

Critique of Child Custody Evaluations and Reports  
By  
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In child custody disputes, Michigan law provides that courts may utilize a psychologist to conduct investigations and make recommendations regarding a child's best interests. Judges may be inclined to appoint a psychologist in cases where a mother or father face an allegation of parental alienation or when parents are embroiled in a high level of conflict that prevents them from reaching an agreement about legal custody or parenting time. Although custody disputes are, by nature, adversarial, the appointment of an independent evaluator has the potential to avert allegations that the examiner was biased. In some cases a neutral examiner's recommendations may make it possible for the parents to settle their dispute and save the time and expense of a trial. However, if one parent perceives that the evaluator's report is biased, or that the procedures utilized were inadequate or improperly followed, then that party may retain another professional to review the initial findings.

**Maintaining a Neutral Attitude when Reviewing Allegations of Parental Alienation  
and Child Custody Reports**

As a child custody evaluator, I am periodically asked to evaluate the procedures that an examiner used in a child custody evaluation and to critique the findings in the examiner's report. When retained by either party to review another evaluator's advisory report, I consider it imperative to maintain an objective, neutral attitude, and to avoid preconceptions about whether the evaluation was properly conducted. Above all else, my efforts are directed toward assisting the court in reaching a decision that will be in the child's best interests. I seek to determine whether the original evaluation was properly conducted and adequately addressed the referral question(s), whether the report accurately conveyed the obtained data, and whether the recommendations are consistent with that data, and developmentally appropriate for the child in question.

My experience has been that well-trained, seasoned child custody examiners generally conduct competent child custody evaluations, while less skilled examiners are inclined to employ improper or questionable procedures. For example, in one review case several psychological tests were administered to the parents, but interpretation of each test's results were not provided in the final report, nor was there an explanation for omitting this data. The referring attorney, upon learning of this occurrence, was able to fashion an effective cross-examination addressing this issue. In other cases, evaluators may use improper or questionable procedures, such as neglecting to interview or administer the same tests to both parents. It has also been my experience that when a mother or father makes an allegation of parental alienation, less-experienced examiners do not always evaluate thoroughly the basis for both parent's positions, and this

shortcoming may be a legitimate basis for challenging the examiner's conclusions and recommendations.

### **Minor Flaws vs. Serious Errors in Child Custody Evaluations**

When reviewing child custody evaluation procedures, a distinction should be made between minor flaws or shortcomings, and serious errors and omissions. For example, during one review I discovered that one test protocol that was incorrectly tabulated and misinterpreted. However, since this test was not afforded much weight by the examiner the mistakes did not substantially influence the findings. In contrast, in another case I discovered that a test protocol contained numerous incorrect interpretations that were given considerable weight in the findings and conclusions. In this instance, the nature and seriousness of the errors served as a basis for challenging the adequacy of the evaluation.

### **Distinguishing Facts from Opinion**

A second reason for critiquing a child custody evaluation report is to ascertain whether the conclusions are consistent with the obtained data. Raw psychological test data needs to be reviewed to insure that tests have been correctly scored and interpreted, and appropriately incorporated into the findings. Because specialized training is required to analyze this information, it is especially difficult for the average attorney or parent to determine its validity.

In one case where several psychological tests were administered to each parent, the test findings incorporated in the report were intermingled with the examiner's opinions. The intermingling was not apparent to the untrained reader and, consequently, the attorneys and judge could have mistakenly attributed equal significance to both test findings and examiner's opinions. Identifying what had occurred, explaining its significance, and recommending an appropriate avenue of cross-examination to the referring attorney averted this outcome.

It is also important to read an evaluator's hand-written notes when conducting a review of a report. In some high-conflict divorces, including those involving allegations of child or parental alienation, a parent may believe that the child custody evaluator invested insufficient attention to a particular issue which, if given more thorough consideration, would have led to a different recommendation. Upon reviewing an evaluator's notes it may be possible for a trained professional to determine whether the parties were treated fairly and in a comparable manner, or whether one parent's concerns were given more weight or less attention than they warranted. In order to make this determination, however, the reviewer must approach the review process with the same neutral,

objective attitude that would be employed if he or she had conducted the original evaluation.

The goal of reviewing child custody evaluations is to identify the report's strengths and weaknesses and to specify any serious errors or omissions that may call into question the conclusions and recommendations. If the reviewer believes that a recommendation is erroneous or that it is not in a child's best interest for a specific reason, the basis for this opinion should be clearly explained and supported by research findings or other relevant information.

After a careful examination of all of the information underlying a child custody evaluation report, a reviewer could conclude that there is a basis to challenge the evaluation procedures, findings, conclusions, or recommendations. However, it would be unprofessional and inappropriate for a reviewer to offer testimony that addresses ultimate legal issues, such as which parent should have legal or physical custody or what the parenting time schedule should be. Reviewers, even those with the highest professional qualifications, should restrict themselves to reviewing the data gathered and prepared by the original evaluator and limiting testimony to its adequacy, sufficiency, completeness, et cetera, as noted above. In addition, it is permissible for psychologists that provide critiques of child custody evaluation reports to provide testimony to hypothetical questions and to educate the court about research related to children's post-divorce adjustment.

Finally, a reviewer could conclude that an evaluation was competently performed and that its recommendations rest upon sound data and logical reasoning. Even though a parent may not wish to hear this, it may be reassuring to discover that the evaluation was, indeed, properly conducted.

If you have a question about child custody evaluations, feel free to contact our office to discuss your concern.

For more information or to make an appointment, please call Swerdlow-Freed Psychology at (248) 539-7777. Our offices are conveniently located at 30600 Northwestern Highway, Suite 210, Farmington Hills, Michigan 48334, and 55 North Pond Drive, Suite 6, Walled Lake, Michigan 48390