

Effectively and Ethically Preparing Your Client for a Custody Evaluation

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What Is a Custody Evaluation?

A neutral, objective assessment of the children's needs and each parent's ability to meet those needs, based upon:

- Data gathered within the evaluation process.
- Application of the law.
- Application of current social science research.
- Professional/expert opinion of evaluator.

When Should Your Client Consider One?

- Parents are unable to reach an agreement regarding custody and/or parenting time.
- ADR processes have not been successful.
- There are special considerations or circumstances that require forensic investigation and/or additional expertise.

Coaching Clients for Custody Evaluations

- Parents need to speak for themselves and be honest during custody evaluations.
- They may benefit from assistance regarding how to organize information and present it most effectively through a difficult process.
- Coaches may be retained by the parent directly, or retained by counsel as attorney work product (a/k/a "stealth coach").
- Coaches **do**:
 - Explain process
 - Help client reduce anxiety
 - Help client organize information for clarity
 - Keep focus on children and children's needs
- Coaches **do not**:
 - Tell client what to say or not say
 - Answer questions for clients
 - Complete forms/paperwork for client
 - Help client conceal information

Qualifications for Custody Evaluators

- Minnesota statutes do not currently contain guidance or requirements regarding qualifications or training for custody evaluators.
- Guidance and ethical standards for evaluator best practice are available through:
 - "AFCC Model Standards of Practice for Child Custody Evaluations," Association of Family and Conciliation Courts
 - "Guidelines for Child Custody Evaluations in Family Law Proceedings," American Psychological Association
 - "Child Custody Evaluation Standards," American Academy of Matrimonial Lawyers (National)
- **Recommended Minimum Training / Qualifications:** Custody evaluators should have formal education and training in a relevant professional field, as well as ongoing training in the following areas:
 - Relevant aspects of the law
 - Systemic family dynamics
 - Child development and psychological needs of children
 - Impact on adults and children of
 - Separation and divorce
 - Domestic abuse
 - Child abuse and neglect
 - Chemical abuse
 - High levels of parental conflict
 - Psychological health and psychological disorders
 - Physical and emotional disabilities
 - Dynamics of domestic abuse
 - Interviewing techniques suitable for adults, children and collateral sources
 - Impact of culture and religion
 - Implicit bias
 - Forensic processes
 - Interpretation of data and discernment of priorities
 - Professional report writing for the court
 - Providing testimony as an expert witness

Questions to Ask Potential Evaluator

- What is your training and background? What specific training have you had regarding Custody Evaluations?
- What is your protocol?
- What are your policies or expectations about meeting in-person or remotely?
- May I see your CV?
- May I have a copy of your fee agreement to review with my client?
- How are fees paid?
- Do you require a deposit? What is it used for?
- What is your anticipated time frame from intake meeting to providing feedback?
- How do you provide feedback to parents?
- Do you always write a report? If not, what is the process to get one?
- How long are your reports in general?
- How long have you been doing custody evaluations? How many have you completed?
- What information do you need from attorneys before you get started?



How to Describe the Process / Help Clients Understand What to Expect

INTAKE MEETING

- Typically with both parents (unless compelling reason parents cannot be in same room, e.g., active Order for Protection)
- Process is described in detail by the evaluator
- Parents given opportunity to ask questions about process

Practice Tip: Help your client think about who will have relevant information, and encourage them to gather contact information for each person.

PARENT INTERVIEWS

- Each parent typically meets with evaluator individually 1-3 times in course of evaluation.
- Parents should be prepared to discuss
 - Family of origin and extended family
 - Previous and current significant relationships
 - Relationship with other parent
 - Each child (in depth)
 - Parenting and co-parenting history, including:
 - Giving and receiving affection
 - Limit setting and follow through
 - Favoring or slighting a child
 - Providing age and developmentally appropriate assistance
 - Knowledge of health issues and any concerns
 - Play activities appropriate to each child
 - Encouraging problem solving and independence*(Additional data regarding these areas is gathered at the home visits and structured or semi-structured parent/child observations)*
- Each parent's proposal regarding:
 - Parenting schedule
 - Custodial designations
 - Holiday schedule
 - Other resources that may be of assistance to children or to parents

Practice Tip: Prepare the client for the possibility that the evaluator may be impersonal and clinical in gathering data. It is likely there will be no feedback during the process. The evaluator's impressions and opinions are typically reserved until all the data have been gathered. **An ethical evaluator will not make interim recommendations!**

Practice Tip: Encourage client to be prepared to discuss the strengths of both parents and challenges of each without diatribes against the other parent. Discuss realistic ability to co-parent and efforts client is willing to exert in order to ensure the child gets the best of what each parent has to offer.

CHILD INTERVIEWS

- Children 6 and older typically interviewed individually and/or in sibling group
- Children 6 and younger may be included in a structured or semi-structured observation of parent and child together
- Typically occur at evaluator's office or other neutral location

Practice Tip: Encourage parent to help child understand the role of the evaluator.

Practice Tip: Help your client understand that most evaluators will be able to discern if the child has been coached. Parent should encourage the child to be open and honest with the evaluator.

HOME VISIT

- Evaluator observes parent-child interactions in the home
- Typically includes all household members (e.g. step siblings, grandparents, roommates, etc.)
- Observation/inspection of physical environment in each home

Practice Tip: Encourage parent to plan activities for home visit that will demonstrate interaction. Activities should be familiar to child.

QUESTIONNAIRES

- Parent History Surveys/Questionnaires
- Questionnaires for collateral references

ADDITIONAL EVALUATIONS/ASSESSMENTS (MAY NOT OCCUR IN EVERY EVALUATION)

- Psychological Evaluation
- Chemical Abuse/Dependency Assessment

COLLATERAL INFORMATION

- Personal References
 - Close friends, family members who are familiar with relationships within the family being evaluated
- Professional Collateral Sources
 - People who have a relationship to one or more family members by virtue of their profession, such as:
 - Children's teachers and other personnel at school
 - Childcare providers
 - Mental health providers who have worked with any member or members of the family
 - Pediatrician/Doctors, especially if there are any medical conditions that must be managed (e.g. asthma, diabetes, epilepsy)
 - Social workers
 - Probation officers
 - Law enforcement (if police reports exist)
- Court documents
 - Family law matter
 - Any associated cases:
 - Child protection/juvenile court
 - Order for Protection or Harassment Order
 - Criminal matters concerning child/ren, either parent, adults or children in either parent's household

FEEDBACK TO ATTORNEYS/PARENTS

Evaluators vary on how feedback is provided. Some evaluators always draft a written report; others prepare findings and recommendations which they review with attorneys only. Other evaluators include parents in the feedback session. Some evaluators will meet briefly with attorneys and parties together to deliver feedback, then turn the process over to a neutral (e.g., mediator) who facilitates the settlement negotiations.

REPORTS

- At a minimum, reports should include:
 - Names of all persons consulted
 - List of all documents reviewed
 - Information that was requested but not obtained/reviewed in connection with the evaluation
 - Analysis of each factor in Minn. Stat. §518.17, subd. 1, with supporting data
 - Recommendations regarding:
 - Parenting time schedule
 - Holiday and vacation time
 - Transportation and exchanges
 - Method for communication between parents
 - Method for resolving child-related disputes
 - Additional services which may be helpful for parents and/or children
 - Legal custody (joint/sole)
 - Physical custody (joint/sole)

TESTIMONY AT DEPOSITION OR TRIAL (IF NECESSARY)

- Neutral Evaluator is expert for the Court under Rule 702, Minnesota Rules of Evidence
- Adverse Evaluation
 - Attorney Work Product
 - Report Review
 - Testimony as Adverse Evaluator