

## ***APPROPRIATE LIMITS ON CRITIQUES OF CHILD CUSTODY EVALUATIONS***

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As court ordered child custody evaluations become more common, attorneys for either party often retain a psychologist to review reports to determine if there is a legitimate basis to challenge the findings, conclusions and recommendations of the court appointed examiner. While it is permissible for psychologists to assist attorneys to prepare for litigation by helping them to understand the technical aspects of child custody reports, there are explicit boundaries that should never be crossed.

The terms “second opinion” and “critique” are sometimes used interchangeably but refer, in fact, to very dissimilar activities. In the context of a child custody evaluation a “second opinion” would follow the first evaluation and involves a complete examination of the family involved that is of equivalent or larger scope than the initial evaluation. Following this procedure, the second examiner would conduct interviews, administer psychological tests and collect data from collateral sources in a comparable but not necessarily identical manner to the initial study. Data obtained through these means would be sufficiently comprehensive to allow the second examiner to respond to the referral questions (e.g., custody and/or parenting time) that were addressed in the first evaluation.

A critique, by contrast, is a critical analysis of a previously prepared child custody evaluation report that is limited in scope. A critique can offer an opinion on whether the report is sufficiently comprehensive, whether the psychological testing was correctly scored and interpreted, whether the psychological and legal questions have been adequately addressed, and whether the findings and conclusions are consistent with the obtained data. In addition and if appropriate, the reviewer who conducted the critique could provide expert testimony on research that may be relevant to the issues of a case or answer hypothetical questions.

There is a standard of practice for psychologists delineated in the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct (2002). The Ethics Code applies to the professional activities of psychologists, including cases where a psychologist acts as a consultant to an attorney in a child custody dispute. It obligates the compliance of all members of the American and Michigan Psychological Association, and is the most authoritative standard of professional conduct for psychologists.

The Ethics Code includes the following provisions in Standard 9:

9.01(a) Bases for Assessments: Psychologists base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings.

9.01(b) Except as noted in 9.01c, psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements and conclusions. When, despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions, and appropriately limit the nature and extent of their conclusions and recommendations.

9.01(c) When psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions and recommendations.

The APA's Specialty Guidelines for Forensic Psychologists (1991) also offers guidance regarding this issue, as found in Guideline VI H, which states:

Forensic psychologists avoid giving written or oral evidence about the psychological characteristics of particular individuals when they have not had an opportunity to conduct an examination of the individual adequate to the scope of the statements, opinions, or conclusions to be issued. Forensic psychologists make every effort to conduct such examinations. When it is not possible or feasible to do so, they make clear the impact of such limitations on the reliability and validity of their professional products, evidence or testimony.

The APA's Guidelines for Child Custody Evaluations in Divorce Proceedings (1994) offers similar guidance as stated in Section III, Procedural Guidelines, 13:

The psychologist does not give any opinion regarding the psychological functioning of any individual who has not been personally evaluated. This guideline, however, does not preclude the psychologist from reporting what an evaluated individual (such as the parent or child) has stated or from addressing theoretical issues or hypothetical questions, so long as the limited basis of the information is noted.

Leading authorities have addressed the role boundaries a consultant-psychologist should observe when reviewing a child custody evaluation report. It is accepted practice that only an evaluator who personally conducts an evaluation is qualified to opine about custody, parenting time and related issues, and that consultants must restrict their opinions and not address ultimate issues. For example, Greenberg, Martindale, Gould, and Gould-Saltman (2004) stated:

... the information available to a mental health professional often depends on the role in which the professional is serving. Consultants... may only have access to information provided by one parent or his/her attorney... Consultants or privately retained experts may be able to describe research relevant to the instant case, or

address the quality of work performed by another professional. Neither consultants nor therapists, however, have access to the breadth of information that is available to the psychological evaluator. It is therefore inappropriate for a therapist or consultant to express opinions on psycholegal issues (e.g. parental capacity).

Gould, Kirkpatrick, Austin, and Martindale (2004) discussed limitations imposed on consultants who critique child custody evaluation reports and offered the following caution:

A critical review of a CCE [child custody evaluation] must include caveats and statements about the limitations of the review. A written critique should include a statement that the critical review is neither a custody evaluation nor a second opinion... The limited scope of a critical review must be clearly articulated to everyone.

Similarly, Greenberg and colleagues (2004) stated, "Mental health professionals have an affirmative ethical obligation to articulate the limits of their procedures, expertise and information base, and the potential impact of these limitations on the validity of their conclusions and recommendations".

These authoritative sources clearly articulate the limits that psychologists must observe when conducting critiques of child custody evaluation reports. Failure to respect these limits may constitute a legitimate basis to challenge the appropriateness of the critique and have it excluded from being entered into evidence as expert opinion.

If you have a question about a child custody evaluation report, feel free to contact our office to discuss your concern.

#### References:

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