

Appropriate Limits on Critiques of Child Custody Evaluations

By

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As court-ordered child custody evaluations have become common, attorneys are increasingly retaining forensic psychologists to critique child custody reports to determine if there is a basis to challenge the conclusions or recommendations. While it is permissible for forensic psychologists to assist attorneys to prepare for litigation by helping them understand the technical aspects of a child custody report, there are boundaries that should not be crossed.

The terms “second opinion” and “critique” are sometimes used interchangeably but refer, in fact, to very different 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 scope to the initial evaluation. Following this procedure, the second examiner would conduct interviews, administer psychological tests and collect data from collateral sources in a comparable, albeit 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 its scope. A critique can offer an opinion on whether the report is sufficiently comprehensive, whether the psychological testing was correctly administered, 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 is relevant to the issues of the case or answer hypothetical questions.

The standard of practice for psychologists is delineated in the American Psychological Association’s Ethical Principles of Psychologists and Code of Conduct (2010). The Ethics Code applies to the professional activities of psychologists, including cases where a psychologist acts as a consultant to an attorney. Furthermore, adherence to the Ethics Code is obligatory upon all members of the American Psychological Association, as well as other professional organizations that adopt its standards as their own. Finally, the Ethics Code is widely recognized as 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.

Likewise, the APA's Guidelines for Child Custody Evaluations in Divorce Proceedings (2009), Section III, Procedural Guidelines, Part 12, advises:

Psychologists provide an opinion of an individual's psychological characteristics only after they have conducted an examination of the individual adequate to support their statements and conclusions... Psychologists do have an ethical requirement to base their opinions on information and techniques sufficient to substantiate their findings (Ethics Code 9.01(a), and may wish to emphasize this point for the court's benefit if pressed to provide opinions or recommendations without having examined the individual in question.

Leading authorities have addressed the role boundaries a consultant-psychologist should observe when critiquing a child custody evaluation report. It is accepted practice that only an evaluator that has personally conducted an evaluation of all the relevant parties is qualified to opine about custody and parenting time. Consequently, consultants are advised to limit their conclusions and not offer an opinion on ultimate issues. As Greenberg, Martindale, Gould, and Gould-Saltman (2004), all recognized authorities on child custody evaluations, 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, conclusive opinions on the validity of abuse allegations, etc.” p. 23).

Gould, Kirkpatrick, Austin, and Martindale (2004), another group of recognized authorities, 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” (p. 52).

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” (p. 23).

These authoritative sources clearly articulate the limits that psychologists should observe when providing 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.

References:

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