

## APA Guidelines for Child Custody Evaluations (Family Law Proceedings)

When child custody hearings or trials involve litigation, the weight of a court's decision will be based on a child custody evaluation, a psychological evaluation, or any other abbreviated evaluation ordered by the court. Most often the lawyer for the plaintiff or respondent will make this proposal to the court, assuming it is advantageous to their case. Parents representing themselves *pro se* may file these motions by their own authority. A parent able to convince a court that their ex-spouse has a mental disorder moves rapidly up the scale toward primary custody. When the opposing parent is designated the visitation or secondary parent based on one or another of these evaluations or proposed parenting plans, that parent can be marginalized out of the family equation quite easily.

Such a proposal (ordinarily filed as a motion) for court-ordered evaluation, essentially changes the playing field. It relieves the court, at its own discretion, from the exclusive function of the decision maker in the case.

Judges (often court attorneys rotate into positions of presiding judge) do not typically have PhDs in psychology, child and adolescent development, or child custody research. That role for a judge would be in violation of lawful procedure. The role of a judge is not to serve as an expert but to adjudicate lawful proceedings. A judge may, at his or her discretion, reject or accept expert testimony or evidence. This, in fact, forms a common basis for appeal of a hearing.

If the proficiency requirements recommended by the American Psychological Association were actually implemented in child custody evaluations, there would in all likelihood be much less damage done to children by these evaluations, which are almost always rubber-stamped by the court.

APA Guidelines for Child Custody Evaluations in Family Law Proceedings (2015) sets the following mandates concerning proficiency in conducting child custody evaluations:

- (1) Generically, unless otherwise specified, it is no longer the default assumption that child custody proceedings will produce the classic paradigm of sole custodian versus visiting parent.
- (2) Multiple methods of data gathering enhance the reliability and validity of psychologists' eventual conclusions, opinions, and recommendations.

Unique as well as overlapping aspects of various measures contribute to a fuller picture of each examinee's abilities, challenges, and preferences.

(3) Optimally, diverse and accurate methods are used in addressing the questions raised in a *specific* child custody evaluation.<sup>3</sup>

## Mental Disorders

How did family courts morph into a mental health industry? The irony of these proceedings is that the psychological testing used across the United States in child custody cases have nothing to do with parenting. If one evaluates a parent regarding any of these "best interest" or "detrimental" doctrines in any family court throughout the United States, one or more of the following tests are used in all cases: Minnesota Multiphasic Personality Inventory (MMPI-2); Millon Clinical Multiaxial Inventory (MCMMI-3); and the Rorschach inkblot test. These tests are not designed to test a parent's ability to parent a child.

These are all tests of psychopathology (abnormality). They are tests constructed and designed to diagnose mental disorders. Does getting a divorce cause a mental disorder?

Alternative psychological tests of mental abnormality (used just as erroneously as those mentioned above) are used in less than 10 percent of child custody cases. They include the Ackerman-Schoedorf Scales for Parent Evaluation of Custody (ASPECT), the Bricklin Perceptual Scales (BPS), and the Thematic Apperception Test (TAT).

Psychological testing specific to the assessment of parent competence in child custody cases does not provide any outcome measures on the validity of these tests of abnormality related to parenting and child custody. In other words, there are no valid outcome measures of the predictive validity of these tests of abnormality as they apply to parent competence.

A recent inventory designed to measure parent competence and successful parenting in child custody cases does show promise. The Parenting Skills & Competency Inventory (PSCI) provides empirical measures of successful (competent) parenting in child custody cases. These tests provide direct, interactive measurements between child and parent, which are gender-neutral.

Parent assessments are widely recognized functional inventories used in the screening, assessment, and evaluation of parent competence. Parenting inventories are also used in the development of school support services. These inventories may be used in Individualized Education Plans (IEPs), School Support Plans (504 plans), co-parenting plans, and in child custody determinations.

In the usual polarizing position of courts, one of the most recent solutions to the problem of geographic relocation is to grant a geographical relocation if the parent *opposed* to the move can prove that the relocation is detrimental to the child. If so, the custody can then be reassigned to the parent opposing the relocation. This simply creates the same problem in reverse. Additionally, the same issues of defining detrimental and best interest remain.

One of the newest buzz words in the custody evaluation industry is the term *hypothesis*. Child custody evaluators have begun putting forth the notion in their documents that the evaluator is hypothesizing what is in the best interest of and least detrimental to the child. This is a misleading use of the forensic term hypothesis. This is a legal word game to confuse speculation (and frequently manipulation) with science. When a court evaluator hypothesizes that a child will not be harmed by the forced separation from a parent, they are often projecting their own bias into the situation. Credible developmental evidence based on observed behavior is seldom provided. Scientific research (actual experimental research) across multiple disciplines concludes that forced separation from either parent results in developmental damage, which in many cases is irreversible.

When a scientist in the field of human behavior forms a hypothesis, it is based on an experimental design, tested through many trials, subjected to statistical analysis, and subsequently confirmed by behavioral data collected to confirm or disconfirm the hypothesis. This is not done in a child custody evaluation.

Family courts construe the meaning of evidence to be guilt or innocence. In science the term *evidence* means data verified by objective observation and measurement following the experiment. One cannot test the validity of an experiment before the experiment is conducted.

If a person conceded to the position that evaluators are actually conducting science it would mean that each child in each of these cases is a guinea pig awaiting outcome data. Great liberty is given to these delegated court authorities who ostensibly conduct research and practice with no accountability to research

committees, federal oversight, or ethics review. If this were not bad enough, they are allocated immunity from any outcomes.

Science has been relied upon in the search for a cure for polio, in landing a man on the moon, and in the discovery of the human genome. In family court jurisdictions involving child custody, science is excluded from the proceedings. The specific field of science involved here is childhood development, more precisely, a research area neuroscientists call “early cognition.” Scientific research in this area has changed the way we think about childhood, human attachment, learning, and child custody determinations.

Both the “best interest” doctrine and the “least detrimental” doctrine applied in courts throughout the United States exclude the conclusions made in this area of scientific research. Scientific research and hundreds of scientific studies by some of the most prestigious scholars at top universities in the United States have no voice or influence in these family court proceedings. Scientific research conducted by the United States government as well as privately financed research is silenced in family court jurisdictions. What are some of these recent scientific conclusions related to child custody determinations?

Review of scientific literature and its conclusions in this field are an indictment of child custody practices in the United States:

- (1) Forced separation from *either* parent (maternal or paternal) results in traumatic disorders in children of divorce.
- (2) Trauma resulting from forced separation in child custody, if not repaired by the end of adolescence, is often irreversible.
- (3) Parenting remains the most influential factor in healthy childhood development.
- (4) School-based support in which each divorced parent is actively involved, results in healthy emotional development for the child as well as significantly higher long-term academic performance.
- (5) Masking of childhood behavioral problems and symptoms with drug therapies is not the least restrictive intervention and does not itself result in adaptive skills and competencies for the child in divorce.

How does a social scientist or neuroscientist explain personal, social, and political resistance to such findings? Consider this question in light of the fact that we are dealing annually with tens of thousands of children across the United States and a multibillion dollar industry.

Everett Shostrom, a psychologist, film maker, and author, published a best seller in 1968 entitled, *Man the Manipulator: The Inner Journey from Manipulation to Actualization*.<sup>4</sup> Shostrom received his PhD from Stanford in 1950. He was elected president of the American Psychological Association in 1973. In its time, his book was a provocative revelation on the topic of manipulation and social engineering in a democracy.

Shostrom maintained that, to some degree, we are all manipulators. We all use tricks to conceal fear and our true nature by controlling others in an attempt to reduce our tension. In contrast, mindfulness in social institutions as well as in personal lives, while at times uncomfortable, results in positive social change and human growth. The downside to manipulation is its inevitable unwanted collateral damage—remanufacturing of past trauma.

Family courts use manipulation as a tool to control and regulate fear. The simple fact of divorce does not account for the magnitude of collateral damage to children caused by court practices and procedures. The result is a dysfunctional institution attempting to cure a family in the process of its dissolution. In this scenario of social destructiveness our children have become dispensable. Insult is then added to injury by labeling these children “generation X,” and the “lost generation.”

In the manipulative role of “protector” (a defensive posture described in Shostrom’s book), family courts compound existing emotional injury, aggravate hostilities to ignitable levels, and exacerbate the very problem a court is mandated to solve. If you have doubts about any of these stated concerns, you need only sit in on any daily divorce hearings in your jurisdiction.

Almost all violence surrounding the problem of child custody is associated with domestic violence. Does this mean that any possible alternative causes must be foreign? In this family court logic there is neither foreign nor domestic jurisdiction that presides over this battleground.

Complete immunity protects all family court players, like stone Buddhas, having no accountability. Divorce courts take pride in a kind of homeland security status. We are not simply examining contrived false allegations of domestic violence or false sexual allegation charges in unraveling families. The child custody reality show is much broader in context. One must begin to ask, “What amount of domestic violence is itself perpetrated by a broken system of justice that has become disenfranchised from a political constituency or any serious rule of law?”

## New Paradigms

The classical model of child custody is being replaced by a functional paradigm. It is supported by scientific literature, which confirms that a secure attachment to either and both parents are equally as vital in child custody. In most cases, forced separation from either parent in divorce is the origin of an array of subsequent psychological disorders in children.

When detractors from this enlightened view claim that collateral damage done to children is necessary because violence (whether in the form of war or divorce) is inevitable, one finds in most of these skeptics that violence has played an important part in their own childhood development. To a hammer, everything is a nail.

Divorce requires two separate households. Couples able to equitably share the caring of their children and also cohabitate in peace would not be getting a divorce in the first place. The arrival of a child in a relationship, the demands of parenting, and financial constraints are common causes of divorce. Divorced parents do not need the added burden of mandated practices that heighten institutionalized terror.

The realization that separate households are necessary in divorce may seem obvious. It is not obvious to family courts. This simple insight is at the heart of the new child custody paradigm. A separate living space introduces one of the most important principles in the functional paradigm described earlier in proficiencies 2 and 3. Beginning at birth, a child is attached to both their paternal parent and maternal parent. Psychologists also know that children are the developmental behavioral product of their environment.

Simply stated, parents must have a household environment in which to properly parent their children. This also requires, of course, competent skills in parenting on the part of a parent. This is not the same as having to prove that you are not a criminal or a mental patient.

Without an environment in which there is proper parenting, children cannot acquire vital developmental skills required for success in life. Statistics show that children in divorce who do not possess school readiness skills by the age of five (kindergarten) begin a career in education with serious developmental disadvantages. In most instances these deficits follow them throughout the

remainder of their education. Social emotional damage caused the antiquated classical model cause even greater developmental damage.

The child custody plot thickens at the point of temporary orders. Why are such significant disproportions of fathers denied equity physical custody at temporary orders hearings? Many fathers without financial resources begin their divorce process living out of their car and trying to preserve the integrity of a dissolving family system and their relationship to their children. Maternal parents (although the statistics are lower) also find themselves scrambling for a new home and self-preservation. The proficiency guidelines by the American Psychological Association cited earlier, are an attempt to change the lens of magnification in looking at this problem. Mindful Child Custody offers a new functional lens in solving the child custody problem in the United States.

The classical custody model takes the mistaken view that one parent and one household puts an end to the problem concerning the best interest of the child. Nothing could be further from the truth. Instead, the classical model ignites a battlefield for extended warfare. The custodial versus noncustodial paradigm contradicts all available scientific literature concerning child custody determinations in divorce.

Proficiency standards, which are functional and scientifically based, do not attempt to ignore the retaliatory nature of angry, divorcing parents. Forensically, however, it recommends functional procedures, interventions, and evaluation protocols that think outside the box. Simply implementing functional (interactive, child-parent) measurements is itself thinking outside the box. In the functional model parents are not required to render their opponents disabled in order to be awarded custody of this child.

The Parenting Skills & Competency Inventory (PSCI) used in Mindful Child Custody provides a functional approach in support of a parent evaluation. The PSCI has successfully been used across jurisdictions to invalidate the finding and conclusion of traditional tests of abnormality like the MMPI, Rorschach, and other tests of personality.

Mindful Child Custody provides parents a higher level of proficiency standards. We know, for instance, that children learn across households. This means that the environment a child has with any one parent must support his or her learning in the household of an opposing parent. This must also support yet another learning environment—school. This represents a problem of learning and parenting. It is not

a problem of criminality and/or insanity. This principle applies even more so if a child is homeschooled.

A child's adjustment to divorce is determined by three behavioral environments. The learning environments of respective parents and a child's classroom determine the future of success of a child in divorce. Mindful Child Custody takes the position that parent competence is the standard that should be used in child custody decisions. The excessive intrusion of government into constitutional parental rights by the use of false standards of criminality or mental illness violates parental rights. These procedures and practices cause unnecessary trauma to children in divorce.



