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Custody Evaluations

What You Need to Know



THE DIVORCE
SOLUTIONIST
— YOUR LOSS IS YOUR GAIN —

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THE DIVORCE SOLUTIONIST

The purpose of a custody evaluation (CE) is to help the court/judge explore some issues or concerns raised by itself, either party or the attorney for the child. Custody evaluations are an investigative tool extended by the court so the experts assigned or appointed to conduct them are under that court's directives. The professional that conducts the evaluation is held to a certain standard must meet specific criteria, and have certain qualifications (all dictated by the state).

They can be very helpful if you understand the position they are in AND the responsibility you have to ensure that the process goes as designed.

These are the key things to keep in mind and consider when you are working with a CE.

1. Treat the evaluator with respect and consideration.

The evaluator is a professional, and although you might or not want them involved in your situation, they are. They should be treating you courteously too but they don't need you as much as you "need" them.

2. Be on time, dress appropriately, and don't be obnoxious.

Way too many parents display behavior that gives off the wrong first impression. Whether intentional or not, you need to exercise some decorum.

3. Realize that the evaluator is NOT your therapist.

Although the evaluator is a therapist, it's really important that you realize the evaluator is NOT your therapist. The evaluator's job is to critically analyze you and your behaviors to make a recommendation to the court about your parenting ability or your "fitness" as a parent. The evaluator really works for the court, so be mindful of the information you share with the evaluator.

4. Keep it about the kids.

It is so tempting to share all the messed up things, or the lies, or what's been said to you by the other party, with the custody evaluator...DON'T. I know you want to fill the CE in on things that you anticipate the other party leaving out or defending yourself or vindicating yourself but try to refrain from doing any of these. It's important that you keep your mind focused on making sure the CE is not influenced by your actions. They are trained professionals, they will figure out which parent is the "real issue". Present yourself as reasonable and place the concerns of your child above all. Communicate your knowledge of

your child's interests, needs, and desires, and use that knowledge as a basis for your views on custody. When the evaluator is observing you with your children, be attentive to their needs. Focus on their interests and not yours. Show the priority the children have in your life.

5. Provide lots of evidence and data.

Cold hard data and the evidence speak louder than anything you can say. If you have proof to back up your claims then that should be provided. But be careful that you are not presenting it in an accusatory manner. Make a list of your concerns so that you can be confident they have been communicated.

6. Inform the evaluator to those who can support your report.

Be sure to provide the evaluator with a list of people that he can call to learn more about you and your parenting practices. Teachers, babysitters, neighbors, and others who have seen you in a parenting role, but who are not your family members, are especially important. We all assume that your family loves you and will back you up no matter what, so they tend to be viewed as biased sources of information. Your child's teacher is not likely to be as biased, so this is a great person to have the evaluator talk to. Just like with a job interview, before listing anyone as a reference, ask them if they are comfortable being a character reference for you and whether they'd have any concerns providing you with a good recommendation. If there is any doubt about someone's ability to give you a good recommendation, I would not list them as a reference. Ask them to be honest if contacted. It is important in general to communicate with your child's educators and healthcare providers, and you should discuss with the evaluator how often you communicate with those individuals.

7. Share previous testing results with caution.

If your therapist has done any psychological testing on you, you may want to share these results with the evaluator. Before you decide to share these results, talk to your therapist about any negative aspects of the testing. You may be within normal ranges on all but one scale and depending on what that scale is, you may not want to share the results. Also, when you share things with the evaluator, the information may become part of the court record, which can be "good" or "bad" for either of you.

8. Don't make yourself out to be perfect.

CEs are therapists so they can see things clearly in most of these instances. So If you present yourself as the perfect parent, the evaluator will more likely question your credibility. It's best to go in and be honest about your strengths and your weaknesses because we all have both. Present your weaknesses in a careful way though, don't share them as if they are irreparable or as if you're not trying to address them or that you succumb to them. Present them in a way that's more realistic but not limiting you in taking care of your child(ren).

9. Don't be defensive.

Some CEs will try to provoke litigants because they want to see how they handle stress and being agitated. If the therapist says something upsetting, like, "So I hear you have a bad temper and your ex-wife is concerned that you discipline your kids too harshly," don't get defensive and start yelling and attacking. Do say, "Hmm, it's hard for me to understand why she would say that. I love my kids, I would never hurt them." Pay attention to the questions asked, and answer them directly and to the point. Take your time answering the questions. If you don't understand the question, don't guess – ask for clarification, or for the evaluator to explain further.

10. Be aware.

Remember that what you say to the evaluator will not be kept confidential. The entire purpose of this evaluation is for a report to be generated to be given to the Court.

11. Don't pretend you don't have feelings.

Understand that it is ok to be nervous, cry, and show emotion. Doing any or all of these are normal and sometimes even expected. Try your best to stay relaxed and let the best aspects of your personality come out (patience, humor, concern for the child's well-being, etc.).

12. Psychological Testing is a possibility.

If the custody evaluator chooses to use psychological testing, you MUST answer honestly. The tests are designed to detect defensive or evasive answers as well as lies. You will not fool these tests.

13. Preparing your children.

If your child is of an appropriate age, let them know in general terms that they are going to speak to someone and/or be observed by that person, and should be open and honest with that person. Let them know they will not be in trouble for anything they say or do.

14. Be Willing To Compromise.

If you are inflexible and unwilling to capitulate anything regarding the parenting time and custody of the children, it will not look good. You should be willing to make changes and adjust to do what's believed to be best for the kids. Unwillingness to compromise and cooperate is something that may end up in their report.

15. Do your research - pick a good evaluator.

Ideally, if you have an attorney they should have recommendations on which CE you should work with based on the specific issues of your case. However, if you're not represented then you should take the time to find one based on recommendations or thorough research.

DO NOT:

1. DO NOT bad mouth or give negative opinions about the other parent or his or her family. If you have concerns, limit them to factual issues (for example, “he drinks about 6 beers a night” versus “he drinks a lot”).
2. DO NOT repeatedly call the evaluator to ask when the report will be complete, or harass the evaluator with phone calls.
3. DO NOT ask other individuals to speak favorably or coach them on what to say. They should be as open and honest with the evaluator as you should be.
4. DO NOT coach your children on how to behave or what to say. DO NOT tell them to say negative things about the other parent. The custody evaluator has ways of telling if this has happened.
5. DO NOT use your children as messengers to the other parent.
6. DO NOT refuse to talk to the other parent regarding the child. Keep all communications “BIFF” – Brief, Informative, Factual, and Focused. Do not accept abusive communications, but an outright refusal is usually not a good thing.
7. DO NOT excessively leave the child with babysitters, especially if you are not the primary residence parent.
8. DO NOT be inflexible regarding parenting time issues.
9. DO NOT allow your significant other to get involved in custody disputes.
10. DO NOT drop by the expert’s office without an appointment.



ABA Guidelines:

Parents' preparation for the evaluation.

1. Prior to the first interview, parents should gather relevant documents, including school records, therapy information, and a list of collateral witnesses. Where there are specific, complex issues such as relocation, domestic violence, child abuse, etc., your client will want to gather supporting documents and records from the court file or elsewhere that support these issues.

2. Mental preparation is key to interview preparation. There are four critical areas your client should be prepared to discuss:

- First, clients should understand why the evaluation is necessary and all their concerns that lead them to want to have the evaluation.
- Second, clients will want to discuss the history of parenting and the parenting strengths and weaknesses of all parental figures involved, including legal and stepparents or parents' significant others.
- Third, the evaluator will want to know about the children, including the children's needs, interests, and any difficulties the children have had.
- Finally, clients should be prepared to discuss what they are seeking from the evaluation and why they believe that will be best for the children.

3. It is imperative that your client stay balanced between the need to express all legitimate concerns about the other parent and how the other parent's behaviors might be negatively affecting the children, while simultaneously avoiding bad-mouthing or bashing the other parent. A good way to remain in this balance is for clients to explain how they support the children's relationship(s) with the other parent, as well as protect the children from exposure to conflicts and exposure to any potential harm. Parents should avoid "diagnosing" the other parent. Remember, credibility is always important. A credible parent stays balanced and focused on the children's needs, whereas a less credible parent describes situations and people in either/or terms and focuses only on his or her own perceived strengths as well as the other parent's perceived weaknesses.

4. Have your clients be prepared to talk about the children's varied needs (i.e., their psychological, emotional, educational, social, and extracurricular needs). Most importantly, your clients will need to be prepared for why they believe the preferred outcome is in the children's best interests.

5. Your client's emotions. One of the biggest challenges for parents going through a custody evaluation is managing their emotions. Parents should stay focused on the facts and why they are concerned for their children while also expressing emotions sufficient to the situation, whether laughing when telling funny stories about a child or crying when discussing the fear of any abuse that might have existed or might exist in the future. Be real, and if the situation is appropriate, cry or express sadness and fear as would be expected.

6. Psychological testing. There is considerable controversy about the use and misuse of psychological testing in custody evaluations. Typically, when the mental health of one or both parents is questioned, a custody evaluator will include psychological testing among the several procedures used. Four critical issues are to be considered. First, the use of testing should always be determined based on the scope of the evaluation. Second, psychological testing should only be used to generate hypotheses about the persons involved and not for generating conclusions about a person's psychological functioning. Third, the information gathered from psychological tests is likely to have limited or no value specific to parenting or co-parenting, in large part because the inferences to be gained from such testing are about individuals and the problems are in the family. Fourth, psychological testing often yields inferences about diagnoses, which are much less relevant than behaviors in understanding the family dynamics.

7. Follow-up interviews. A critical part of the evaluation process is the interviews with each parent. An evaluator is likely to ask questions of each parent to learn how they believe their children are functioning. Most evaluators recognize that many critical and relevant issues are perceived differently by each parent. Evaluators often ask each parent about the statements and allegations made by the other parent. These are not meant to be gotcha moments, and they do not indicate the evaluator believes one parent over another. The follow-up interviews and questions help the evaluator develop hypotheses and form a more thorough picture of the family and its unique dynamics. Specific examples with an explanation about why the situation worries the client are more beneficial than general statements about concerns or fears. Likewise, evaluators should not ask about generalities and should focus on specific situations and how they impact the children and the entire family.

More importantly, throughout the interviews, clients should avoid defensiveness, stay focused on the needs of the children, acknowledge how they have contributed to some of the problems, and demonstrate insight into the family's struggles over the years.

8. After the report is submitted. You and your client will need to consider how the evaluator conducted the evaluation and why the evaluator reached his or her findings and conclusions. Be open to how/why the recommendations are in the best interests of the children. If an evaluator appeared to use a thorough process, in depth and with breadth, especially with the relevant and critical issues, you might realize that your client's co-parent might also not be happy with certain aspects of the evaluation.

However, if your evaluator did a superficial job, was not balanced in procedures, or showed evidence of cognitive or other biases, you might want to engage the services of a consultant or expert witness to help you raise these issues with the court.

Resources

Links:

www.apa.org/practice/guidelines/child-custody

www.afccnet.org/Portals/0/Committees/ModelStdsChildCustodyEvalSept2006.pdf

www.naswor.socialworkers.org/Membership/Resources/Child-Custody-Evaluation-Guidelines

