

Guidelines for Child Custody Evaluations in Divorce Proceedings

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Introduction

Decisions regarding child custody and other parenting arrangements occur within several different legal contexts, including parental divorce, guardianship, neglect or abuse proceedings, and termination of parental rights. The following guidelines were developed for psychologists conducting child custody evaluation, specifically within the context of parental divorce. These guidelines build upon the American Psychological Association's *Ethical Principles of Psychologists and Code of Conduct* (APA, 1992) and are aspirational in intent. *As guidelines, they are not intended to be either mandatory or exhaustive. The goal of the guidelines is to promote proficiency in using psychological expertise in conducting child custody evaluations.*

Parental divorce requires a restructuring of parental rights and responsibilities in relation to children. If the parents can agree to a restructuring arrangement, which they do in the overwhelming proportion (90%) of divorce custody cases (Melton, Petrila, Poythress, & Slobogin, 1987), there is no dispute for the court to decide. However, if the parents are unable to reach such an agreement, the court must help to determine the relative allocation of decision making authority and physical contact each parent will have with the child. The courts typically apply a "best interest of the child" standard in determining this restructuring of rights and responsibilities.

Psychologists provide an important service to children and the courts by providing competent, objective, impartial information in assessing the best interests of the child; by demonstrating a clear sense of direction and purpose in conducting a child custody evaluation; by performing their roles ethically; and by clarifying to all involved the nature and scope of the evaluation. The Ethics Committee of the American Psychological Association has noted that psychologists' involvement in custody disputes has at times raised questions in regard to the misuse of psychologists' influence, sometimes resulting in complaints against psychologists being brought to the attention of the APA Ethics Committee (APA Ethics Committee, 1985 ; Hall & Hare-Mustin, 1983 ; Keith-Spiegel & Koocher, 1985 ; Mills, 1984) and raising questions in the legal and forensic literature (Grisso, 1986; Melton et al., 1987; Mnookin, 1975; Ochroch, 1982; Okpaku, 1976; Weithorn, 1987).

Particular competencies and knowledge are required for child custody evaluations to provide adequate and appropriate psychological services to the court. Child custody evaluation in the context of parental divorce can be an extremely demanding task. For competing parents the stakes are high as they participate in a process fraught with tension and anxiety. The stress on the psychologist/evaluator can become great. Tension surrounding child custody evaluation can become further heightened when there are accusations of child abuse, neglect, and/or family violence.

44 Psychology is in a position to make significant contributions to child custody
45 decisions. Psychological data and expertise, gained through a child custody
46 evaluation, can provide an additional source of information and an additional
47 perspective not otherwise readily available to the court on what appears to be in a
48 child's best interest, and thus can increase the fairness of the determination the
49 court must make.

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53 **Guidelines for Child Custody Evaluations** 54 **in Divorce Proceedings**

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I. Orienting Guidelines: Purpose of a Child Custody Evaluation

58 **1. The primary purpose of the evaluation is to assess the best psychological**
59 **interests of the child.**

60 The primary consideration in a child custody evaluation is to assess the individual
61 and family factors that affect the best psychological interests of the child. More
62 specific questions may be raised by the court.

63 **2. The child's interests and well-being are paramount.**

64 In a child custody evaluation, the child's interests and well-being are paramount.
65 Parents competing for custody, as well as others, may have legitimate concerns, but
66 the child's best interests must prevail.

67 **3. The focus of the evaluation is on parenting capacity, the psychological**
68 **and developmental needs of the child, and the resulting fit.**

69 In considering psychological factors affecting the best interests of the child, the
70 psychologist focuses on the parenting capacity of the prospective custodians in
71 conjunction with the psychological and developmental needs of each involved child.
72 This involves (a) an assessment of the adults' capacities for parenting, including
73 whatever knowledge, attributes, skills, and abilities, or lack thereof, are present; (b)
74 an assessment of the psychological functioning and developmental needs of each
75 child and of the wishes of each child where appropriate; and (c) an assessment of
76 the functional ability of each parent to meet these needs, including an evaluation of
77 the interaction between each adult and child.

78 The values of the parents relevant to parenting, ability to plan for the child's future
79 needs, capacity to provide a stable and loving home, and any potential for
80 inappropriate behavior or misconduct that might negatively influence the child also
81 are considered. Psychopathology may be relevant to such an assessment, insofar as
82 it has impact on the child or the ability to parent, but it is not the primary focus.

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II. General Guidelines: Preparing for a Child Custody Evaluation

4. The role of the psychologist is that of a professional expert who strives to maintain an objective, impartial stance.

89 The role of the psychologist is as a professional expert. The psychologist does not act
90 as a judge, who makes the ultimate decision applying the law to all relevant
91 evidence. Neither does the psychologist act as an advocating attorney, who strives to
92 present his or her client's best possible case. The psychologist, in a balanced,
93 impartial manner, informs and advises the court and the prospective custodians of
94 the child of the relevant psychological factors pertaining to the custody issue. The
95 psychologist should be impartial regardless of whether he or she is retained by the
96 court or by a party to the proceedings. If either the psychologist or the client cannot
97 accept this neutral role, the psychologist should consider withdrawing from the case.
98 If not permitted to withdraw, in such circumstances, the psychologist acknowledges
99 past roles and other factors that could affect impartiality.

5. The psychologist gains specialized competence.

- 101 A. A psychologist contemplating performing child custody evaluations is aware
102 that special competencies and knowledge are required for the undertaking of
103 such evaluations. Competence in performing psychological assessments of
104 children, adults, and families is necessary but not sufficient. Education,
105 training, experience, and/or supervision in the areas of child and family
106 development, child and family psychopathology, and the impact of divorce on
107 children help to prepare the psychologist to participate competently in child
108 custody evaluations. The psychologist also strives to become familiar with
109 applicable legal standards and procedures, including laws governing divorce
110 and custody adjudications in his or her state or jurisdiction.
- 111 B. The psychologist uses current knowledge of scientific and professional
112 developments, consistent with accepted clinical and scientific standards, in
113 selecting data collection methods and procedures. The *Standards for*
114 *Educational and Psychological Testing* (APA, 1985) are adhered to in the use
115 of psychological tests and other assessment tools.
- 116 C. In the course of conducting child custody evaluations, allegations of child
117 abuse, neglect, family violence, or other issues may occur that are not
118 necessarily within the scope of a particular evaluator's expertise. If this is so,
119 the psychologist seeks additional consultation, supervision, and/or specialized
120 knowledge, training, or experience in child abuse, neglect, and family violence
121 to address these complex issues. The psychologist is familiar with the laws of
122 his or her state addressing child abuse, neglect, and family violence and acts
123 accordingly.

6. The psychologist is aware of personal and societal biases and engages in nondiscriminatory practice.

126 The psychologist engaging in child custody evaluations is aware of how biases
127 regarding age, gender, race, ethnicity, national origin, religion, sexual orientation,
128 disability, language, culture, and socioeconomic status may interfere with an

129 objective evaluation and recommendations. The psychologist recognizes and strives
130 to overcome any such biases or withdraws from the evaluation.

131 **7. The psychologist avoids multiple relationships.**

132 Psychologists generally avoid conducting a child custody evaluation in a case in
133 which the psychologist served in a therapeutic role for the child or his or her
134 immediate family or has had other involvement that may compromise the
135 psychologist's objectivity. This should not, however, preclude the psychologist from
136 testifying in the case as a fact witness concerning treatment of the child. In addition,
137 during the course of a child custody evaluation, a psychologist does not accept any
138 of the involved participants in the evaluation as a therapy client. Therapeutic contact
139 with the child or involved participants following a child custody evaluation is
140 undertaken with caution.

141 A psychologist asked to testify regarding a therapy client who is involved in a child
142 custody case is aware of the limitations and possible biases inherent in such a role
143 and the possible impact on the ongoing therapeutic relationship. Although the court
144 may require the psychologist to testify as a fact witness regarding factual
145 information he or she became aware of in a professional relationship with a client,
146 that psychologist should generally decline the role of an expert witness who gives a
147 professional opinion regarding custody and visitation issues (see Ethical Standard
148 7.03) unless so ordered by the court.

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152 **III. Procedural Guidelines: Conducting a Child Custody Evaluation**

153 **8. The scope of the evaluation is determined by the evaluator, based on the**
154 **nature of the referral question.**

155 The scope of the custody-related evaluation is determined by the nature of the
156 question or issue raised by the referring person or the court, or is inherent in the
157 situation. Although comprehensive child custody evaluations generally require an
158 evaluation of all parents or guardians and children, as well as observations of
159 interactions between them, the scope of the assessment in a particular case may be
160 limited to evaluating the parental capacity of one parent without attempting to
161 compare the parents or to make recommendations. Likewise, the scope may be
162 limited to evaluating the child. Or a psychologist may be asked to critique the
163 assumptions and methodology of the assessment of another mental health
164 professional. A psychologist also might serve as an expert witness in the area of
165 child development, providing expertise to the court without relating it specifically to
166 the parties involved in a case.

167 **9. The psychologist obtains informed consent from all adult participants**
168 **and, as appropriate, informs child participants.**

169 In undertaking child custody evaluations, the psychologist ensures that each adult
170 participant is aware of (a) the purpose, nature, and method of the evaluation; (b)
171 who has requested the psychologist's services; and (c) who will be paying the fees.
172 The psychologist informs adult participants about the nature of the assessment
173 instruments and techniques and informs those participants about the possible

174 disposition of the data collected. The psychologist provides this information, as
175 appropriate, to children, to the extent that they are able to understand.

176 **10. The psychologist informs participants about the limits of confidentiality**
177 **and the disclosure of information.**

178 A psychologist conducting a child custody evaluation ensures that the participants,
179 including children to the extent feasible, are aware of the limits of confidentiality
180 characterizing the professional relationship with the psychologist. The psychologist
181 informs participants that in consenting to the evaluation, they are consenting to
182 disclosure of the evaluation's findings in the context of the forthcoming litigation and
183 in any other proceedings deemed necessary by the courts. A psychologist obtains a
184 waiver of confidentiality from all adult participants or from their authorized legal
185 representatives.

186 **11. The psychologist uses multiple methods of data gathering.**

187 The psychologist strives to use the most appropriate methods available for
188 addressing the questions raised in a specific child custody evaluation and generally
189 uses multiple methods of data gathering, including, but not limited to, clinical
190 interviews, observation, and/or psychological assessments. Important facts and
191 opinions are documented from at least two sources whenever their reliability is
192 questionable. The psychologist, for example, may review potentially relevant reports
193 (e.g., from schools, health care providers, child care providers, agencies, and
194 institutions). Psychologists may also interview extended family, friends, and other
195 individuals on occasions when the information is likely to be useful. If information is
196 gathered from third parties that is significant and may be used as a basis for
197 conclusions, psychologists corroborate it by at least one other source wherever
198 possible and appropriate and document this in the report.

199 **12. The psychologist neither overinterprets nor inappropriately interprets**
200 **clinical or assessment data.**

201 The psychologist refrains from drawing conclusions not adequately supported by the
202 data. The psychologist interprets any data from interviews or tests, as well as any
203 questions of data reliability and validity, cautiously and conservatively, seeking
204 convergent validity. The psychologist strives to acknowledge to the court any
205 limitations in methods or data used.

206 **13. The psychologist does not give any opinion regarding the psychological**
207 **functioning of any individual who has not been personally evaluated.**

208 This guideline, however, does not preclude the psychologist from reporting what an
209 evaluated individual (such as the parent or child) has stated or from addressing
210 theoretical issues or hypothetical questions, so long as the limited basis of the
211 information is noted.

212 **14. Recommendations, if any, are based on what is in the best psychological**
213 **interests of the child.**

214 Although the profession has not reached consensus about whether psychologists
215 ought to make recommendations about the final custody determination to the courts,
216 psychologists are obligated to be aware of the arguments on both sides of this issue
217 and to be able to explain the logic of their position concerning their own practice.

218 If the psychologist does choose to make custody recommendations, these
219 recommendations should be derived from sound psychological data and must be
220 based on the best interests of the child in the particular case. Recommendations are
221 based on articulated assumptions, data, interpretations, and inferences based upon
222 established professional and scientific standards. Psychologists guard against relying
223 on their own biases or unsupported beliefs in rendering opinions in particular cases.

224 **15. The psychologist clarifies financial arrangements.**

225 Financial arrangements are clarified and agreed upon prior to commencing a child
226 custody evaluation. When billing for a child custody evaluation, the psychologist does
227 not misrepresent his or her services for reimbursement purposes.

228 **16. The psychologist maintains written records.**

229 All records obtained in the process of conducting a child custody evaluation are
230 properly maintained and filed in accord with the *APA Record Keeping Guidelines*
231 (APA, 1993) and relevant statutory guidelines.

232 All raw data and interview information are recorded with an eye toward their possible
233 review by other psychologists or the court, where legally permitted. Upon request,
234 appropriate reports are made available to the court.

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