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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.

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

Guidelines for Child Custody Evaluations in Divorce Proceedings

I. Orienting Guidelines: Purpose of a Child Custody Evaluation

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

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

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

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

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

In considering psychological factors affecting the best interests of the child, the psychologist focuses on the parenting capacity of the prospective custodians in conjunction with the psychological and developmental needs of each involved child. This involves (a) an assessment of the adults' capacities for parenting, including whatever knowledge, attributes, skills, and abilities, or lack thereof, are present; (b) an assessment of the psychological functioning and developmental needs of each child and of the wishes of each child where appropriate; and (c) an assessment of the functional ability of each

parent to meet these needs, including an evaluation of the interaction between each adult and child.

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

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.

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

5. The psychologist gains specialized competence.

A psychologist contemplating performing child custody evaluations is aware that special competencies and knowledge are required for the undertaking of such evaluations. Competence in performing psychological assessments of children, adults, and families is necessary but not sufficient. Education, training, experience, and/or supervision in the areas of child and family development, child and family psychopathology, and the impact of divorce on children help to prepare the psychologist to participate competently in child custody evaluations. The psychologist also strives to become familiar with applicable legal standards and procedures, including laws governing divorce and custody adjudications in his or her state or jurisdiction.

The psychologist uses current knowledge of scientific and professional developments, consistent with accepted clinical and scientific standards, in selecting data collection methods and procedures. The Standards for Educational and Psychological Testing (APA, 1985) are adhered to in the use of psychological tests and other assessment tools.

In the course of conducting child custody evaluations, allegations of child abuse, neglect, family violence, or other issues may occur that are not necessarily within the scope of a particular evaluator's expertise. If this is so, the psychologist seeks additional consultation, supervision, and/or specialized knowledge, training, or experience in child abuse, neglect, and family violence to address these complex issues. The psychologist is familiar with the laws of his or her state addressing child abuse, neglect, and family violence and acts accordingly.

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

The psychologist engaging in child custody evaluations is aware of how biases regarding age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, culture, and socioeconomic status may interfere with an objective evaluation and recommendations. The psychologist recognizes and strives to overcome any such biases or withdraws from the evaluation.

7. The psychologist avoids multiple relationships.

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

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

III. Procedural Guidelines: Conducting a Child Custody Evaluation

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

The scope of the custody-related evaluation is determined by the nature of the question or issue raised by the referring person or the court, or is inherent in the situation. Although comprehensive child custody evaluations generally require an evaluation of all parents or guardians and children, as well as observations of interactions between them, the scope of

the assessment in a particular case may be limited to evaluating the parental capacity of one parent without attempting to compare the parents or to make recommendations. Likewise, the scope may be limited to evaluating the child. Or a psychologist may be asked to critique the assumptions and methodology of the assessment of another mental health professional. A psychologist also might serve as an expert witness in the area of child development, providing expertise to the court without relating it specifically to the parties involved in a case.

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

In undertaking child custody evaluations, the psychologist ensures that each adult participant is aware of (a) the purpose, nature, and method of the evaluation; (b) who has requested the psychologist's services; and (c) who will be paying the fees. The psychologist informs adult participants about the nature of the assessment instruments and techniques and informs those participants about the possible disposition of the data collected. The psychologist provides this information, as appropriate, to children, to the extent that they are able to understand.

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

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

11. The psychologist uses multiple methods of data gathering.

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

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

The psychologist refrains from drawing conclusions not adequately supported by the data. The psychologist interprets any data from interviews or tests, as well as any questions of data reliability and validity, cautiously and conservatively, seeking

convergent validity. The psychologist strives to acknowledge to the court any limitations in methods or data used.

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.

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

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

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

15. The psychologist clarifies financial arrangements.

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

16. The psychologist maintains written records.

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

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

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