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Guidelines for Child Custody Evaluations in Family Law Proceedings

Analysis (Draft) of Proposed APA Child Custody Evaluation

Preparing: Guidelines 7 8 9 10

(authors unknown)

Analysis & Commentary by C.A. Childress, Psy.D. (2/1/21)

DRAFT

Childress Comment:

This proposal for Guidelines for Child Custody Evaluations fails on multiple levels as a professional work-product.

It is devolving now into personal opinions of the six “Working Group” members without support from the “established scientific and professional knowledge of the discipline” and their Guidelines are not based on “information and techniques sufficient to substantiate their findings.” The “Working Group” for these proposed Guidelines failed to show proper care

Google Negligence: failure to take proper care in doing something.

321 Guideline 7. Psychologists strive to obtain informed consent when indicated.

322 **Rationale.** Providing informed consent in written form as “an explanation of the nature and purpose of
323 the assessment, fees, involvement of third parties, and limits of confidentiality” and allowing
324 opportunity to “ask questions and receive answers” (APA Ethics Code, Standard 9.03) enhances valid
325 participation and supports shared legal and ethical goals of fundamental fairness.

Dr. Childress Comment:

This is a self-evident statement.

326 **Application.** Psychologists endeavor to have all capable adults participating in the evaluation sign an
327 informed consent form (APA Ethics Code, Standard 3.10). If the adult is not capable of giving consent,

Dr. Childress Comment:

The informed consent – process – is more than simply obtaining a signature on a piece of paper, it is actually informing the person of the factors and potential consequences of their participation and then obtaining their voluntary agreement based on their informed understanding.

328 then consent is sought from an appropriate legal representative. A full explanation of procedures,
329 specific referral questions, policies, timelines, interpretive sessions, fees, release of records, and
330 consideration of publicly available social media activity allow persons to raise questions before the
331 evaluation is initiated. When a custody evaluation is court ordered, informed consent may not be
332 necessary (APA Ethics Code, Standard 3.01; APA 2013b), although the same information, such as

cc should (called "informed assent" for those with diminished capacity)

333 purpose, fees, and involvement of the court, ~~may~~ be offered to the examinee.

334 Psychologists ~~attempt to~~^{cc} document all efforts to obtain informed consent, and if informed consent is

335 not obtained (e.g., the parent does not understand the purpose of the evaluation, or is unwilling to

336 consent to the parameters of the custody evaluation), the psychologist ~~strives to~~^{cc} notify the referral

337 source. The evaluator ~~strives to~~^{cc} ensure that all parties understand with whom information may be

338 shared and any other limits of confidentiality. There is generally no privileged information or

339 communication in a child custody evaluation.

Dr. Childress Comment:

Despite there being no assumption of privilege or confidentiality in the communications made during a child custody evaluation, psychologists nevertheless recognize and respect all individuals' right to privacy and do not disclose private information except as is necessary to the purposes of the assessment and referral question. While released from confidentiality under some circumstances (e.g., agreement of the patient, danger or risk of harm, or by court order), psychologists still recognize the fundamental human right of privacy, and psychologists disclose only as much information as is necessary to the purpose of the disclosure.

340 In the process of obtaining informed consent, psychologists ~~endeavor to~~^{cc} advise the parties that written

341 or oral communications germane to the child custody evaluation will be sent to the court and counsel

342 for each party, unless such communications address administrative or procedural matters that call for

343 more limited distribution. For example, court appointed psychologists may find it prudent to raise

344 ~~payment~~ issues or potential withdrawal from an evaluation due to personal conflicts directly with the

345 court; while, in some instances, privately retained psychologists may appropriately raise similar or other

346 concerns directly with the attorneys who hire them. ~~It is worth bearing in mind that~~^{cc} communications

Dr. Childress Comment:

Forensic psychologists seem highly concerned with "payment" but as yet they have reported on no outcome data indicating any success at solving anything.

Where are the follow-up questionnaires at 6-months and 12-months regarding the outcome produced by the custody evaluation? There are none. They solve nothing. Yet they are prominently concerned with their "payment."

347 intended to be **exclusive** may subsequently be ordered by the court to be disclosed to all parties or are
348 sometimes shared by attorneys on their own initiative.

Dr. Childress Comment:

“communications intended to be exclusive”

There should be no “exclusive” communication in a family evaluation – there should be NO secrets. That the “Working Group” sees a potential need for “exclusive” communication between the evaluator and some parties is immensely inappropriate.

349 Explanations of how findings of the evaluation will be communicated, and to whom, **may** be included in

Dr. Childress Comment:

This is part of informed consent and informed assessment, people have the right to know what is happening to them, and what the potential consequences might be. Even if court ordered, they have the right to information about what is happening.

350 the informed consent. For example, the informed consent ^{cc or may not} **may** describe if and how the psychologist will
351 explain assessment findings to examinees. Psychologists also ^{cc} **endeavor to** make clear how
352 communication will take place regarding the status of the evaluation (APA, 2013b). ^{cc they are simply citing other Guidelines}
353 Clarification about who owns the report may be useful to the litigants in the informed consent. For
354 example, court-ordered evaluations are owned by the court, which, in addition to other sources of law,
355 may control further distribution. Non-court ordered evaluations may be owned by the examinees.
356 Psychologists ^{cc} **endeavor to** include in the informed consent an explanation of mandatory obligations,
357 such as those triggered by child abuse, elder abuse, or other legally defined circumstances.
358 Psychologists ^{cc} **strive to** give children an age-appropriate explanation of the purpose of the evaluation,
359 consistent with each child’s cognitive abilities and verbal skills, in order that assent may be obtained
360 (Calloway & Lee, 2017). Consent for children must be provided by the legal guardian(s) unless the court
361 has ordered it. Psychologists also strive to provide collateral sources, whether the evaluation is court-
362 ordered or not, with “information that might reasonably be expected to inform their decisions about

cc they are simply citing other Guidelines

363 participating” (APA, 2013b; p. 13). Such information may include who has retained the psychologist, the
364 nature, purpose, and intended use of the information they provide, and the limits of confidentiality and
365 privacy regarding the information they offer (APA, 2013b).

cc they are simply citing other Guidelines

366 **Guideline 8. Psychologists ~~endeavor to~~^{cc} identify, request, and review relevant records.**

367 **Rationale.** Background and historical information obtained from relevant records improves

368 psychologists’ ability to obtain a fuller sense of the family’s functioning and dynamics. Records also

Dr. Childress Comment:

Citation please. This is a false statement. Relevant history may improve diagnosis and recommendations, irrelevant history does not. There is no research supporting the statement made by the “Working Group.”

Review of records can be time-consuming and therefore expensive for the patient and financially lucrative for the evaluator. This is a vulnerable population of clients with compromised autonomy because of court involvement, and they are in deep emotional need and emotional distress. It would be easy for the evaluating psychologist to exploit the family and situation for their own financial gain by extending the “record review,” “home observations,” and “collateral contacts” that result in more billable time for the psychologist but are of no appreciable value to the assessment or outcome.

369 assist in understanding the chronology of the challenges the family has encountered over the course of
370 their development. Information from children’s medical, educational, and other relevant records is
371 useful for understanding children’s challenges, resilience, family relationships, and current and future
372 needs.

Dr. Childress Comment:

I have prominent professional concerns for potential exploitation of these vulnerable clients by forensic custody evaluators who are conducting long and unfocused assessments with substantial collection of irrelevant history because their evaluation is entirely unfocused in its intent.

373 **Application.** Psychologists ~~strive to~~^{cc} identify in a timely manner which records should be reviewed. To
374 facilitate collection of particularly sensitive information, such as child protective service documentation,
375 psychologists may request that permission to obtain particular records is incorporated into the court
376 order for the evaluation. Psychologists ~~endeavor to~~^{cc} consider the content of obtained records when
377 organizing interview questions and testing protocols, which can inform efforts to gather further

378 information regarding such issues as school performance as well as document review, parent and child
379 interviews, parent-child interactions, psychological testing, collateral (e.g., teachers, physicians, and
380 therapists) interviews, substance abuse and family violence screenings, and legal histories (Geffner et
381 al., 2009). When psychologists identify a potential delay in the receipt of some records, they may find it

Dr. Childress Comment:

They have no idea what they are doing so they have no idea what they are looking for. They collect information on a shot-gun fishing expedition because it is all billable time and very financially lucrative for them, and there is no incentive whatsoever to hold down their costs to the parents, while there ARE personal financial incentives to increase the costs through extensive and unnecessary record review to answer the referral question – which parent is causing the child’s attachment pathology, and what are the treatment implications? (i.e., how do we fix it?)

382 prudent to begin conducting initial examinations in order to ensure that the overall evaluation is
383 completed in a timely fashion.

Dr. Childress Comment:

The standard turnaround time for a clinical diagnostic assessment is two-six weeks from first session to report. Longer than two to six weeks, and the information becomes out-of-date for decision-making purposes.

384 **Guideline 9. Psychologists ^{cc}endeavor to structure child custody evaluations in accordance with**
385 **psychological science and evolving practice standards.**

Dr. Childress Comment:

An entire Guideline to restate Standard 2.04

2.04 Bases for Scientific and Professional Judgments

Psychologists' work is based upon established scientific and professional knowledge of the discipline.

386 **Rationale.** Each case presents its own set of demands. Codes and guidelines are continually updated,
387 and psychological tests are periodically revised. Interview procedures, informed by analyses reflected in
388 the professional literature, improve with the psychologist’s increased experience and with the

389 availability of ongoing peer supervision. Psychological science contributes to the development and
390 refinement of each of these components and enriches the plan that would guide the implementation of
391 the evaluation and outcomes. Child custody opinions that reflect the psychologist's familiarity with such
392 considerations and that best fit the case are the most valid, accurate, and appropriately persuasive. citation please

Dr. Childress Comment:

The "established scientific and professional knowledge of the discipline" is:

- Attachment (Bowlby and others)
- Family systems therapy (Minuchin and others)
- Personality disorders (Beck and others)
- Complex trauma (van der Kolk and others)
- Child development (Tronick and others)
- DSM-5 & ICD-10 diagnostic systems

The proposed Guidelines for Child Custody Evaluations:

- Bowlby citations – 0
- Minuchin citations – 0
- Bowen citations – 0
- Beck citations – 0
- Millon citations – 0
- Kernberg citations – 0
- Linehan citations – 0
- Van der Kolk citations – 0
- Cicchetti citations – 0
- Tronick citations – 0
- Kohut citations – 0
- DSM-5 & ICD-10 citations – 0
- 54% if the citations are to forensic literature, of which 75% of the citations are to opinion pieces in forensic psychology, and two of the research studies were surveys of the opinions of forensic psychologists.
- Applied Behavioral Analysis – 0 citations
- Functional Behavioral Analysis – 0 citations
- The "transference" (Freud and psychoanalysis) – 0 citations

- “Schemas” (Beck and cognitive psychology) – 0 citations
- “Internal working models” (Bowlby and attachment) – 0 citations

“Psychological science contributes to the development and refinement of each of these components and enriches the plan that would guide the implementation of the evaluation and outcomes”

393 **Application.** Psychologists ^{cc}endeavor to structure child custody evaluations in **case-specific** ways, and to
 394 update **templates** regularly. In accordance with evolving practice standards and psychological science,
 395 psychologists ^{cc}strive to include such components as conducting parent interviews, observing parent-child
 396 and caregiver-child interactions, reviewing documents, interviewing and/or observing each child,
 397 administering psychological testing to parents and children, interviewing cohabitating partners,
 398 interviewing and obtaining materials from collateral sources (e.g., teachers, physicians, and therapists),
 399 and screening for substance abuse and family violence (including intimate partner violence and child
 400 maltreatment) (Geffner et al., 2009). The planful inclusion of specific steps and tasks provides the
 401 structure that guides an evaluation to its final product.

Dr. Childress Comment:

Rudimentary and basic information that is typically provided in the Introduction chapter to a beginning textbook on assessment.

402 Psychologists ^{cc}endeavor to **as opposed to uniformed decisions?** make informed decisions that enable the most appropriate and timely
 403 execution of the evaluation. Relevant issues include time management, compensation and **financial**
 404 arrangements, external consultations that may be needed, order of assessment instruments,
 405 instruments and methods to utilize, collateral information to review, and necessary adaptations to the
 406 particulars of the family. Psychologists ^{cc}strive to ensure that decisions about these issues are based on
 407 the referral question and consistent with psychological science and evolving practice standards.
 408 Psychologists attempt to anticipate challenges, reduce risks and obstacles, and build reasonable
 409 flexibility into the structure of the evaluation. Evaluation methodologies may change based on the court
 410 order and the issues of the case. Psychologists ^{cc}strive to understand how psychological science and

411 practice standards inform any procedural changes that may occur, as well as the limitations that those
412 changes may place on the conclusions of the evaluation.

Dr. Childress Comment:

These are 100% fluff statements that have no meaning or practical value (“Psychologists strive for world peace and the betterment of all humanity, and when things change, psychologists take this change into consideration.”)

That was an entirely pointless Guideline.

413 **Guideline 10.** Psychologists ^{cc} **strive to** construct an evidence-based, multimethod, and multitrait

414 **assessment format that reflects valid and reliable methods of data gathering.**

Dr. Childress Comment:

Multi-method/multi-trait assessment procedures are to – triangulate – on an issue from several different approaches – look at several issues, not just one (multi-trait), and look at each using several different approaches – types of data (e.g., observational, clinical interview, test results – all pointing to the same issue or factor – triangulating on the cause from multiple perspectives.

Forensic psychology does not use multi-method/multi-trait in this way. They use it as an excuse to do a lot of irrelevant things that provide no useful information (but pad the expenses and fees charged for the evaluation). It is a shot-gun, fishing expedition because they don’t know relevant from irrelevant information (because they are not applying any of the “established scientific and professional knowledge of the discipline” to their assessment).

Forensic psychology and child custody evaluations need outside and independent review from:

- Ethics
- Cultural Psychology
- Psychometrics of Assessment
- Clinical Psychology
- Child Development
- Attachment
- Family Systems Therapy

Not forensic psychology, they should not be allowed to self-review their practices.

415 **Rationale.** Evidence-based multimethod assessment practices include the selection of assessment
416 instruments with sound psychometric properties that draw upon complementary data sources (Mihura,
417 2012). Multitrait and ^{cc} **multitrait** assessments help balance the limitations on reliability and validity of

Dr. Childress Comment:

“sound psychometric properties”

There is NO inter-rater reliability for child custody evaluations – zero. If an assessment procedure is not reliable in CANNOT be a valid assessment of anything. That is basic and axiomatic in the psychometrics of assessment – if an assessment procedure is not reliable, it cannot possibly be valid.

There are four methods of establishing the reliability of an assessment procedure – test-retest, alternate forms, split-half (internal consistency), and inter-rater reliability. In the case of an interview assessment procedure, such as a child custody evaluation, the applicable reliability approach is inter-rater reliability, i.e., do two evaluators reach the same conclusions and recommendations based on the same data?

There is zero inter-rater reliability for child custody evaluations. Two different evaluators can reach entirely different conclusions and recommendations based on the same data. Child custody evaluations are not a valid assessment of anything, except the opinions of the one random person who does the evaluation.

The “multitrait/multimethod” approach they advocate in this context is simply a means to appear “scientific” and pad their billable time and financial income by exploiting the vulnerability of the parents.

418 single measures by deliberately selecting data sources with contrasting strengths and weaknesses.

Dr. Childress Comment:

They are reciting by rote certain phrases without actually understanding what they mean. They are just using the multi-method/multi-trait argument to appear scientific (when they’re not) and to pad the time involvement and financial income from each custody evaluation (do lots of things that take a lot of time, but don’t add anything to the outcome for the child, the family, or the court).

419 Similarly, when integrating data from different modalities and convergences and divergences are

420 assessed, multitrait assessment allows relevant aspects of an examinee’s functioning to be analyzed

421 directly (Hopwood & Bornstein, 2014). Unreliable, invalid, and scientifically unsupported or otherwise

422 poorly chosen methods may be harmful to the parties as well as to the process in which these persons

423 are engaged.

Dr. Childress Comment:

If custody evaluators cannot even apply a diagram from Minuchin of exactly the pathology (cross-generational coalition and emotional cutoff), then “integrating data from different modalities and convergences and divergences” to allow “relevant aspects of an examinee’s functioning to be analyzed directly” is far beyond their capability.

In the absence of child abuse, parents have the right to parent according to their cultural values, their personal values, and their religious values, and professional psychology does NOT intrude into that

foundational human right of parents.

424 **Application.** Psychologists ~~strive to~~^{cc} create an assessment battery that employs scientifically valid and
425 reliable methods that are relevant to the issues being assessed. Psychologists are mindful that courts
426 often confuse these two notions by mentioning only “reliability” when addressing the sufficiency of
427 forensic mental health assessment techniques. It may be helpful for psychologists to find a way to
428 convey that “validity” refers to whether a test or other measure assesses what it is meant to measure,
429 and that “reliability” refers to the consistency of the obtained results.

Dr. Childress Comment:

Apparently, it would also be helpful to “find a way to convey” to the “Working Group” that “reliability” of child custody evaluations “refers to the consistency of obtained results” from one evaluator to the next, i.e., the “inter-rater reliability.”

If an assessment procedure, like a child custody evaluation, has no inter-rater reliability, then it CANNOT possibly be a valid assessment of anything, because it has no “consistency in the obtained results” from one custody evaluator to the next.

I suspect the “Working Group” may be interested to learn this principle of psychometrics and assessment, that child custody evaluations are not reliable, and so they are also not valid (“validity” refers to whether a test or other measure, like a child custody evaluation, assesses what it is meant to measure).

430 Multitrait assessment practices yield stronger, more clinically useful data (Hopwood & Bornstein, 2014;
431 AERA et al., 2014). Psychologists ~~attempt to~~^{cc} develop an assessment battery consisting of psychological

Dr. Childress Comment:

No. Multi-trait assessment only yields an assessment on multiple traits, multi-method/multi-trait will yield stronger, more clinically useful data when used to triangulate on a specific issue, but NOT when used as a hodge-podge random fishing expedition by throwing in everything AND the kitchen sink. That’s just creates a... long and unfocused (and expensive/lucrative) assessment.

432 tests, instruments, techniques, and other data gathering sources that are suited to the characteristics of
433 the case. This battery takes into account specific family members’ cultural and demographic

Dr. Childress Comment:

Child custody evaluations are primarily structured around long and extensive interviews with the family, with psychological testing sometimes added as an adjunctive assessment procedure (typically for unclear purpose and with no appreciable impact on the interpretations or outcome of the evaluation, which is mostly relies on opinions formed during the interviews based on everyone’s reporting of history and

relationships).

Characterizing a custody evaluation as “an assessment battery consisting of psychological tests, instruments, techniques, and other data gathering” is not accurate. It is a set of interviews with the family members that sometimes has additional “psychological tests” and home-observations added (of highly questionable validity, although they pad the expenses and financial income for the custody evaluator, who appears to have no motivation or desire to limit the time and expense of the custody evaluation).

citation please

434 characteristics and addresses the referral questions. Direct methods of data gathering typically include

Dr. Childress Comment:

They are asserting a fact: “This battery takes into account specific family members’ cultural and demographic characteristics and addresses the referral questions” – citation please. This is not true. Prove it.

This is a **false** and **deceptive** statement.

5.01 Avoidance of False or Deceptive Statements

Psychologists do not knowingly make public statements that are false, deceptive, or fraudulent concerning their research, practice, or other work activities or those of persons or organizations with which they are affiliated.

“This battery takes into account specific family members’ cultural and demographic characteristics and addresses the referral questions” – that is a **false** and **deceptive** statement concerning the practice of child custody evaluations with which the “Working Group” is affiliated

“Six members of the Working Group were selected with different areas of expertise and levels of experience in conducting child custody evaluation.” (lines 97-99)

“This battery takes into account specific family members’ cultural and demographic characteristics and addresses the referral questions” Prove it. Citation please.

They are promoting a practice that they themselves conduct with false and deceptive statements about its quality and with no evidence to support their false and deceptive public statements regarding the nature and quality of child custody evaluations. **Citation please.**

435 psychological testing, **forensic interviews**, and behavioral observations (Ackerman & Pritzl, 2011).

Dr. Childress Comment:

“forensic interview” – Question: did the forensic evaluator fail to take proper care by conducting a *forensic* rather than *clinical* interview? Is this a crime, or pathology? Are they an investigator, or a healthcare professional? Did they assess for a possible thought disorder? How? Did they assess for possible child psychological abuse? How?

Google negligence: failure to take proper care in doing something.

436 Person-focused rather than test focused evaluations are described in the empirical literature as

437 providing more individualized, context-relevant, and reliable findings (Groth-Marnat & Wright, 2016).

(cc “strive to” recognize? “aspire” to recognize?)

438 Psychologists recognize the importance of utilizing pertinent evidence-based theoretical frameworks
439 when appropriate. One example is the interpretation of data through a trauma informed lens when
440 traits and symptoms may be better explained as evidence of trauma from abuse inside or outside the
441 family, while another example is the adoption of culturally informed perspectives on interpretation of

Dr. Childress Comment:

“utilizing pertinent evidence-based theoretical frameworks”

- Family conflict = family systems therapy – one of the four primary schools of psychotherapy and the only school focused on understanding families, family relationships, and family conflicts (Minuchin, Bowen, Haley, Madanes): i.e., THE pertinent theoretical framework when assessing family conflicts.
- Attachment pathology = the attachment system – a problem in parent-child bonding is a problem in the love-and-bonding system of the brain, i.e., the attachment system: i.e., THE pertinent theoretical framework when assessing attachment pathology in the family.
- Trauma-informed = personality disorders – both narcissistic and borderline personality disorders are the product of unresolved childhood trauma (distorted “schemas” of self and other), and a trauma-informed theoretical framework would include van der Kolk and Beck (trauma reenactment narrative), Linehan (borderline), Kernberg (narcissistic and borderline), and Millon (all “personality” pathology) surrounding the collapse of a narcissistic or borderline “personality disordered” parent that is creating significant relationship conflict and pathology in the family surrounding the divorce and spousal conflict.
 - Minuchin, Bowen, Haley, Madanes citations – 0
 - Bowlby, Ainsworth, Sroufe, Ruth-Lyons citations – 0
 - van der Kolk, Courtois, Perry, Briere citations – 0

442 psychological test outcomes (Chiu, 2014). Psychologists are also encouraged to access documentation
443 from a variety of sources (e.g., schools, health care providers, childcare providers, agencies, and other
444 institutions) and to contact members of the extended family, friends, acquaintances, and other
445 collateral sources when the resulting information is likely to be relevant, while bearing in mind the
446 potential biases of such informants.

Dr. Childress Comment:

There seems to be absolutely no consideration for the financial cost for the parents of such a long and unfocused assessment, or perhaps there is a full and complete understanding for the financial costs of accessing “documentation from a variety of sources (e.g., schools, health care providers, childcare

providers, agencies, and other institutions) and to contact members of the extended family, friends, acquaintances, and other collateral sources” even though the information may be entirely irrelevant or add nothing to the outcome conclusions and recommendations, or are acknowledged to be biased sources of information of little practical value – but all of it is billable time (not to insurance, full private practice fees, court guaranteed) for reviewing a whole variety of sources of possible information, whether its relevant or useful, or not.