

**April 2016**

## **Minefields of Child Custody & Parenting Evaluations**

**Following my recent publication of an article on the threats to the validity of forensic disability evaluations, I have been asked to write about some these same issues as they pertain to family law evaluations, specifically to child custody and parenting assessments. As many of you who have read my previous works or attended my lectures over the past several years, I have been and remain critical of the status quo child custody forensic evaluation process.**

**Domestic Relations judges continue to order child custody and parenting evaluations on a regular basis throughout the United States and internationally. In response, there remains a corps of clinicians rushing to meet this demand to examine litigants. However, as is the case in other areas of forensic practice, including in disability and criminal matters, not all clinicians are created equally. Child custody evaluations demand exceptional skill to properly and effectively address the specific clinical and legal issues presented in each case. Forensic examinations are quite complex, and unquestionably are vulnerable to errors committed by examiners. It therefore is incumbent upon both forensic practitioners and the legal professional to be mindful of the various factors that potentially can corrupt the reliability of the custody assessment process and reduce the accuracy of the examiner's findings.**

**To perhaps the surprise of some, there are significant conceptual similarities and parallels between disability and child custody evaluations. To contrast these two areas, in IME disability exams, the evaluator is required to assess for the presence of any impairment of vocational capacity, to describe the nature of that impairment, and to opine on how that impairment might impact the person's ability to perform his or her essential job functions in the workplace. In child custody exams, the evaluator is required to assess for the presence of any impairment of parenting capacity, to explain the nature of the impairment if any is identified, and to address how that impairment**

**might affect the person's ability to perform the essential parenting skills necessary to meet the needs of the child.**

**My colleague, forensic psychologist Dr. Lisa Piechowski, recently published an outstanding article<sup>1</sup> that reviews some of the challenges to the validity of assessment findings resulting from examiner-made errors during the forensic examination process. While her article addressed disability examinations specifically, her analyses apply similarly to family law matters. Examiners' mistakes include conceptual, data collection, and inferential related errors. As a forensic psychologist who has performed over 1,000 forensic examinations, in both family law and disability specialties, I am keenly aware of the potential challenges to the forensic evaluation process. I therefore have taken the liberty to draw from Dr. Piechowski's paper a list of some of these potential threats to the integrity of forensic reports as they apply to child custody and parenting assessments. I ask the reader's indulgence in advance to peruse the relevant information below.**

**I believe that increasing the legal profession's awareness of the potential deficiencies of child custody reports will permit not only increased scrutiny of evaluators' work products, but more importantly, will enable attorneys to better weigh the value of a forensic report and to more capably identify which reports could and indeed should be analyzed and possibly challenged. These commonplace errors include the following:**

**Approaching the evaluation as a clinical rather than a forensic evaluation**

**Clinical exams often are subjective in nature, based largely upon clients' self-reports, which typically are assumed be accurate and truthful. These exams usually focus on generating a diagnosis for the purpose of designing a treatment plan. On the other hand, child custody and parenting evaluations underscore addressing functional capacity over diagnosis. They mandate not only maximal objectivity,**

but as well require an assumption that the litigant's self-report might be unreliable and that multiple data sources should be investigated, all of which are oriented around the specific legal standard in question in the context of the exam. In child custody exams, a clear nexus must be established between the triad of the parent's psychological symptoms, parenting ability, and the needs of the child.

### Failure to define "parenting ability" as a clinical and legal construct

I have and will continue in future writings and presentations to address this particular issue at length, as I believe that it remains one of the greatest potential impediments to providing adequately for the needs of children in families undergoing divorce. While the term "best interests of the child" indeed does embody a specific legal definition as determined by governing statutes and laws in each state and province, the term "parenting capacity" remains as ambiguous as ever. Indeed, what is *normative parenting* in North America? There is no standard definition, let alone even a loose framework upon which forensic evaluators can rely to map out assessment strategies and to formulate clinical opinions with respect to parenting functioning. Yet, many custody evaluators continue to offer cavalier opinions to the courts about parenting time and legal custody issues from within this vacuum of clarity and transparency.

### Overemphasis on diagnostic issues rather than functional capacity

Merely because an examinee happens to meet the diagnostic criteria of a particular DSM mental or personality disorder, it does not follow that she or he necessarily exhibits specific functional impairments, let alone impairments that are essential to that individual's ability to effectively parent a child. Symptoms are not behaviors and psychodiagnostic babble does not necessarily translate to functional impairment. Such an erroneous conceptual belief unfortunately is often held by novice and sometimes even experienced examiners.

### Lack of understanding of specific parenting demands

The litigant's functional ability must be weighed with respect to her or his unique and essential parenting tasks. Parents from two different families might undergo comparable custody assessments, and both could be found to have similar emotional symptoms and even identical diagnoses. However, if they have very different child rearing demands from one another, it does not necessarily follow that both will meet the criteria for exhibiting dysfunctional parenting. Impairment in parenting only is impairment when one's ability to perform his or her relevant parenting functions is somehow compromised.

### **Failure to incorporate multiple data sources and over-reliance on self-report**

Clients' self-reports are vulnerable to both intentional and unintentional misrepresentation. In the clinical arena, the significance of such self-descriptions by a client might reflect nothing more than a perception or belief that could be worthy of addressing clinically for the purpose of improving that person's emotional well-being. In contrast, forensic evaluators must consider the response style of the examinee in a different light, including analyzing the extent to which the individual's self-statement might be a function of litigation-related motives, including but not limited to financial, control and other incentives. Research has shown that custody litigants tend to be defensive and avoid disclosure to examiners relative to their non-divorcing peers. By analyzing multiple types of data, such as reports from collateral sources, psychodiagnostic testing, and other records, the accuracy of the self-report can be evaluated and hypotheses can be generated about the veracity and meaning of the litigant's self-reported information.

### **Inappropriate test selection**

There are no published psychological tests that directly assess parenting capacity. Consequently, forensic evaluators mainly are left to administer psychological tests that merely measure constructs such as symptoms or attitudes. As is the case in other areas of

forensic assessment, including disability evaluations, the examiner must then analyze these seemingly immaterial and conceptually distant data, and draw accurate inferences about the relationship between those data and the relevant legal questions. In other words, in a custody examination, the evaluator must be able to provide a clear and rational connection between someone's symptoms, for example, and that person's ability to function generally, and to perform critical parenting functions more specifically. This is by no means an easy task because, once again, there are no standards or formulas upon which the evaluator can rely to guide his or her interpretations. This process affords the evaluator wide latitude to use and hence, an opportunity to potentially misuse psychological testing data.

### **Failure to consider alternative hypotheses and confirmation bias**

Since these forensic examinations often produce inconsistent information, it is incumbent upon the custody evaluator to resolve any apparent conflicts in the data through an iterative process of hypotheses generation and testing to identify those points where the preponderance of the data converge. The examiner's ultimate opinion must be confirmed by and linked directly to the supporting data. Also, in part to ensure the absence of or at least diminished confirmatory bias, which is the tendency for an examiner to seek or interpret information that confirms one's pre-existing assumptions while minimizing the relevance of contradictory data, alternative hypotheses to explain those data that are inconsistent with the final conclusions drawn should be offered. Confirmation bias is not the only type of bias that can affect an examiner's work, and I will address other forms of potential prejudice in an upcoming article.

To conclude, as Dr. Piechowski most articulately remarks, "Evaluation data should never be engineered to fit with the examiner's opinion; rather the examiner's opinion should flow from the data. Careful attention to these considerations can lead to more accurate outcomes and improvements in the quality of forensic... evaluations."

**I Recommend**

**Attorneys engaged in the practice of family law remain cognizant that the child custody examination process embodies substantial art, in addition to science, and therefore is highly susceptible to inadvertent or even purposeful examiner actions that could corrupt the integrity of that process, thereby leading even well-intentioned evaluators to draw erroneous conclusions.**

**[1. Piechowski, L.D., Identifying Examiner-Related Threats to Validity in the Forensic Assessment of Disability, International Journal of Law and Psychiatry (2015), <http://dx.doi.org/10.1016/j.ijlp.2015.08.010>**

**Sincerely,  
Mark D. Mosk, Ph.D.**