determine the best interests of a child?; (2) How do staff attorneys define the best interests of a child?; and (3) What are the challenges and barriers experienced by staff attorneys in custody advocacy?

4.1. RQ1: How Do Staff Attorneys Determine the Best Interests of a Child?

Findings indicated that best interest team processes are aligned with current accepted practices in the custody evaluation field (American Psychological Association, 2010), legal field (American Bar Association's Family Law Section Council, 2003), as well as the general expectations of family court judges (Waller & Daniel, 2004). More importantly, findings indicated that CAP's investigation and decision-making processes yielded several noteworthy benefits and advantages in comparison to traditional custody evaluation models. For example, a frequent criticism of child custody evaluations is that the evaluator's recommendations are subject to personal and cultural biases (Baker et al., 2016; Bow & Quinnell, 2004; Charlow, 1987). This can be problematic in that evaluators may develop a preference for one parent/guardian, and unconsciously disregard data that does not fit their preconceptions (Bradshaw & Hinds, 1997; Feinberg & Greene, 1995; Sagi & Dvir, 1993). To help reduce such biases, it has been suggested that evaluators should seek consultation or supervision (Bow & Quinnell, 2004). However, evaluators

often resist such assistance due to what Bow and Quinnell (2004) describe as "personal pride, confidentiality/liability issues, and licensure status (i.e., most evaluators function at the independent practice level, which does not require supervision)" (p. 124). Although best interest team members may also have biases, beliefs, or personal experiences that can influence their custody determinations and recommendations, as program staff described, a three-person team helps reduce subjectivity, given that multiple perspectives help shape and determine the final recommendations and/or position. In addition, each team member must support the conclusions and recommendations they put forth to other team members with objective evidence that the best interest team collected during their investigation. In light of these assets, a team approach that is similar to CAP's may address some of the ongoing criticisms of child custody evaluations and/or custody decision-making processes, while attending to some of the constraints described by Bow and Quinnell (2004).

An additional criticism of child custody evaluators by attorneys and judges is that they have limited knowledge of legal criteria (including, for example, the "best interests of the child" statute; Bow, Gottlieb, & Gould-Saltman, 2011; Bow & Quinnell, 2004). In fact, a study evaluating attorneys' beliefs and opinions about child custody evaluations found that the most common complaint related to the conclusions and recommendations put forth by child custody evaluators, with one concern centering specifically on the evaluator's ignorance regarding the Best Interests of the Child Standard (Bow et al., 2011). With this as backdrop, the present findings suggest that an approach such as that employed by CAP – led by a staff attorney, and supported by a volunteer attorney with legal training and expertise – may help rectify this criticism.

It is important to note that CAP does not serve as a replacement to traditional child custody evaluations (i.e., forensic evaluations conducted by social workers or psychologists). Instead, the best interest team operates as a combination of best interest / friends of the court attorneys, custody evaluator, and guardian *ad litem*, and the team is tasked with the responsibilities of investigating, monitoring, and championing for the child's best interests. If any stakeholder (e.g., CAP, judge, litigating party) believes that a forensic evaluation is necessary, they can file a motion to request this additional element to supplement the best interest team's investigation.

A noteworthy aspect of the best interest team is that they are not bound by the child's directives relating to custody, but instead develop a set of recommendations and/or position that focus on their view of the best interests of the child (American Bar Association's Family Law Section Council, 2003). The best interest team (and most other best interest attorneys across the United States) take this approach because children do not always choose or know what is in their best interests, or children may be manipulated, coached, or "brainwashed" by a parent or guardian to express wishes that are contrary to their best interests. This highlights how state statutes (e.g., West Virginia and Minnesota) that give a child's preference deference over the preference of a primary caretaker can be problematic and, at times, not consistent with a child's best interests (Crippen, 1990). With that in mind, the next section will discuss how staff attorneys define the best interests of children.

4.2. RQ2: How Do Staff Attorneys Define the Best Interests of a Child?

In the state of North Carolina (NC), the best interest standard is what guides custody determinations. However, the NC statute is somewhat vague, stating, "the court

shall consider all *relevant* [italics added for emphasis] factors including acts of domestic violence between the parties, the safety of the child, and the safety of either party from domestic violence by the other party" (N.C.G.S. Section 50-13.2.). Furthermore, the NC statute does not explicitly list all the factors that judges, as well as advisors and/or advocates are to consider; it only mentions some examples, which mostly center around a child's safety. Because of the vagueness and lack of specificity of this statute, judges as well as advisors and/or advocates can emphasize and/or attach greater importance to some factors than others as related to the best interests of the child (Lowery, 1981). And although case law and state statutes provide criteria that help define best interests, the criteria tend to be broad and/or refer to general issues (Harmer & Goodman-Delahunty, 2014). In other words, for some issues, there is little guidance about which information is most important in determining a child's best interest, or how a factor related to best interest should be evaluated and/or assessed (Harmer & Goodman-Delahunty, 2014). The next paragraphs highlight factors that CAP staff attorneys viewed to be of most importance as related to best interests, as well as their potential implications.

In line with previous work (e.g., Banach, 1998), study findings suggest that, although staff attorneys indicated that best interests of children are determined on a case-by-case basis, they also cited several factors that they utilized regularly in the custody decision-making process, or consistently viewed to be important factors of best interests. Results indicated that best interests factors that CAP staff reported assessing are largely consistent with those deemed salient in the literature, including: parent-child relationship, the ability of parents to co-parent, physical and mental health of all individuals involved (i.e., absence or presence of psychopathology or parent/guardian substance abuse), and

child's adjustment to community and school (Gourley III & Stolberg, 2000; Rohrbaugh, 2008).

In addition, the present findings suggest that because NC BICS are broad and vague, staff attorneys have built in a greater level of specificity regarding what best interests factors are salient and should be considered when determining custody recommendations. Doing so helps to guide their work, and it appears that the best interest team primarily relies on case law, experience, other professionals, as well as information learned from their training provided by the Council for Children's Rights, which covers topics such as developmental stages of children, how to interview children, parental conflict, effects of divorce on children and families, an overview of CAP cases, client and family confidentiality, and expectations of judges (Council for Children's Rights, 2016, p. 96), to inform their custody determinations.

4.3. RQ3: What are the Challenges and Barriers Experienced by Staff Attorneys in Determining and Advocating for a Child's Best Interests?

To my knowledge, this is the first study to examine challenges experienced by a custody advocacy team in determining and advocating for a child's best interests. Challenges noted by CAP staff included: connecting children and families with needed services; confirming or disconfirming abuse allegations; deciding between or identifying "the lesser of two evils" as related to parents/guardians; responding to family or guardian noncompliance; and determining weights to assign to various factors in a case. The next paragraphs outline some key challenges noted by program staff and potential implications.

One key challenge noted by staff was related to children and families' inability to access treatment and/or services recommended by CAP, specifically reunification

therapy. Staff attributed this challenge to the high costs of reunification therapy, and/or insurance companies' unwillingness to cover the costs of this service. Additional research is needed that examines the effects of reunification therapy on child outcomes. Moreover, the findings from this study illustrate how a best interest team appointed to advocate and represent the best interests of children are at times limited in their capacity to help children, especially those from disadvantaged backgrounds. Given these points, it is critical that efforts be made to reduce such disparities, by (a) advocating and enacting policies that ensure that insurance companies cover needed and beneficial services for children, and (b) developing collaborative partnerships between family courts and local mental health organizations to facilitate identification, evaluation, and treatment at reduced costs for low-income families, or those experiencing financial difficulties due to separation/divorce. Such steps, combined with judges' usual approach of splitting fees between parents/guardians, could alleviate some of the challenges related to children receiving services recommended by CAP and/or court-appointed advisors/advocates involved in custody cases.

System-level barriers to accessing needed services represented a second challenge noted by staff. These barriers were particularly pronounced for children who had Medicaid coverage. For instance, in our interview, Callow described a circumstance in which her client's therapist and service providers unanimously recommended that the child attend a wilderness rehabilitation treatment program[20]. However, because Medicaid

[20] Outdoor education and wilderness programs have been shown to foster positive mental health among youth and young adults. Some noted benefits include more positive self-concept, increased self-esteem, reduced school truancy, and increased prosocial behaviors (Brand, 2002; Gillespie & Allen-Craig, 2009; Mutz & Müller, 2016; Schell, Cotton, & Luxmoore, 2012).

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insured the child, the client was required to receive less intensive services before qualifying for a more intensive (and expensive) service such as a wilderness program. This challenge is problematic because it results in a service plan that does not align with the services, supports, or interventions that those involved in the case believe will be best suited for the child; in some cases, it essentially requires the receipt of services that may not meet the child's needs and may be ineffective. Moreover, the delay in receiving an appropriate level of treatment can contribute to an exacerbation of the child's presenting concerns or problematic behaviors. Future studies should examine the extent to which children with Medicaid coverage experience these system-level barriers, the factors that contribute to these barriers (e.g., restrictive eligibility criteria, poor reimbursement rates), and the implications of such barriers for children's functioning. The knowledge gained from such an investigation can support the efforts of advocacy groups and/or lawmakers, working for local policy and system change to address existing barriers and create a child health system that meets the needs and promotes the well-being of *all* children.

A third major challenge noted by staff attorneys was the difficulty weighing the various components of best interests when determining their recommendations and/or position. This was especially difficult for staff attorneys in cases in which some factors of best interests seemingly "competed" with one another, and/or disagreement existed among the best interest team regarding how to weigh the various factors. In such instances, some have called for greater transparency from advisors and/or advocates about which issues were given more or less priority in their recommendations, supported by their rationale and empirical support, so that "decisions can be made with more consistency and reliability of opinion" (Harmer & Goodman-Delahunty, 2014, p. 267).

Although transparency in custody decision-making processes would help shed light on how various factors were weighed relative to other factors when determining a child's best interests, it does not guarantee that differences of opinion will be settled, or that subjective perceptions will not continue to guide custody determinations. As such, guidelines should be developed that are explicit about *all* the relevant domains of best interests that must be considered when determining custody, followed by suggested relative weights to assign each factor.

One potential way that future studies can develop these tools or guidelines is by (a) creating vignettes from some of the most common scenarios in high-conflict custody cases, (b) asking various stakeholders involved in child custody evaluations such as family court judges, family-law attorneys, forensic psychologists, GALs, and social workers to frame their custody recommendations based on the evidence and the factors present in the case, and (c) having these stakeholders describe the relative weight they assigned to each factor in the case. An effort of this kind could help assist in the development of tools and guidelines for custody determinations, based on consensus from multiple stakeholders with varying expertise related to children's best interests.

Similar to the complexity introduced by the consideration of potentially contradictory factors in a custody evaluation and/or investigation, parental coaching constituted another major challenge noted by CAP staff – in particular, in the context of such difficult dynamics, it can raise challenges in parsing out what is fact or fiction. For instance, Robinson attributed this to the fact that some parents coach their children to say things that may not have occurred, or to react negatively towards the other parent. Although Robinson described a sense of comfort with sharing the burden of trying to

decide whether (and to what degree) parental coaching (or as described in some custody and divorce literature "parental alienation") is present and influencing these cases with the other best interest team members, overall, the fact remains that court-appointed advisors and/or professionals continue to struggle with identifying if parental coaching is present, and how they should address it when determining custody recommendations. As such, these challenges may highlight the need to implement recommendations outlined by Baker and colleagues (2016), including: developing guidelines to help judges as well as court-appointed advisors and/or advocates ascertain whether children's stated preference are of free will or the product of coaching and coercion; mandating ongoing training for custody evaluators and custody decision-makers to recognize parental alienation; and modifying state statutes to explicitly address parental alienation.

Given that CAP operates in North Carolina (NC), it is important to note that the state's BICS standard does not mention parental alienation and/or coaching. This omission can be problematic in two primary ways: (1) by not specifying the various ways a parent/guardian can fail to support relationship between the child and the other parent/guardian, there may be insufficient consideration to this factor during custody evaluations / investigations, or during custody hearings in which custody determinations are made; and (2) even if judges as well as court-appointed advisors and/or advocates had an understanding of parental alienation, they would not be legally obligated to give it any consideration in their custody determinations (Baker et al., 2016). In light of these findings, the state of NC should modify state statutes to explicitly list *all* the factors that should be considered when determining a child's best interests, including parental alienation and/or coaching. This will help ensure that *all* factors deemed as salient in

determining a child's best interests (e.g., parental alienation) are not overlooked due to their omission, and/or ambiguity in statutes or guidelines.

4.4. Limitations

The findings of this study should be considered within the context of the project's scope and methodological constraints. Given that this study utilized an "ethnography-inspired approach," caution should be exercised in generalizing these findings. Although CAP staff's experiences were informative and provided useful data regarding how staff attorneys determine, formulate, and operationalize the best interests of the child – they cannot be readily applied to all custody advocacy programs. The Custody Advocacy Program of focus here functions within a specific context (Council for Children's Rights) in a medium-sized city in North Carolina and may have its own unique processes and approaches in comparison to other custody advocacy programs. Secondly, my values and biases as a researcher may also serve as a limitation of this study. That said, my engagement in reflexive practices, in addition to my use of member checks, likely helped limit the impact of such biases on study findings and my interpretations.

A third limitation of this study is its reliance on archival data to address the study's research questions. That is, I developed the research questions after interviews had been conducted for another purpose (i.e., my research practicum). These questions emerged based on the consistency of the themes that arose in my interviews across staff. Thus, participants were not asked to speak to the specific research questions (e.g., how do you define best interests?) that guided this study. Rather, program staff were asked questions relating to: activities, impact, success, measures employed, potential indicators of effectiveness, data used to draw conclusions and form custody recommendations, and

factors they perceive to be of importance in determining custody recommendations and/or positions.

The study would have also benefitted by the inclusion of reports and perspectives from volunteer attorneys and custody advocates, the other members of the best interest teams. Interviews with CAP volunteers would have helped in triangulating information learned from interviews with staff attorneys, as well as allowed for the integration of diverse viewpoints and experiences related to how best interests are determined, formulated, and defined. Similarly, study findings would be strengthened by triangulating information shared by program staff with case files. This would have allowed for corroboration of information shared regarding cases; however, this was not possible given the nature of some cases and client confidentiality.

Finally, because the data I originally collected (i.e., interviews) were for the purposes of practicum, and follow-up interviews / member checks were only with a limited number of participants, the findings of the study reflect the specific practices and processes employed, and the ideas and insights offered, by those employed at CFCR during the spring of 2017. Furthermore, in my time with the Custody Advocacy Program, I was only able to attend one trial (which lasted several days), and one staff meeting. Thus, while the discussions were in-depth and they supported the development of the practicum's products and led to the development of this specific project, they also reflected a relatively circumscribed time period and set of experiences. With that in mind, the next section describes potential future directions.

4.5. Future Directions

The current findings point to a number of next steps that inform future studies and, of salience, could help strengthen custody decision-making procedures and guidelines. Given that this study focused on the perspectives of CAP staff, future studies could integrate the perspectives of the volunteer attorneys and custody advocates in regards to custody processes and how they define the "best interests" of children. Additionally, future efforts should employ longitudinal methodologies to allow for a more in-depth examination of custody processes. For example, such work could enhance understanding of how custody recommendations by court-appointed advisors and/or advocates are developed and refined throughout a case, and how perceptions of what is in the best interests of the child evolve based on information presented and/or uncovered. Moreover, longitudinal research that examines how final custody determinations are associated with long-term outcomes for children and families could help inform the development of weights to assign to various factors in a case. In particular, research illuminating how custody determinations such as joint custody, co-parenting, and child relocation impact children and youth could lead to greater understanding of how various custody determinations and recommendations influence child and youth outcomes.

This study also found that program staff experienced challenges in developing recommendations for children whose parents/guardians evidence mental health challenges (i.e., how to allocate custody when one parent/guardian has mental health issues). The findings from this study may highlight the need for more comprehensive trainings that educate court-appointed advisors and/or advocates about mental health disorders, and how parental adherence with treatment, along with available support

systems (e.g., family, friends, community) could mitigate the concerns and challenges related to mental health problems and their potential effects on parenting capacity.

4.6. Conclusion

In summary, the present study provided valuable insights into how a custody advocacy program determines, formulates, and operationalizes the best interests of children, and the challenges they face in doing so. The findings from this study helped highlight some of the benefits of the model that CAP employs for investigating and determining the best interests of children, including representation of a diverse set of perspectives when determining custody recommendations, as well as reduced personal biases. According to Justice Linda Dessau of the Family Court of Australia, a combination of a quality custody evaluation and a good judge is "probably as good as it gets in the present system." (p. 268); however, the findings from this study suggest that integrating a model that is similar to CAP's in high-conflict custody cases, with the choice of requesting an independent forensic evaluation (i.e., a mental health evaluator whose training is grounded in psychology or social work) to supplement investigations (if necessary), is one way to strengthen how children's best interests are determined and represented in court.

Additionally, the findings from this study revealed how staff attorneys define the concept of "best interests," which consisted of children having a relationship with both parents, safety, health adjustment, satisfactory mental and physical health, and legal custody. Notably, despite the lack of specificity of the NC custody statutes, the Custody Advocacy Program staff tend to consider factors that are deemed important in the literature. Nevertheless, this finding signals a potential need to modify the best interests

of the child statute so that the varied professionals and stakeholders working in the family court system advocating or representing a child's best interests are using the same standards or guidelines for making judgments about the best interest of the child. A set of guidelines accepted by diverse stakeholders (e.g., judges, best interest attorneys, GALs, social workers, and forensic psychologists) as encompassing *all relevant* factors (including adequate attention to parental alienation) of best interests would help ensure that no factors are overlooked during custody decision-making, and that a child's representation of best interests is not dependent on who their judge or best interest attorney is, but instead by laws that provide adequate parameters for consideration of *all* factors of best interests.

Furthermore, the findings from this study related to challenges and barriers and custody advocacy underscore the need for reducing disparities among lower income (and Medicaid insured) families in accessing services. The present findings suggest the need for systemic change to remove barriers to service(s) among disenfranchised and vulnerable populations. In conclusion, the findings from this study point to the benefits of the CAP model and approach, and can be used to inform efforts to develop tools and policies that ensure that the best interests of children are at the forefront of custody cases.

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APPENDIX A: EXAMPLE EMAIL TO CUSTODY ADVOCACY PROGRAM STAFF TO ARRANGE INTERVIEWS

"I hope this email finds you doing well. As you may already know, I am assisting The Council with strategic and organizational planning, specifically for the Custody Advocacy Program. I wanted to reach out to coordinate a time we could meet so I can learn more about the program. I am reaching out to the entire team, therefore, if you could please provide me with a set of times you are available on Tuesdays and Thursdays (in the coming weeks), so I can set up a time that does not overlap with other members of the team. Thank you."

APPENDIX B: STANDARDIZED CAP INTERVIEW QUESTIONS[21]

Focus	Probe for
1. Can you provide some background on your job and the cases you work with?	Job title Number of years at CFCR Path to CFCR (e.g., education, jobs held previously). How do you interact within the system (e.g., with children, in court, with families)?
2. Progression of a case	Case assignment Preparation for case Investigation Settlement / Trial
3. Use of volunteers	Expectations of volunteers What are volunteers' roles during investigations? How is communication with volunteers?
4. What do you think is the best possible outcome for a case?	What is success in your job? How is success measured? Are there better indicators of success than what is currently used?

[21] Jaimelee Behrendt-Mihalski formulated many of these questions during a practicum in the Fall of 2015 during which she worked with the Council for Children's Rights' Children's Defense Team. Minor modifications were made to meet the goals of the present practicum with the Custody Advocacy Program.

5. What tactics do you use to get this accomplished?	Individual tactics Systemic tactics Specific examples of tactics and cases where tactics have been used
6. What barriers or roadblocks stop you from getting to the best-case scenario?	Levels: o Individual o Familial o Environmental o Organizational o Systemic Specific examples of barriers
7. What are some things you've done (successfully and unsuccessfully) to combat barriers?	Specific examples of tactics and cases where tactics have been used successfully and unsuccessfully
8. What do you need to be successful from the: System? Organization? Data and policy department? Team/self?	Specific examples of what is needed at each level and how to fill gaps, increase capacity, and/or ensure previous successes are maintained

APPENDIX C: QUESTIONS FORMULATED BASED ON INFORMATION LEARNED THROUGH INTERVIEWS WITH CAP STAFF, CASE FILE REVIEW, AND OBSERVATIONS

** Note: These questions were formulated during practicum in the spring of 2017.**

1. What documents hold the most weight in developing recommendations?
2. How far do you go back in educational records? How do you use the information from educational records to develop a recommendation?
    a. Do you look at when the child was with mom vs. dad; how child's academic performance was? Number of absences?
    b. If a recommendation was made to monitor absences and grades, etc. How is this upheld? Is it assumed it is followed unless the other parent files a motion with evidence to suggest otherwise?
3. Do you organize these data to draw conclusions (e.g., number of days missed when in custody with mom vs. dad, etc.)?
    a. How are the data synthesized to form conclusions?
4. How does the team reach a recommendation?
    a. How is consensus reached if there is disagreement?
5. Do you ever have families that come back?
    a. What is that rate on average?
    b. Why do you think families come back?
6. How do you use the physical examination report to make recommendations?
7. What files are you typically looking for in a case to base recommendations out of?
    a. e.g., physical exam reports are typically out dated, does this mean it is not important? Or does that factor in?

   b. What information are you able to discern based on records?

8. What occurs during parent conferences typically?
   a. Who attends?
9. What are the responsibilities of a parent coordinator? How often are they assigned?
10. How is communication in the group?
   a. Are all aspects of the case discussed with the team?
   b. Regular updates?
11. Are recommendations made on how parents communicate to one another? (e.g., no more using the child as a pawn, or placing them in the middle)
12. Where are the recommendations the best interest team develop?
   a. What type of recommendations are generally accepted by the judge?
13. How often does the team meet?
14. Do you ever make recommendations for services families should seek (e.g., parenting education)? Do you coordinate any services?
15. Are home visits / interview typically done in a team? Or one on one?
   a. How is it divided?
16. Can you describe the number of hours of interviews you conduct?
17. Is there a specific number of teachers you hope to interview during cases?

APPENDIX D: EXAMPLE EMAIL TO STUDY PARTICIPANTS TO SOLICIT FEEDBACK AND COMMENTS REGARDING STUDY FINDINGS

"Good morning,

I hope this email finds you doing well. I am reaching out with a few updates about my CAP-focused Master's thesis because in March, you provided consent to participate in a study to examine (a) the best interests of the child standard and its use in guiding custody decisions, and (b) the challenges and barriers experienced in determining the best interest of a child.

First, I want to thank you again for all your help and continued support in making this project possible. I have carefully reviewed the transcripts and coded my interviews for themes based on the research questions that I proposed.

In qualitative research, it is important to present findings and impressions to the participants to help ensure that the findings and interpretations are accurate, framed appropriately, and are adequate (i.e., do not have any meaningful gaps). I hope to obtain your thoughts, feedback, and comments about the findings from this study.

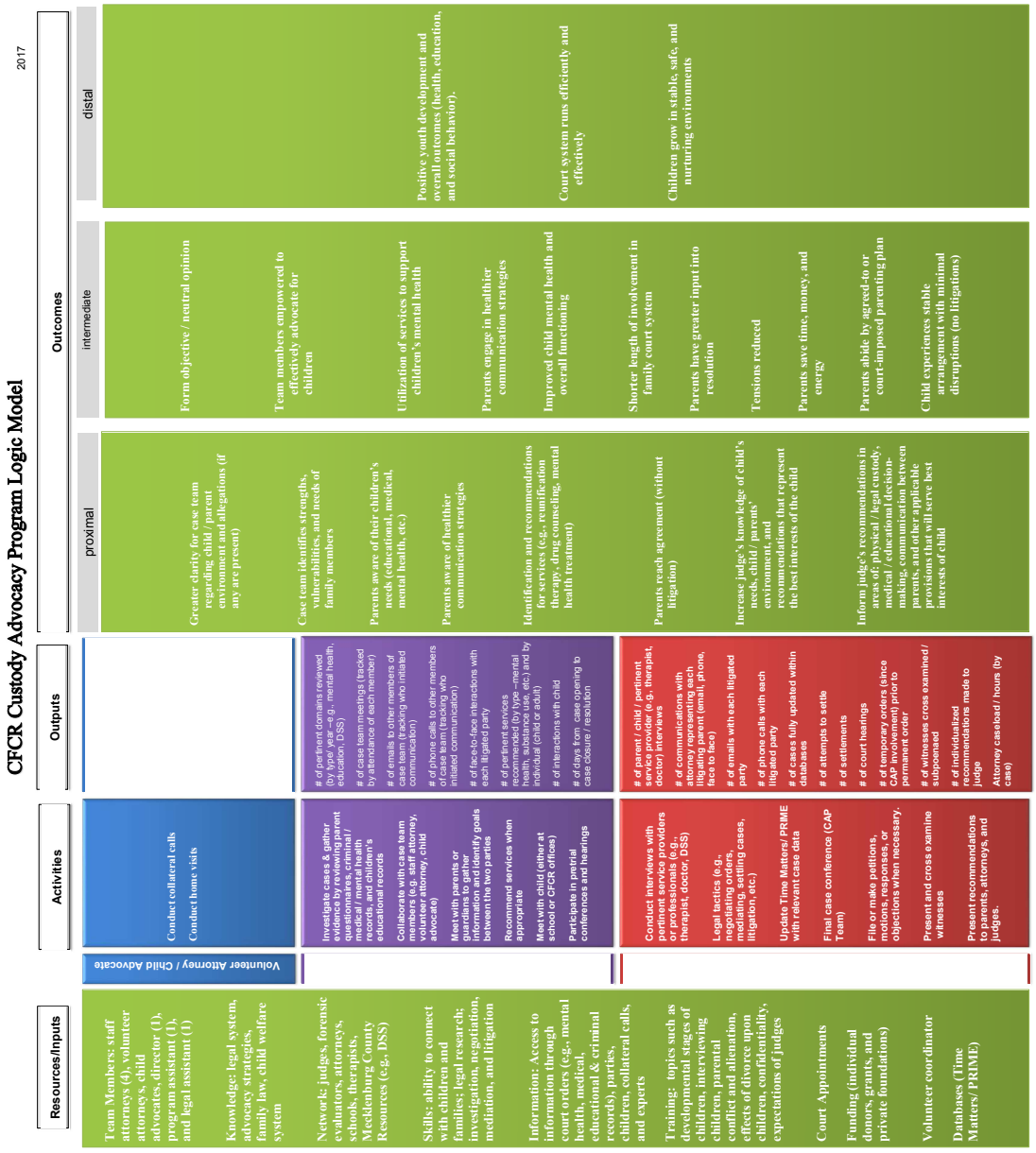
To facilitate this process, I developed two documents that summarize the findings, including sample quotes from participants. The first document, "**1. CAP Processes"** summarizes the processes the best interest team uses in determining the best interests of children. Please quickly review this document and let me know if the findings are accurate and truly reflective of the Custody Advocacy Program.

The second document, **"2. Defining Best Interests & Challenges and Barriers"** is the document that I would appreciate that you carefully review. Please note areas in which you agree with the findings as well as areas in which you may not agree, or have suggestions / comments that could help clarify the findings and ensure that the findings are accurate and truly reflective of the Custody Advocacy Program.

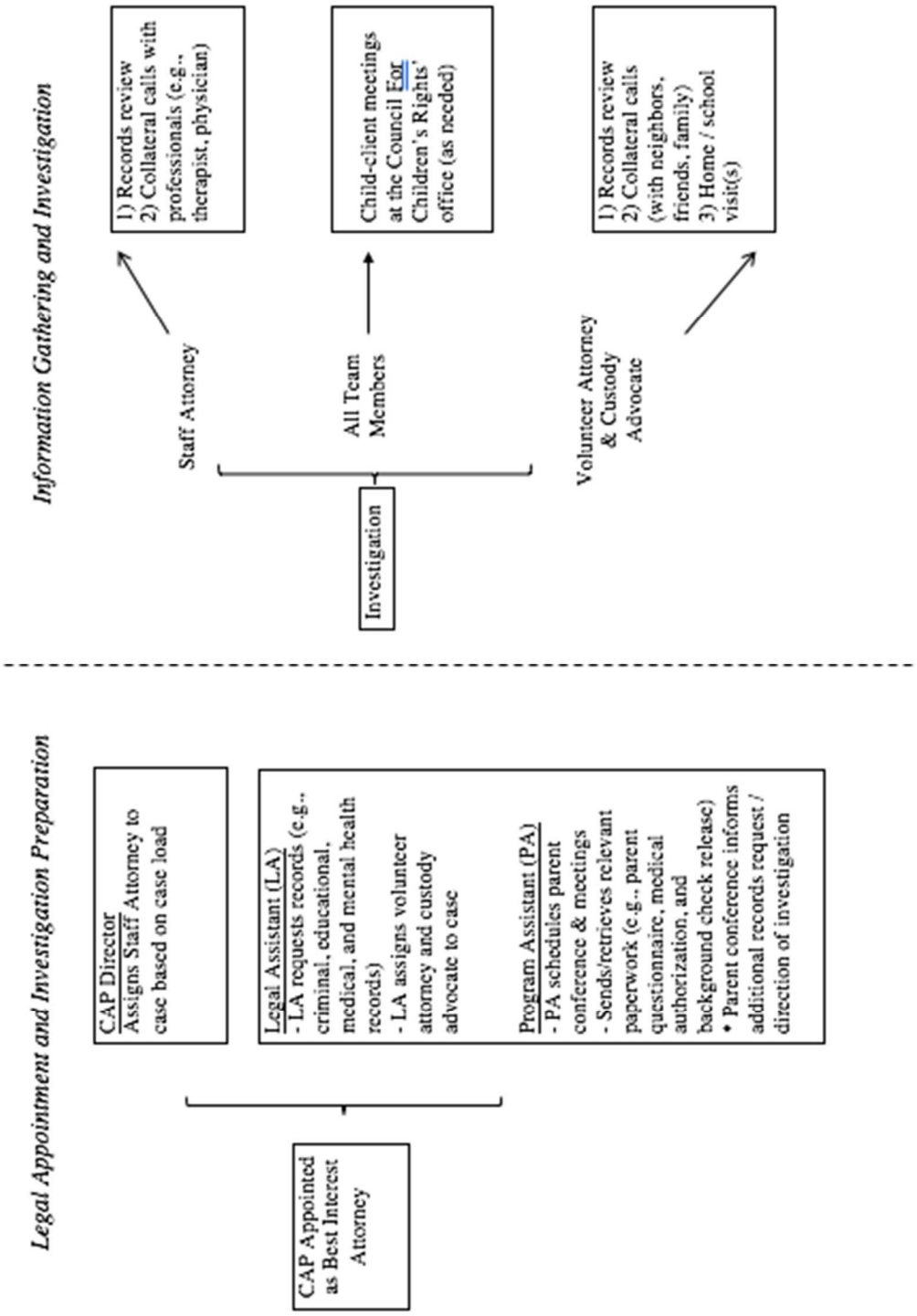
My hope is to defend the thesis this semester. The deadline for thesis defense set by the University is November 26th. Therefore, any feedback you have would need to be provided beforehand to allow sufficient time for revisions to the thesis as needed based on your comments / feedback. With that as a backdrop, I am requesting that you provide feedback by **Monday**, **November 19th.**

Thank you again for all your help,"

APPENDIX E: CFCR CUSTODY ADVOCACY LOGIC MODEL



APPENDIX F: PHASE 1 – LEGAL APPOINTMENT AND INVESTIGATION



APPENDIX G: PHASE 2 – DETERMINING RECOMMENDATIONS