

Ethical Child Custody Evaluations: The Good, The Bad and The Ugly

In a divorce, there may be a child custody dispute, but whatever objections may arise, hopefully, there should be no question concerning the evaluator's ethics or objectivity.

By Elisa Reiter and Daniel Pollack June 13, 2021 at 03:20 PM



Clint Eastwood as "Blondie," or "The Man With No Name," in the classic film "The Good, The Bad and The Ugly."

Often, the greatest battle in a divorce is not about money, but about who will have custody of the children. If there is a custody dispute, a child custody evaluation may be an important aspect of the case. It is intrinsic to child custody disputes that one or both parties may be dissatisfied with the evaluator's recommendation. Whatever

those objections, hopefully, there should be no question concerning the evaluator's ethics or objectivity.

[Dr. Jonathan Gould](#) suggests that “the primary focus for evaluators is to understand the child development research and then apply relevant research to each case.” Task one includes an examination of the parenting history of each child. Is the child the beneficiary of joint caretaking by both parents? Has the child exhibited any qualms or difficulties related to being cared for by each parent while the family was intact? What can the evaluator predict about potential risk to the child if there was or was not shared parenting responsibilities or if the parents belittle each other?

Evaluators must parse:

- How families approach their physical space - how they navigate from one place to another, including work and school schedules;
- How each parent deals with their own emotional needs and the emotional needs of their children at their home;
- How each parent sets and/or respects boundaries;
- How flexible or rigid each parent is in their thinking, including about the amount of time and quality of time the child spends with the other parent;
- How each parent fills their days when away from the other parent and/or the children;
- How each parent processes their feelings about the divorce - the Kubler Ross grief cycle attendant to the death of the marital relationship;
- How each parent feels about sharing activities regarding the children with the other parent.

[Texas Family Code Chapter 107](#) establishes rules to govern special appointments, including child custody evaluations. [Evaluators and judges](#) must reflect on the fact that “seldom can a court find one party adequately represents a child's interest or that party's interests are not adverse.” Attorneys intent on zealous advocacy must prepare their clients as best they can, realizing that as advocates, we can guide, but not control human behavior.

[Texas Family Code Section 107.104](#) establishes minimum qualifications for child custody evaluators. Minimum criteria include: holding a degree and being licensed in Texas as a “social worker, professional counselor, marriage and family therapist, or psychologist, or, have a license to practice medicine in this state and a board certification in psychiatry.” Additional statutory prerequisites to serve as a child custody evaluator in Texas include, in addition to holding one of the degrees noted, to:

have two years of full-time experience equivalent part-time experience under professional supervision during which the individual performed functions involving the evaluation of physical, intellectual, social and psychological functioning and needs and developed an understanding of the social and physical environment, both present and prospective, to meet those needs.

Without abundant and meaningful training and experience, child custody evaluators will not be able to ensure that their evaluations will conform to at least minimal ethical standards. The evaluator’s experience is a crucial factor. In addition to the foregoing, once they meet the foregoing threshold criterion, they must have performed at least 10 court ordered child custody evaluations under the supervision of a professional who is qualified to conduct evaluations. Those who conduct evaluations must also be familiar with the applicable guidelines appropriate to their [licensure](#).

Divorce is taxing physically, financially and emotionally. How can an overwrought parent prepare? Gathering documentation for the evaluator is only a starting point. Is the parent cooperative, conflicted or disengaged? Posed differently, there are parents who demonstrate [parental responsiveness versus parental demandingness](#). Does [the parent](#) indulge the child’s every whim? Is the parent authoritarian? Is the parent authoritative? Is the parent neglectful? Do socioeconomic factors impact the family? Does either parent’s family of origin include a history of mental and/or physical health risks?

Particularly important is that the evaluator must be able to act in an ethical manner. The Association of Family and Conciliation Courts publication, [Model Standards of Practice for Child Custody Evaluation](#) (p. 7) specifically notes: “Evaluators fulfill a role that is consistent with the needs of and directives from the court. When the

specified role(s) cannot ethically be accepted and/or when the directives cannot ethically be followed, evaluators shall decline participation and shall articulate in writing the basis for the decision to decline.” In short, evaluators must be truly neutral and non-judgmental. In February 2021, in an [Analysis of Proposed APA Guidelines for Child Custody Evaluation Introduction](#), the following criticism is raised:

The routine failure of child custody evaluations to apply the ‘established scientific and professional knowledge of the discipline’ results in ‘recommendations, reports, and diagnostic or evaluative statements, including forensic testimony’ not being based on information ‘sufficient to substantiate their findings,’ and these failures cause substantial harm to the child and surrounding family.

In addition, the evaluator’s internalized implicit biases may impact the evaluation. [Experts](#) may be influenced by stereotypes they hold, and their data analysis may be influenced by those long held prejudices. In an era where we are attempting to hold attorneys to higher standards in avoiding implicit bias, we should not stand alone. To strive for an ethical child custody evaluation, evaluators must not only have training as described herein, they must be sensitive to their own biases. If an evaluator believes one parent to be a credible source, and has an inherent willing suspension of belief of the other parent, the evaluator may have lost sight of the importance of neutrality. A good cross-examination should elicit whether or not the evaluator contemplated alternative scenarios to the recommendations set out in the evaluator’s report.

As [Harper Lee](#) wrote, “[p]eople generally see what they look for, and hear what they listen for.” Let’s continuously push ourselves and child custody evaluators for maximum ethical conduct.

[Elisa Reiter](#) is an attorney, Board Certified in Family Law and in Child Welfare Law by the Texas Board of Legal Specialization, at Underwood Perkins, P.C. Contact: ereiter@uplawtx.com.

[Daniel Pollack](#) is an attorney and professor at Yeshiva University’s School of Social Work in New York City. Contact: dpollack@yu.edu.