

## **Guidelines for Child Custody Evaluations in Family Law Proceedings**

**Approved as APA Policy by the APA Council of Representatives February 2009**

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# Guidelines for Child Custody Evaluations in Family Law Proceedings<sup>1</sup>

## Introduction

Family law proceedings encompass a broad range of issues, including custody, maintenance, support, valuation, visitation, relocation, and termination of parental rights. The following guidelines address what are commonly termed “child custody” evaluations, involving disputes over decision-making, caretaking, and access in the wake of marital or other relationship dissolution. Our goal is to promote proficiency in the conduct of these particular evaluations. This narrowed focus means that evaluations occurring in other contexts (*e.g.*, child protection matters) are not covered by these guidelines. In addition, we acknowledge a clear distinction between the forensic evaluations described in this document and the advice and support that psychologists provide to families, children, and adults in the normal course of psychotherapy and counseling.

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<sup>1</sup> This revision of the 1994 Guidelines for Child Custody Evaluations in Divorce Proceedings was completed by the Committee on Professional Practice and Standards (COPPS). Members of COPPS during the development of this document were Lisa Drago Piechowski (Chair, 2009), Eric Y. Drogin (Chair, 2007-2008), Mary A. Connell (Chair, 2006), Nabil El-Ghoroury (BPA Liaison, 2007-2008), Michele Galietta, Terry S. W. Gock, Larry C. James (BPA Liaison, 2004-2006), Robert Kinscherff, Stephen J. Lally, Gary D. Lovejoy, Mary Ann McCabe, Bonnie J. Spring, and Carolyn M. West. COPPS is grateful for the support and guidance of the Board of Professional Affairs (BPA), and particularly to BPA Chairs Cynthia Sturm (2009), Jaquie Resnick (2008), Jennifer F. Kelly (2007), and Kristin Hancock (2006). COPPS also acknowledges the consultation of APA Practice Directorate staff Shirley A. Higuchi and Alan Nessman. COPPS extends its appreciation to the APA Practice Directorate staff who facilitated both the work of COPPS and revision efforts: Lynn F. Bufka, Mary G. Hardiman, Omar Rehman, Geoffrey M. Reed, Laura Kay-Roth, Ernestine Penniman, and Ayobodun Bello.

Although some states have begun to favor such terms as “parenting plan or time” or “parental rights and responsibilities” over “custody” (American Law Institute, 2000, pp. 131-132), the substantial majority of legal authorities and scientific treatises still refer to “custody” when addressing the resolution of decision-making, caretaking, and access disputes. In order to avoid confusion and to ensure that these guidelines are utilized as widely as possible, we have continued to apply the term “custody” to these issues generically, unless otherwise specified. It is no longer the default assumption that child custody proceedings will produce the classic paradigm of sole custodian versus visiting parent. Many states recognize some form of “joint” or “shared” custody that affirms the decision-making and caretaking status of more than one adult. The legal system also recognizes that the disputes in question are not exclusively “marital” and therefore may not involve “divorce” *per se*. Some parents may never have been married, and perhaps never lived together at all. In addition, child custody disputes may arise after years of successful co-parenting, when one parent seeks to relocate for work-related or other reasons. In these guidelines, we apply the term “parents” generically when referring to persons who seek legal recognition as sole or shared custodians.

Parents may have numerous resources at their disposal, including psychotherapy, counseling, consultation, mediation, and other forms of conflict resolution. When parents agree to a child custody arrangement on

their own—as they do in the overwhelming majority (90%) of cases (Melton, Petrila, Poythress, & Slobogin, 2007)—there may be no dispute for the court to decide. However, if parties are unable to reach such an agreement, the court must intervene in order to allocate decision-making, caretaking, and access, typically applying a “best interests of the child” standard in determining this restructuring of rights and responsibilities (Artis, 2004; Elrod, 2006; Kelly, 1997).

Psychologists render a valuable service when they provide competent and impartial opinions with direct relevance to the “psychological best interests” of the child (Miller, 2002). The specific nature of psychologists’ involvement and the potential for misuse of their influence has been the subject of ongoing debate (Grisso, 1990, 2005; Krauss & Sales, 1999, 2000; Melton, Petrila, Poythress, & Slobogin, 2007). The acceptance and thus the overall utility of psychologists’ child custody evaluations are augmented by demonstrably competent forensic practice and by consistent adherence to codified ethical standards.

These guidelines are informed by the American Psychological Association’s (APA) *Ethical Principles of Psychologists and Code of Conduct* (“Ethics Code,” APA, 2002). The term *guidelines* refers to statements that suggest or recommend specific professional behavior, endeavors, or conduct for psychologists. Guidelines differ from *standards* in that standards are mandatory and may be accompanied by an enforcement mechanism.

Guidelines are aspirational in intent. They are intended to facilitate the continued systematic development of the profession and to help facilitate a high level of practice by psychologists. Guidelines are not intended to be mandatory or exhaustive and may not be applicable to every professional situation. They are not definitive and they are not intended to take precedence over the judgment of psychologists.

### **Expiration**

These guidelines are scheduled to expire 10 years from February 21, 2009 [the date of adoption by APA Council of Representatives]. After this date, users are encouraged to contact the APA Practice Directorate to determine whether this document remains in effect.

## **I. Orienting Guidelines: Purpose of the Child Custody Evaluation**

### **1. The purpose of the evaluation is to assist in determining the psychological best interests of the child.**

*Rationale.* The extensive clinical training of psychologists equips them to investigate a substantial array of conditions, statuses, and capacities. When conducting child custody evaluations, psychologists are expected to focus on factors that pertain specifically to the psychological best interests of the

child, because the court will draw upon these considerations in order to reach its own conclusions and render a decision.

*Application.* Psychologists strive to identify the psychological best interests of the child. To this end, they are encouraged to weigh and incorporate such overlapping factors as family dynamics and interactions; cultural and environmental variables; relevant challenges and aptitudes for all examined parties; and the child's educational, physical, and psychological needs.

## **2. The child's welfare is paramount.**

*Rationale.* Psychologists seek to maintain an appropriate degree of respect for and understanding of parent's practical and personal concerns; however, psychologists are mindful that such considerations are ultimately secondary to the welfare of the child.

*Application.* Parents and other parties are likely to advance their concerns in a forceful and contentious manner. A primary focus on the child's needs is enhanced by identifying and stating appropriate boundaries and priorities at the outset of the evaluation. Psychologists may wish to reflect upon their own attitudes and functioning at various points during the course of the

evaluation, to ensure that they are continuing to maintain an optimal focus on the child's welfare.

**3. The evaluation focuses upon parenting attributes, the child's psychological needs, and the resulting fit.**

*Rationale.* From the court's perspective, the most valuable contributions of psychologists are those that reflect a clinically astute and scientifically sound approach to legally relevant issues. Issues that are central to the court's ultimate decision-making obligations include parenting attributes, the child's psychological needs, and the resulting fit. The training of psychologists provides them with unique skills and qualifications to address these issues.

*Application.* Psychologists attempt to provide the court with information specifically germane to its role in apportioning decision-making, caretaking, and access. The most useful and influential evaluations focus upon skills, deficits, values, and tendencies relevant to parenting attributes and a child's psychological needs. Comparatively little weight is afforded to evaluations that offer a general personality assessment without attempting to place results in the appropriate context. Useful contextual considerations may include the availability and use of effective treatment, the augmentation of parenting attributes through the efforts of supplemental caregivers, and

other factors that could affect the potential impact of a clinical condition upon parenting.

## **II. General Guidelines: Preparing for the Custody Evaluation**

### **4. Psychologists strive to gain and maintain specialized competence.**

*Rationale.* Laws change, existing methods are refined, and new techniques are identified. In child custody evaluations, general competence in the clinical assessment of children, adults, and families is necessary, but insufficient in and of itself. The court will expect psychologists to demonstrate a level of expertise that reflects contextual insight and forensic integration as well as testing and interview skills.

*Application.* Psychologists continuously strive to augment their existing skills and abilities, consistent with a career-long dedication to professional development. Although psychologists take care to acquire sufficient knowledge, skill, experience, training, and education prior to conducting a child custody evaluation, this acquisition is never complete. An evolving and up-to-date understanding of child and family development, child and family psychopathology, the impact of relationship dissolution on children, and the specialized child custody literature is critical to sustaining competent practice



in this area. Psychologists also strive to remain familiar with applicable legal and regulatory standards, including laws governing child custody adjudication in the relevant state or other jurisdiction. Should complex issues arise that are outside psychologists' scope of expertise, they seek to obtain the consultation and supervision necessary to address such concerns.

## **5. Psychologists strive to function as impartial evaluators.**

*Rationale.* Family law cases involve complex and emotionally charged disputes over highly personal matters, and the parties are often deeply invested in a specific outcome. The volatility of this situation is often exacerbated by a growing realization that there may be no resolution that will completely satisfy every person involved. In this contentious atmosphere, it is crucial that evaluators remain as free as possible of unwarranted bias or partiality.

*Application.* Psychologists are encouraged to monitor their own values, perceptions, and reactions actively, and to seek peer consultation in the face of a potential loss of impartiality. Vigilant maintenance of professional boundaries and adherence to standard assessment procedures, throughout the evaluation process, will place psychologists in the best position to identify variations that may signal impaired neutrality.

**6. Psychologists strive to engage in culturally informed, nondiscriminatory evaluation practices.**

*Rationale.* Professional standards and guidelines articulate the need for psychologists to remain aware of their own biases, and those of others, regarding age, gender, gender identity, race, ethnicity, national origin, religion, sexual orientation, disability, language, culture, and socioeconomic status. Biases and an attendant lack of culturally competent insight are likely to interfere with data collection and interpretation, and thus with the development of valid opinions and recommendations.

*Application.* Psychologists strive to recognize their own biases and, if these cannot be overcome, will presumably conclude that they must withdraw from the evaluation. When an examinee possesses a cultural, racial, or other background with which psychologists are unfamiliar, psychologists prepare for and conduct the evaluation with the appropriate degree of informed peer consultation and focal literature review. If psychologists find their unfamiliarity to be insurmountable, the court will appreciate being informed of this fact sooner rather than later.

## **7. Psychologists strive to avoid conflicts of interest and multiple relationships in conducting evaluations.**

*Rationale.* The inherent complexity, potential for harm, and adversarial context of child custody evaluations make the avoidance of conflicts of interest particularly important. The presence of such conflicts will undermine the court's confidence in psychologists' opinions and recommendations, and in some jurisdictions may result in professional board discipline and legal liability.

*Application.* Psychologists refrain from taking on a professional role, such as that of a child custody evaluator, when personal, scientific, professional, legal, financial, or other interests or relationships could reasonably be expected to result in (1) impaired impartiality, competence, or effectiveness; or (2) exposure of the person or organization with whom the professional relationships exists to harm or exploitation (Ethics Code 3.06). Subject to the same analysis are multiple relationships, which occur when psychologists in a professional role with a person are simultaneously in another role with that person, when psychologists are in a relationship with another individual closely associated with or related to that person, or when psychologists promise to enter into another future relationship with that person or with another individual closely associated with or related to that person (Ethics

Code 3.05). Psychologists conducting a child custody evaluation with their current or prior psychotherapy clients, and psychologists conducting psychotherapy with their current or prior child custody examinees, are both examples of multiple relationships. Psychologists' ethical obligations regarding conflicts of interest and multiple relationships provide an explainable and understandable basis for declining court appointments and private referrals.

### **III. Procedural Guidelines: Conducting the Child Custody Evaluation**

#### **8. Psychologists strive to establish the scope of the evaluation in a timely fashion, consistent with the nature of the referral question.**

*Rationale.* The scope of a child custody evaluation will vary according to the needs of a particular case and the specific issues psychologists are asked to address. Referral questions may vary in the degree to which they specify the desired parameters of the evaluation. Failure to ensure in a timely fashion that an evaluation is appropriately designed impairs the utility and acceptance of the resulting opinions and recommendations.

*Application.* Before agreeing to conduct a child custody evaluation, psychologists seek when necessary to clarify the referral question and to

determine whether they are potentially able to provide opinions or recommendations. It may be helpful to have psychologists' understanding of the scope of the evaluation confirmed in a court order, or by stipulation of all parties and their legal representatives.

## **9. Psychologists strive to obtain appropriately informed consent.**

*Rationale.* Obtaining appropriately informed consent honors the legal rights and personal dignity of examinees and other individuals. This process allows persons to determine not only whether they will participate in a child custody evaluation, but also whether they will make various disclosures during the course of an examination or other request for information.

*Application.* When performing child custody evaluations, psychologists attempt to obtain informed consent using language that is reasonably understandable to the examinee. If the examinee is legally incapable of providing informed consent, psychologists provide an appropriate explanation, seek the examinee's assent, consider the preferences and best interests of the examinee, and obtain appropriate permission from a legally authorized person (Ethics Code 3.10, 9.03). Psychologists are encouraged to disclose the potential uses of the data obtained, and to inform parties that consent enables disclosure of the evaluation's findings in the context of the

forthcoming litigation and in any related proceedings deemed necessary by the court. Psychologists may find it helpful to extend a similar approach to persons who provide collateral information (*e.g.*, relatives, teachers, friends, and employers) even when applicable laws do not require informed consent *per se*.

## **10. Psychologists strive to employ multiple methods of data gathering.**

*Rationale.* Multiple methods of data gathering enhance the reliability and validity of psychologists' eventual conclusions, opinions, and recommendations. Unique as well as overlapping aspects of various measures contribute to a fuller picture of each examinee's abilities, challenges, and preferences.

*Application.* Psychologists strive to employ optimally diverse and accurate methods for addressing the questions raised in a specific child custody evaluation. Direct methods of data gathering typically include such components as psychological testing, clinical interview, and behavioral observation. Psychologists may also have access to documentation from a variety of sources (*e.g.* schools, health care providers, child care providers, agencies, and other institutions), and frequently make contact with

members of the extended family, friends and acquaintances, and other collateral sources when the resulting information is likely to be relevant. Psychologists may seek corroboration of information gathered from third parties, and are encouraged to document the bases of their eventual conclusions.

**11. Psychologists strive to interpret assessment data in a manner consistent with the context of the evaluation.**

*Rationale.* The context in which child custody evaluations occur may affect the perceptions and behavior of persons from whom data are collected, thus altering both psychological test responses and interview results. Unreliable data result in decreased validity, a circumstance that enhances the potential for erroneous conclusions, poorly founded opinions, and misleading recommendations.

*Application.* Psychologists are encouraged to consider and also to document the ways in which involvement in a child custody dispute may impact the behavior of persons from whom data are collected. For example, psychologists may choose to acknowledge, when reporting personality test results, how research on validity scale interpretation demonstrates that child custody litigations often display increased elevations.

**12. Psychologists strive to complement the evaluation with the appropriate combination of examinations.**

*Rationale.* Psychologists provide an opinion of an individual's psychological characteristics only after they have conducted an examination of the individual adequate to support their statements and conclusions (Ethics Code 9.01(b)). The only exception to this rule occurs in those particular instances of record review, consultation, or supervision (as opposed, in each case, to evaluations) in which an individual examination is not warranted or necessary for the psychologist's opinion (Ethics Code 9.01(c)). The court typically expects psychologists to examine both parents as well as the child.

*Application.* Psychologists may draw upon the court's resources to encourage relevant parties to participate in the child custody evaluation process. If a desired examination cannot be arranged, psychologists document their reasonable efforts and the result of those efforts, and then clarify the probable impact of this limited information on the reliability and validity of their overall opinions, limiting their forensic conclusions and any recommendations appropriately (Ethics Code 9.01(c)). While the court eventually will have no choice but to make a decision regarding persons who are unable or unwilling to be examined, psychologists have no corresponding



obligation. Psychologists do have an ethical requirement to base their opinions on information and techniques sufficient to substantiate their findings (Ethics Code 9.01(a)), and may wish to emphasize this point for the court's benefit if pressed to provide opinions or recommendations without having examined the individual in question. When psychologists are not conducting child custody evaluations *per se*, it may be acceptable to evaluate only one parent, or only the child, or only another professional's assessment methodology, as long as psychologists refrain from comparing the parents or offering opinions or recommendations about the apportionment of decision-making, caretaking, or access. Non-examining psychologists also may be asked to share with the court their general expertise on issues relevant to child custody (*e.g.*, child development, family dynamics), as long as they refrain from relating their conclusions to specific parties in the case at hand.

**13. Psychologists strive to base their recommendations, if any, upon the psychological best interests of the child.**

*Rationale.* Not every child custody evaluation will result in recommendations. Psychologists may conclude that this is an inappropriate role for a forensic evaluator, or that available data are insufficient for this

purpose. If a recommendation is provided, the court will expect it to be supportable on the basis of the evaluations conducted.

*Application.* If psychologists choose to make child custody recommendations, these are derived from sound psychological data and address the psychological best interests of the child. When making recommendations, psychologists seek to avoid relying upon personal biases or unsupported beliefs. Recommendations are based upon articulated assumptions, interpretations, and inferences that are consistent with established professional and scientific standards. Although the profession has not reached consensus about whether psychologists should make recommendations to the court about the final child custody determination (*i.e.*, “ultimate opinion” testimony), psychologists seek to remain aware of the arguments on both sides of this issue (Bala, 2006; Erard, 2006; Grisso, 2003; Heilbrun, 2001; Tippins and Wittman, 2006) and are able to articulate the logic of their positions on this issue.

#### **14. Psychologists create and maintain professional records in accordance with ethical and legal obligations.**

*Rationale.* Legal and ethical standards describe requirements for the appropriate development, maintenance, and disposal of professional records.

The court expects psychologists providing child custody evaluations to preserve the data that inform their conclusions. This enables other professionals to analyze, understand, and provide appropriate support for (or challenges to) psychologists' forensic opinions.

*Application.* Psychologists maintain records obtained or developed in the course of child custody evaluations with appropriate sensitivity to applicable legal mandates, the *Record Keeping Guidelines* (APA, 2007), and other relevant sources of professional guidance. Test and interview data are documented with an eye toward their eventual review by other qualified professionals.

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