Conducting child custody evaluations: best practices for mental health counselors who are court-appointed as child custody evaluators.

As the number of high-conflict separation cases continues to rise, mental health counselors are increasingly called upon to assist courts with child custody evaluations. Counselors can provide family courts with invaluable services either as treating or as forensic experts. Because each of these roles is unique, however, it is imperative that counselors who provide services to family courts understand the differences. Ethical, legal, and malpractice risks also increase considerably for counselors who provide courts with expert testimony. The purpose of this paper is to (a) discuss the central differences between the roles of counselor and of child custody evaluator, and (b) describe best practices for conducting child custody evaluations.

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Over the past half-century, an increasing number of children have seen their parents live apart. In fact, the U.S. Census Bureau (2011) reported that nearly 46% of children do not live with both biological parents, and the number of children born to unmarried parents continues to increase (Martin et al., 2010), as does the eventual decoupling of the parents of a large number of these children (Elrod & Dale, 2008). As a result, many parents experience challenging issues related to child custody.

In most cases, separating parents face the challenges associated with severance successfully in a healthy way and custody arrangements are settled amicably (Melton, Petrila, Poythress, & Slobogin, 2007). However, some 10% of separating parents disagree on custody and visitation arrangements, leading to litigation and court intervention (American Academy of Child & Adolescent Psychiatry [AACAP], 1997; American Psychological Association [APA], 2010; Luftman, Vetkamp, Clark, Lannacone, & Snooks, 2005). In these cases, judges tasked with making custody decisions will often call upon court-appointed mental health professionals for assistance with the decision-making process (Bow & Quinnell, 2004; Terzuoli, 2010).

In the population studied by Bow and Quinnell (2004), 16% of child custody cases were referred to mental health experts. As high-conflict separation cases continue to rise, mental health counselors (MHCs) are increasingly called upon to assist courts in making decisions about custody and visitation decisions, either as an MHC called upon to testify as an expert witness on behalf of a particular party, or
as a court-appointed child custody evaluator called in to provide an accurate and unbiased description of the family (Gladding, 2011).

Whatever their role, MHCs who are called to testify in court are vulnerable to being charged with an ethical violation (Greenberg & Gould, 2001; Greenberg, Martindale, Gould, & Gould-Saltman, 2004). For instance, it is not uncommon for MHCs who testify on behalf of their clients to unknowingly make an ethical error by voicing an "expert opinion" with regard to custody issues without having made a thorough evaluation. Yet even if a child custody evaluation (CCE) is conducted, MHCs can still find themselves involved in litigation if ethical procedures to separate the counselor and evaluator roles are not followed (Gorman, 2007; Greenberg et al., 2004; Kirkland & Kirkland, 2001; Sullivan, 2004). For example, providing advice to one litigating party during a home visit can be interpreted as an indication that the MHC is biased. It is therefore imperative that MHCs thoroughly understand the unique nature of each role and their differences before they become involved with families in conflict.

Even though many MHCs are involved in these cases and serve as child custody evaluators (Bow, Gottlieb, & Gould-Saltman, 2011), there is a lack of published articles offering guidance for counselors who must conduct CCEs. The only relatively recent article deals primarily with the process of conducting evaluations and reporting results to the courts (Patel & Jones, 2008). This article therefore reviews ethical issues related to CCEs and common counselor misconceptions about their role in the evaluation process. It is based both on the ethical codes of the counseling profession (i.e., American Counseling Association [ACA] Code of Ethics, 2005; American Mental Health Counselors Association [AMHCA] Code of Ethics, 2010) and on current and well-established best practices (e.g., the AACAP Practice Parameters for Child Custody Evaluation, 1997; the APA Guidelines for Child Custody Evaluations in Family Law Proceedings, 2010; and the Association of Family Conciliation Courts [AFCC] Model Standards of Practice for Child Custody Evaluation, 2006).

To further complicate matters, the qualifications for child custody evaluators differ from state to state (Terzuoli, 2010). Though this article does not provide information specific to any particular state, it provides general guidance to MHCs who work with families involved in high-conflict separation cases. Specifically, it discusses the central differences between providing expert witness testimony as a counselor versus conducting a CCE as an evaluator, and it describes best practices for conducting CCEs, including counselor training, ethical and legal issues, and procedural considerations.

COUNSELOR VERSUS EVALUATOR ROLES

Ethical guidelines mandate that MHCs be aware of their competencies and expertise when providing services to clients. In fact, the ACA (2005) ethics code recognizes that based on their training MHCs may have differing scopes and capacities for practice; however, all must practice within the boundaries of their competence and only after obtaining appropriate education, training, and supervision (C.2.a, C.2.b.). The AMHCA (2010) ethics code similarly suggests that MHCs must recognize the boundaries and limitations of their expertise (C. 1.a.). In determining the scope of their competence as it relates to the CCE process, MHCs must first understand the essential differences between the role of a counselor and the role of a child custody evaluator (AMHCA, 2010, D.4.a.).

Identified Client
An essential difference between a counselor and a child custody evaluator concerns the concept of the identified client. Typically, identified client refers to the individual or individuals for whom services are being rendered; sometimes, the system or some other stakeholder may assume the role of the identified client in a counseling relationship (ACA, 2009). For example, in couples and family counseling the MHC may identify the client (the unit being assessed and intervened upon) as the system, even though the individuals that create the system are the primary stakeholders (Turner & West, 2006). Informing all parties of the identified client from the outset of the counseling relationship ensures ethical practice.

When serving as a child custody evaluator, the MHC does not identify as client the family system, the litigating parties, or even the child; here, the client is the court itself. In other words, the MHC more often than not is appointed by the court (the judge) and renders the services to the court (Greenberg et al., 2004). That is why it is of vital ethical importance that the MHC remain neutral, avoiding a therapeutic working alliance with the individuals involved in the CCE.

Staying continuously aware of the identified client promotes a child custody evaluator's ability to remain impartial. Remaining neutral when conducting CCEs is imperative to delivering a nonbiased report to the court, since the counselor's partiality can be called into question if one of the litigating parties perceives that the MHC is not neutral (Gorman, 2007). For instance, an evaluator who offers advice to a litigating parent about parental boundaries is performing counseling duties and no longer providing services to the court. Thus, attentive forethought and continuous recognition of the intended client may help a counselor to navigate situations that could blur the roles of child custody evaluator and MHC. To maintain the distinction, MHCs must decline to evaluate individuals they are counseling or have counseled in the past (AMHCA, 2010, D.4.f.), and refrain from counseling individuals they have evaluated (APA, 2010; AFCC, 2006).

Primary Goals

Since the ACA (2009) has identified stakeholders as "individuals who have an association with a purpose” (p. 363), it is essential that the purpose of the services is clear to all parties. For instance, in couples counseling, the stakeholders might be both of the individuals in the relationship, and the desired goal might be to increase effective and intimate conversation in order to improve the quality of the relationship. If stakeholders are to be informed of such an outcome, it is imperative that MHCs have a lucid understanding of both the purpose of their role (APA, 2010) and also of the outcome that should occur when the work is completed (Rohrbaugh, 2008). In other words, before rendering services MHCs should have a prospective product in mind (e.g., positive client outcome, submission of a report, etc.).

The primary objective of MHCs is to improve client welfare and interrelationships (ACA, 2005; AMHCA, 2010). For child custody evaluators, however, the primary goal is to obtain and organize information so that it will help a judge to render decisions about child custody and access (AFCC, 2006). Thus, although in general the goal of counseling is to form an alliance with clients and to use counseling skills and interventions to promote client outcomes (ACA, 2009), child custody evaluators are tasked with responsibility for providing the court with valid, objective, and unbiased information about how a family functions as it relates to the best psychological interests of the child (Gould & Martindale, 2007).

Expert Testimony
MHCs may be called into court to testify as either a treating expert or a forensic expert. Greenberg and Shuman (1997) indicated that treating experts have relevant and specialized knowledge that qualifies them to provide the courts with opinions that typically relate to clinical diagnosis and the prognosis of some person or persons involved in the child custody process. Treating experts are ethically limited to providing the courts with clinical opinions related to diagnoses, behavior patterns, progress toward acquiring coping skills, and so forth (Greenberg et al., 2004). Forensic experts, on the other hand, provide the court with custody and visitation recommendations related to the best interest of the child (Austin, Dale, Kirkpatrick, & Flens, 2011; Gould & Martindale, 2007; Greenberg & Shuman, 1997). Forensic experts can therefore express their professional opinions on matters such as parental capacity, custody schedules, limitations of assessments, and so on. Though both roles help the court to reach a just conclusion, the content of the expert testimony differs.

Ethical violations in legal testimony are likely to occur if identified clients and primary goals were not clear at the outset; the most common violation occurs when custody recommendations are made by counselors who are not qualified to make such recommendations (Terzuoli, 2010). For instance, if a child's counselor, at the request of one of the litigating parties, testifies as a treating expert but also provides a custody recommendation, the counselor is offering testimony outside the scope of the professional role of treating expert. Such testimony violates aspects of both the ACA (2005) and AMHCA (2010) ethics codes since there was no unbiased CCE (ACA, E.13.a.; AMHCA, D.4.d). Unqualified recommendations are often delivered to courts even though the professional practice standards emphasize the importance of mental health professionals limiting their testimonies to their role, expertise, and the partial data available (ACA, 2005, E. 13.a.; AMHCA, 2010, D.4.b., D.4.c., D.4.d., D.4.e.; APA, 2010, III.12.; AFCC, 2006, 12.1, 12.2). That is why it is of utmost importance that child custody evaluators adhere to best practice standards (APA, 2010).

**BEST PRACTICES IN CHILD CUSTODY EVALUATIONS**

Recommendations made by the custody evaluator should be based on the best interests of the children involved. The best interest of the child (APA, 2010, p. 863) is the standard in high-conflict custody cases; it requires judges to make custodial and visitation decisions based on interests that promote the well-being of children (Elrod & Spector, 2004; Hall, Pulver, & Cooley, 1996; Rohman, Sales, & Lou, 1987). Although the Codes of Ethics of both the ACA and AMHCA address the primary obligations of MHG's who act as forensic experts, neither provides CCE standards for counselors based on the best interest of the child. Thus, this section will provide essential information about best practices in CCEs related to that standard.

**Counselor Preparation and Training**

CCE guidelines indicate that child custody evaluators need to possess at least a master's degree in a mental health field where the individual received focused training in human development, child and adult psychopathology, interviewing techniques, and family systems (AFCC, 2006, section 1.2), although many states do not require evaluators to have advanced training beyond their practicing degree. However, this sort of foundational training is only a partial component of the knowledge base necessary for effective CCEs (Pickar, 2007).

Best practices call attention to child custody evaluators possessing advanced knowledge and skills in a wide range of topics in order to achieve the best interest of the child standard (AFCC, 2006). The AMHCA
Code of Ethics (2010) also requires that MHCs who engage in evaluation should possess advanced specialized knowledge and competence in this area (D.4.a.). Among the areas of advanced knowledge are understanding of (a) the effects of divorce/ separation, relocation, and remarriage on children; (b) the effects of trauma and crisis, domestic violence, substance abuse, child alienation, and child maltreatment (including sexual abuse) on the psychological and developmental needs of children, adolescents, and adults; (c) the significance of separation and divorce within specific cultures and religions; (d) the impact of childhood disabilities on the child’s biopsychosocial development; and (e) the effect of custodial arrangements on children. MHCs who choose to conduct CCEs are also likely to encounter myriad specific issues related to the best interest of the child that their formal training did not cover.

Competence may be acquired through continuing education (post-master’s coursework, voluntary certification programs, professional workshops, etc.) and supervised practice; to maintain proficiency as a qualified and ethical child custody evaluator, an MHC must be able to regularly monitor his or her continuing competence to do so. Evaluators therefore have an ethical responsibility to keep abreast of best practices in the field and continually seek professional development, supervision, and consultation well beyond their practicing degree.

Ethical and Legal Considerations in Child Custody Evaluations

The role of child custody evaluator is not without risks. In fact, it is not uncommon for evaluators to find themselves in litigation based on an ethical complaint related to a CCE. Ethical complaints against child custody evaluators typically manifest in one of two ways (Greenberg et al., 2004): (a) a discontented parent seeks to discredit the MHC who performed the CCE in order to reverse a custody decision; or (b) MHCs have utilized inappropriate procedures, violated role boundaries, or exceeded the limits of their competence during the evaluation. It is therefore imperative that MHCs who provide forensic services: (a) preserve their role as forensic experts; (b) stay constantly aware that the court is the identified client; (c) preserve the unbiased report as the end-goal of their services; and (d) understand the major legal and ethical considerations within the forensic field.

Avoid multiple relationships. To avoid a conflict of interest, it is essential that the forensic expert not engage in multiple roles (personal, professional, legal, financial, or other) that might impair impartiality, competence, or effectiveness or expose the person with whom the professional relationship exists to harm or exploitation (AACAP, 1997; ACA, 2005; AMHCA, 2010; APA, 2010; AFCC, 2006). A need to intervene clinically may arise in certain situations (e.g., in cases of imminent danger to self or others or disclosure of child abuse). Such instances should be clearly documented and the information forwarded to the judge and the attorneys for the parents.

An MHC who becomes aware of having a relationship with any of the parties to the case (e.g., previous client, social acquaintance) should provide the following written information to the appointing judge or attorney: (a) a full disclosure of professional and social relationships with any party to the evaluation; (b) a description of how such multiple roles might jeopardize the integrity of the evaluation; and (c) a request for removal from one of the roles (AACAP, 1997; AFCC, 2006). If the court or attorneys decline the request, it is necessary to again inform the appointing agent of the limitations of the multiple roles and clearly document how these relationships may affect the evaluation process.
Staying impartial, objective, and culturally informed. Besides maintaining an objective stance, forensic experts are obligated to provide nondiscriminatory evaluations and to practice in a culturally competent manner (AFCC, 2006). MHCs who assume this role should first be aware of their own cultural biases related to age, gender, gender identity, race, ethnicity, national origin, religion, sexual orientation, disability, language, and cultural and socioeconomic status, and of how these biases might interfere with the evaluation process (AACAP, 1997; AFCC, 2006). The MHC should also be knowledgeable about how cultural background may influence the behaviors of individuals within the family being evaluated (Luftman et al., 2005). An MHC who is not able to overcome personal biases or lacks cultural competence should at a minimum disclose this potential conflict to the court in a timely manner (AFCC, 2006).

Awareness and knowledge of law. Malpractice lawsuits are a considerable risk for child custody evaluators (Kirkland & Kirkland, 2001). In fact, Bow, Gottlieb, Siegel, and Noble (2010) found that 63% of psychologists (N = 117) who had done CCEs had been subjected to licensing board complaints. To further complicate matters, CCE procedures are not standardized across jurisdictions (Terzuoli, 2010). Although national training in custody evaluation can be helpful, it is imperative that forensic experts also receive state and local training so that they are familiar with the statutes, case law, and local rules governing child custody within the jurisdiction (AFCC, 2006).

Because training standards are not uniform, the risk is high, and conducting CCEs is complex, MHCs who do so need a comprehensive familiarity with CCE procedures. The following section provides guidelines for conducting a sound and scientific CCE.

CCE PROCEDURAL CONSIDERATIONS AND GUIDELINES

Before agreeing to accept an appointment to conduct a CCE, the MHC should seek from the court and the attorneys their expectations about his or her role and the purpose and scope of the evaluation (AACAP, 1997; APA, 2010; AFCC, 2006). Specifically, the MHC should ask for a court order or a stipulated agreement from all parties and their legal representatives that clearly defines the following points: (a) the specific role of the MHC within the custody case (i.e., treating expert, forensic expert, etc.); (b) the purpose of the evaluation (e.g., legal and physical custody issues, adjustment of visitation guidelines); and (c) the scope of the evaluation. Thus, the framework of the CCE in its entirety should be clear from the outset. Once the MHC has received the CCE referral and the stipulations have been defined, the CCE may formally begin.

Informed Consent

Before collecting data, the MHC needs to obtain informed consent from all parties involved in the CCE so as to honor their legal rights and personal dignity (AACAP, 1997; ACA, 2005; AMHCA, 2010; APA, 2010; AFCC, 2006). A primary objective of informed consent for a CCE is to fully inform all participants that the normal boundaries of confidentiality will not apply because the results of the evaluation will be used in the litigation and any necessary related proceedings (AACAP, 1997; ACA, 2005; AMHCA, 2010; APA, 2010). The informed consent process should be used to educate participants about situations where the MHC as a mandated reporter will be obliged to report certain disclosures to the proper authorities (e.g., imminent danger to self or others, child or elder abuse, etc.; Gladding, 2011). Thus, the informed consent needs to capture the nonconfidential nature of a CCE.
It is also highly advisable that MHCs provide a written disclosure document specifically designed for CCE cases (AACAP, 1997; APA, 2010; Patel & Jones, 2008) that covers at minimum the following:

* Purpose, nature, and scope of the evaluation

* Limits of confidentiality and signed waiver of confidentiality (described above)

* How information obtained will be used

* Who will have access to records and the report, and all parties to whom the evaluation report will be released

* Financial arrangements, with a fee schedule describing services such as depositions, court appearances, and so forth. The document should clarify that services rendered are not considered health services and that the evaluation will make no claims for health insurance reimbursement.

* Credentials and training of the evaluator

* Informed consent for the release of information pertinent to the evaluation

* Arrangement for consulting with other professionals

* Informed consent for authorization to contact collateral sources (e.g., extended family, friends, others involved in the child's life). Releases should contain parents' permission to contact collateral informants, areas about which information will be sought, and how the information will be used.

* The actual evaluation procedures to be used, such as interviews, observations, home visits, and assessments

* Mutual responsibilities of the MHC and each party.

Where the interviewee is legally incapable of providing informed consent, the MHC should provide a developmentally appropriate explanation, seek the individual's assent, consider the individual's preferences and best interests, and obtain consent from the person legally authorized to provide it. All collateral informants contacted during the course of the evaluation should be informed in writing of its purpose, the limits of confidentiality, the party who retained the evaluator's services, and how the information they provide will be used (AFCC, 2006). When the evaluator is unable to secure written informed consent from collateral sources due to time constraints, the evaluator may provide this information to the individual orally. Notification procedures should be clearly documented in the evaluator's records (APA, 2010). After obtaining consent from the litigating parties, the MHC may begin collecting data.

Gathering and Preparing the Data

To enhance the validity of findings, evaluators should use a variety of methods for gathering evaluation data, including parental interviews, observations of the child, review of court records and other documents (e.g., school and medical records), collateral interviews, and if appropriate formal assessment instruments (AACAP, 1997; APA, 2010; AFCC, 2006). The procedures used for gathering data should be balanced and fair to all parties. For example, length of interviews should be the same for both parties to the case, and evaluative criteria should be the same for each parent/child combination.
Maintaining an intentional and balanced approach to the CCE will help the MHC to stay objective and impartial.

Evaluators should also maintain records that safeguard privacy, confidentiality, and legal privilege (APA, 2010; AFCC, 2006). Per the AFCC standards (2006), "Evaluators shall establish and maintain a system of record-keeping and professional communication consistent with law, rules, and regulations, and that safeguards applicable privacy, confidentiality and legal privilege" (p. 10). Records should be created and maintained so that other professionals who are legally entitled to possess or review them have timely access to copies. The records should also be kept so that other professionals will be able to refer to them in analyzing, understanding, or challenging the opinions offered in the evaluation report. There should be a clear correspondence between recommendations made in the report and data in the case file.

With regard to the interviews, a CCE can be conducted by an individual MHC or by a team of two helping professionals (see Langelier, 2009, for more information on team CCEs). In either case, it is recommended that the process begin with the individual MHC or the team meeting both parents together before the evaluation begins to explain the process, learn the primary concerns of the parents, and review the informed consent documents together. Parents will also need to be notified that the child will be interviewed (if the stage of the child's development allows) and that their interaction with the child will be observed. Parent-child observations should be scheduled and overt. The parents should be given information about the purpose of the parent-child observation, how these sessions differ from other sessions (e.g., structured, unstructured, home visits, etc.), and guidelines for the visit.

Patel and Jones (2008) gave a detailed description of the CCE process, including the criteria and components of a written report. Additional strategies for CCE interviews, drawing on AACAP (1997), ACA (2005), AMHCA (2010), APA (2010), and AFCC (2006) guidelines, are as follows:

* The MHC should interview the primary parties in person. Telephone interviews are acceptable only for obtaining information from collateral sources and for collecting supplemental information from primary parties. A log of all in-person interviews and telephone contacts should be recorded in the case file.

* If sessions are recorded, all statements made by the MHC during the session should be on the recording.

* The MHC should individually interview each parent, caregiver, and adult who performs a caretaking role with the child or lives in the same residence as the child.

* If allegations arise against a party to the case, and the allegations have a bearing on the evaluation recommendations, the evaluator should schedule subsequent interviews to allow that party to respond to the allegations. All allegations, reports, and assertions made by primary parties should be corroborated and documented by at least two sources if the reliability of the person making the allegation is in question. Collateral interviews with extended family, friends, and acquaintances may be used to confirm or contradict allegations.

* MHCs should make all possible efforts to encourage parties to participate in the evaluation process and if necessary draw upon court resources (e.g., consultation with the presiding judge) to encourage participation. If one party refuses to participate, the evaluator should document all efforts made to
secure participation, the result of these efforts, and how the lack of this information will affect the reliability and validity of the opinions expressed in the evaluation report.

* The MHG should refuse to listen to recordings one parent has made of the other party, especially if the recording was made without the knowledge or permission of the second party.

* Children aged about 3 and older should be interviewed alone, away from the supervision or presence of the parent or caregiver, using procedures appropriate to the developmental level of the child. The evaluator should be skilled in strategies for interviewing children and should follow established procedures to minimize potential harm to the child. Evaluators should be aware of and adhere to published research guidelines addressing the effects of interviews on children's responses to various forms of questioning. (See Benedek & Ash, 2010; Powell & Lancaster, 2003; and Rohrbaugh, 2008, for detailed guidance on interviewing children.)

* MHCs should refrain from giving interim recommendations to either party before the evaluation is completed.

* When drawing conclusions and recommendations, MHGs should stay aware of the fact that all data were collected in the context of a custody dispute. In other words, the responses and behaviors of individuals may be influenced by the dispute, the interview process, and the evaluator's presence during any observation sessions.

* Evaluation findings should be substantiated by sound evidence and data gathered, without any personal biases or unsupported allegations. The MHC should be prepared to explain in testimony how different sources and different types of information were considered and weighed when an opinion was formed. All recommendations should be based on clinical data, in accordance with established professional standards, and in support of the best interests of the child.

* MHCs should report on or be prepared to testify about the characteristics or parenting abilities of a party only when they have (a) conducted a direct examination of that particular person and (b) obtained sufficient information to form an unbiased opinion.

* In an evaluation report or in testimony, MHCs may decline to give opinions if they do not have enough information to support an informed opinion. When asked directly to give an opinion, MHCs should clearly specify the limits of their reports or testimony, especially when the person has not been examined.

CONCLUSION

The purpose of a CCE is to assess the child's psychological and developmental needs, address the parenting capacities of litigating parents, and determine the best fit between the child's needs and the capacities of the parents (APA, 2010). The CCE process thus involves a comprehensive compilation of information and the formulation of opinions pertaining to custody or access to the child. It also involves dissemination of that information and those opinions to the court, to the litigants, and to the litigant's attorneys. CCEs give judges adequate and nonbiased information about the family so that the judge rules in a manner that is in the best interest of the child.

Because determining what is in the best interest of the child can be complex and challenging, judges often appoint MHCs to help them render custodial and visitation decisions. It is imperative that MHCs
working as forensic experts stay neutral by identifying the court as the client and following the CCE guidelines that support the best interest of the child standard. Unfortunately, there are documented cases of treating experts providing the courts with custody recommendations about families they have counseled but not evaluated.

Although MHCs are exposed to formative training that allows them to establish rapport and assess the systemic functioning of families, the nonpartisan and scientific nature of CCEs is often challenging for many who accept the role of forensic expert. Unfortunately, studies related to CCEs are virtually nonexistent despite the number of MHCs who conduct CCEs. Moreover, this line of work does place MHCs in a position to be sued due to the lack of standardized CCE guidelines and jurisdictional variances in the laws. This article has therefore discussed the central differences between the role of the counselor and that of the child custody evaluator and described best practices for conducting child custody evaluations.

REFERENCES


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