



# A Child Custody Evaluation:

# What Every Parent Should Know

BY PHILIP M. STAHL

If you and your ex-spouse cannot agree on a custody and visitation plan—even after mediation and other settlement efforts—the court may order you to participate in a child custody evaluation. A child custody evaluation is a process in which a mental-health expert, often a psychologist, evaluates your family and makes a recommendation to you and the court for a custody/visitation or parenting plan that is in your child's best interests.

Although many people think that the evaluator will determine your parenting plan, in fact, the evaluator only makes recommendations. In an ideal situation, you and your ex-spouse can use those recommendation to reach a settlement; but, if not, the judge can use them, along with other testimony, to make an order for your family.

## CHOOSING AN EVALUATOR

Many parents worry about the cost of a child custody evaluation. The cost of an evaluation will vary depending on your jurisdiction, the size of your family, and the

types of issues in controversy. Although it is tempting to choose the least expensive evaluator you can find, your children will benefit most from an evaluation conducted by a skilled and experienced evaluator who is suited to the issues in your case.

Typically, parents and their attorneys will agree on the selection of an evaluator, or the judge will select one. If you are making the choice, ask potential evaluators about their experience, any specific training related to your issues of concern, and how they conduct evaluations. This screening is particularly important in cases involving complex issues, such as allegations of domestic violence, substance abuse, alienation of children, or when one parent wants to relocate with the children and the other parent objects.

## CONFIDENTIALITY

If you see a psychologist or other mental-health professional for therapy, the information you share with the psychologist is confidential. You are in charge of deciding who has access to it. However, in a court-ordered child-custody evaluation, you do not have a "therapist-patient" relationship with the evaluator, and generally what you say is not considered confidential. At the very least, the evaluator will write a written report that goes to the attorneys and the court.

Although the exact nature and limitations of confidentiality will vary depending on where you live, be prepared to have this report—and the information it contains about your family—in the public record. Court files are rarely confidential, even though in many jurisdictions custody evaluations are filed separately from the rest of the court record. In certain cases, the court will seal the file to prevent the dissemination of otherwise confidential information. However, in some states, if a case is appealed, the names of the litigants are used, thus exposing the family to even more potential disclosure.

If at the conclusion of an evaluation the case goes to trial, the evaluator's entire file is subject to discovery by one or both attorneys. This is likely to include psychological test data if the evaluator relied upon it. If a dispute arises over such disclosures, the court will decide which material the evaluator must send to attorneys as part of the discovery process. Finally, remember that if your case goes to trial, the evaluator may testify and be cross-examined in open court about his or her report and supporting analysis.

Effective January 1, 1999, the Judicial Council of California mandated that court-appointed evaluators must explain the limits of confidentiality to all participants, including children and collateral sources (such as teachers, counselors, ministers, etc.). Because such rules vary across the country, you may want to discuss this further with your attorney and any potential evaluator.

Effective January 1, 2010, all California child-custody evaluations are confidential outside of the court process. The state now requires custody evaluators to give clients a form that outlines the potential court-imposed sanctions facing a parent or anyone else who makes an unwarranted disclosure of the contents of a child-custody-evaluation report. The form also indicates who can have access to the report—and who cannot, including, but not limited to, the children, teachers, physicians, friends and relatives of parents, and anyone else whose access to the report would not be in the child's best interests. Check with your lawyer about any such rules in your area.

### PREPARING FOR THE EVALUATION

Be prepared to discuss the custody evaluation process with your attorney. Some attorneys suggest a "coach" to help parents through the evaluation process. Although not unethical for a lawyer to recommend, such a coach may be of limited assistance because generally parents do best when they approach the evaluation process in a natural and honest manner.

It is normal to be nervous about the custody evaluation process. Be as open as possible with the evaluator regarding your strengths and weaknesses as a parent. Resist the urge to portray the other parent negatively, because doing so can be counterproductive. To ensure the best interests of your children, be honest and open as well about your ex-spouse's strengths and weaknesses as a parent.

Stay focused on the needs of your children, rather than

on differences with your ex-spouse. Be as open as possible to various custody/visitation plans, even if you favor one in particular. Try not to appear vindictive or overly critical. Let the evaluator know that you understand that maintaining a healthy relationship with the other parent is in the best interests of your child. This is the case unless there is something truly toxic about that parent-child relationship. Such toxic issues may include domestic violence, child abuse or neglect, substance abuse, very harsh disciplinary techniques, and other behaviors that are harmful to children. Some personality styles also may lead to toxic, abusive, or neglectful parenting, such as untreated depression, significant personality disorders, and other similar problematic styles.

### DURING THE EVALUATION

At the start of the evaluation, your evaluator will provide you with a statement of his or her procedures, the expected fees for the evaluation, a statement about the limits of confidentiality, and what the evaluator will do once he/she has gathered the evaluation data. This process is referred to as informed consent. Like most evaluators, I provide this informed consent in writing before the evaluation begins and orally at the first meeting with parents.

Parents commonly want the evaluator to solve problems during the course of the evaluation. Quite simply, your evaluator cannot give advice. He or she has a job, and that job is to evaluate you and your family. Any advice a custody evaluator may give about some conflict in your family could affect the custody evaluation. Instead, ask your attorney or a mediator to help resolve any conflicts that arise. Then let the evaluator assess the impact of that resolution on your family and integrate it into his or her findings.

A common question at the start of a custody evaluation is "How do I tell my child about this?" I respond by asking how aware the child is of the conflict and what the parent has told the child. This helps me to assess the parent's empathy for the child. I then answer the parent's question, because I feel strongly about trying to reduce the negative impact of a custody evaluation on the child. Especially when children are aware of conflicts, my answer generally goes something like this:

When I meet with children, I always tell them that my job is to help their mother and father find ways to agree and cooperate about how to raise them. I want children to know that I want to learn as much as I can about them and their feelings, not just about the divorce and their parents. I encourage them to be open and talk about their feelings.

I ask parents to tell their children that I am a psychologist who is trying to understand as much as possible about them, their feelings, and the family. Then I ask the parents how they think their children will respond to this message. This helps me assess the parents' empathy for their children's feelings.

Throughout the evaluation process, you can expect your evaluator to remain neutral, balanced, and objective. Your

# THE EVALUATION PROCESS

Although not all evaluators proceed in the same way, in most cases you can expect the evaluator to:

- ✓ Interview each parent (separately) two or three times;
- ✓ Perhaps interview the parents together;
- ✓ Interview each child (separately) at least twice;
- ✓ Observe parents and children together;
- ✓ Review court documents and other appropriate written collateral information;
- ✓ Contact collateral sources (e.g., therapists, teachers, day-care personnel, pediatricians) to gather other neutral information about you and your family;
- ✓ Submit a written report with an analysis of the evaluator's conclusions about your issues and, most likely, with specific recommendations about custody/visitation and a parenting plan for you and the other parent.

In addition, your evaluator may conduct psychological testing or use questionnaires to help provide additional information about your emotional functioning or parenting style. These tools are commonly used by psychologists, especially in more complicated evaluations, and are designed to provide additional helpful information.

Your evaluator also might visit you and the other parent in your homes. In some cases, such as when there are safety allegations, the evaluator is actually looking at the home and its contents. However, in most cases, during home visits, the evaluator will be observing each parent's interaction with the child(ren) in a natural setting. In my view, this is particularly helpful when evaluating custody arrangements for children under six years old.

—P.M.S.

evaluator will spend approximately the same amounts of time, over several interviews, with you and the other parent. He or she will conduct interviews with your child(ren), observe each parent with the children, and have contact with appropriate and relevant collateral sources.

Expect your evaluator to ask you about critical allegations made by the other parent and to ask the other parent about things you have said. Your evaluator will ask you about your child, his or her functioning and needs, and about the parenting plan you believe to be in your child's best interests. Ultimately, expect your evaluator to consider all relevant information that you, your ex, and your attorneys provide, to write a report that analyzes thoroughly the issues, and to provide a discussion of the risks and benefits of various custodial options before making any recommendations.

## THE EVALUATOR'S RECOMMENDATIONS

One of the main differences between a child custody evaluation and settlement techniques, such as mediation, is that the evaluator makes recommendations about the family. Typically, such recommendations include:

- Your parenting plan, including specific recommendations about custody and each parent's access to the child, relating to both legal and physical custody;
- Issues of contention in high-conflict families, addressing, for example, how to modify access agreements when necessary;
- The time-share between parents and how parents might deal with future conflicts;
- In families with continuing high-conflict, the use of a parenting coordinator, similar to a binding arbitrator, to help resolve ongoing problems;
- Therapy for parents and/or children. These therapy recommendations should be specific, rather than a vague statement about the need for therapy;

- Special problems, such as domestic violence, substance abuse, alienation of children, and relocation, including periodic or post-treatment follow-up evaluations;
- Parenting classes to help parents better understand their children's needs; and
- A periodic reevaluation of young children as their developmental needs change significantly.

When the report is complete, many evaluators will meet with both parents together to share observations and recommendations. In this way, the evaluator can help parents remain focused on the children's needs, which is extremely important during and after the divorce. However, a joint meeting may be unproductive if parents focus on win-lose, rather than the best interests of their children.

Evaluators should avoid sharing observations and recommendations with one parent and then later with the other. This can result in one parent's sharing with the other parent distorted information about the evaluator's observations and conclusions, which is not helpful to anyone.

A thorough and professional child-custody evaluation can help parents learn to work together more effectively on behalf of their children, ultimately leading to settlement rather than ongoing litigation. Rather than a nerve-wracking chapter in an adversarial process, the evaluation can guide parents toward a healthy resolution of custody and visitation issues. However, some family dynamics and certain issues reduce the likelihood of settlement. Even in these situations—and if the case goes to trial—you can still expect your evaluator to stay focused on your children's best interests and remain neutral and objective throughout. **FA**

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