

SUMMARY OF THE PRACTICE PARAMETERS FOR CHILD CUSTODY EVALUATION

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ABSTRACT

This summary is presented as a guide for clinicians evaluating the often delicate and complex issues surrounding a child custody dispute. The historical basis of child custody and the various judicial presumptions that have guided courts, as well as the differences between performing child custody evaluation and engaging in traditional clinical practice, are reviewed in the complete document. Issues that are common to all child custody disputes are presented, including continuity and quality of attachments, preference, parental alienation, special needs of children, education, gender issues, sibling relationships, parents' physical and mental health, parents' work schedules, parents' finances, styles of parenting and discipline, conflict resolution, social support systems, cultural and ethnic issues, ethics and values, and religion. In addition, special issues that complicate custody evaluations are presented, including infants in custody disputes, homosexual parents, grandparents' rights, parental kidnapping, relocation problems, allegations of sexual abuse, and advances in reproductive technology, such as frozen embryos, oocyte donation, and artificial insemination. Key Words: child custody, forensic psychiatry, joint custody, court, parenting, practice parameters, guidelines.

These parameters give the clinician direction in conducting custody evaluations. Recommendations are based on extensive review of the scientific literature and clinical consensus among experts in the subject. The literature review, including references, and the rationale for specific recommendations are contained in the complete document (American Academy of Child and Adolescent Psychiatry, 1997).

Clinicians frequently are asked to offer opinions regarding child custody and visitation issues. Their opinions often heavily influence the decisions of judges and mediators on the custody and visitation arrangements of parents and children.

Approximately one in two marriages in the United States ends in divorce, affecting about a million children per year. About 10% of these divorces involve custody litigation.

CONCEPTUAL MODELS

Judges and clinicians have used several conceptual models to guide them in their opinions regarding child custody disputes. The "tender years" presumption held that young children need to be with their mothers. This presumption reflected an awareness of children as developmentally unique human beings rather than simply small adults. This doctrine, which emphasized the importance of the maternal-infant relationship, survived well into the twentieth century.

The "best interests of the child" is now the prevailing legal test for custody decisions in all states. Although there are wide variations in how this concept is interpreted by judges, it generally favors the custody arrangement that best fulfills the needs of the specific children involved and fosters their normative development.

The "least detrimental alternative" has been postulated as an alternative judicial presumption. This presumption holds that courts and clinicians should be guided by the more realistic notion that all children in separating or divorcing families are harmed to some extent. The goal is to find the solution that appears to harm them the least.

Mediation has been suggested as an alternative to the adversarial legal process. Some parents undergo mediation voluntarily. In some jurisdictions mediation is mandatory.

ROLE OF THE EVALUATOR

The role of the evaluator in a child custody dispute is different from that of a therapist in a traditional, clinical setting.

It is important for the practitioner to keep these roles separate. Trying to be both the therapist and forensic evaluator for the same children or family is inappropriate and will complicate both the therapy and the evaluation.

Competence as a forensic specialist is crucial in custody evaluations. Required skills include an engaging interview style, an understanding of family relationships and interpersonal dynamics, an appreciation for child and adult developmental issues, and familiarity with family law in the local jurisdiction.

Treating clinicians are advocates or agents for children and ideally are partners with parents or guardians in the therapeutic alliance. In contrast, the forensic evaluator, while guided by the child's best interests, has no duty to the child or his or her parents. The forensic evaluator reports to the court or attorney involved rather than to the parties being evaluated. Thus, the aim of the forensic evaluation is not to relieve suffering or to treat, but to provide objective information and informed opinions to help the court render a custody decision. Forensic evaluators must be mindful of this role and convey this in full to all parties before beginning the evaluation.

Ethical considerations are highlighted in forensic evaluations. Evaluators should consider whether they are qualified to perform the evaluation, have the time and flexibility to work within the judicial system, have set fees that are fair, are able to remain unbiased and unaligned with one side of the case, and have sufficiently ruled out any conflict of interest.

ISSUES IN CHILD CUSTODY DISPUTES

A number of issues are common to custody disputes. Addressing these issues with the children and family can result in the creation of a clinical database that is helpful to the evaluator in giving opinions and recommendations.

Continuity. The evaluator should consider which arrangement seems to offer the most stable and permanent arrangement for the child, and also reduces disruption for the family.

Attachments. The evaluator must carefully assess the parent-child connection, recognize and protect the opportunities for the child to maintain continuity with attachment figures, and also appreciate how these attachments will enter into the ultimate forensic recommendations.

Preference. Judges give more weight to a child's stated preference regarding custody when the child is older than age 12. When small children state a preference, the evaluator must assess its meaning and context. Has the child come to this opinion freely, or has a parent rehearsed or heavily influenced the child?

Parental alienation. In a custody dispute a child may appear to be extremely hostile toward one of the parents. The child finds nothing positive in the relationship with that parent and prefers no contact. The evaluator should assess this apparent alienation and hypothesize its origins and meaning, since there are several possible routes to this outcome.

Child's special needs. Some children in a custody evaluation may have handicaps in vision or hearing, mental illness, or chronic physical conditions. The evaluator should address whether either or both parents are attuned sufficiently to the child's needs. Does one parent seem better able to provide special care required by the child? Are there frequent conflicts over choosing doctors and other care-givers?

Education. The evaluator should assess each parent's educational plans for the child and the appropriateness of these plans in regard to the child's educational history and needs. What seems to make most sense for the child? Does the child have any special educational needs? Is one party more sensitive to and realistic about these needs than the other?

Gender issues. There is no rigorous scientific support for the notion that boys should be placed with fathers or girls with mothers. The evaluator should focus on each parent's sensitivity to the child's need for appropriate gender-role-models, as well as the quality of each parent's relationship with the child.

Sibling relationships. Commonly, siblings in a family undergoing divorce and custody dispute lend emotional support to each other. The evaluator should examine the sibling bonds and the sensitivity of each parent to these special relationships. It is rare to recommend separating siblings as a solution to a custody dispute, unless the peculiarities of a case warrant this unusual outcome.

Parents' physical and psychiatric health. The evaluator should explore whether either parent suffers from a physical ailment that could directly affect the parent-child relationship or interfere with the parent's ability to care for the child. Does a parent abuse drugs or alcohol, and if so, what is the impact on the child? In child custody disputes it is

common for a parent's psychiatric history to be used by the opposing side as an argument against granting custody to that parent. The issue, however, is not the diagnosis, but the effect of psychiatric impairment on the parent's ability to parent effectively, care for the child, and maintain an empathic relationship with the child.

Parents' work schedules. The evaluator should assess how each parent views his or her work and how it interfaces with time spent with the child. The appropriateness of child care plans, and their effect on the child, should also be considered.

Parents' finances. Although the court may separate the financial details of the divorce settlement from the custody case, the clinician should acquire general knowledge of each parent's finances and earnings potential in order to assess any effects upon the child.

Styles of parenting and discipline. The evaluator should avoid making value judgments about which parenting style is better. The focus should be on the "goodness of fit" between each parenting style and the child. At times, parenting style is obvious from joint parent-child interviews and when it is not, the evaluator should explore this area. The evaluator also should assess how each parent views the child's relationship with the other parent.

The evaluator should inquire about each parent's philosophy toward discipline. It is usual for litigating parents to exaggerate the harshness or permissiveness of each other's manner of child-rearing.

Conflict resolution. The evaluator should examine how family members resolve conflicts. It may be possible to assess conflict resolution during family interviews, if conflicts occur between the parent and child or among the siblings. It also is important to assess how conflict between the parents is handled.

Social support systems. The evaluator should take into account the presence or absence of supports for the child that might be in place depending upon the custodial recommendation. For example, grandparents, other relatives, or friends might have a bigger role in the child's life at one location than another. In addition, if a parent has a deficit or disability, can that parent make use of supports that would enhance his or her relationship with the child?

Cultural issues. The evaluator should assess how the final decision would affect issues of culture and ethnicity and their impact on the growth and development of the child.

Ethics and values. The evaluator must guard against imposing his or her own values onto the assessment of the parents' values. When one parent's ethics are clearly suspect (e.g., a parent with antisocial personality disorder or tendencies), the evaluator should advise the court about how this pattern of behavior could affect the child.

Religion. Parental conflict frequently centers on which religious background, if any, will be given to the child. The child may be taken to one church by the mother and another one by the father. The evaluator should warn the parents of the harm that can come from ongoing parental conflict over this issue.

SPECIAL ISSUES IN CHILD CUSTODY DISPUTES

Infancy. The evaluation of the needs of infants in custody disputes presents special challenges. The evaluator should assess each parent's attachment to the child and the reasonableness of their plans for the child. Parents may argue for visitation arrangements that are developmentally unsound given the child's age and status.

Emerging social phenomena. A number of social phenomena have impacted child custody disputes, including: the homosexual parent; stepparents' and grandparents' rights; parental kidnapping; relocation problems; allegations of sexual abuse; and advances in reproductive technology, such as frozen embryos, oocyte donation, and artificial insemination. These complex issues perplex judges, who are increasingly likely to seek assistance from clinicians. While many of these issues can be addressed through the typical evaluation process, the evaluator should guard against providing advice, which the courts will consider expert, in areas in which he or she has insufficient training, education, or experience.

THE EVALUATION PROCESS

Referrals may come from a parent, the child's or a parent's attorney, the judge, the judge's clerk, or a family relations officer. Before accepting the referral, the evaluator should clarify the exact questions being asked and determine whether he or she can provide an answer or opinion. Children should never be evaluated without the permission of the custodial parent or the authorization of the court. Arrangements for the fee should be established at the outset of the evaluation.

A complete evaluation can be accomplished only when the evaluator has interviewed parties on both sides of the custody dispute. The evaluator should consider meeting with the parents together at least once if the parents consent to it. Each parent should be interviewed individually, as well, to allow sufficient time to express his or her point of view. At the start of every first session, the legal nature of the process should be explained, including the fact that privilege and confidentiality are waived.

In the parent interviews, each should be asked to address the following: a description and history of the marriage and separation; the parent's perception of his or her relationship with the child; the parent's understanding and sensitivity to any special needs of the child; the parent's specific plans for the future should custody be awarded or not awarded; the parent's history, including family of origin, social history, and psychotherapeutic experience, if any; the developmental history of the child; and the usual routine of the child. Explore any allegations parents make against each other. Each parent should be given the opportunity to respond to allegations raised about him or her by the other parent. Observe which subjects the parent focuses on and which he or she ignores. It is not necessary to render DSM-IV diagnoses of the parents in a custody dispute, and in most cases, psychological testing of the parents is not required.

The evaluator should conduct a psychiatric evaluation of each child, with diagnoses when appropriate. Children as young as 3 years usually can be interviewed alone if they can separate from the parent. Consider seeing the siblings together at the outset, to allow them to be supportive of each other. Each child is usually seen twice, since he or she should be brought to one appointment by the mother and to another by the father.

During the interview with the child, the purpose of the evaluation and the role of the clinician should be explained. The evaluator should explore the child's perception of the family situation and what he or she thinks is going to happen. The quality of the child's attachment with the parents should be assessed through discussion and projective techniques. Depending on the circumstances it may or may not be appropriate to ask about the child's preference. If the child volunteers a custodial preference, explore this further, including the child's reasons for the preference, the child's fantasies about what life would be like with a particular parent, and indications that the child has been coached.

The interview with parent and child may occur in the office or be one part of a home visit. Some evaluators have each parent and the child perform a task together, which indicates how they work together, whether the parent is responsive to the child's lead, the parent's patterns of discipline, and other aspects.

Other information should be gathered as relevant. All pertinent legal documents, such as court orders, affidavits, and motions should be obtained. It may be desirable to interview other individuals who figure prominently in the child's or family's life, either in person or by telephone: stepparent, potential stepparent, grandparents, babysitters, extended family, friends, neighbors, school personnel, etc. These interviews may or may not be helpful. Consider whether a home visit to one or both homes would be helpful. It is important to contact current and former psychotherapists of the children or the parents.

THE WRITTEN REPORT

The report, an important communication to the court, should be free of technical jargon. It should be concise, but detailed enough to provide necessary information and to hold the interest of those who read it.

COURTROOM TESTIMONY

Clinicians who agree to perform a child custody evaluation also implicitly agree to be available to testify in depositions and in court if requested. Custody trials can take place a year or more after the evaluation. The evaluator should save clinical notes, since either attorney may want to see the primary data that formed the basis of conclusions and recommendations.

REFERENCE

American Academy of Child and Adolescent Psychiatry (1997), Practice parameters for child custody evaluation. *J Am Acad Child Adolesc Psychiatry* 36(10suppl)