

ESSENTIAL ELEMENTS OF COMPETENT CHILD CUSTODY EVALUATIONS

By Daniel H. Swerdlow-Freed, Ph.D.

With increasing frequency, psychologists are being appointed to conduct child custody evaluations. While practice patterns vary, competent evaluations should include certain basic elements. The purpose of this article is to identify those elements and discuss their importance.

Not all psychologists are trained to conduct child custody evaluations. This specialized task requires considerable knowledge of normal and abnormal child, adolescent and adult development, the effects of divorce on children, familiarity with various custody arrangements, and the appropriateness of specific schedules for children at different stages of cognitive and emotional development.

Proper professional training and experience are needed to conduct competent child custody evaluations. Relevant post-graduate education courses and individual case consultation with an experienced child custody evaluator are two avenues that can be followed to develop the knowledge base and skills needed for this activity, especially for psychologists who did not receive requisite training during graduate school.

The scope of an evaluation is typically determined by two factors. The first is the purpose of the evaluation, which should be cited in the Court's order of appointment, and cites the expectation of receiving recommendations on the issue of custody and/or parenting time. The second factor, related to the first, concerns the issues raised by each parent, as well as any other substantive information that an evaluator might receive. For example, if one parent accuses the other of alienating or sexually abusing a child, or of domestic violence, this would require thorough investigation.

In addition to properly framing the scope of the evaluation, evaluators should possess knowledge of relevant statutes, especially the Michigan Child Custody Act, as well as applicable case law. A competent evaluator recognizes that the primary legal question in a child custody evaluation is the "best interests of the child" standard and that failure to apply all the obtained data to the relevant Factors reduces the reliability and validity of the report's findings and recommendations. In addition, it is critical for evaluators to know which standard of proof applies to family law disputes and whether an established custodial environment does or does not exist in a particular case.

The following factors should be considered in every child custody evaluation.

Focus of the evaluation: The primary concerns in a child custody evaluation involve issues relating to the psychological and developmental needs of the child, and the extent to which each parent possesses the willingness and ability to meet the routine and unique needs of the child.

In assessing parental capabilities, inquiry is made regarding each parent's knowledge, awareness, and general sensitivity to the child, as well as to the skills, attitudes, and abilities each parent brings to the parenting enterprise. The psychological and developmental needs of the child must also be determined, with particular attention paid to whether development has been proceeding normally, or has been delayed. If a child's development has been delayed or if the child has special needs, then it is critical to identify the parent who is most willing and capable to provide for these unique conditions.

Equal treatment: Under most circumstances, both parents should be administered equivalent interviews and the same battery of psychological tests. This allows for equitable comparison of the Child Custody Act factors. To treat one parent in a substantially different manner might raise the question of bias, and could cast doubt on the examiner's findings or recommendations.

Similarly, children should be treated in a substantially equal manner, unless there is good reason to do otherwise. One legitimate reason for differential treatment would be with children of disparate ages, such as toddlers and school-age children. In this circumstance, the school-age child would be interviewed while the toddler would not be, because the latter lacks the requisite cognitive and verbal skills to participate in an interview.

Multiple sources of data: Comprehensive evaluations require information from multiple sources, such as interviews, direct observation and psychological testing. Additionally, it is important to review a child's school records, and to speak with collateral sources such as a teacher, day-care provider, or other adult who possesses relevant knowledge of the child.

If the parents or child are in therapy or have a significant medical condition, it is important to review their mental health or medical record, or to speak with their therapist or physician. Other third parties, such as extended family, friends or co-workers might be contacted as well if the evaluator considers it warranted.

Collecting information from multiple sources allows for comparison and contrast of data. Additionally, greater confidence can be vested in conclusions that are based on two or more sources of information, while appropriate reservations can be acknowledged about conclusions that are not as well supported.

Confidentiality: Psychologists are ethically obligated to inform participants in a child custody evaluation about limitations to confidentiality. This includes explaining the purpose of the evaluation, the manner in which the information will be reported, and to whom it will be reported. Even when evaluations are Court ordered it is good practice for evaluator's to obtain each parent's written authorization to release the report.

Limitations of opinion: Under most circumstances, psychologists are ethically bound to avoid giving opinions about the psychological functioning of individuals they have not

personally evaluated. The intent of this ethical standard is to limit the rendering of a professional opinion to individuals who have been adequately evaluated and to insure that opinions are based on reliable and valid information. Psychologists are not precluded, however, from responding to hypothetical questions.

In conclusion, the selection of an appropriately trained, competent child custody evaluator is an important legal strategy. This article identifies practice guidelines that competent, well-trained child custody evaluators follow. Before stipulating to the use of a forensic psychologist, attorneys are well advised to confirm that an examiner possesses the necessary education and training to conduct a competent evaluation and adheres to relevant professional guidelines.

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