

Bulletproof Custody Evaluations

In recent years we have observed that court-appointed custody evaluations, parental fitness evaluations, and home studies are more often challenged than before, when they were accepted and used as tools to accelerate and facilitate conflict resolution. These challenges are done either through attacking methodology or evaluator credentials and/or through seeking an opposing, rebuttal evaluation and opinion. In fact, professional presentations have been conducted for attorneys on how to “handle” (combat) adverse evaluation findings.

We believe it is necessary to respond to this trend in three ways:

1. Reaching out to attorneys
2. Better preparation of parents
3. Making the evaluation process as “bulletproof” as possible

Attorneys

Three ideas come to mind here. First, we need to inform attorneys of the steps in our processes, what will be done, what information will be taken into account, what factors we will weigh and consider, and what our reports will encompass. We need them to tell us explicitly what they believe should be evaluated, and we need them to incorporate their suggestions, if feasible, into our evaluations. A joint meeting with the evaluator and both attorneys (and their clients) is recommended prior to the evaluation. Second, we need to encourage attorneys not to use the evaluation process for their clients unless they are willing to assert their belief in the process, perhaps in writing. Third, we need to encourage Bar Association presentations which emphasize the harm done to families by viewing our evaluations as tools of combat, ways of gathering ammunition, or strategic steps toward winning.

Parents

After hearing in each case what the attorneys and parents have in mind, we should remind the parents of what we can and cannot do, the steps we will take, the limits of what our reports can cover and recommend, the specific factors we will consider in the type of situation they are facing (child custody, parental fitness, move-away, abuse allegation, etc.), and our sense of the expectations of the Court concerning our evaluation. We should specify and solicit the kinds of information we would like to have, and we should indicate our openness to everything relevant the parents would like us to access (records, emails, journals, photos, direct observations, contacts with references, etc.)—specifically informing them at the outset about any information source we will not consider or decision we will not address.

We should inform the parents that the kinds of information we consider most seriously are those that (1) relate directly to the factors we are assessing, (2) can be confirmed through evidence or cross-checking multiple sources, and (3) are relevant to the future welfare of the children. We should remind parents that we will not be able to determine if someone is lying or which version of past events is true. We should inform parents that we will not be seeking or offering a mental health diagnosis in our report, and that mental illness, even if present in a parent, is not considered in itself conclusive evidence of parental limitations or incapability. The parents should be reminded that if their mental health is an issue to be taken into account in their evaluation, they will be evaluated psychologically by an appropriate professional, and that person’s input will then be incorporated into our findings as it relates directly to parenting ability and child welfare.

We should state explicitly to the parents that we hope and expect our evaluation and findings will be used by them to negotiate an arrangement for parenting the children and that they will thus be able to avoid a court battle. And we should remind the parents that we will be open, following the issuing of our report, to meeting with them individually or together – not to accept additional information, but to answer their questions and elaborate on our suggestions.

Bulletproofing the Process

Of course, nothing will fully bulletproof our process if it is viewed by the parties and their attorneys as just another tool for conflict or an arena in which to gain victory. However, there are steps we can take to make our evaluations as clear and understandable, as ethical and objective, and as professionally conducted as possible. The following we likely aspire to already, but they are worth noting – they are presented in no particular order of importance.

- We need to rely on multiple sources of information, definitely including information sources our clients suggest, and giving most credence to information we can confirm by our own direct observation, by evidence, and by the converging observations of others
- We need to use a standard informational questionnaire or structured interview, as well as a standard rating instrument for home visits
- We need to listen actively for signs of unrealistic client expectations and confront them directly with correct information and an opportunity to reconsider commitment to the evaluation
- We should not pressure clients to complete our evaluation; we should see their participation as voluntary and based on their informed decision
- We should be clear about what we will not consider in our evaluation, what we will not pursue, and what we will not address in our report, and we should be open and unapologetic about sharing this
- We should encourage clients to ask their attorneys questions about the purpose of the evaluation, how its results will be used, and who will have access to the evaluation's findings (see attachment)
- We should keep in mind what not to include in our reports: speculation, uncorroborated hearsay, clinical language (resistance, compensation, projection, idealization-devaluation, narcissism, psychopath, schizoid), questionable concepts (parental alienation syndrome, borderline traits, child abuse symptoms, parentified child, enmeshed parent, dry drunk, Napoleon complex, Munchausen by Proxy, Taurus, adult child of alcoholic, people-pleaser), mental health diagnoses (particularly severe, loaded labels such as personality disorders), and anything not directly related to the factors we have set out to consider relevant to parenting and child welfare. We are not writing a clinical report, speculating about possible personality dynamics, or doing the kind of evaluating and communicating we might do as or for therapists. Remember, our evaluation and report are intended to help move the clients toward resolution, and our primary ethical consideration is to do no harm.
- We should form our evaluation (and report) around the checklist of factors we have informed the clients we will consider for their specific type of situation (see attachment).
- We should give ourselves permission to terminate or suspend the evaluation process if we feel we are being deceived or if a client is not cooperating fully.
- We should recognize the limits of our knowledge, of our time, and of our abilities, and we should not hesitate to acknowledge when we do not know the answers to some (possibly very important) questions.
- We should keep in mind that it is not always true that a child needs both parents or a mother or a father. Children need access to good parenting.
- We should keep in mind that mental illness or extreme traits or odd lifestyle choices do not necessarily equate to poor parenting.
- We should remember research indicates that ongoing conflict between parents damages children, and we should note any behavior from either parent that has the effect of furthering or exacerbating conflict or placing obstacles in the way of cooperation.
- We should remember that a history of violent acting out toward adults and only in the context of divorce or marital strife does not necessarily predict potential harmfulness toward children.