



FAMILY LAW PRACTICE

ALERT

THE AMERICAN PSYCHOLOGICAL ASSOCIATION ISSUES NEW GUIDELINES FOR CHILD CUSTODY EVALUATIONS IN FAMILY LAW PROCEEDINGS

By Eric S. Solotoff

The American Psychological Association (APA) notes that parties resolve child custody issues amongst themselves in 90 percent of the cases. When parties cannot resolve custody and visitation issues (called “parenting time” in New Jersey) amongst themselves or after a court’s early intervention program, the next step is to have a child custody evaluation performed by a forensic psychologist. In some cases, the court will appoint this expert. In others, the parties may agree upon a joint expert. In bitterly contested cases, parties often have their own custody expert – and there may also be a court appointed expert.

In 1994, the APA developed Guidelines for Child Custody Evaluations in Divorce Proceedings. The APA issued updated guidelines effective February 21, 2009, which are effective for the next 10 years. These Guidelines consist of 14 individual guidelines that are meant to be aspirational in nature, and not mandatory. Rather, the Guidelines are intended to facilitate the continued systematic development of the profession and a high level of practice by psychologists. The Guidelines were not intended to be exhaustive nor replace the judgment of the psychologist. That said, they provide fodder for cross-examination during a custody trial if the expert is not aware of the Guidelines and/or fails to follow them. A rationale and application is provided for each of the following 14 Guidelines:

- 1. The purpose of the evaluation is to assist in determining the psychological best interests of the child.** Since the ultimate standard in

deciding a custody case is “the best interests of the children,” the Guidelines reinforce that the psychologist should be focusing on the psychological best interests of the children, which is what the Court expects. The Guidelines encourage the expert to weigh and incorporate 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.

Litigants going through the process of a custody evaluation should provide the expert with all relevant information regarding these factors. In reviewing the expert report, make sure that the expert has addressed them all. If it is your own expert, you may want to inquire why these issues are not included. If it is a neutral or adverse expert, it is a potential issue to be raised on cross examination. With the neutral expert, you may not want to wait until trial. If any of these factors are important enough to impact the final recommendation, you may want to ask the expert to reconsider his or her recommendation in light of this information.

- 2. The child’s welfare is paramount.** While a parent’s concerns need to be considered and may be forcefully advocated by a parent (this may occur in cases where a parent seeks to relocate with the children), it is the child’s best interests that must be the most important consideration.

3. **The evaluation focuses upon parenting attributes, the child's psychological needs and the resulting fit.** The APA notes that a psychologist's training provides him or her with the "unique skills and qualifications" to address these issues. To make an evaluation useful and credible to a court, the evaluation should focus on the skills, deficits, values and tendencies relevant to parenting traits and a child's psychological needs. In addition, more than just providing a personality assessment, the results must be placed in the appropriate context.
4. **Psychologists strive to gain and maintain specialized competence.** In addition to the general level of expertise that comes with a psychology degree and early training, psychologists are required to continue to stay abreast of changes in the field. This means that they must have an up-to-date understanding of child and family development, child and family psychopathology, the impact of divorce on children, and the specialized child custody literature. In addition, the Guidelines require psychologists to remain familiar with the applicable law regarding child custody. Attorneys should make sure that psychologists are aware and have copies of the custody statute and the relevant Court Rules. In addition, if it is a relocation case, which has numerous factors of its own set forth in the case law, the expert should have the case. In fact, if the law is not appropriately considered in a report, it is fodder for cross examination. So too would be an expert's lack of familiarity with the law or recent research by people deemed to be leaders in their field.
5. **Psychologists strive to function as impartial evaluators.** Obviously, the lack of partiality would taint the entire process.
6. **Psychologists strive to engage in culturally informed, nondiscriminatory evaluation practices.** As with the prior factor, the need to avoid any type of bias is self-evident. That said, it is important to be familiar with cultural differences and language differences. Cultural reasons may provide explanations for a party's conduct that may otherwise seem unusual or improper. For example, when translation from English to another language is required, there may be verb conjugation issues that can be misinterpreted.
7. **Psychologists strive to avoid conflicts of interest and multiple relationships in conducting evaluations.** This guideline has probably received the most discussion over the years. Specifically, psychologists are urged not to wear more than one hat. If they are the treating therapist, they should not be the custody evaluator and vice versa. The APA notes that in some jurisdictions, this can result in legal liability and professional discipline. These multiple roles may also violate APA Ethical standards.
8. **Psychologists strive to establish the scope of the evaluation in a timely fashion, consistent with the nature of the referral question.** Psychologists must know what type of evaluation they are supposed to be doing and when it is expected.
9. **Psychologists strive to obtain appropriately informed consent.** The reason for this is to honor the legal rights and personal dignity of the examinee. More importantly, the participants have to be made aware that the results of the evaluation will be used in the litigation.
10. **Psychologists strive to employ multiple methods of data gathering.** The more methods of data gathering that are done, the more likely that the results of the evaluation will be reliable. This includes psychological testing, clinical interviews, behavioral observation, access to documentation from a variety of sources (e.g. schools, health care providers, child care providers, agencies and other institutions), and contact with collateral sources (e.g. extended family members, friends and acquaintances). Litigant's want to be sure to provide this information and these contacts to the expert if they believe that this will help their case.
11. **Psychologists strive to interpret assessment data in a manner consistent with the context of the evaluation.** Psychologists are encouraged to consider and document the ways in which a custody dispute may impact the behavior of persons from whom data are collected. This is especially so with regard to the psychological personality testing, which may reflect elevated scores in certain areas because of a custody dispute.

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

The essential aspect of this Guideline is that the psychologist must actually meet with and examine a party in order to render a specific opinion about them. The APA Ethics code requires this.

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

When psychologists make child custody recommendations, they should be derived from sound psychological data and address the psychological best interests of the child. In addition, they should not be based upon personal biases or unsupported beliefs. Rather, the recommendations should be based upon articulated assumptions, interpretations and inferences that are consistent with established professional and scientific standards.

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

This is necessary to allow other professionals to analyze,

understand and/or challenge the psychologists' forensic opinions. Obviously, if the expert's file does not contain the information consistent with the findings and opinions in the report, it is subject to attack.

The new Guidelines should be considered and understood when going into a custody evaluation, and all reports must be reviewed and scrutinized in light of the Guidelines. In addition, many states have guidelines for psychologists performing custody evaluations (New Jersey, Pennsylvania and Delaware among them), which should similarly be considered.

Family law issues involve complex choices and decisions, and child custody is no exception. For more information regarding the revisions to the APA Guidelines for Child Custody Evaluations in Family Law Proceedings or guidance on other family law issues, contact Eric Solotoff at 973.994.7501 or esolotoff@foxrothschild.com or any attorney in Fox's Family Law Practice. Visit us on the web at www.foxrothschild.com.

ABOUT FOX ROTHSCHILD'S FAMILY LAW PRACTICE

Fox Rothschild LLP is a full-service law firm with a distinguished Family Law Practice geared to serve business leaders and high-net worth individuals. With 28 family law attorneys in 10 offices across Delaware, Nevada, New Jersey, New York and Pennsylvania, the Practice has significant experience in complex family law litigation and remedies outside the judicial system, addressing and resolving delicate matters with care, agility and hands-on service. Fox attorneys speak regularly on important topics in family law and are frequently recognized by local and national publications for their litigation acumen and accomplishments. For more information about the Family Law Practice, visit www.foxrothschild.com.

The Family Law Practice maintains two blogs, a Pennsylvania Family Law blog (<http://pafamilylaw.foxrothschild.com/>), as well as a New Jersey Family Law blog (<http://njfamilylaw.foxrothschild.com/>). Both blogs provide readers with information on and insight into family law issues in Pennsylvania and New Jersey, including prenuptial agreements, divorce, equitable distribution, alimony, child support, spousal support, alimony pendente lite, custody, parenting time, and grandparents' visitation.



Fox Rothschild LLP

ATTORNEYS AT LAW

Attorney Advertisement

© 2009 Fox Rothschild LLP. All rights reserved. This publication is intended for general information purposes only. It does not constitute legal advice. The reader should consult with knowledgeable legal counsel to determine how applicable laws apply to specific facts and situations. This publication is based on the most current information at the time it was written. Since it is possible that the laws or other circumstances may have changed since publication, please call us to discuss any action you may be considering as a result of reading this publication.