



## Children As Pawns: Who Determines Custody?

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The division of assets in a divorce is a process rife with potential conflict, which varies according to the value of the assets and relative worth of the parties. More painful and much more difficult, however, is the determination of custody. Children are not assets to be divided. Their lives, already affected by the divorce, will be further impacted by the custody situation. Attorneys and courts struggle with ways to determine which parent would be the better primary caretaker. If only there were a test ... Because there is not such a determining factor, the legal system has come up with many tests - and people to evaluate them. Rather than simplify the decision, this process may have further complicated it. In addition to the questions of objectivity raised about the tests themselves, there are the questions raised about the individuals who evaluate them.

### Which Are the Best Guidelines?

Many protocols and guidelines exist that suggest best practice for conducting child custody evaluations. The American Psychological Association, American Academy of Child and Adolescent Psychiatry, American Psychiatric Association and the Association of Family and Conciliation Courts are but a few of the professional organizations that have published protocols.

#### ***The APA Guidelines***

The protocol for conducting child custody evaluations published by the American Psychological Association (APA Guidelines, 1994) suggests the use of multiple methods of data collection, " ... including, but not limited to, clinical interviews, observation, and/or psychological assessments." A study undertaken by Bow and Quinnell, discussed in *Psychologists' Current Practices and Procedures in Child Custody Evaluations Five Years After American Psychological Association Guidelines*, *Professional Psychology: Research and Practice*, 32, 261-268 (2001) 5 years after the promulgation of the APA's child custody guidelines indicates that psychological testing of the parent and child ranks fourth and sixth on a scale of one (most important) to ten (least important) with respect to data collection methods. Clinical interviews with the parents and child were ranked most important, and observations of the parents and child together were ranked second in terms of importance.

The APA Guidelines state that the purpose of a child custody evaluation "... is to assess the best psychological interests of the child." The guidelines further state that "[t]he focus of the evaluation is on the parenting capacity, the psychological and developmental needs of the child, and the resulting fit."

#### ***The AACAP Practice Parameters***

The American Academy of Child and Adolescent Psychiatry (AACAP) practice parameters suggest that areas of assessment should include, inter alia, continuity and quality of attachments, preference, parental alienation, child's special needs, education, gender issues, sibling relationships, parents' physical and psychiatric health, parents' work schedules, parents' finances, styles of parenting and discipline, conflict resolution, social support systems, cultural and ethnic issues, ethics and values, and religion. Practice Parameters for Child Custody Evaluation, *Journal of the American Academy of Child and Adolescent Psychiatry*, 36:10 Supplement, 57S-68S (1997). With regard to psychological testing, however, the AACAP practice parameters state, "[i]n most cases, psychological testing of the parents is not required. Psychological tests, such as the Minnesota Multiphasic Personality Inventory, the Thematic Apperception Test, or the Rorschach were not designed for use in parenting

*evaluations.*" (Emphasis added.) The AACAP Practice Parameters do provide for psychological testing, however, in some cases: " ... [I]f the psychiatric health of a parent or child is a legitimate issue, the evaluator may request psychological testing of each parent to help support an opinion and provide relevant data."

### **Caution: Psychological Tests Are Not What You Think**

Although there is no test to determine who the more appropriate parent is, or which parent has superior parental ability, the fact remains that child custody evaluators, as part of their protocol, are utilizing psychological testing with increasing frequency. The AACAP, however, recognizes the fact that the great majority of the psychological tests utilized in child custody evaluations were never *designed to be used in a forensic setting*, and may, in fact, provide unreliable data for the evaluator. In an article entitled "On the Use and Misuse of Psychological Testing in Child Custody Evaluations," author David M. Brodzinsky writes, that "...psychologists routinely overstep the bounds of their professional role by offering opinions about custody and visitation matters based to a great extent, and sometimes exclusively, on the results of psychological testing." However, he also concedes that psychological testing does serve a legitimate purpose in providing data about the unique strengths, limitations and dynamics of the parties. He states that the problem is not that psychological tests are used in custody evaluations, but how they are used.

Some psychological tests are specifically designed for use within the context of custody evaluations, such as the Bricklin Scales (Bricklin Perceptual Scales (BPS), Perception of Relationships Test (PORT), Parent Awareness Skills Survey (PASS)), and the Ackerman-Schoendorf Scales for Parent Evaluation of Custody (ASPECT), all of which assess attitudes and behaviors. Although the concept of psychological tests specifically designed for use in child custody evaluations is welcomed, the lack of both substantive data compiled over time, and peer-reviewed research regarding these tests suggests that their results should be viewed with caution, and no more emphasis should be placed on the results of these tests than is placed on other types of psychological tests utilized by child custody evaluators.

In general, standard psychological tests are designed to measure intelligence, personality, psychopathology and general psychological functioning. Some of the most common tests administered in child custody evaluations, but not specifically designed for this use, are the MMPI and MMPI-2 (Minnesota Multiphasic Personality Inventory), WAIS-R (Wechsler Adult Intelligence Scale-Revised), MCMI-II and MCMI-III (Millon Clinical Multiaxial Inventory), and the Rorschach.

### **Are Intelligence Tests Relevant?**

Intelligence tests, on the other hand, are designed to enable forensic evaluators to obtain a picture of the intellectual abilities of the test subject. These tests are the Wechsler Intelligence Scale for Children (WISC III) and for Adults (WAIS-R), and the Stanford-Binet Intelligence Scale. A person's degree of intelligence is not a determining factor with respect to the issue of child custody. However, for purposes of a child custody evaluation, a subject's level of intelligence is relevant to the issue of his or her ability to problem-solve in specific areas relating to the ability to appropriately care for, and provide for, the child.

### **Personality Tests**

The MMPI (now revised to the MMPI-2), a personality test, is one of the most widely used tests in child custody and general psychological forensic evaluations. The MMPI and MMPI-2 were developed to screen for severe psychopathology, and were designed to assess personality traits by statistical comparison to a standardized population. The MMPI was originally designed for hospital use in diagnosing psychiatric disturbances. The MMPI-2 was adapted for use in a much broader population. Both include "validity scales," which are designed to measure a test subject's approach to the testing process. These scales, based upon the answers provided, can measure attitudes regarding truthfulness and defensiveness, and carry assessment phrases such as "fake-good" and "fake-bad." The test results allow the evaluator to make assumptions about the test subject's personality and how it is affected by certain variable factors, thus impacting upon the subject's ability to be a "good" parent. This method of extrapolation, however, opens itself to criticism of being subjective in its application of the test results to the ultimate issue of parental fitness for custody.

The MMPI and MMPI-2 and the MCMI-II and MCMI-III are objective personality tests in the sense that they are rated by comparing the subject's answers with certain scales. Both tests, however, are "self-reporting," and are,

therefore, more open to manipulation by the test-takers, in an attempt to portray themselves in the best possible light. The MCMI provides data about basic personality styles and is used in the context of evaluating any psychopathology that might affect the parent-child relationship. These differ from projective tests, such as the Rorschach or the Thematic Apperception Test (TAT), which require the subjects either to describe what they see by looking at an inkblot (as in the Rorschach) or to look at a picture and tell a story about what is happening in the picture (as in the TAT). The Rorschach tests can be scored using a scale, most notably the Exner Scale, which arguably makes this projective test somewhat more objective in nature. Administering and scoring a Rorschach test requires a great deal of training and expertise, and the results are only as good as the evaluator administering and scoring them. However, the use of these types of projective tests in child custody evaluations, and others like them, such as human figure drawings, remains controversial, and should be viewed as purely subjective tests, in that the results are subject to the testing bias and predisposition of the evaluator. Additionally, these types of tests have no direct relevance in assessing parenting ability.

### **Why Evaluations?**

Child custody evaluations become necessary because of the unwillingness, or inability of one or both of the parties to work out the issue of custody between themselves. Further, in high-conflict divorces, the parties lack the ability to work with each other for the good of the children, and in families in which domestic violence has occurred, it may be inadvisable to resolve the issue of custody without the assistance of a child custody evaluator. In these situations, the use of psychological testing enables the evaluator to attempt to shed some light on the psychological make-up of the parties, their possible personality deficits, and their potential for distortion or outright lying.

Psychological testing also enables the evaluator to learn more about the parties' personality traits, how these traits affect their parenting styles, and how they impact upon interactions between the parents. This information becomes useful when the evaluator is called upon to make recommendations with regard to custody, visitation, and/or a general parenting plan for the parties.

As with any benefit, there are also risks. As stated above, the reliance upon psychological tests not designed for use in the context of child custody evaluations makes the tests subject to overgeneralization and misinterpretation. The possibility of misuse of the test results, to predict future behaviors or events, is also a strong possibility. It must also be recognized that a divorce and child custody battle is one of life's most stressful events, and the parties undergoing psychological testing are reacting, and responding, within this context. Many of the parties are good people forced to function in a stressful set of circumstances while suffering from emotional chaos. Within this context, psychological testing may not be structured to consider these issues, and thus cannot distinguish between deep-seated psychological issues and psychological problems arising from the situation.

### **Conclusion**

We are all human, and unfortunately, each of us functions in this world with many biases, some hidden, some overt. This includes child custody evaluators. Great attention must be paid to the individual make-up, experiences and personality of the child custody evaluator so that these biases can be explored as part of the litigation process. This type of evaluation must occur in order to determine whether the evaluator's opinions and conclusions are based upon the raw data collected by him or her as part of a forensically and scientifically defensible evaluation process, or whether it is derived from his or her personal issues superimposed upon the parties.

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