Conducting efficient, effective, empirically-sound and evidence-based child custody evaluations:

“Grownups never understand anything by themselves, and it is exhausting for children to have to provide explanations over and over again.”

Antoine de Saint-Exupéry (1943)

This presentation refers to developmental norms and generic circumstances.

None of this information should be construed as case-specific.

Always defer to the expert opinion of a child-centered mental health professional who has first hand knowledge of the individuals involved.

This discussion assumes a child’s general physical health. Serious and/or chronic illness anywhere in the family system can impact every aspect of development.

The pace and direction of development can vary as a function of environment, opportunity, and biology.

Today’s discussion will consider the simplest case: Mother, Father and one child. Application to more complex families typically requires more time, more effort and much more organization.

Gender references are arbitrary for the ease of expression unless specifically noted.

“Parent” refers to any primary caregiver without regard to biological or genetic status, legal ties or cohabitation status unless specifically noted.
Caveat Lector

- The dynamics at issue can occur within any caregiver-child dyad regardless of legal, biological, or genetic relatedness or proximity; i.e.,
- This is not only about divorce.

Caveat Lector

- We don’t know if or how this conceptualization may be culture-specific.

Caveat Lector

- Unfortunately, many family law professionals’ familiarity with child and family development is based largely on personal experience.

Caveat Lector

- Personal experience can be critically important (and some argue that it is necessary) to do this work.

Caveat Lector

- In fact, your personal experience of relationships is as likely to facilitate empathy...

- ... as it is to leave you with crippling blind spots and unsupportable biases.
What are your biases?

I am biased:
I am a happily married, never-divorced, Caucasian, English-speaking American raised in an intact family.

Confirmational Bias

“Everything you look for and all that you perceive has a way of proving whatever you believe.”

“Uncovering information that supports one’s initial impressions is inherently gratifying, while uncovering information that calls into question one’s initial impressions generates discomfort.”

Caveat Lector

Time is short. The topics presented here today each deserve in-depth examination. Take this presentation as introduction only. Please use the references and links provided to learn more.

Make this the beginning of a dialogue. Contact me any time at: bgarberphd@FamilyLawConsulting.org
Now I get it!

Summary thoughts

A case example in brief

The Process-Oriented Observational Protocol

Child interviews

Initial adult interviews

Interviews

Frontloading

The Scientific Method

(In one quick illustration)

Best Practices:

Guidelines, standards and ethics

Metrics:

What does CCE measure?

Theory and foundational assumptions

History

The tender years doctrine

Chattel


The approximation rule


The least detrimental alternative


The best interests of the child


“Best Interests” criteria are intentionally vague and vary by jurisdiction. They commonly emphasize:

- The emotional ties and relationships between the child and his or her parents, siblings, family and household members
- The capacity of the parents to provide a safe home and adequate food, clothing, and medical care
- The mental and physical health needs of the child
- The mental and physical health of the parents
- The presence of domestic violence in the home


Just as it is impossible to determine FIT by assessing only the shoe.
It's impossible to determine FIT by assessing individuals.

CCE is a comprehensive assessment of the FIT within the dynamic family system.

CCE seeks to characterize the strengths and weaknesses of each subsystem.

What is the quality of the relationship between the child and Parent A?

What is the quality of the relationship between the child and Parent B?

What is the quality of the relationship between Parent A and Parent B?

And a view of the reconfigured family within its community.
Theory and foundational assumptions

Structure
- Limits and associated consequences
- Boundaries in space
- Rituals, routines and schedules

Anxiety fuels conflict

Therefore structure reduces conflict

Corollary 1(a):
Clear, calm and consistent:
C3 trickles down from you to parents to the children.
Err on the side of thorough:
I’d far rather have too many data than too few

The child’s needs must always supersede the parents’ needs and wishes.

The child’s needs must always supersede the child’s wishes.

One size can never fit all.
Each child has unique needs.

The child’s needs must always supersede the child’s wishes.
Corollary 4(a):

If you need to be liked and depend on client gratitude and praise, you’re in the wrong business.

At best, CCEs leave one parent loving you and one parent hating you.

5

The child’s needs are best served by the opportunity to make and maintain a healthy relationship with both (all) parents.

Corollary 6(a):

As the differences between care environments (“culture shock”) increase, fewer transitions may serve the child’s best interests.

Parent-child relationship impediments?

1. Is the parent abusive, neglectful, insensitive or unresponsive to the child’s needs?
2. Is either parent (or their allies) undermining the child’s security with the other parent?
3. How do practical matters (e.g., distance) bear on each parent-child relationship?

Therefore, CCE must assess the quality of the child’s relationship with each parent and any related impediments.

Children’s needs are best served when their parents can communicate, cooperate and maintain consistent parenting practices.
Corollary 6(b):

As consistency of parenting practices diminishes, the child’s stress at transition increases, suggesting that fewer transitions serve the BIC

Corollary 6(c):

As the frequency and severity of co-parental conflict increases, the child’s stress at transition increases, suggesting fewer transitions (and/or transition through neutral settings)

Corollary 6(d):

Children with special needs, especially anxiety and cognitive processing difficulties, (THINK: Autism Spectrum Disorders) need a more rigid and predictable parenting plan.

Corollary 6(e):

Less emotionally mature children need more frequent contact with each caregiver.

Corollary 7(a):

How valid are today’s observations when the matter is heard in court six months from now?

People grow and change over time (not just children)
The Parenting Plan must be structured but flexible, able to grow with the child.

One non-scientific rule of thumb:
A child should not be separated from a primary caregiver more consecutive nights than x2 her age in years.

CCEs measure the family system under stress – we often cannot know how that stress changes the system.

The Hawthorne Effect: Observing a thing changes it. How can we know what the “real” child or parent or system looks like?

"Psychologists are duty bound to avoid as many sources of evaluation bias as possible. Parent/child observations and home visits are both rampant sources of potential bias in several areas. The AFCC mentions only one by warning of observer effects: "Evaluators shall be mindful of the fact that their presence in the same physical environment as those being observed creates an effect that they will influence the way behaviors and interactions that they are endeavoring to observe." There are many more potential biases than just this one."
9 The conventional legal process is likely to exacerbate family conflict.

Corollary 8(a):

Be careful to avoid language that suggests winning or ownership, e.g., “custody” “visitation” and “dad’s time”

Corollary 8(b):

Communicates ownership and encourages competition

“Physical custody”
“Legal custody”
“Visitation”
“My time with the kids”
“The child’s other parent”

Communicates responsibility and encourages cooperation

“Residential responsibility”
“Decision making authority”
“Access/Period of care”
“The kids’ time in my care”
“My co-parent”

Recommend alternative dispute resolution processes whenever you can

Corollary 10(a):

Know your limits: You can rescue no one.

You can only be competent, respectful, open-minded, and patient.
Humility in all things:
Strive to become “expert” in your field.
You can never be more “expert” than a parent about his or her child.

Corollary 10(b):
Take care of yourself.

Corollary 10(c):
Both CCEs and self-care ask the question:
Where do you get refueled?

Emotional maturity is about fuel efficiency:
- Where do you get emotionally refueled?
- How far can you go on a full tank?
- What do you do when your tank is empty?
- Are you able to fuel others?

Are you a Hummer or a Prius?

Child Custody Evaluations: Finding Fit in Dysfunctional Families
Transitional objects can increase MPG

Transitional objects facilitate self-regulation and emotional maturity, particularly during separation from a primary caregiver.

"Virtual visitation ... refers to the use of email, instant messaging, webcams, and other internet tools to provide regular contact between a noncustodial parent and his or her child."

Co-parental conflict... With or without marriage With or without separation With or without divorce

✓ Family law decisions must speak to the child’s emotional needs first and foremost.
✓ Where does the child get refueled?
✓ How long can the child go between refueling?
✓ How can we help her grow her MPG?


How do you take care of you?


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DSM 5: 300.14 Dissociative Identity Disorder
Metrics: What does CCE measure?

- Each child’s unique strengths and weaknesses in developmental perspective
  - Social
  - Emotional
  - Physical/health
  - Cognitive/intellectual
  - Expressive
  - Spiritual/aesthetic
  - Athletic
  - Interests/goals/wishes

Sensitive and responsive care:
- Each parent’s ability and willingness to read and respond to the child’s unique needs; e.g.:
  - Discipline
  - Advocacy
  - Contingency
  - Empathy

Quality of the co-parenting relationship
- Communication
- Compromise
- Consistency of parenting practices
- Support of the child’s relationship with the other parent

The reconfigured family’s place in the community
- Physical resources (food, clothing, shelter, education, medical)
- Advocacy (Who is supporting the family? Extended family? Social services?)
- “Belonging” (predicts resilience – the ability to manage stress)
- Child’s access to peers and healthy outlets (teams, clubs, sports, transitional affiliations)

Best Practices: Guidelines, standards and ethics
Dysfunctional Families 17

Child Custody Evaluations: Finding Fit in Dysfunctional Families

Adolescent Psychiatry (1987)
American Academy of Child and Adolescent Psychiatry

Model Standards of Practice for Family and Diverse Mediation (2011)
Association of Family and Conciliation Courts (AFCC)

Model Standards of Practice for Child Custody Evaluation (2007)

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Basics

B.1 MAINTAINING OBJECTIVITY
Child custody evaluators shall strive for objectivity and shall take reasonable steps to avoid multiple relationships with any and all participants of an evaluation.

B.2 DISCLOSURE OF POTENTIAL CONFLICTS
Child custody evaluators shall disclose any and all professional and social relationships with any subject of the evaluation, attorney or judge involved in the proceeding.

B.4 AVOIDANCE OF THERAPEUTIC INTERVENTION
Child custody evaluators shall not offer advice or therapeutic interventions to anyone involved in the child custody evaluation process.

10.1 AWARENESS OF OBSERVER EFFECTS
Evaluators shall be mindful of the fact that their presence in the same physical environment as those being observed creates a risk that they will influence the behaviors and interactions that they are endeavoring to observe.

5.4 USE OF DIVERSE METHODS
Child custody evaluators shall strive to use multiple data gathering methods in order to increase accuracy and objectivity.

- Parents' initial questionnaires
- Record review – educational, medical, legal, criminal...
- Individual interviews
- Dyadic observation(s)
- Third party references
- Adult psychometrics?
- Child psychometrics?

Accountability:
Organization and Record Keeping

3.2 RECORD-KEEPING OBLIGATIONS
Child custody evaluators have an obligation to expeditiously establish and maintain a record-keeping system.
Scope: Determining the specific questions that the CCE intends to address

- The Court Order
- The Service Agreement

12.5 RECOGNITION OF THE SCOPE OF THE COURT ORDER

Evaluators shall avoid offering opinions to the court on issues that do not directly follow from the court order of appointment or signed stipulation or are not otherwise relevant to the purpose of the evaluation.

5.1 ESTABLISHING THE SCOPE OF THE EVALUATION

The scope of the evaluation shall be delineated in a Court order or in a signed stipulation by the parties and their counsel.

6.1 THE DECISION TO USE FORMAL ASSESSMENT INSTRUMENTS

Use of formal assessment instruments is within the discretion of the child custody evaluator. The use of formal assessment instruments is not always necessary.

Psychometric instruments can provide invaluable individual data.
Individual adult psychometric tests are not normed, have not established reliability (and therefore cannot establish validity) for family law applications.

The empirical link between a psychometric profile or diagnosis and parenting or FIT is weak at best.

Reviews of the MMPI/MMPI-2

“... were unable to identify any single scale or pattern of scales that was directly related to effective or ineffective parenting.”

We do not (yet) have any reliable and valid standardized instruments that measure FIT:

An adult’s ability to read and respond sensitively to a specific child’s needs.
We do not (yet) have any reliable and valid standardized instruments that measure FIT: An adult's ability to read and respond sensitively to a specific child's needs.

"It is also crucial to stay cognizant that psychological problems do not prevent an individual from being a good parent, and perhaps the preferred one in an evaluation in which the totality of relevant factors are fully considered."

"Direct dyadic observations

Parent self-report

Child interviews

History and references

And soon to come ...

Standardized attachment instruments

Structured vs. unstructured?

NOT unannounced, NOT unexpected without consent

10.2 PARENT-CHILD OBSERVATIONS

Each parent-child combination shall be observed directly by the child custody evaluator, unless there is a risk to the child's physical or psychological safety.
Parent-child observations


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American Academy of Child and Adolescent Psychiatry

CONTINUITY AND QUALITY OF ATTACHMENTS

The evaluation focuses upon ... fit

The assessment of the quality of the attachments between the parents and the children is the centerpiece of the evaluation.

The custody evaluator should observe each parent-child combination, unless there is a risk to the child's physical or psychological safety.

(a) The custody evaluator should observe each parent-child combination, including pre-verbal children, unless verifiable threats may take place.

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American Psychological Association

“The evaluation focuses upon ... fit”

American Academy of Matrimonial Lawyers

“The custody evaluator should observe each parent-child combination, unless there is a risk...”

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Association of Family and Conciliation Courts

“Evaluators shall assess the relationships between each child and all adults...”

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Association of Family and Conciliation Courts

“each parent-child combination shall be observed directly...”

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American Academy of Child and Adolescent Psychiatry


The evaluation focuses upon the fit between the parenting styles and the child's developmental needs.

The custody evaluator should observe each parent-child combination, unless there is a risk to the child's physical or psychological safety.

(a) The custody evaluator should observe each parent-child combination, including pre-verbal children, unless verifiable threats may take place.
...observations made by trained professionals are less susceptible to systematic biases than parents’ self-reports and teacher reports ...

(Saini & Polak, 2014, p. 186)

“...it is strongly recommended that the parent-child observation be videotaped because of the wealth of data that arises during the structured process. Later contemporaneous review of both parent-child observation tapes may provide more-telling comparisons of parenting strengths, weaknesses, and bond[s] with the children.”

Structured play observation

Cooperative block building tasks

**Observe what?**
- Limit setting
- Process versus product
- Frustration tolerance
- Communication
- Negotiation/compromise
- Affect management & expression

**Observe whom?**
- Each parent-child dyad
- Co-parent interactions
- Sibling interaction
- Deferece to YOU

- Who complements, accommodates whom?
- How does the parent manage win-lose?
- How is frustration managed?
- Who allies with whom?
- Who leads?
- Who follows?

- Task-oriented directive
  - "That’s going to send it over"
  - "We have to build it tall"
  - "Where does this belong for parent?"

- Process-centered?
  - "Help me find…?"
  - "What do you think?"
  - Shared pleasure
  - Process oriented

- Task-centered?
  - "A maze could be good, too!"
  - "Does not take the bait (‘Travis is going to break it!’)"
  - "That’s okay, let’s start up again"

- Flexible/child-centered/GWTF?
  - "Help me find…?"
  - "What do you think?"
  - Shared pleasure
  - Flexible/child-centered/GWTF

Child Custody Evaluations: Finding Fit in Dysfunctional Families
Child Custody Evaluations: Finding Fit in Dysfunctional Families

**Authoritative/directive/critical?**
- Frustration tolerance/soothing?
- Affect management & expression?
- How are teams created?
- Process versus product?
- Limit setting?
- Leadership
- Fun?

**Competitive block building tasks**
- Flexible/child-centered/GWTF?
- Engaging, supportive
  - Models behavior:
    - "I'm sorry, I'll try to be more careful."
  - Defuses upset;
    - Switches focus easily

**Process-centered?**
- Task-centered and competitive?
  - "Don't give up!"
    - "Oh, you stinker!"
    - "You make that tower!"
    - "Alright"
    - "Good job!"

**Task-centered and competitive?**
- How are teams created?
- Process versus product?
- Limit setting?
- Leadership
- Fun?

**Self-involved**
- Disconnected; self-involved
  - Both girls' towers fall—no response/support/encouragement
  - "Sorry, I can't help you, I'm too busy."
11.1 THE IMPORTANCE OF COLLATERAL SOURCE INFORMATION
Valid collateral source information is critical to a thorough evaluation. Sufficiency and reliability of collateral source information is a determination to be made by the child custody evaluator.

Personal references
✓ Who?
✓ How many per party?
✓ Obtain party's consent AND referents' informed assent!
✓ Worthwhile?

11.4 FORMULATION OF OPINIONS
Evaluators shall be prepared to explain how different sources and different types of information were considered and weighted in the formation of their opinions.

12.2 ARTICULATION OF THE BASES FOR OPINIONS EXPRESSED
Opinions expressed by child custody evaluators shall be based upon information and data obtained through the application of reliable principles and methods. Evaluators shall differentiate among information gathered, observations made, data collected, inferences made, and opinions formulated.

12.4 ARTICULATION OF LIMITATIONS
In reports and in testimony evaluators shall articulate any limitations to the evaluation with respect to methodology, procedure, data collection, and data interpretation...

When the available data do not enable evaluators to opine responsibly on the relative advantages and disadvantages of different parenting plans under consideration, they shall decline to offer an opinion.

To recommend or not to recommend...?

Level I: What the clinician observes
Level II: What the clinician concludes about the psychology of a parent, child, or family
Level III: What the psychologist concludes about the implications of Level II conclusions for custody-specific variables
Level IV: The psychologist’s conclusions about the custody-related “shoulds” in the matter

“there is no evidence in the empirical literature that current interview protocols, traditional psychological tests, or custody-specific tests are in any way able to reliably predict child adjustment to different access plans, yet 94% of evaluating psychologists still make such recommendations.”

“... it is imperative that mental health witnesses carefully circumscribe their testimony so as not to blur the critical distinction between the function of an expert witness to expound from the specialized knowledge base (i.e., the ‘whats’) and that of the judge to make the ultimate legal-socio-moral determination (i.e., the ‘shoulds’).”

“This parent will be sensitive and loving with the child in the form of a specific recommended access plan.”

The Scientific Method
(In one quick illustration)

The Scientific Method

Hypothesis N:
Collect relevant data
(multiple methods/multiple sources)

Confirm or refute hypothesis

Corollary hypotheses

REPORT
Frontloading

Frontload the process

- Gather as much data upfront before even meeting parties
- Use these data to guide and streamline interviews
- Collect process observations: How does each parent manage the organizational demands? (Not unlike applying for college, advocating for educational or medical needs)

Frontload the process – Step 1

1. Service Agreement
2. Violent and Controlling Behavior Checklist
3. Adult Personal History
4. Drug Use Disorders Identification Test
5. Chronology Form
6. Identifying Resources and References
7. Child’s Developmental History
8. Adult Disclosure of Assistance
9. Perceptions of My Child
10. The Child’s World Questionnaire

Process AND Product!!

Not just content: How each parent manages this complex executive task is relevant data!
The Service Agreement

Establishes the structure, goals and limits of the CCE. Return requires initial each page, sign and date the last twice. Include funds.

- Did she really read and understand it?
- Did she complete it?
- Did she include funds?

Violent and Controlling Behaviors Checklist

AFCC guidelines call for continuous screening for IPV even when there are no allegations.

2. Universal and Ongoing Screening.

A child custody evaluator follows an intimate partner violence screening protocol in every case, including those where no allegations or judicial findings of intimate partner violence have been made.

An evaluator aspires to make behaviorally specific inquiries about concrete acts (like hitting, pushing, or strangling) and patterns of behaviors (like interfering with social connections, appropriating or denying access to resources, and undermining personal autonomy) as opposed to making inquiries about abstract concepts (like domestic violence, abuse or conflict).

An evaluator seeks information on multiple forms of intimate partner violence including physical, sexual, economic, psychological, and coercive controlling behaviors of adults and children as well as threats and actions based on immigration status.

An evaluator strives to remain attuned to ongoing and past intimate partner violence. Without understanding the dynamics and context of past intimate partner violence, an evaluator is less likely to comprehend the nature and level of present and future risk for family members. Past violence is a significant risk factor for future violence. Furthermore, the form, frequency, and severity of intimate partner violence may change over time.
Mediator’s Assessment of Safety Issues and Concerns (MASIC)

1. Psychological abuse
2. Coercive controlling behaviors
3. Threats of severe violence
4. Physical violence
5. Severe physical violence
6. Sexual violence
7. Stalking


Adult Personal History

Self-report describing family of origin, academic, medical, mental health, addiction and intimate history

Adult Personal History

“My priorities”
Is a forced ranking task that allows sharp comparison between parents and between self-report and actual behavior

Drug Use Disorders Identification Test

Self-report instrument:
Drugs and alcohol:
What about behavioral addictions?
(sex, gambling, shopping, video...)

Chronology Form

Beginning to put together the family history
Identifying Resources and References

Each adult’s contact information, employer, physician, therapist;

Each child’s school, therapist, physician;

Three personal references per adult minimum

Child’s Developmental History

Process AND Product!

Remember you’re not only gathering facts, you’re observing (1) how each parent goes about completing the questionnaires AND (2) comparing the parents’ answers with one another and with objective reports (e.g., pediatric records).

For example: Mom claims Father was absent at birth. Dad denies and knows every detail.

Perceptions of My Child

Case illustration from CCFE 2017 Responses

Perceptions of My Child

The Child’s World Questionnaire

How well does the parent know the child’s interests? Preferences? Strengths and weaknesses?

Hypothesis: Sensitive and responsive parents try to know these things without intruding, so less and less success into adolescence
Adult Disclosure of Assistance

Parties are free to engage helpers throughout the CCE process (e.g., “custody coaches,” lawyers, therapists) but must disclose who and who these people contribute to (confound) questionnaires. Do they lie? Of course.

Frontload the process – Step 2

- Receipt and review and integration of preliminaries
- Elicit subsequent data and resources
- Structure initial interviews
- Schedule meetings

Read and integrate everything:

Help

I create and continuously revise five documents as I read. These work-product documents guide evaluation.

Family Tree
- How do the pieces fit together?

WHO?
- Index of persons
Take or obtain face shots of key players as referents in anticipation of interviewing young children or children with cognitive or verbal deficits.

My Accumulated Chronology of Events
- Helps to communicate context: e.g., what was happening when she ran away?
- Helps to suggest patterns e.g., every time she ran away, he started drinking and Billy's grades fell at school.
- Very helpful for "Family History" section in final report.

Documents received and Reviewed
- Critical for your final report!
- What did you base your conclusions and recommendations on?
- How did you obtain this?
- When did you obtain this (date everything!)
- How did this weigh in your thinking?

Constantly accumulating questions
- What about ...?
- How could that be...?
- Get document!
- Get consent and talk to nanny!
- But she said ...?
- What was that date?
- Where did that happen?

An emerging report?
- Real time record minimizes memory loss and contamination
- Continuously reshapes inquiry
- Standardized methods across evaluations minimize bias and optimize reliability

An emerging report?
The alternative is sitting down to distill and summarize 40+ hours of data.
Frontload the process – Step 3

Solicit follow-up documents, e.g., third party references, medical, educational and therapist paperwork

- Keep copies of everything
- Date everything for date received and from whom
- Follow-up calls? Interviews?

Third party reference assent & questionnaire

Cover letter and Consent to Providers

- Identify self, role and purpose
- Provide consent(s)
- Request records
- Open door to follow up call

Interviews

Focused without leading or pressure

- Rapport within role
- Contemporaneous notes: process and product
- Recorded?
- Their pace, their rhythm

Rapport! Rapport! Rapport!

What if …?
- “What’s happening…?”
- “What can help you?”
- “What happened earlier…?”
- “How do you feel?”
- “What’s that mean?”
- “Check consistency of report”
- “Check vocabulary meanings”
- “Any changes? New perspectives?”
- “Ideas since first spoke?”
- “Thank you!”

Beware vocabulary!
Whom do you interview first?
Sequence effects, confirmational bias and safety

- The inevitable “AHA!” after the first interview
- Does that initial contamination carry forward?
- Unless there are safety concerns or legal restrictions, meet with both parents together at least briefly
- Joint initial interview is less content than process: How do these adults manage together? What is the child exposed to at transition?
- Review procedures, confidentiality, when and how to introduce you to the kids
- Plan ahead

Child interviews

Association of Family and Conciliation Courts

5.8 ASSESSMENT OF CHILDREN
Child custody evaluators shall individually assess each child who is the subject of the evaluation.

(a) Evaluators shall assess each child whose placement is at issue and shall be attentive to any special developmental needs of the children. Evaluators shall consider the stated wishes and preferences of the child.

“Child custody evaluators shall individually assess each child...”

American Academy of Matrimonial Lawyers

4.7 ASSESSMENT OF CHILDREN
Custody evaluators should individually assess each child who is the subject of the evaluation.

(a) Custody evaluators should assess each child whose placement is at issue and should be attentive to any special developmental needs of the children. Evaluators shall consider the stated wishes and preferences of the child.

“Custody evaluators should individually assess each child...”

Rapport!
Rapport!
Opens the door to trust, disclosure and admission.

A sterile or threatening environment
will inhibit interview

✓ Sit at the same level as the child.
✓ Go at the child’s pace.
✓ Engage around familiar activities

✓ Dress in comfortable casual clothes rather than in formal, intimidating clothes, law enforcement or medical uniform.

Respect boundaries and trauma history (and CYA)

Face to face can be threatening
Respect personal space

Enter her world rather than invite her into yours ...

Assuring (and documenting) the child’s informed ASSENT

✓ NOT therapy
✓ NOT private
✓ Will be telling the judge
✓ Mom and dad will hear
✓ Child need not talk at all
✓ Her thoughts and feelings are valued and important

A standardized format?

Clarify the child’s expectations and fears

✓ Must choose between parents?
✓ Be taken away from parents?
✓ Be blamed for family conflict?
✓ Pass/fail test??
✓ Confidentiality?
✓ Like psychotherapy?
How was the child prepped?

- “Now’s a good time to tell me what you’re supposed to tell me”
- Do you know who I am?
- Do you know what my job is?
- Who told you what?
- What did [parent] tell you to say?
- What did [parent] tell you not to say?

... multiple interviews are often necessary to establish sufficient rapport and obtain crucial information, especially about high-risk incidents....”

... one observation session alone is not sufficient in helping to make valid inferences about the general style of interactional behavior in families... On the other hand, it is perhaps unrealistic and overly costly to routinely carry out the numerous observational sessions... there is good rationale for conducting a minimum of two 45- to 60-minute observation sessions with each parent.

Context specificity: Are the data you gather specific to this time and place or representative of the child’s general experience?

- Time of day (Nap time? Conflict with activity?)
- Specific to today (Didn’t sleep? Sick?)
- Office v. home v. other setting?

One interview is never enough

Recency effects?

Are the data you gather contaminated by a recent upset or event? How does the fact that Mom drove to this interview impact the child’s presentation?

- Data gathering starts in the waiting room!
- Who has exercised custody most recently?
- What did the transporting parent tell child in advance? At separation?
- How does the child read the transporting parent’s needs and wishes?
- Debriefing effects: The long ride home
Proximity effects?

Where is the accompanying parent?
- Implicit wish to please or defy the proximal parent?
- How does the child understand confidentiality?

Chameleon Kids

Leading questions and self-fulfilling prophecies. Many children who spend their lives migrating between warring parents become chameleons
- What do your questions, body language, and attitude communicate to the child?
- Really truly honestly: do you have a bias? How does it show?


Better:
- Carefully scripting how the accompanying parent should introduce you and the process
- Planning at least one interview delivered by each caregiver to watch for context (chameleon) effects
- Let the child teach you

Best:
- Multiple sources
- Multiple occasions
- Multiple modalities

Multiple Sources
- Teachers
- Coaches
- Neighbors
- Parents
- Sibling
- Tutor
- Therapist
- Grandparents

Multiple Occasions
- Different times of day
- Different days of week
- Different places? School, Mom’s home, Dad’s home, your office, park?
- With her therapist?
- Accompanied by Parent A
- Accompanied by Parent B
Multiple Modalities

Direct verbal interview may be necessary, easiest to record and easiest to defend but direct verbal interview invites defensiveness, coached and scripted replies.

F2F can trigger:
✓ Fight
✓ Flight
✓ Freeze
✓ Flock

Leave your ego at home.

You do not need to impress or be an expert.
✓ Be present.
✓ Be respectful.
✓ Follow the child’s lead.
✓ Play dumb.

Play dumb?

Scratch your head and wonder aloud often.
✓ “Teach me about you…”
✓ “Can you help me understand?”
✓ “Can you say it differently?”
✓ “I don’t get it…”
✓ “I forget, what did you say last time?”

Watch your language!

“Please circumscribe the nexus of the dilemma.”

Watch your language!

✓ Stress will cause regression and compromise comprehension
✓ Don’t mistake physical maturity, age or grade level for verbal comprehension
✓ Chameleon kids will acknowledge understanding when they do not
✓ Cognitively precocious kids may understand the words but not digest the implications

“Don't worry, I speak fluent teenage.”
Let the child know that some of the questions may be confusing.

It is okay to say, "I don't understand."

Let the child know that sometimes a question may be repeated. If this happens, it does not mean that the first answer was wrong.

"... one of the main risks of repeated questions is that children may get the impression that the evaluator is looking for a specific response."

Give the child permission to correct you.

Let the child know that some questions may be easy and others may be difficult, and no one is expected to know everything.

Use a neutral tone with no urgency. Your pressure will be contagious.

- Take breaks
- Offer water? Snack (be wary of allergies!)
- Watch for bathroom-needs
- Is your door locked? Is it closed?

Follow up on apparent contradictions to clarify without judgment.

Respect the child's wishes concerning whether or not to discuss a specific matter.

If the child says she or he wants to stop the interview, do so.

Thank the child.

How do you elicit balanced content?
The QUERY GRID

Emotion Categories (columns)

Contexts in child’s life

Three wishes

“If you could have three magical wishes — but only three! — what would you wish for?”

- Me-here-now
- Abstract-global-future
- Clues to role corruptions, guilt/blame

A child should wish for me-here-now objects and outcomes.

“Star Wars Legos”

“No more homework”

“All the candy I can eat”

Other wishes betray enmeshment, triangulation, alienation and stress

“Money for the taxes”

“Daddy to die and go to hell”

“A boyfriend for mom”

“Mom to stop drinking”

Do differently?

“Someday, when you have your own kids, what will you do differently than your parents do with you?”

Not get ‘vorced.”

Child Custody Evaluations: Finding Fit in Dysfunctional Families
F2F may be necessary, but is not sufficient

F2F invites scripted replies

And can be threatening
Think outside of the box

Side-by-side, focused on a shared task can help to minimize resistance

And then what happened?
Different modalities elicit different information:

- Written questionnaires
- Hypotheticals
- Play
- Drawings
- Video prompts
- Direct observation

“Play [and other observational methods] is an indisputably useful communication facilitation mechanism. It is not a reliable data gathering method.”

D. Martindale, PhD
AFCC eNews 10.2015 “Much is Forgotten in 123 Years”
Accessed 10.26.2015 at:

The Process-Oriented Observational Protocol
A process-oriented evaluation paradigm: Data from within and between observations

Family system evaluations must become sensitive to process variables.

Ainsworth’s Strange Situation as a model process-oriented evaluation protocol

- Parent and infant are introduced to the experimental room.
- Parent and infant are alone. Parent does not participate while infant explores.
- Stranger enters, converses with parent, then approaches infant. Parent leaves inconspicuously.
- First separation
  - First reunion: How does infant manage the separation? Stranger’s departure?
- Second separation: Stranger enters and engages behavior to that of infant.
- Second reunion episode: Parent enters and greets infant, and picks up infant; stranger leaves inconspicuously.


Critical observations are drawn from data within and between observational epochs.

The same epochs viewed separately would generate very different data.

Scheduling your next custody eval?

A process-oriented observation protocol can reveal the extent to which the child is adapting chameleon-like to disparate caregiving environments.

This observation bears on the weight given to the child’s voice and treatment recommendations.
**Child Custody Evaluations: Finding Fit in Dysfunctional Families**

Seeing the real child and better understanding his experience

A process-oriented evaluation paradigm:
- Understanding his experience
- What did each parent observe?
- How typical was the dyadic interaction?
- How typical was the exchange?
- How typical was the child?
- What did each parent see about own behavior?
- What did each parent see about other parent’s behavior?

**Within data**

<table>
<thead>
<tr>
<th>Time</th>
<th>Event Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>10:00</td>
<td>Parent A arrive with child: Child individual interview #1</td>
</tr>
<tr>
<td>11:00</td>
<td>Parent A join examiner and child: Parent-child observation #1</td>
</tr>
<tr>
<td>12:00</td>
<td>Parent B arrive, knock on door and enter Parent A leave premises entirely Parent-child observation #2</td>
</tr>
<tr>
<td>1:00</td>
<td>Parent B go to wait room: Child individual interview #2</td>
</tr>
<tr>
<td>2:00</td>
<td>Parent B depart with child</td>
</tr>
</tbody>
</table>

But that’s so complicated!
- Much less complicated than most school outings, dance recitals, or soccer tournaments
- The problems that arise are as informative as the plan itself!
  - Who is late?
  - Who is early?
  - Boundaries, limits, roles
- More time efficient for all!

Schedule:

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<td>Parent B departs with child</td>
</tr>
</tbody>
</table>
Observe transition!

10:00 Parent A arrive with child
Child individual interview #1
11:00 Parent A join examiner and child
Parent-child observation #1
12:00 Parent B arrives, knock on door and enter
Parent A leaves premises entirely
Parent-child observation #2
1:00 Parent B go to wait room
Child individual interview #2
2:00 Parent B depart with child

Divorce Transition Stress Disorder?

Caution!
High conflict parents’ confirmational biases will cause them to interpret DTSD as resistance of the receiving parent. When this is not understood, it can fuel very destructive and expensive litigation.

A case example in brief

- Mother and Father separated 2 years ago
- Parents’ initial mutual agreement that Sam would reside with Mother and spend alternate weekends with Father has disintegrated.
- Sam is now resisting contact with Father
- Mother claims “we should listen to Sam” and “I won’t force him to go”
- Father claims Mother is alienating Sam from him

8 year old Sam

Child Custody Evaluations: Finding Fit in Dysfunctional Families
The court orders a CCE

- Father files for contempt against Mother for (allegedly) interfering with his parenting time
- The court orders a CCE
- Parents agree to call you

What’s your first step?

- Reply, “No, thank you” and refer them to a colleague you despise
- Review the court order
- Determine whether the parents can afford your hourly rates
- Call the attorneys
- Email Garber in USA and plead for consultation
- Quit and become a carpenter

You’re in.

The court order is clear:

“Determine why Sam is resisting contact with Father and recommend child-centered solutions including consideration of a new schedule of care. The parties are to cooperate fully with the evaluator, including providing consent to allow the evaluator to communicate with all relevant medical, mental health and educational professionals.”

You deliver preliminary materials via email to each parent

1. Service Agreement
2. Violent and Controlling Behavior Checklist
3. Adult Personal History
4. Drug Use Disorders Identification Test
5. Chronology Form
6. Identifying Resources and References
7. Child’s Developmental History
8. Adult Disclosure of Assistance
9. Perceptions of My Child
10. The Child’s World Questionnaire

Process observation

- Mother never receives email attachments
- Requests re-send x2 (with apologies and excuses) and then requires paper copies
- Father’s paperwork and funding received in one week
- Mother’s partially completed paperwork received in four weeks

You review preliminaries

- Begin to collect questions for interviews
- Send out third party requests (doctor, school, Sam’s therapist, personal references)
- Invite parents to joint initial adult interview
**Dysfunctional Families**

**B.D. Garber, PhD**  
FamilLawConsulting.org  
21 September, 2018

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**Adult interviews**

- Mother resists meeting with Father – consults with attorney – concedes.
- Father eager to meet with Mother
- Mother arrives late, ignores Father; orients only to you
- In interview, Mother interrupts Father, demands your attention
- You plan and proceed to conduct individual adult interviews.
- Third party materials begin to trickle in

**“Sam I Am”**

- Sam is clingy, avoids eye contact and has trouble separating from Mother
- Slow to engage in interview
- Loves Legos! He shows you how to make a Lego space station
- “Who lives on the space station?”
- “If you lived on the space station, who would live there with you?”

---

**Initial interview with Sam**

1. Mom is all good  
   Dad is all bad

   Sam’s reasons are weak and inconsistent
   “cuz he cheated on us”

**“cuz he cheated on us”?**

1. Mom is all good  
   Dad is all bad

   Sam’s reasons are weak and inconsistent
   “cuz he cheated on us”

---

**Query Grid**

- “Lies?”  
  “Like what?”  
  (scratch your head and play dumb)

**When she tells me lies**

---

**POOP**

- Mother arrives with Sam
- Mother is excused
- Mother is interviewed
- Sam and Mother play interaction
- Father arrives at noon precisely
- Father leaves the premises
- Sam and Father play interaction
- Father is excused
- Follow-up Sam interview
- Mother returns to retrieve Sam
- Request parent written summaries

“Now’s a good time to tell me what you’re doing.”

Knock at door as expected:

- Mother becomes frantic; physically between Sam and door;
- Mother ignores Father’s greeting; prolonged separation focused on Sam;

Immediate hug as if rescuing Sam from drowning: “How was it, sweetie…?”

- Sam regressed, clingy and sad:
  Mean, He broke my Space Station! [NOT WHAT HAPPENED!]

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Child Custody Evaluations: Finding Fit in Dysfunctional Families
POOP

- Mother arrives with Sam
- Mother is excused
- Sam interview
- Sam and Mother play interaction
- Father arrives at noon precisely
- Mother leaves the premises
- Sam and Father play interaction
- Father is excused
- Follow-up Sam interview
- Mother returns to retrieve Sam
- Request parent written summaries

Sam was very much more regressed and anxious with Mother than with Father;

POOP

- Mother arrives with Sam
- Mother is excused
- Sam interview
- Sam and Mother play interaction
- Father arrives at noon precisely
- Mother leaves the premises
- Sam and Father play interaction
- Father is excused
- Follow-up Sam interview
- Mother returns to retrieve Sam
- Request parent written summaries

Mother was notably more controlling, intrusive; less child-centered; wanted to impress;
Father was better able to "be in Sam's world;" patient, respectful

POOP

- Mother arrives with Sam
- Mother is excused
- Sam interview
- Sam and Mother play interaction
- Father arrives at noon precisely
- Mother leaves the premises
- Sam and Father play interaction
- Father is excused
- Follow-up Sam interview
- Mother returns to retrieve Sam
- Request parent written summaries

Mother is incensed: writes about "trauma" Sam endured; threatens to report you to licensing board; will consult with attorney about continuing CCE

Father is grateful; all went well; eager to see Sam further; can you be the family therapist when this is all over? So proud of Sam! He's grown!

Threatened board complaint?

- Ignore Mother's bluster and defenses
- Document it THEN ignore it
- Withdraw from CCE – your career is too important
- Write a letter to the court via counsel and ask for advice
- Alert the licensing board
- Order a tall, frozen margarita with salt

Follow up adult interviews

“Can you be the family therapist?”

1

No.
Consider hypotheses that address the court’s question: Why is Sam resisting contact with Father?

Talk through your hypotheses:

<table>
<thead>
<tr>
<th>Hypothesis</th>
<th>Data Support</th>
<th>Data Refute</th>
</tr>
</thead>
<tbody>
<tr>
<td>Dad is bad and deserving rejection</td>
<td>Sam's words but not behavior; Mother's words</td>
<td>Sam's behavior; Father's interviews; Father's third party reports</td>
</tr>
<tr>
<td>Sam is independently manipulating</td>
<td>Mother is more lenient, fewer rules, more privileges; Father is stricter</td>
<td>?</td>
</tr>
<tr>
<td>Sam and Mother are entwined</td>
<td>Sam isn't resisting Father; He's listening to mother; Mother's drinking; Sam is parentified?</td>
<td>Mother interview: wants Sam to have healthy relationships</td>
</tr>
<tr>
<td>Mother is undermining Sam's</td>
<td>Mother's expressed emotions and behavior about and around Father; Sam reads her like a book</td>
<td>Mother denies that she ever SAYS anything negative about Father</td>
</tr>
<tr>
<td>relationship with Father; i.e.,</td>
<td>medical, cognitive, developmental</td>
<td>Healthy MD reports; Impressive</td>
</tr>
<tr>
<td>alienating</td>
<td>differences relevant?</td>
<td>interviews; Good academics</td>
</tr>
</tbody>
</table>

Recommendations?

- NO clue. I'm totally confused!
- Do nothing: Sam and Father will spontaneously repair their relationship
- Educate Mother about Sam's needs and her parenting
- Educate Father: Boys usually reject their Fathers
- Add alternating Mo-Sam, Fa-Sam family therapy to coordinate with Sam's therapy
- Father should have more time with Sam
- Reverse custody: Sam should reside with Father

Summary thoughts

Structure! Structure! Structure!

Structure will reduce your anxiety and theirs. It will improve the quality and the objectivity of your evaluations and help keep you out of trouble.
Calm
Clear
Consistent

Anxiety is contagious and undermines mature, rational thinking.

Leave your ego at home

Be confident enough to play dumb. Treat the parents/child like the experts that they are.

Humility.
Respect.
Patience.

This is their life. What would you want and need from a professional if it was you?

Rapport!

Your transparent, reliable and predictable process and your calm, clear manner will build trust and open the door to disclosures.

Value process at least as much as product

How it happens can be more valuable than what happens.

Expose yourself.

Your reasoning must be transparent. Your oversights, omissions and errors must be acknowledged. Your limits must be stated.
1. Take care of yourself.
   Self-care is not selfish.
   Self-care is necessary and healthy and a good model for everyone who is looking.

9. Know when to say “no” – and do it.
   Otherwise you will compromise your health and your integrity, and you will do harm.

10. “We can do no great things,
    Only small things with great love.”