

The American Psychological Association's Guidelines for Child Custody Evaluations in Family Law Proceedings: Implications for the Courts

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Whether they directly preside over such matters or not, all judges are aware that child custody cases are among the most contentious, nerve-wracking, and costly proceedings in our entire legal system. The most aggrieved and well-heeled of litigants are likely to up the ante by enlisting psychologists as expert witnesses—even when the Court has already found it necessary to do so on its own. American Psychological Association (APA) Guidelines exist to encourage best practices for these witnesses, and to help them to avoid commonly encountered pitfalls. This article addresses how the Court can best access, interpret, and reinforce the latest revision of these Guidelines for the benefit of parties, counsel, and judges alike.

In 1994, the APA published its first *Guidelines for Child Custody Evaluations in Divorce Proceedings* in the wake of concern over psychologists' growing influence in custody disputes and a lack of guidance in conducting child custody evaluations.¹ During the decade and a half following the arrival of these initial Guidelines, child custody evaluations became even more prevalent, inspiring a significant growth in social science research and reflecting a rapidly evolving legal landscape. The APA responded to these changes by updating its first Guidelines and renaming them the *Guidelines for Child Custody Evaluations in Family Law Proceedings*.² The pace of scientific and legal change has not abated, and the APA has passed a new set of *Guidelines* with the same name as the preceding version, but with a strikingly fresh perspective on such matters as child abuse, child neglect, intimate partner violence, problem substance use, and a host of problematic parenting practices.³

The Guidelines represent much more than the collective opinion of the Working Group that wrote them, comprised of six psychologists with varying levels of child custody experience and different areas of expertise. At the outset of this latest revision, more than one hundred public comments from laypersons and fellow professionals were received and reviewed. Once an initial

draft of the Guidelines was completed to the Working Group's satisfaction, that draft was reviewed by APA's Office of General Counsel and by other staff persons, and then sent out for another round of public comments. The Working Group made further revisions based on those comments, and a subsequent draft was submitted for additional legal review. The Guidelines were sent to the APA's Board of Directors, to the APA's Council Leadership Team, and ultimately to the APA's elected Council of Representatives for a final vote of approval in February 2022.

THE DIFFERENCE BETWEEN GUIDELINES AND STANDARDS

The APA views Guidelines and Standards as having notably different purposes and effects. Guidelines are aspirational statements of best practices and desirable conduct. Standards are mandatory and are typically accompanied by enforcement processes that may lead to disciplinary action and even expulsion. The only set of Standards utilized by the APA is its *Ethical Principles of Psychologists and Code of Conduct*.⁴ References to these Standards are embedded in virtually every Guideline, but the APA reminds everyone—laypersons and fellow professionals alike—that Guidelines describe what APA members strive to do, and not what they are required to do.

HOW ARE THESE GUIDELINES DIFFERENT?

The Guidelines provide new and updated recommendations for conducting comprehensive child custody evaluations. Users will be exposed to a wealth of recent research and professional literature with consistent attention to multiculturalism. The Guidelines offer greater specificity concerning assessment techniques, more procedural recommendations, and a streamlined progression of advice that tracks successive phases of the evaluation process in chronological order. The current Guidelines stop short of providing a potentially restrictive template for conducting child custody evaluations.

Footnotes

1. American Psychological Association, *Guidelines for Child Custody Evaluations in Divorce Proceedings*, 49 AM. PSYCHOLOGIST 677, 677-680 (1994).
2. American Psychological Association, *Guidelines for Child Custody Evaluations in Family Law Proceedings*, 65 AM. PSYCHOLOGIST 863, 863-867 (2010).

3. American Psychological Association, *Guidelines for Child Custody Evaluations in Family Law Proceedings*, AM. PSYCHOLOGIST (2022).
4. American Psychological Association, *Ethical Principles of Psychologists and Code of Conduct* (2017), <https://www.apa.org/ethics/code/index> [<https://perma.cc/3HXA-7GBZ>].

Psychologists are receiving more requests than ever before to conduct evaluations of ethnically/racially diverse families. This is not surprising when we consider, for example, that non-Hispanic White children under age 15 now comprise less than half of the U.S. child population in this age range.⁵ The Guidelines reflect the value of withdrawing from cases or seeking peer consultation when faced with potentially insurmountable barriers to valid and effective cross-cultural assessment. The current Guidelines deliver specific recommendations for ensuring culturally competent practice. Key to the effective use of such advice is recognizing that even when psychologists and examinees are of the same ethnicity, their respective cultural identities may actually be defined by additional frameworks (e.g., disability, resources, and experiences with racism).

The Guidelines offer expanded guidance concerning specialized areas of child custody evaluation, such as relocation, child maltreatment, and parent-child contact problems. Areas receiving heightened focus include psychological testing, child interviewing, and screening for problem substance use and family violence (such as intimate partner violence and child maltreatment). The Guidelines continue to emphasize that the welfare of the child is paramount.

Specific procedural recommendations are provided to encourage routine screenings for problem substance use and family violence, which may lead to separate and more specialized evaluation(s) of child maltreatment, domestic violence, and/or substance use if advisable. Detailed support is provided for determining how to assess children in the context of child custody evaluations. This may include some combination of observing children on their own, observing parent-child interaction, one-on-one child interviewing, and child psychological testing.

The Guidelines also include updated advice for psychological testing in general, whether administered to children, adults, or both. Data generated through psychological testing can help develop and test hypotheses concerning matters that inform the best interests of the child. Conducting such procedures is typically reserved by law to licensed psychologists, for whom recommendations are made concerning best practices for choosing, administering, interpreting, and describing the results of various measures. The Guidelines also help non-psychologists to appreciate the potential benefits of procuring psychological testing and recognizing the specialized knowledge required to utilize these instruments correctly and effectively in child custody evaluations.

FIVE SECTIONS OF THE GUIDELINES

The Guidelines are divided into five sections: Scope of the Child Custody Evaluation, Competence, Preparing for the Child Custody Evaluation, Conducting a Child Custody Evaluation, and Interpreting and Communicating the Results of the Child Custody Evaluation. These sections reflect the expected sequence in which a comprehensive child custody evaluation typically occurs.

SCOPE OF THE CHILD CUSTODY EVALUATION

The scope of each evaluation is determined with reference to the best interests of the child and the child's welfare. As a result, the needs of the child and the capacities of the parents each require investigation. It is necessary to ascertain the fit between the child's needs and each caregiver's ability to provide healthy parenting.

The Guidelines recommend practices for comprehensive child custody evaluations, but not for the "brief focused evaluations" that address narrowly tailored issues in custody concerns.⁶ Child protective evaluations are covered by separate APA Guidelines that are themselves currently under revision.⁷ The Guidelines are not intended for consultants or for non-evaluating investigators in these cases.

COMPETENCE

Psychologists who perform comprehensive child custody evaluations need to be skilled in and suitably informed concerning forensic psychology, family systems, child and adult development, child and adult pathology, problem substance use, family violence, and assessment procedures for both adults and children. They need to become appropriately grounded in the law of the various jurisdictions in which they practice. Innovations in psychological research and periodic changes in the law require psychologists not only to acquire a sufficient knowledge base, but also to maintain and continue to develop their skills in this rapidly evolving practice environment. Understanding of multi-cultural influences on parenting and child rearing becomes increasingly important in a diverse society.

In addition, there are areas of child custody evaluations that require specialized competencies. For example, the Guidelines include brief discussions of relocation of one parent, quality of attachment, parent-child contact problems, intimate partner violence contrasted with situational couple violence, child maltreatment, personality dysfunction, and a host of additional mental health-related concerns.

Currently, the most contentious aspect of child custody evaluation involves sharply differing opinions on the nature, prevalence, and effects of alienating behaviors. There is no question that these phenomena exist, but far less clear are what causes them and the specific ways in which they may affect a given family and its members. Why a child rejects and refuses contact with one parent may be based in separation anxiety, poor parenting, mental health problems, or trauma related to domestic violence. What we do know is that a child who chooses one parent to the exclusion of the other is likely to suffer long-term emotional damage which may disrupt the longer-term develop-

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5. William H. Frey, *Less than Half of US Children are White, Census Shows* (2019), <https://www.brookings.edu/research/less-than-half-of-us-children-under-15-are-white-census-shows/> [https://perma.cc/822J-VMJB].

6. Linda Cavallero & Susan E. Hanks, *Guidelines for Brief-Focused*

Assessment: AFCC Task Force on Brief Focused Assessments, 50 FAM. CT. REV., 558, 558-569. (2012).

7. American Psychological Association, *Guidelines for Psychological Evaluations in Child Protection Matters*, 68 AM. PSYCHOLOGIST 20, 20-31 (2013).

“The Court Order is the blueprint for the psychologist’s evaluation...”

ment.⁸ Effectively ferreting out the roots and causes of this particular problem on a case-by-case basis requires diligent monitoring of the research and professional literature in this evolving area of research and study.

Psychologists may pursue different subspecialties, which may make

one evaluator preferable over another for a given case. For example, if a family has a history of violence, a psychologist well-versed in domestic violence issues may be preferable over others who are equally qualified in every other way. Similarly, a psychologist with a strong background in child disabilities may be a preferred choice for a child with chronic physical disease, special learning issues, or other disabilities. Multicultural knowledge, training, and experience may suggest a specific psychologist for a given case. In some jurisdictions, of course, some of these choices may not be available, which underscores the critical importance of psychologists remaining as professionally well-rounded as feasible.

PREPARING FOR THE CHILD CUSTODY EVALUATION

The Court Order is the blueprint for the psychologist’s evaluation and subsequent report, specifying what the psychologist is expected to assess in the best interest of the child. The more thorough the Order is in stating what questions the Court wants answered, the more relevant and helpful the evaluation may be. For example, are stepparents, stepsiblings, grandparents to be included in the evaluation, and if so, how heavily should their information be weighed? If one parent is moving away, what factors does the Court want considered in the psychologist’s evaluation? Does the Court want specific recommendations on treatment, parenting time, and/or custody? The Guidelines caution psychologists about accepting employment based on Orders that do not contain explicit questions that the Court wishes to have addressed.

It is helpful when Orders empower the psychologist to obtain legal, medical, child protective, assessment, treatment, and other specified records. The Order may also specify a timeline for completion of the evaluation and designate who is to receive the report on its completion. Such Orders structure the work of the evaluator, reduce the time involved in administrative details, reduce participant resistance, and avoid the omission of essential information.

Properly conducted child custody evaluations are the product of careful preparation and flexible planning. Psychologists are best advised to gather records, select testing materials, update consent forms, and consider case-specific assessment goals well in advance of the first examination—knowing, of course, that last-minute developments may require a fresh approach to meeting assessment goals.

CONDUCTING THE CHILD CUSTODY EVALUATION

In conducting evaluations, psychologists seek to act as fair and impartial evaluators in whatever matters they undertake. Because parties are highly invested in evaluation results, participants may be overstressed, volatile, and unpredictable. The Guidelines recommend that psychologists avoid the presence—or any seeming indication—of cognitive, confirmatory, explicit, or implicit bias. The use of derogatory language in the course of examinations, reports, or courtroom testimony will run afoul of this principle. When psychologists encounter matters that involve contradictions to their own values, they should seek consultation and perhaps withdraw from the case entirely if they feel incapable of remaining impartial.

Continuing to take their cue from the *Ethical Principles of Psychologists and Code of Conduct*, which are currently under revision, the Guidelines urge psychologists to remain aware of any real or perceived conflicts of interest, as these may introduce real or apparent bias into the evaluator’s findings.⁹ For example, the child’s therapist is not an appropriate choice to use as an evaluator. It is too much to ask of treatment providers to deliver objective, arm’s-length assessments of forensic matters, just as it is unfair to saddle the parties with welcome opinions that, due to their source, may carry correspondingly less weight with the Court. This is not to suggest, of course, that the child’s therapist cannot be a valuable fact witness, educating the Court about the child’s emotional status and requirements for further treatment. Following the completion of their forensic responsibilities, child custody evaluators should not be expected to take on another role once the Court has rendered a decision. For example, an evaluator should not become a parenting coordinator, or a therapist to the family or its members, unless such a dual role is unavoidable.

The Guidelines place considerable emphasis on the methods used to evaluate children. Developmentally appropriate assessment protocols are critically important. Interviews may derive useful information from children as young as two or three years of age. Observations of infants and toddlers provide knowledge about a child’s temperament, reactivity, separation anxiety, and adaptability. These data may be very helpful in determining the goodness of fit reflected in personality and parenting style. Goodness of fit is generally accepted to denote how the parents’ strengths and weaknesses enhance or detract from the development of a particular child’s needs and gifts. Collateral interviews with daycare workers and other childcare personnel can help evaluators learn about levels of parental involvement and the child’s resiliency when placed in new environments.

Interviewing adolescents requires different skills from interviewing young children. In jurisdictions where an older child’s custodial preferences are heavily weighted, attempts to discover the adolescent’s perspective on this issue may be essential. Because of the fluctuating nature of parent-child relationships during adolescence, the content of interviews may be variable, calling for multiple interviews with the teenager rather than a single interview. It is especially important for the evaluator to talk to

8. Amy J. L. Baker & Naomi Ben-Ami, *To Turn a Child Against a Parent is to Turn a Child Against Himself: The Direct and Indirect Effects of Exposure to Parental Alienation Strategies on Self-Esteem and Well-Being*, 52 J. DIVORCE & REMARRIAGE 472, 472-489 (2011).

9. American Psychological Association, *supra* note 4.

people who know teenagers apart from their parents. Collateral interviews can be conducted with such sources as teachers, physicians, coaches, and youth group leaders. Psychological testing can be very helpful in identifying and defining issues particular to a given child, such as cognitive or other mental health concerns.

Of considerable importance in evaluating children is observing family interactions. These observations can be conducted in a variety of settings including the psychologist's office, the family home, or the playground. While there are few observational schemes that have been developed specifically for forensic use, psychologists should choose those with the most established reliability and validity. Much can be learned by observing the way the parent responds to the child, sets appropriate boundaries for the child's behaviors, demonstrates engagement with the child, handles sibling interactions, and disciplines the child in an appropriate fashion. Similarly, the child's behavior with each parent may be documented in terms of seeking attention from the parent, remaining near to the parent, displaying pleasure in family interaction, engaging with siblings in a constructive manner, and conveying comfort with the family setting.

Adult interviews assist in the assessment of parenting style, addressing both strengths and weaknesses. This enables psychologists to gauge parents' and the children's goodness of fit so children can develop in a physically and mentally healthy manner. The Guidelines discuss the variety of topics to be included in adult interviews, such as social history, educational history, vocational history, and previous as well as current relationships. Co-parenting skills can be a specific focus of these interviews, as the quality of co-parenting is a known factor in children's healthy adjustment. The Guidelines indicate that this facet of the evaluation focuses less on mental health status than on parenting capacity and performance.

Adult psychological testing is frequently a part of the child custody evaluation. The Guidelines address such issues as the need for standardized administration and standardized scoring. Since, in general, most psychological measures are not developed for child custody evaluations and do not have standards using comparable populations, it is important for psychologists that assessment measures are selected for their contribution to an understanding of an adult's ability to parent as opposed to an isolated clinical profile. The Guidelines note that it is customary for both parents to receive the same procedures unless there are unusual circumstances that ethically and clinically support using different tests. Psychologists take into account any adaptations that are made—such as translation into a different language—and how these changes might affect the reliability and validity of a given assessment procedure.

A notable change in the Guidelines is the strong recommendation that in each case psychologists conduct screening for substance use and domestic violence, regardless of an examinee's known history. Due to the increased stress that child custody evaluations may occasion, psychologists are advised to continue screening for both these concerns throughout the ongoing assessment process. The stress and weight of the evaluation may cause an increase in substance use, which may influence relationship conflict. Numerous substance use measures are available. The authors caution that not all self-report measures are reliable.

Collected data must be sufficient to address the Court's referral questions and to support the evaluator's conclusions. Taking

short cuts in the evaluation process may create a lack of confidence on the part of the Courts and the participants regarding findings about a child's needs, an adult's parenting capacity, and the goodness of fit between the two. Thorough examinations are necessary for sufficiently reliable conclusions. If parties are reluctant to participate, psychologists may consider seeking an additional court order to facilitate the completion of evaluations in a timely manner. When requested data are missing, this should be mentioned as a potential limitation to the overall validity of the report and conclusions and recommendations it contains.

All child custody evaluation records must be placed in an orderly storage system. This facilitates retrieval, enables prompt provision of follow-up services, and honors the requirements of regulatory bodies. Paper, video, and electronic data, including interview material, clinical records, educational records, and test data are considered components of these records. With the increased use of digitalization, it is all the more important for psychologists to remain cognizant of changing trends in record storage.

INTERPRETING AND COMMUNICATING THE RESULTS OF THE CHILD CUSTODY EVALUATION

The Guidelines recommend that data analysis and interpretation be performed in a rigorously scientific fashion. Psychologists recognize that personal situations and cultural contexts may influence the nature and relevance of the data obtained. Relevant stressors may include such events as bereavement, natural disasters, public health emergencies, and other threats to the family.

Cultural issues influence parenting techniques and patterns of interaction among family members. Evaluators must be aware and manage their own cultural and other biases when analyzing evaluation data. An up-to-date grasp of scientific research and technical assessment developments are especially important when analyzing complex referral questions that address such issues as relocation and parent-child contact problems.

The Guidelines make it clear that all recommendations should support the best interest and welfare of the child. Psychologists may not be comfortable in a particular case with making recommendations related to legal custody, physical custody, or parenting time, perhaps because of a lack of sufficient data. The Court may seek suggestions and advice concerning mental health treatment, parenting resources, and other custody-related concerns, and psychologists are free to offer answers if a sufficient basis has been established. The Guidelines caution against making recommendations that have not been requested.

When writing reports and testifying about child custody evaluations, psychologists are urged to present their findings in a manner that is concise, accurate, and impartial. Since reports are often entered into evidence, it is important that such data sources as interviews, test results, collateral reports, and reviewed records are suitably documented. The Guidelines suggest that reports be well-organized, even-handed, and transparently based upon reliable, thoroughly reviewed sources. Psychologists may see themselves as caught between complying with the Court's expressed

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desires for brevity and concision, while honoring the requirements of regulatory agencies that all relevant data be presented. One way of meeting both goals may be to describe the data sources, the rationale of the findings, and the recommendations separately, followed by a sufficiently complete description of the sources consulted and the data collected in a separate section. The best and most effective reports are professionally composed, honor privacy needs to the extent feasible, avoid unnecessary jargon, and convey respect for all parties.

CONCLUSION

With respect to child custody proceedings, there is perhaps no other form of civil or criminal litigation in which judges find themselves more dependent upon the assistance of expert witnesses. Some of these witnesses are exceptionally skilled in conveying their recommendations, cataloging the data that inform those recommendations, and explaining the ways in which psychological practice, research, and ethics converge to make those recommendations more than just a product of instinct, sympathy, and experience. Others of these witnesses wait with thinly veiled impatience for the Court to reveal just what part of “scientific expert” it fails to understand.

In either instance, the Court will want to be armed with sufficient information concerning just what it is that psychologists’ national guild organization recommends in terms of best practices for child custody evaluations. The Guidelines will soon be publicly accessible, and well worth the Court’s review. Encouraging psychological expert witnesses to heed the advice of their own profession—and enabling them to do so—will benefit all parties in the long run.



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EDITOR’S NOTE

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Rounding out the quartet of articles, Michael Roundy of Boston, Massachusetts provides guidance to judges in his article on judicial accommodation of *pro se* parties. A challenge to the efficiency and fairness of resolving domestic relations cases is the ever-increasing number of self-represented parties. Given that there is no right to appointed counsel in most domestic relations scenarios, how the Court in a domestic relations case handles the *pro se* party can impact the process and outcome of a case. Michael provides an excellent survey of case law, court rules, codes of conduct, and ethics opinions that readers will find very helpful in handling these often challenging situations. He provides a number of real-life examples for judges to consider when determining how far they can go in advising and guiding the *pro se* litigant.

I enjoyed working with these respected and knowledgeable professionals. All of us at *Court Review* hope that these articles will be helpful to the judicial officers who are charged with help-

ing families move through the court system.

— David M. Johnson



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