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Pros and Cons: The Role of Consultants in Child Custody Battles

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We are all aware of the growing number of consultants who assist individuals, couples and attorneys seeking child custody orders. Unfortunately, some consultants fail to understand the work of single parenting, shared custody schedules, and how some degree of cooperation is necessary for their children’s overall wellbeing.

Can a parent, with the help of a consultant, “look” better? Certainly. Testing results, interviews and collateral contacts can all be crafted to

present a much better picture than how a parent or third party would otherwise present to a court or jury.

No parent wants to “lose” custody of their children. Yet, there are times when third parties must intervene in cases if parents are unfit to care for their own children. Many litigants are loath to deplete their finances litigating over custody. Sometimes, one parent is simply unwilling to cede custody to the other parent, even if the parent ceding custody is demonstrably impaired. Whether or not certain parenting time schedules constitute a loss often depends on the perspective of the person analyzing the offer on the table.

With all these issues come questions, the most profound: What about the children? After all, our children’s mental health, and a parent’s ability to enjoy quality parenting time with their children, are often the benchmarks for real victory in custody litigation.

In 1985, the Washington Post quoted a San Francisco radio host who commented in regard to plans to renovate Candlestick Park (in lieu of constructing a new downtown stadium for the Giants): “That would be like putting lipstick on a pig.” What happens when consultants are hired in custody matters? Are those consultants little more than make-up artists hired to apply cosmetics in the hopes of enhancing the parent’s appearance in the course of a custody evaluation? With a cohort of “senior-level” evaluators retiring, and a new crop of evaluators entering the field, how concerned should we be?

There is fertile ground for consultants. For instance, consultants can assist attorneys in preparing cross examination to tear apart a custody evaluator’s report, or to impeach the logic employed by the evaluator.

They can offer challenges to computerized scoring and analysis of test results to tests like the MMPI, MMPI-2 and Millon. Consultants can assist litigants prepare for the custody evaluation process. Consultants may also assist warring parents manage their feelings, to have some recognition of how the other litigants and the children are feeling, and then utilize that emotional intelligence in ways that net a better impression with the evaluator.

The use of consultants to challenge a child custody evaluation may lead to several potential issues that impact a family. Child custody evaluations are intense in a variety of ways. Child custody evaluations are expensive, time intensive, and may have harmful effects on children. They may also have unintended layers of bias in the evaluation process itself. How? The evaluators can fall prey to gathering research that supports only their preconceived opinions. While judges may order forensic evaluations to glean relevant information that helps those judges ascertain what serves the best interests of the child, sometimes evaluations go beyond the scope outlined by the court. Moreover, pulling consultants into the process may influence parents in ways that ultimately do not serve the best interests of the child who is the subject of the litigation.

In her recent book, "Childhood Narcissism," Mary Ann Little, Ph.D. opines that healthy parents find middle ground evidenced by taking certain steps including the following, to assure that they can:

- Model moderation in their own lives, balancing selfishness and generosity
- Embrace the critical values of human connection, kindness, respect and caretaking

- Teach empathy
- Live and follow the golden rule
- Encourage listening to hear, not listening to retort
- Model kindness and consideration
- Value others for internal, not external qualities
- Live in the moment and take steps to make daily progress
- Exercise respect and consideration for their fellow man
- Search for the good in others and life

While each individual may strive to be an exceptional parent, not every parent is exceptional. Nor do they need to be. Texas Family Code Section 107.112 was amended by the 88th Legislature in 2023 to provide that:

“(b-1) A child custody evaluator shall create an audiovisual recording of each interview the evaluator conducts with a child who is the subject of a suit seeking conservatorship of, possession of, or access to the child. A recording created under this subsection is confidential and may not be released after the completion of the suit in which the evaluator conducted the evaluation, except by court order for good cause shown.”

Why this change? To assure transparency in the process. While it is not mandatory to identify a consulting expert in a custody case in Texas, the 88th Legislature passed H.B. 891, amending Texas Family Code Section 104.008 in 2023, to provide as follows:

“(a-1) Subsection (a) does not prohibit a person from offering an expert opinion regarding the qualifications of, reliability of the methodology used by, or relevance of the information obtained by a person who has conducted a custody evaluation relating to the child under Subchapter D,

Chapter 107, as long as the person’s testimony does not violate Subsection (a).”

An individual may not offer an expert opinion as to possession of or access to a child—otherwise characterized by mental health professionals as parenting time—unless that individual conducted a child custody evaluation of the child made the subject of the case. Therapists may testify regarding their observations, diagnoses, prognoses and treatment recommendations, but if the therapist did not conduct a child custody evaluation, they may not give recommendations as to possession of or access to minor children.

So, what of the consulting expert? Parents do not suddenly have a baseline of capability when children expand the family. The following sets a good parent apart:

- The ability to nurture their child with authoritative parenting, while constantly adapting to their child’s changing needs.
- The ability to communicate with the child.
- To find a means of co-parenting, when needed, whether that parent continues to reside in the same home or elsewhere.

Self-regulation of emotions does not always come with maturity. Consultants can help educate. They can help litigants learn to better adapt, to communicate politely and succinctly, and to help give children stable homes and healthy choices. Should their artistry be disclosed in discovery? Should existing law be modified to mandate that if a consulting expert has been hired, that it is obligatory to reveal the existence of the consulting expert to the opposition? These are important issues for lawmakers to ponder.

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