

Requirements for Child Custody Evaluators

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The Therapist
January/February 2006

Horror stories of incomplete or inappropriate child custody evaluations reached the desks of legislators in Sacramento throughout the 1980s and 1990s. In response, laws have been passed to improve the quality of evaluators and the evaluations they conduct. This has resulted in the development of uniform standards for child custody evaluators, including specialized training requirements, specifically tailored to performing such evaluations. If you are interested in becoming a child custody evaluator, you should become familiar with Family Code §§3110.5 and 1816 (www.leginfo.ca.gov), as well as Rules of Court §§5.220, 5.225, and 5.230 (www.courtinfo.ca.gov/rules). The requirements set forth in these sections are summarized as follows:

LICENSING REQUIREMENTS¹

On or after January 1, 2005, child custody evaluators must meet one of the following criteria:

- licensed as a physician, who either is a board certified psychiatrist or has completed a residency in psychiatry;
- licensed as a psychologist;
- licensed as a marriage and family therapist;
- licensed as a clinical social worker; or
- a court-connected evaluator who has been certified by the court as meeting all of the qualifications for court-connected evaluators as specified by the Judicial Council Family Code §3110.5, subdivision (b).

Exception: The above-mentioned criteria do not apply in any case where the court determines that there are no evaluators who meet the criteria listed above, who are willing and available, within a reasonable period of time, to perform child custody evaluations. In those cases, the parties to the custody dispute may stipulate to an individual who does not meet the criteria, subject to approval by the court.

Training and Experience Standards for Court-Appointed Child Custody Evaluators²

Child custody evaluators must complete a total of 40 hours of Initial Education and Training (defined in section II of this article). Such training must be acquired after January 1, 2000, from an Eligible Provider (defined in section I of this article); complete the Domestic Violence Training Requirements (defined in section III of this article); fulfill the Experience Requirements (defined in section IV of this article); and meet the Continuing Education, Training, and Experience Requirements (defined in section V of this article).

I. Eligible Providers³

“Eligible providers” include the Administrative Office of the Courts and may include educational institutions, professional associations, professional continuing education groups, public or private for-profit or not-for-profit groups, and courtconnected groups. Eligible providers must:

- A. Ensure that the training instructors or consultants delivering the training and education programs either meet the requirements of this rule or are experts in the subject matter;
- B. Monitor and evaluate the quality of courses, curricula, training, instructors, and consultants;
- C. Emphasize the importance of focusing child custody evaluations on the health, safety, welfare, and best interest of the child;
- D. Develop a procedure to verify that participants complete the education and training program;
- E. Distribute a certificate of completion to each person who has completed the training. The certificate must document the number of hours of training offered, the number of hours the person completed, the dates of the training, and the name of the training provider; and
- F. Meet the approval requirements, as follows: Effective July 1, 2003, the Administrative Office of the Courts must approve all eligible education and training programs. Education and training courses that were taken between January 1, 2000, and July 1, 2003, may be applied toward the requirements of this rule if they addressed the subjects listed in the education and training requirements below, and were either certified for continuing education credit by a professional provider group or offered as part of a related postgraduate degree or licensing program.

II. Initial Education and Training⁴

Child custody evaluators must complete 40 hours of the following education and training, after January 1, 2000, from an eligible provider. Serving as the instructor in a course in one or more of the subjects listed below, as an eligible provider, can be substituted for completion of the requisite number of hours, on an hour-per-hour basis, but each subject taught may be counted only once. The hours required by this rule must include, but are not limited to, all of the following subjects:

- A. The psychological and developmental needs of children, especially as those needs relate to decisions about child custody and visitation;
- B. Family dynamics, including, but not limited to, parent-child relationships, blended families, and extended family relationships;
- C. The effects of separation, divorce, domestic violence, child sexual abuse, child physical or emotional abuse or neglect, substance abuse, and interparental conflict on the psychological and developmental needs of children and adults;

D. The assessment of child sexual abuse issues required by Family Code sections 3110.5(b)(2)(A) and 3118; local procedures for handling child sexual abuse cases; and the effect that court procedures may have on the evaluation process when there are allegations of child sexual abuse;

E. The significance of culture and religion in the lives of the parties;

F. Safety issues that may arise during the evaluation process and their potential effects on all participants in the evaluation;

G. When and how to interview or assess adults, infants, and children; gather information from collateral sources; collect and assess relevant data; and recognize the limits of data sources' reliability and validity;

H. The importance of addressing issues such as general mental health, medication use, and learning or physical disabilities;

I. The importance of staying current with relevant literature and research;

J. How to apply comparable interview, assessment, and testing procedures that meet generally accepted clinical, forensic, scientific, diagnostic, or medical standards to all parties;

K. When to consult with or involve additional experts or other appropriate persons;

L. How to inform each adult party of the purpose, nature, and method of the evaluation;

M. How to assess parenting capacity and construct effective parenting plans;

N. Ethical requirements associated with the child custody evaluator's professional license and rule 5.220;

O. The legal context within which child custody and visitation issues are decided and additional legal and ethical standards to consider when serving as a child custody evaluator;

P. The importance of understanding relevant distinctions among the roles of evaluator, mediator, and therapist;

Q. How to write reports and recommendations, where appropriate;

R. Mandatory reporting requirements and limitations on confidentiality;

S. How to prepare for and give court testimony;

T. How to maintain professional neutrality and objectivity when conducting child custody evaluations; and

U. The importance of assessing the health, safety, welfare, and best interest of the child or children involved in the proceedings.

III. Domestic Violence Training Requirements

Basic Domestic Violence Training requirements⁵ Child custody evaluators must participate in programs of continuing instruction in domestic violence, including child abuse, as may be arranged and provided to them. It is the responsibility of the Judicial Council to develop standards for the training programs. The training may utilize domestic violence training programs conducted by nonprofit community organizations with an expertise in domestic violence issues.

The areas of instruction shall include, but are not limited to, the following:

- The effects of domestic violence on children;
- The nature and extent of domestic violence;
- The social and family dynamics of domestic violence;
- Techniques for identifying and assisting families affected by domestic violence;
- Interviewing, documentation of, and appropriate recommendations for families affected by domestic violence;
- The legal rights of, and remedies available to, victims; and
- Availability of community and legal domestic violence resources.

Advanced Domestic Violence Training Requirements⁶

In addition to the basic training in domestic violence, child custody evaluators must also complete the following advanced training. *Sixteen hours* of advanced training must be completed within a 12-month period. The training must include the following:

A. *Twelve hours* of instruction, as approved by the Administrative Office of the Courts, in:

(1) The appropriate structuring of the child custody evaluation process, including, but not limited to, maximizing safety for clients, evaluators, and court personnel; maintaining objectivity; providing and gathering balanced information from both parties and controlling for bias; providing for separate sessions at separate times (as specified in Family Code §3113); and considering the impact of the evaluation report and recommendations with particular attention to the dynamics of domestic violence;

(2) The relevant sections of local, state, and federal law or rules;

(3) The range, availability, and applicability of domestic violence resources available to victims, including, but not limited to, battered women's shelters, specialized counseling, drug and alcohol counseling, legal advocacy, job training, parenting classes, battered immigrant victims, and welfare exceptions for domestic violence victims;

(4) The range, availability, and applicability of domestic violence intervention available to perpetrators, including, but not limited to, arrest, incarceration, probation, applicable Penal Code sections (including Penal Code §1203.097, which describes certified treatment programs for batterers), drug and alcohol counseling, legal advocacy, job training, and parenting classes; and

(5) The unique issues in family and psychological assessment in domestic violence cases, including the following concepts:

(a) The effects of exposure to domestic violence and psychological trauma on children; the relationship between child physical abuse, child sexual abuse, and domestic violence; the differential family dynamics related to parent-child attachments in families with domestic violence; intergenerational transmission of familial violence; and manifestations of post-traumatic stress disorders in children;

(b) The nature and extent of domestic violence, and the relationship of gender, class, race, culture, and sexual orientation to domestic violence;

(c) Current legal, psychosocial, public policy, and mental health research related to the dynamics of family violence, the impact of victimization, the psychology of perpetration, and the dynamics of power and control in battering relationships;

(d) The assessment of family history based on the type, severity, and frequency of violence;

(e) The impact on parenting abilities of being a victim or perpetrator of domestic violence;

(f) The uses and limitations of psychological testing and psychiatric diagnosis in assessing parenting abilities in domestic violence cases;

(g) The influence of alcohol and drug use and abuse on the incidence of domestic violence;

(h) Understanding the dynamics of high-conflict relationships and abuser/victim relationships;

(i) The importance of, and procedures for, obtaining collateral information from probation departments, children's protective services, police incident reports, restraining order pleadings, medical records, schools, and other relevant sources;

(j) Accepted methods for structuring safe and enforceable child custody and parenting plans that assure the health, safety, welfare, and best interest of the child, and safeguards for the parties; and

(k) The importance of discouraging participants in child custody matters from blaming victims of domestic violence for the violence and from minimizing allegations of domestic violence, child abuse, or abuse against any family member.

B. *Four hours* of community resource networking intended to acquaint the evaluator with domestic violence resources in the geographical communities where the families being evaluated may reside.

Domestic Violence Training Update

Four hours of update training are required each year after the year in which the advanced training is completed. These four hours must consist of instruction focused on, but not limited to, an update of changes or modifications in local court practices, case law, and state and federal legislation related to domestic violence, and an update of current social science research and theory, particularly in regard to the impact on children of exposure to domestic violence.

Eligible Domestic Violence Training Providers⁷

The Domestic Violence Training required for child custody evaluators must be obtained from eligible providers. “Eligible providers” includes the Administrative Office of the Courts and may include educational institutions, professional associations, professional continuing education groups, public or private for-profit or not-for-profit groups, and court-connected groups. The Administrative Office of the Courts must approve all education and training programs. Eligible providers must meet the following criteria:

- A. Ensure that the training instructors or consultants delivering the education and training programs either meet the requirements of this rule or are experts in the subject matter;
- B. Monitor and evaluate the quality of courses, curricula, training, instructors, and consultants;
- C. Emphasize the importance of focusing child custody evaluations on the health, safety, welfare, and best interest of the child;
- D. Develop a procedure to verify that participants complete the education and training program; and
- E. Distribute a certificate of completion to each person who has completed the training. The certificate must document the number of hours of training offered, the number of hours the person completed, the dates of the training, and the name of the training provider.

Local Court Rules Regarding Domestic Violence Training Requirements⁸

Each local court may adopt rules regarding the procedures by which child custody evaluators who have completed the training in domestic violence as mandated by this rule will notify the local court. In the absence of such a local rule of court, child custody evaluators must attach copies of their certificates of completion of the initial 12 hours of advanced instruction and of the most recent annual 4-hour update training in domestic violence to each child custody evaluation report.

Some Previous Domestic Violence Training Accepted⁹

Persons who have attended training programs offered after January 1, 1996, that meet the initial 12 hours of the advanced training requirements will not be required to repeat said requirements. However, they are required to meet the additional four hours of community resource networking intended to acquaint the evaluator with domestic violence resources in the geographical communities where the families being evaluated may reside.

IV. Experience Requirements¹⁰

Child custody evaluators must also satisfy initial experience requirements by completing or supervising three court-appointed partial or full child custody evaluations including a written or an oral report between January 1, 2000, and July 1, 2003; or conducting six child custody evaluations in consultation with another professional who meets the education, experience, and training requirements of this rule.

V. Continuing Education Training, and Experience Requirements¹¹

After completing the initial 40 hours of training, persons appointed as child custody evaluators must annually complete 8 hours of update training covering subjects described in Initial Education and Training Requirements. This requirement is in addition to the annual 4 hours of domestic violence update training described in the Domestic Violence Training Requirements.

Requirements for Court-Ordered Child Custody Evaluations

This segment of the article will address the rules pertaining to the child custody evaluations themselves. The Responsibilities of the Court will be outlined in section I; the Responsibilities of the Evaluator will be outlined in section II; the Scope of the Evaluation will be outlined in section III; Rules Regarding Jurisdictional Cooperation will be outlined in section IV; and Ethics for Child Custody Evaluators will be outlined in section V.

Responsibilities of the Court and the Evaluator¹²

I. Responsibilities of the Court

The Court must:

A. Adopt local rule within one year of this rule's effective date to:

- (1) Implement this rule of court;
- (2) Determine whether a peremptory challenge to a court-appointed evaluator is allowed and when the challenge must be exercised. The rules must specify whether a family court services staff member, other county employee, a mental health professional, or all of them may be challenged;
- (3) Allow evaluators to petition the court to withdraw from a case;
- (4) Provide for acceptance of and response to complaints about an evaluator's performance; and
- (5) Address ex parte communications.

B. Give the evaluator, before the evaluation begins, a copy of the court order that specifies:

- (1) The appointment of the evaluator under Evidence Code §730, Family Code §3110, or Code of Civil Procedure §2032; and
- (2) The purpose and scope of the evaluation.

C. Require child custody evaluators to adhere to the requirements of this rule.

D. Determine and allocate between the parties any fees or costs of the evaluation.

II. Responsibilities of the Evaluator

The evaluator must:

A. Consider the health, safety, welfare, and best interest of the child within the scope and purpose of the evaluation as defined by the court order;

B. Strive to minimize the potential for psychological trauma to children during the evaluation process; and

C. Include in the initial meeting with each child an age-appropriate explanation of the evaluation process, including limitations on the confidentiality of the process.

III. Scope of the Evaluation¹³

All evaluations must include:

A. A written explanation of the process that clearly describes the:

(1) Purpose of the evaluation;

(2) Procedures used and the time required to gather and assess information and, if psychological tests will be used, the role of the results in confirming or questioning other information or previous conclusions;

(3) Scope and distribution of the evaluation report;

(4) Limitations on the confidentiality of the process; and

(5) Cost and payment responsibility for the evaluation.

B. Data collection and analysis that are consistent with the requirements of Family Code section 3118; that allow the evaluator to observe and consider each party in comparable ways and to substantiate (from multiple sources when possible) interpretations and conclusions regarding each child's developmental needs; the quality of attachment to each parent and that parent's social environment; and reactions to the separation, divorce, or parental conflict. This process may include but is not limited to:

(1) Reviewing pertinent documents related to custody, including local police records;

(2) Observing parent-child interaction (unless contraindicated to protect the best interest of the child);

(3) Interviewing parents conjointly, individually, or both conjointly and individually (unless contraindicated in cases involving domestic violence), to assess:

(a) Capacity for setting age-appropriate limits and for understanding and responding to the child's needs;

(b) History of involvement in caring for the child;

(c) Methods for working toward resolution of the child custody conflict;

(d) History of child abuse, domestic violence, substance abuse, and psychiatric illness; and

(e) Psychological and social functioning;

(4) Conducting age-appropriate interviews and observation with the children, both parents, stepparents, step- and half-siblings conjointly, separately, or both conjointly and separately, unless contraindicated to protect the best interest of the child;

(5) Collecting relevant corroborating information or documents as permitted by law; and

(6) Consulting with other experts to develop information that is beyond the evaluator's scope of practice or area of expertise.

C. A written or oral presentation of findings that is consistent with Family Code sections 3111 and 3118, or Evidence

Code section 730. In any presentation of findings, the evaluator must:

(1) Summarize the data-gathering procedures, information sources, and time spent, and present all relevant information, including information that does not support the conclusions reached;

(2) Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews;

(3) Only make a custody or visitation recommendation for a party who has been evaluated. This requirement does not preclude the evaluator from making an interim recommendation that is in the best interest of the child; and

(4) Provide clear, detailed recommendations that are consistent with the health, safety, welfare, and best interest of the child if making any recommendations to the court regarding a parenting plan.

IV. Rules Regarding Jurisdictional Cooperation¹⁴

When one party resides in another jurisdiction, the custody evaluator may rely on another qualified neutral professional for assistance in gathering information. In order to ensure a thorough and comparably reliable out-of-jurisdiction evaluation, the evaluator must:

A. Make a written request that includes, as appropriate:

- (1) A copy of all relevant court orders;
- (2) An outline of issues to be explored;
- (3) A list of the individuals who must or may be contacted;
- (4) A description of the necessary structure and setting for interviews;
- (5) A statement as to whether a home visit is required;
- (6) A request for relevant documents such as police records, school reports, or other document review; and
- (7) A request that a written report be returned only to the evaluator and that no copies of the report be distributed to parties or attorneys;

B. Provide instructions that limit the out-of-jurisdiction report to factual matters and behavioral observations rather than recommendations regarding the overall custody plan; and

C. Attach and discuss the report provided by the professional in another jurisdiction in the evaluator's final report

V. Ethics for Child Custody Evaluators¹⁵

In performing an evaluation, the child custody evaluator must:

A. Maintain objectivity, provide and gather balanced information for both parties, and control for bias;

B. Protect the confidentiality of the parties and children in collateral contacts and not release information about the case to any individual except as authorized by the court or statute;

C. Not offer any recommendations about a party unless that party has been evaluated directly or in consultation with another qualified neutral professional;

D. Consider the health, safety, welfare, and best interest of the child in all phases of the process, including interviews with parents, extended family members, counsel for the child, and other

interested parties or collateral contacts; E. Strive to maintain the confidential relationship between the child who is the subject of an evaluation and his or her treating psychotherapist;

F. Operate within the limits of the evaluator's training and experience and disclose any limitations or bias that would affect the evaluator's ability to conduct the evaluation;

G. Not pressure children to state a custodial preference;

H. Inform the parties of the evaluator's reporting requirements, including, but not limited to, suspected child abuse and neglect and threats to harm one's self or another person; I. Not disclose any recommendations to the parties, their attorneys, or the attorney for the child before having gathered the information necessary to support the conclusion;

J. Disclose to the court, parties, attorney for a party, and attorney for the child conflicts of interest or dual relationships; and not accept any appointment except by court order or the parties' stipulation; and

K. Be sensitive to the socioeconomic, gender, race, ethnicity, cultural values, religious, family structures, and developmental characteristics of the parties.

Bonnie Benitez, J.D., is CAMFT's General Counsel. Bonnie is available to answer member calls regarding business, legal, and ethical issues. Check with your local chapter to see when she will be presenting

Best Practices: Legal and Ethical Issues *in your area. Bonnie will also be presenting Legal and Ethical Issues: Case Studies 2006 at the Annual Conference in Palm Springs, on Sunday, May 7, 2006. Log on to www.camft.org for more details.*

REFERENCES

¹Family Code §3110.5

²California Rules of Court §5.225 subdivision (d)

³California Rules of Court §5.225 subdivision (m) and (n)

⁴California Rules of Court §5.225 subdivision (e)

⁵Family Code §1816

⁶California Rules of Court §5.230 subdivision (d)

⁷California Rules of Court §5.230 subdivision (e)

⁸California Rules of Court §5.230 subdivision (f)

⁹California Rules of Court §5.230 subdivision (g)

¹⁰California Rules of Court §5.225 subdivision (f)

¹¹California Rules of Court §5.225 subdivision (h)

¹²California Rules of Court §5.220 subdivision (d)

¹³California Rules of Court §5.220 subdivision (e)

¹⁴California Rules of Court §5.220 subdivision (f)

¹⁵California Rules of Court §5.220 subdivision (h)