Deconstructing Custody Evaluation Reports

by
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INTRODUCTION

In this article, we address the ways in which attorneys can analyze the work done by evaluators, particularly when that work has led to the development of opinions and recommendations with which a client is displeased.

In this article, we suggest a method for examining reports prepared by custody evaluators, so that the decision to challenge or to accept a report can be made in an informed manner. In part I, we advise attorneys concerning a constructive means by which to review the concerns expressed by clients. In part II, we outline the elements of the report to be examined. We discuss what attorneys should look for as they read those portions of evaluators' reports that address their interviews with parents and children; their observations of parent-child interactions; their use of collateral source information; their selection of assessment instruments and their use of assessment data; their articulation of the bases for their opinions; and, the efficacy with which they provide the information reasonably needed by the litigants, their attorneys, and the court.

I. ADDRESSING YOUR CLIENT'S CONCERNS

The initial steps in the process require that attorneys assign some work to their clients. The client should be asked to identify the following:

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1. The informational elements of the report with which the client takes issue.

From the client's perspective, was there

(a) information presented to the evaluator that s/he appears not to have utilized and that, if utilized, might have led to the generation of different opinions?

(b) information available to the evaluator that s/he did not seek and that, if sought, obtained, and utilized, might have led to the generation of different opinions?

(c) information that the client specifically asked the evaluator to obtain (such as information from specified collateral sources) that the evaluator refused to obtain (for whatever reason) and that, if obtained and utilized, might have led to the generation of different opinions?

2. The opinions offered by the evaluator in the body of the report with which the client disagrees. Opinions and recommendations that appear at the conclusion of the report are supported, in part, by opinions offered earlier, in the body of the report. The opinions that appear in the body of the report are, in essence, the building blocks that form that foundation for the concluding opinions and recommendations. It is useful to look at these with care and not focus attention exclusively on the concluding opinions and recommendations.

Notwithstanding the undeniable subjectivity of litigants, it is useful to obtain the client's perspective on opinions that are flawed because

(a) information that might have resulted in different opinions was not sought, not obtained, not utilized, or not assigned appropriate weight.

(1) With regard to the matter of weight, the client should contemplate the possibility that information favorable to the other parent was assigned too much weight, information favorable to the client was assigned too little weight, information unfavorable to the other parent was assigned too little weight; information unfavorable to the client was assigned too much weight, or that some perspective-distorting combination of the foregoing played a role in the formulation by the evaluator of the opinions expressed in the report.

(b) test data that were utilized in the formulation of the evaluator's opinion were not discussed with the client, where, in

his or her view, discussion of the test data might have cast those data in a different light. [This is particularly important if specific responses to test items might have been viewed in a different light if the client had been afforded an opportunity to explain them.]

(c) With regard to 2(a)(1), above, are there indications (from the client's perspective) that, in explaining/supporting findings and opinions, the evaluator engaged in data suppression; specifically, that information/data not supportive of opinions were omitted from the report?

What follows, presented primarily in outline form, are the areas of evaluators' work on which we believe attorneys should focus attention.

II. DECONSTRUCTING THE EVALUATOR'S WORK

Interviews

Interviews with parents

Interview formats may be defined along a continuum from unstructured to structured. In the quintessential unstructured format, those being interviewed are permitted to present their positions in whatever manner they choose, virtually uninterrupted by the interviewer. In such a format, the interviewer is, in reality, functioning as little more than a stenographer. One notch up on the continuum are interview formats in which the interviewer asks open-ended questions and the interviewee is permitted the freedom to respond either briefly or at length, focusing on whatever elements he or she wishes to emphasize.

In structured interviewing, predetermined questions are asked and interviewees are expected to provide reasonably focused responses. Though such interviews may be used when clinicians are attempting to gather data in an effort to rule out or rule in a specific diagnosis, treatment providers often permit patients to control the direction of provider-patient dialogue. A semi-structured interview is a hybrid of the unstructured and structured interview formats. In a semi-structured interview format, the content areas to be addressed are predetermined, but questions posed to one parent are not necessarily identical those posed to the other parent. To provide an obvious example, ques-

tions seeking parents' perspectives on the ways in which they will modify their work schedules to accommodate parenting plans that they are proposing would not be posed to stay-at-home parents, unless it is likely that in their post-litigation lives they are likely to seek employment.

As attorneys review evaluators' contemporaneously taken notes, they should look for indicators that evaluators have assessed the credibility of the litigants based upon impressions formed by the evaluators in their face-to-face interactions with the litigants. Data published in peer-reviewed social science literature suggests that mental health professionals are no more adept at assessing credibility based upon face-to-face interactions than are attorneys or judges.[1] In a forensic context such as a child custody evaluation, it is critical that interview data be checked against other sources of information, such as data from psychological tests, collateral informants, and pertinent documents.

In reviewing evaluators' reports, attorneys may note that statements describing parental motives have been presented in the same manner that one might present descriptions of what parents wore to their meetings. First, motives cannot be observed and must be articulated. Second, it must be recognized that litigants, wishing to prevail in their litigation, may express socially approved motives that are not, in fact, operating as the litigants make the decisions that are made in day-to-day living, and may deny that certain actions taken by them are driven by motives generally deemed to be undesirable.

For example: An evaluator states: "Since this litigation began all the decisions made by Mrs. Jones have been driven by her concern for the best interests of Max." Such a statement reflects the evaluator's acceptance of the truthfulness of an assertion made by Mrs. Jones.

Attorneys should also examine evaluators' notes for indications that the evaluators have done little more than create a sten-

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[1] Bella M. DePaulo et al., *The Accuracy-Confidence Correlation in the Detection of Deception*, 1 PERSONALITY & SOC. PSYCHOL. REV., no. 4, 1997, at 346; Paul Ekman & Maureen O'Sullivan, *Who Can Catch a Liar?*, 46 AM. PSYCHOLOGIST, Sept. 1991, at 913; Thomas H. Feeley & Melissa J. Young, *Humans as Lie Detectors: Some More Second Thoughts*. 46 COMM. Q., 1998, at 109; Mark G. Frank & Thomas H. Feeley, *To Catch a Liar: Challenges for Research in Lie Detection Training*, 31 J. APPLIED COMM. RES., 2003, at 58.

ographic record of statements made to them by the parents. The evaluator-as-stenographer error can be seen most dramatically where follow-up questions by evaluators are clearly needed but have not been posed. Two examples follow. (1) In responding to a question about his parenting style, Mr. Doe states: "I present Jimmy with choices." Jimmy is 26 months old. What types of choices does one realistically present to a 26-month-old? (2) When asked to describe her three children, whose ages range from 3 to 14, a mother replies: 'They're real firecrackers." There is no inquiry from the evaluator. She simply writes down the response to the question that was posed. When the evaluator is subsequently asked why she did not seek additional information, the evaluator explains: "I like to let people express themselves in their own way."

Interviews with children

Attorneys examining notes taken by evaluators that relate to their interviews with children should endeavor to ascertain the following:

(1) Are there indications that evaluators have briefly assessed children's cognitive and communicative abilities or obtained pertinent information from documents such as school records, to ensure that oral exchanges with the children will be conducted on an appropriate level?

(2) Do the notes reflect who transported children to their interviews?

(3) Have the evaluators noted similarities and differences between children's statements after having been transported by one parent versus the other?

(4) Where children have expressed preferences with regard to parenting plans, have evaluators explored the bases for the expressed preferences, or have the evaluators done no more than make note of the children's statements?

Evaluators fail to meet their responsibilities to those who will be relying upon their reports for expert advisory input when the evaluators neglect to pose questions to children that will elicit the information needed to assess the degree to which statements made by children are useful in assessing the children's long term best interests. For example, in some cases, evaluator explorations into children's preferences are so superficial that even such obvi-

ous problems as children's frequent preferences for parents who are permissive and who place no age-appropriate demands upon them go undetected.

In jurisdictions in which consideration is given to the articulated preferences of children with regard to custodial placement and visitation, evaluators must do more than simply accept children's statements in much the same way that one might collect ballots and then pass that information along without comment. In addition to reminding readers of the chronological ages of the children whose statements are being described, evaluators should offer information bearing on the children's emotional and social maturity, their cognitive development, their capacity for contemplating the long-term implications of their choices, the logic that underlies their expressed preferences, and their possible exposure to subtle coercion by a parent.

The notes taken by evaluators during interview sessions with children are often significantly more sparse than the notes taken by the same evaluators during their interviews with parents. Some evaluators, when questioned concerning the paucity of notes from sessions with children, have opined that children are uncomfortable when evaluators take notes. Some evaluators, when meeting with children, do not take notes during the sessions and, instead, enter them afterwards.

Attorneys should be aware that even contemporaneously taken notes are a poor substitute for videotaped or audiotaped records.[2] Rarely will attorneys encounter in contemporaneously taken notes any indication of the manner in which children's statements were elicited. In the absence of a record concerning the questions that were posed, it is impossible to ascertain if suggestive methods were employed. There is broad consensus that some interviewers, in posing questions to children, suggest the

[2] Michael E. Lamb et al., *The Effects of Forensic Interview Practices on the Quality of Information Provided by Alleged Victims of Child Abuse*, *in* Children's Testimony: A Handbook of Psychological Research and Forensic Practice 131 (Helen L. Westcott et al. eds., 2002).

anticipated (or desired) answers.[3] Notes entered in the record after sessions have been concluded are even less reliable.[4]

B. *Observations of parent-child interactions*

It is advisable for attorneys to determine whether the litigants, in advance of scheduled parent-child observation sessions, were provided with information (preferably in written form) concerning evaluators' expectations for the scheduled sessions. This relates to in-office observations, and it is not uncommon to find that one parent has arrived at an observational session with full knowledge of what is expected and that the other (presumably, inadvertently) has not been provided with the same information. For example: Some evaluators expect parents to arrive with age-appropriate toys or games; others prefer parents to arrive empty-handed, so that all the interacting parents and children will utilize materials provided by the evaluator. In the information provided to parents by evaluators, it should be stressed that evaluators intend to simply observe parents interacting with their children. In particular, parents should be reminded that a parent-child observational session is not the time for either parent to register allegations concerning the other.

There are no standards or guidelines that address the manner in which parent-child observations should be conducted; however, the AFCC *Model Standards* urge evaluators not to become participants in the parent-child interactions that are being observed.[5] Model Standard 10.1, addressing the awareness of observer effects, states: "Evaluators shall be mindful of the fact that their presence in the same physical environment as those being observed creates a risk that they will influence the very

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[3] *E.g.*, Lindsay C. Malloy & Jodi A. Quas, *Children's Suggestibility: Areas of Consensus and Controversy*, *in* THE EVALUATION OF CHILD SEXUAL ABUSE ALLEGATIONS: A COMPREHENSIVE GUIDE TO ASSESSMENT AND TESTIMONY 267 (Kathryn Kuehnle & Mary Connell eds., 2009); David A. Martindale, *Cross-Examining Mental Health Experts in Child Custody Litigation*, 29 J. PSYCHIATRY & L. 483 (2001).

[4] Amye R. Warren & Cara E. Woodall, *The Reliability of Hearsay Testimony: How Well Do Interviewers Recall Their Interviews with Children?*, 5 PSYCHOL., PUB. POL'Y & L. 355 (1999).

[5] Association of Family and Conciliation Courts, *Model Standards of Practice for Child Custody Evaluation*, 45 FAM. CT. REV. 70, 72 (2007) (David A. Martindale, Reporter).

behaviors and interactions that they are endeavoring to observe."[6]

If the simple fact of an evaluator's presence has a distorting effect, becoming an active participant increases the distortion exponentially. Most importantly, there is no way to determine whether evaluator involvement has caused an interaction to go more smoothly or has intruded in a manner that has disrupted an otherwise acceptable parent-child interaction, causing the interaction to be viewed negatively by the evaluator. The more that evaluators intrude during parent-child observations, the less likely it is that the interactions observed will be reasonably representative of typical interactions between a particular parent and a particular child.

Attorneys should see if evaluators' notes reflect having sought post-observation comments from parents. Parents should be encouraged to indicate whether the observed interaction was representative, in their view. If they state that it was not, they should be asked to specify the ways in which what was observed by the evaluator was atypical.

In our view, parent-child observational sessions are best documented by videotape or audio tape. If neither of these is used, copious contemporaneous notes should be taken, and the notes should reflect observable behaviors, not inferences based upon those behaviors. AFCC Model Standard 12.2 states, in pertinent part: "Evaluators shall differentiate among information gathered, observations made, data collected, inferences made, and opinions formulated."[7] Neither emotions, motives, perceptions, nor thoughts are observable. Far too frequently evaluators make statements concerning litigants' motives in a manner that suggests that the motives are known to the evaluators. Evaluators who inform the readers of their reports that a parent and child have interacted "warmly," are not providing the information to which the readers of their reports are entitled.

C. *Use of collateral sources*

Attorneys are urged to examine evaluators' files for indications that collaterals have not become conduits for hearsay. It is

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[6] *Id.* at 86.

[7] *Id.* at 89.

not uncommon to find that collaterals who are mental health service providers, for example, may offer information pertaining to matters concerning which they have no independent knowledge. Dr. Jones's assertion that Mrs. Smith parents her daughter in an authoritative manner (that's a good thing) is of no value, if the opinion is based upon descriptions provided to Dr. Jones by his patient, Mrs. Smith.

Attorneys reviewing information and opinions obtained by evaluators from collateral sources should also check to see if information or opinions that cast their clients in a negative light have been presented to their clients, thereby providing them with an opportunity to respond. This should be done both in the interests of sound methodology and in the interests of procedural fairness, yet it is a step that is far too frequently omitted.

Austin has pointed out that those most emotionally distant from the custodial dispute are likely to be the most objective.[8] Information obtained from them is therefore likely to be of greater accuracy than is information obtained from people such as relatives or close friends. The Austin perspective has lead some evaluators to eliminate from collateral source lists the names of people who are indisputably allied with one of the litigants from collateral sources. We believe this to be a mistake. The use by mental health professionals of the term "collateral sources of information" has an unintended and unfortunate consequence. Far too many evaluators conceptualize the input from collaterals only as information and fail to recognize its incalculable value as stimulus material in subsequent interviews with the litigants. Some of the most useful information obtained from litigants emerges when they respond to statements offered by collaterals.

D. *Use of psychological tests*

An examination of the utility (or lack thereof) of psychological assessment instruments used by evaluators is facilitated if attorneys first consider in which of three categories each instrument belongs. In the first category are tests such as the *Minnesota Multiphasic Personality Inventory-2* (MMPI-2), which

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[8] William G. Austin, *Guidelines for Utilizing Collateral Sources of Information in Child Custody Evaluations*, 40 Fam. Ct. Rev. 177, 181 (Apr. 2002).

are considered to be reasonably reliable and valid, but which were not developed for use in custody evaluations.[9] Though the data from such tests may provide useful information concerning a test-taker's emotional functioning, subjective judgments are not avoided. In order to assist the court, evaluators must still formulate opinions concerning the impact of various emotional difficulties on parenting.

In deciding how best to contend with data from instruments such as the MMPI-2, it is useful to keep in mind that, while the MMPI-2 and similar instruments are tests, as that term is defined in the *Standards for Educational and Psychological Testing*[10], the information obtained is gathered by means of self-report. We insert this reminder because there may be a tendency to inflate the importance of assessment devices that yield scores. In an article entitled "Testing, one, two, three, testing: An attorney perspective," appearing in the *Journal of Child Custody,* Dianna Gould-Saltman, a former family law attorney, now a judge sitting in the Los Angeles Superior Court, wrote: "After having gone from high school to college to law school to bar examination, we are quite familiar with 'tests.'"[11] "Tests break things down to numbers, and we understand numbers."[12]

Tests of the type alluded to by Gould-Saltman are performance tests. The differences between performance tests and a test such as the MMPI-2, described in its manual as having been "designed to assess a number of the major patterns of personality and psychological disorders"[13] are significant. The usefulness of the MMPI-2, and the newer MMPI-2-RF, lies in the fact that the data that these instruments yield include data that provide information concerning what psychologists refer to as *response style* — the mind-set with which the test was taken. Having data that reflect upon response style is particularly important in settings

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9 JAMES N. BUTCHER ET. AL., MANUAL FOR ADMINISTRATION, SCORING, AND INTERPRETATION MMPI-2 MINNESOTA MULTIPHASIC PERSONALITY INVENTORY-2 (2001).

10 AMERICAN PSYCHOLOGICAL ASSOCIATION ET. AL., STANDARDS FOR EDUCATIONAL AND PSYCHOLOGICAL TESTING (1999).

11 Dianna Gould-Saltman, *Testing, One, Two, Three, Testing: An Attorney Perspective,* 2 J. OF CHILD CUSTODY 71, 72 (2005).

12 *Id.*

13 BUTCHER ET. AL, *supra* note 9, at 1.

such as family law proceedings, in which test-takers may endeavor to portray themselves in an unrealistically favorable light.

Theodore Millon, the developer of another self-report inventory (the *Millon Clinical Multiaxial Inventory, 3rd edition* — MCMI-III) has offered some general comments about self-report inventories that are thought provoking. He and his colleagues have written that there are distinct boundaries to the accuracy of the self-report format; by no means is it a perfect data source. Inherent psychometric limits, the tendency of similar patients to interpret questions differently, the effect of current affective states on trait measures, and the effort of patients to affect certain false appearances and impressions all lower the upper boundaries of this method's potential accuracy.[14]

In creating their subpoena demands, attorneys should routinely require the production of all reports from test scoring services, including raw scores and T scores[15] and any computer-generated interpretive reports. Statements appearing in the reports prepared by evaluators should be compared with statements appearing in the computer-generated narrative reports. Evaluators must be able to articulate the bases for any descriptions offered by them of the personality characteristics of those whom they have evaluated. Unfortunately, many evaluators rely on computers to generate personality descriptions. In some states, the regulations governing the practice of psychology address this issue.

A section of the *New Jersey Administrative Code* 13:42-10.5 (e) reads, in pertinent part, as follows: "Licensees who employ computerized narrative reports . . . shall not rely on the interpretations contained in a computerized narrative report as though the report were individually tailored specifically for that examinee."[16] "Licensees shall be responsible for conclusions and recommendations based on computerized narrative reports and shall not be relieved of such responsibility by the use of a computerized narrative report."[17]

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14 THEODORE MILLON ET .AL., MCMI-III Manual 7 (2d ed. 1997).

15 T-scores are standardized scores. Where T-scores are being used, as is done with the MMPI-2, fifty represents the mean and a difference from the mean of ten points represents one standard deviation.

16 N.J. ADMIN. CODE §13:42-10.5(e) (2011).

17 *Id.*

In the second category are assessment devices such as the Bricklin instruments (Bricklin Perceptual Scales, Perception of Relationships Test, Parent Awareness Skills Survey), designed specifically to yield data of particular relevance in custody evaluations. Though the goal of the test developers was praiseworthy, not one of these instruments can be described as generally accepted. Without exception, they are lacking in reliability and validity[18]

The third category comprises the various projective instruments, the use of which adds additional subjectivity to an evaluative process that, in the view of many, is already more subjective than it should be. In psychological assessment, two forms of reliability are particularly important. They are test / re-test reliability and inter-judge reliability. Test / re-test reliability refers to the probability that the data obtained during a particular test administration will be similar to those obtained during a subsequent test administration. Where test / re-test reliability is low, either the instrument is flawed or the characteristics being measured are strongly influenced by situational factors, as is likely to be the case with drawings produced by children. Inter-judge reliability refers to the probability that two different evaluators looking at the same data will offer similar interpretations of those data. Again, children's drawings serve as a useful example. Two different evaluators, looking at the same feature in a child's drawing, are quite likely to formulate different opinions concerning what meaning to attach to the drawing.

As decisions are made concerning the usefulness of psychological tests and the selection of appropriate instruments, it is prudent to be mindful of an admonition offered in the *Standards for Educational and Psychological Testing*: "The greater the potential impact on test takers, for good or ill, the greater the need to identify and satisfy the relevant standards."[19] Selecting instruments with established reliability and validity is particularly important where the decisions to be made will alter people's lives and where the decision-makers may be strongly influenced by test data.

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[18] Kathryn A. LaFortune & Bruce N. Carpenter, *Custody Evaluations: A Survey of Mental Health Professionals*, 16 BEHAVIORAL SCI. & L. 207 (1998).

[19] AMERICAN PSYCHOLOGICAL ASSOCIATION ET. AL., *supra* note 10.

E. *formulation of opinions*

It is indisputable that the formulation of an opinion (personal or professional) is an internal, mental process, the dynamics of which are not perceptible to even the keenest observer. Neither attorneys nor mental health professionals who review the work of their colleagues can, by reading evaluators' reports, discern the manner in which opinions were formulated. It is precisely for this reason that evaluators bear an obligation to articulate the manner in which their opinions were developed. In the absence of such explanations, readers are left with no alternative but to surmise. It seems reasonable to presume that matters stressed by evaluators in their reports were assigned significant weight in the formulation of their opinions and that matters discussed only briefly were assigned only minimal weight. In deconstructing evaluators' reports, it is often useful to be attentive to the weight assigned to different factors and to different types of information.

In looking for clues to evaluators' opinion formulation processes, attorneys are urged to examine evaluators' files for indications that non-supporting data have been ignored or assigned minimal weight, that evaluators have failed to give consideration to applicable statutes and case law, or that evaluators' opinions have been distorted by bias. Indicators of bias are most easily seen in the application of a double standard—the assignment of significant weight to the positive attributes of the favored parent and minimal weight to the positive attributes of the non-favored parent and/or the obverse (the assignment of significant weight to the shortcomings of the non-favored parent and the assignment of minimal weight to the shortcomings of the favored parent).

F. *Communication of findings and opinions*

It is undoubtedly clear to any attorney reading this article that there is wide variation in report-writing styles and in the types of information provided by evaluators in their reports. In our view, attorneys should perform a preliminary review of evaluators' reports, looking for basic content areas. A table of contents significantly assists readers as they look for specific information within the report. One template of basic content areas follows.

I. Introductory material

(a) identification of the judge, court, and docket number;

(b) identification of the parents (with dates of birth), the children (with dates of birth), and the attorneys;

(c) a brief description of the essential elements of the court's order (or, if not court ordered, a description of the assigned task);

(d) information concerning the manner in which the evaluator was contacted (specifically, by whom and when).

II. Methods and procedures

(a) a list of the dates on which different individuals were interviewed should be provided and the duration of each interview should be provided.

(b) observational sessions should be clearly identified.

(c) a list of documents reviewed should be included. The list should include documents reviewed for collateral source information, documents pertaining to past legal matters (that is, documents that provide information concerning the previous involvement with the legal system of either of the litigants, current care givers, or potential care givers), legal documents pertaining to the current litigation (pleadings, court orders, etc.), medical and behavioral health records, legal correspondence, and any miscellaneous documents (such as relevant personal correspondence).

(d) if formal psychological assessment instruments were used, they should be identified. In our view, evaluators should also include brief descriptions of each test utilized. Where tests have been selected to gather data relating to a specific issue, brief commentary regarding the manner in which the anticipated data are likely to bear upon the issue in dispute is useful to the readers and should be included.

(e) collateral sources from whom information was obtained should be listed. Either in the initial listing or in that section of the report in which data gathered are described, evaluators should indicate the manner in which each collateral source knows or is related to one or more of the participants in the assessment.

(f) a brief description of the current allocation of parental rights and responsibilities provides important context. It is also helpful to readers when evaluators indicate whether the custody/access arrangement currently in place was mutually agreed upon or put in place by court order.

III. Data gathered

(a) Those elements of the history of the relationship between the litigants upon which the litigants agree.

(b) information obtained during interviews from each litigant, including family of origin, developmental history, educational history, personal interests, occupational history, medical history, behavioral health history, and legal history, perspective on the marital and family history, position in the dispute before the court and the bases for that position.

(c) observations made during parent-child interaction session and inferences drawn on the basis of those observations.

(d) data obtained through the administration of psychological assessment instruments. Evaluators should provide separate reports on the data from each instrument. Attorneys' skepticism should be triggered by the use of such vague phrases as "data obtained in psychological testing suggest. . . ."

(e) either in this section of evaluators' reports or in their discussion sections, evaluators should clearly articulate the weight assigned by them to different data sets (and the bases for their decisions). Attorneys should look for explanations of the ways in which favorable character traits and identified deficiencies bear directly on parenting issues.

(f) a description of each child's development and relevant characteristics as reported to the evaluators by the parents, information about the children secured from collateral sources, and commentary on similarities and differences between descriptive information offered by the parents and descriptive information provided by collateral sources. In cases in which evaluators will be offering parenting plan opinions that are tied to uncommon characteristics or special needs of children, those characteristics or needs should be described in this section of reports.

(g) information gathered from and perspectives communicated by the children. Attorneys should look with care for indica-

tions that evaluators have or have not explored with children any preferences articulated by them.

(h) observations made during parent-child interaction sessions. Where such observations have been conducted in homes, evaluators should identify all individuals who were present in the home during the observation, indicate the time of day, and describe any activities in which those in the home were involved at the time of the evaluators' arrival.

(i) information obtained through a review of records, through letters written by or questionnaires completed by collateral sources, and through interviews with collateral sources. In our view, for each person from whom information was obtained, evaluators should describe the relationship between the person and those involved in the evaluation, should indicate at whose request the collateral source was contacted, should state the manner in which the information was obtained (in written form, orally, or both), should describe the information obtained, and should articulate the manner in which the information bears upon the issues in dispute.

(j) If not done in an earlier section of their reports, evaluators should, before summarizing, state the questions that were posed by the court in its order. As a convenience to readers, copies of the orders appointing them should be included by evaluators as appendices to their reports.

IV. Summary, conclusions, and recommendations.

(a) "[T]here is no clear consensus among attorneys, judges, and mental health professionals as to the dimensions to be examined in formulating opinions concerning the child's best psychological interests within the context of custodial suitability evaluation."[20] Neither is there consensus regarding methods to be employed. *The Specialty Guidelines for Forensic Psychology*[21] urges psychologists offering forensic psychological services "to identify any substantive limitations that may affect the reliability

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[20] JONATHAN W. GOULD & DAVID A. MARTINDALE, THE ART AND SCIENCE OF CHILD CUSTODY EVALUATIONS 42 (2007).

[21] American Psychological Association, *Specialty Guidelines for Forensic Psychology*, 20 (2012), http://www.apa.org/practice/guidelines/forensic-psychology.pdf.

and validity of the facts or opinions offered. . ."[22] Attorneys should look for statements in which evaluators articulate the limitations that are inherent in their procedures, their data, and inferences drawn based upon their observations. The absence of any statement of limitations should notch up attorneys' skepticism level.

(b) Attorneys should ensure that evaluators have been responsive to each issue raised in the orders appointing evaluators. Attorneys should also be watchful for the expression of opinions that were not sought and for commentary (however sagacious it may be) regarding issues that are unrelated to the issues in dispute.

(c) With specific regard to the injection into their reports of personal perspectives,

> There is an important difference between an expert opinion and a personal opinion. When an expert has formulated an opinion, it is reasonably presumed that the expert has drawn upon information accumulated and published over the years. The defining attributes of an expert opinion relate not to the credentials held by the individual whose fingers type the words or from whose mouth the words flow; rather, the requisite characteristics relate to the procedures that were employed in formulating the opinion and the body of knowledge that forms the foundation upon which those procedures were developed. If the accumulated knowledge of the expert's field was not utilized, the opinion expressed is not an expert opinion. It is a personal opinion, albeit one being expressed by an expert.[23]

(d) In the concluding sections of their reports, evaluators should identify data that were not supportive of the evaluators' opinions and should articulate the bases for decisions either to disregard discrepant data or to assign minimal weight to those data.

(e) In a well-written report, readers should find, articulated with clarity and in a logical sequence: (1) what the issues in dispute are; (2) what methods were employed to obtain information bearing on those issues; (3) what factors were examined; (4) how the obtained information bears upon the factors that were examined; and (5) what the evaluators' opinions are.

Evaluators offering ultimate issue opinions (setting forth specific parenting plans and specific recommendations regarding

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22 *Id.*

23 Martindale, *supra* note 3, at 503.

the allocation of parent decision-making authority) will communicate their opinions differently from evaluators who have elected not to address the ultimate issues (or who have been instructed not to do so).

(f) With regard to the inclusion in reports of references to published works, we are in agreement with the position taken by the Association of Family and Conciliation Courts in its Model Standards of Practice for Child Custody Evaluation. Model Standard 4.6 addresses the "Presentation of Findings and Opinions," and 4.6 (b) reads as follows, in its entirety: "Evaluators are strongly encouraged to utilize and make reference to pertinent peer-reviewed published research in the preparation of their reports. Where peer-reviewed published research has been alluded to, evaluators shall provide full references to the cited research."[24]

(g) Attorneys should be watchful for notations indicating that evaluators have dictated their reports and have not proofread them. Evaluators wishing to be thorough proofread their reports.

CONCLUSION

When the deconstruction has been completed, the client should be asked to identify specific recommendations with which the client disagrees and that constitute the basis for the decision to litigate. The client should also be asked to articulate for the attorney his or her perception of the gap between the parenting plan that the evaluator has recommended and the parenting plan that the client seeks. Finally, notwithstanding the fact that evaluators are presumed to be impartial mental health experts and client are very interested parties, they should be asked to articulate the bases for their views that the parenting plans sought by them would be more likely to serve the best interests of their children than would the parenting plans recommended by the evaluators.

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[24] Association of Family and Conciliation Courts, *supra* note 5, at 78.