

# **MODEL STANDARDS OF PRACTICE FOR CHILD CUSTODY EVALUATION**

## **INTRODUCTION**

The following Standards of Practice for Child Custody Evaluation have been formulated for members of NASW who conduct evaluations in custody and access matters. These members include both court-connected and private practice evaluators in many areas of the world with significant variations in practice and philosophy. It is recognized that local jurisdictional requirements influence the conduct of the custody evaluation; however, the goal of these standards is to highlight common concerns and set standards of practice that are applicable regardless of local circumstances. These standards are intended to assist and guide public and private evaluators. Local law and court rule will influence the manner of implementation and adherence to these standards.

## **PREAMBLE**

Child custody evaluation is a process through which recommendations for the custody of, parenting of, and access to children can be made to the court in those cases in which the parents are unable to work out their own parenting plans. Evaluation may be requested by the parents or their attorneys or ordered by the court. Evaluations may be performed by qualified mental health professionals who are part of a family court system or carried out privately by qualified individuals or teams. Evaluators always serve impartially, never as an advocate for one parent or the other.

The primary purpose and main focus of the custody and/or visitation evaluation is to determine what is in the best interests of the child. Social workers understand the inherent conflict of this process for parents and reaffirm that their role as an evaluator is to keep children's concerns paramount. The assessment goals of a child custody evaluation shall be to

- (a) identify the developmental needs of the child(ren);
- (b) identify the strengths, vulnerabilities, and needs of all other members of the family;
- (c) identify the positive and negative family interactions;
- (d) develop a plan for custody and access utilizing the strengths of each individual that will serve the best interests of the child(ren) and within those parameters, the wishes and interests of the parents, and in most situations, provide them with an opportunity to share in the upbringing of their child(ren); and
- (e) through a written report provide the court, parents, and attorneys with these recommendations and supporting data.

## **I. INITIATING THE PROCESS**

### **A. Appointing or choosing an evaluator**

Social workers will conduct an evaluation only when they have obtained written consent from both parties, or a stipulated agreement from attorneys, or an Order of the court. Parties shall have the right to suspend or terminate an evaluation pending

the consultation of an attorney regarding the advisability of continued participation if the evaluation is not court ordered.

## **B. Arrangements with the parties**

1. The written contract will cover, at a minimum, the following:

- (a) nature of the report;
- (b) access to any records;
- (c) estimated length or duration of the assessment process;
- (d) distribution of the report;
- (e) whether recommendations will be made in the report;
- (f) registration and credentials of the social worker or the evaluating program;
- (g) limits of confidentiality, including abuse reporting requirements and the response to threats of harm;
- (h) informed written consent for the release of information;
- (i) financial arrangements;
- (j) conflict of interest considerations;
- (k) any arrangements for consulting with other professionals;
- (l) scope of the assessment;
- (m) assessment procedures (who will be interviewed, when and where);
- (n) use of any screening or assessment tools;
- (o) the number and nature of home visits;
- (p) policy regarding unilateral assessments and written collateral reports;
- (q) settlement opportunities and the role of the social worker if parental agreement is reached;
- (r) mutual responsibilities of the social worker and each of the parties.

2. If some previous relationship exists, however insignificant, it should be raised at this point and discussed in order to assure each party that objectivity will not be compromised by any prior contact. The social worker must avoid multiple relationships because they may constitute a conflict of interest. The social worker may not conduct a child custody evaluation in a case in which the social worker previously served in a therapeutic role for the child or his or her immediate family or has had other involvement that may compromise the social worker's objectivity (mediation, marital counseling, family therapy, etc.). This does not, however, preclude the social worker from testifying in the case as a fact witness concerning treatment of the child.

3. Communication between the evaluator and the attorneys shall be conducted so as to avoid any question of ex parte communication. Communication of significant matters between evaluator and attorneys may be best accomplished by conference call or in writing with copies to both attorneys.

## **II. EVALUATOR STANDARDS**

### **A. Education and Training**

Custody evaluators shall have a minimum of a master's degree in a mental health field that includes formal education and training in the following:

- (a) extensive knowledge of established theories that relate to the nature and health of familial relationships including, but not limited to, family systems and life cycle theories, attachment theory, theories of childhood development, trauma theories, and other theories that address crisis and transition in families;
- (b) a working understanding of the complexities of the divorce process, awareness of the legal issues in divorce in the evaluator's jurisdiction of practice, and an understanding of the many issues, legal, social, familial, and cultural, involved in custody and visitation.
- (c) knowledge of addictions and mental health issues;
- (d) current approaches to family reorganization after separation or divorce;
- (e) current knowledge of the dynamics of family and domestic violence, including the issues of power and control and the cycle of violence, techniques for assessing the presence of family violence, and the effects of family violence on family members, particularly children;
- (f) knowledge of local mental health, drug and alcohol, family/domestic violence and basic needs resources;
- (g) the impact of cultural, spiritual, and religious background, including cultural self-concept, on the family and the process of separation and divorce;
- (h) (the dynamics of grief/loss within the context of separation and divorce with particular emphasis on the impact on children;
- (i) the completion of psychosocial assessments;
- (j) interview techniques appropriate to adults;
- (k) interview techniques appropriate to children;
- (l) if utilizing testing or screening instruments during the course of an assessment, appropriate training in the administration of and in the interpretation of those instruments.

### **B. Supervision and Consultation**

For evaluators in either public or private settings conducting custody evaluations, it is recommended that ongoing supervision and consultation be available and utilized.

### **C. Knowledge of Statutes**

The evaluator shall be familiar with the statutes and case law governing child custody. These will vary from jurisdiction to jurisdiction and the evaluator must be knowledgeable concerning the criteria for original determination of custody, criteria for change of custody, the use of custody evaluation, qualification for custody evaluators and the legal requirement of the custody evaluation process of the jurisdiction in which the evaluation is being conducted.

### **D. Psychological testing**

- a. Any psychological testing is to be conducted by a licensed/certified psychologist who adheres to the ethical standards of the jurisdiction in which he or she is licensed. In some jurisdictions social workers may administer psychological testing within certain proscribed limits. Social workers in these settings must limit testing and interpretation to those areas for which they are properly trained and qualified.
- b. If testing is conducted with adults or children, it shall be done with knowledge of the limits of the testing and should be viewed only within the context of the information gained from clinical interviews and other available data. Conclusions should take into account the stresses associated with the divorce and the custody dispute.
- c. If psychological test data are used as a significant factor in the final recommendations, the limitations of psychological testing in this regard should be outlined in the report.

The results of psychological testing shall be discussed with the significant adult participants in the evaluation, especially if the results indicate the need for psychological treatment or counseling. Whatever the outcome of the testing, of primary concern to the evaluator should be the parenting skills and abilities of the individual parents. Diagnostic consideration shall be considered secondary to parenting and treatment considerations. To the extent possible given the nature of court-mandated evaluations, results of psychological testing should be presented in such a way as to protect parties' privacy and minimize stigmatization.

### **E. Procedures during an evaluation**

Each evaluator or team may use different procedures relative to joint and/or individual interviews, the necessity of a home visit, and the circumstances in which the children are interviewed. It is desirable that all parties to a dispute, as well as any other significant caretakers, be evaluated by the same evaluator. Any contact between the parties will take into account a history of or allegation of domestic and/or family violence.

### **F. Evaluation in two separate jurisdictions**

In those cases in which the parents or caretakers reside in geographically separated jurisdictions, different evaluators may be necessary for the evaluations of each parent or caretaker. When such is the case, it is the responsibility of the requesting evaluator to be as specific as possible with the details and information requested from

the courtesy evaluator, in order that the returning information is as near as possible to the quality and type of information that the requesting evaluator would have elicited. It is also the responsibility of the originating evaluator to help with the interpretation of the courtesy evaluation for the court. Where feasible, however, it is preferable for all parties to be interviewed by the same evaluator.

#### **G. Interviewing**

Each adult shall be evaluated individually, and comparable evaluation techniques shall be used with all of the significant adults. The social worker will make every reasonable effort to spend equal amounts of time with each party and to undertake the same steps in gathering information from each party. If this is not possible or appropriate, reasons will be stated in the report. The social worker will approach the topic of child custody from social, emotional, developmental, relationship and cultural perspectives and these elements will be reflected in the report provided by the social worker.

#### **H. Procedures with child(ren)**

Each child shall be evaluated individually with procedures appropriate to the developmental level of the child. These procedures may include observation, verbal or play interview, and formal testing. Children's views and concerns about custody and time with their parents should be considered. However, it is important that evaluators interview children in ways that do not give the impression that the child is responsible for decisions about custody and parenting time. Information about the child(ren)'s feelings, thoughts, and wishes about each parent can be obtained through techniques that minimize psychological harm to the child. The children shall be observed with each parent or potential caretaker in the office or home setting if appropriate.

#### **I. Collaterals**

- a. Information from appropriate outside sources, such as pediatricians, therapists, teachers, health care providers, and day-care personnel, shall be obtained where such information is deemed necessary and related to the issues at hand. Prior to the seeking or gathering of such information releases signed by the parents shall be obtained; these releases shall specifically indicate the areas in which the information is sought and limit the use of this information to use by the evaluator in the preparation of the evaluation report.
- b. Interviewing of family and/or friends shall be handled with great care given its potential for increasing divisiveness and resulting in harm to the children. It is possible, however, that family friends and neighbors may be able to present valuable information and/or leads to the evaluator. The use of such information shall be related to the circumstances of a particular evaluation, used only when the evaluator is convinced of its usefulness, and obtained in a manner that discourages conflict.

- c. Additional, relevant public records should be reviewed if appropriate, including police, probation and criminal records and registries.

**J. Children's environment**

The social worker will consider the children's community as part of appropriate custody and access arrangements. This includes the safety of the immediate home environment, day care or after-school care arrangements, religious, cultural and recreational supports, as well as health and counseling resources. All environmental factors will be considered ranging from economic to emotional to community support.

**K. Post evaluation conferences**

The evaluator may hold an interpretive conference with each of the parties, either separately or conjointly. This is not a conference that attorneys need attend, though attorneys may attend if mutually agreed to by parties and appropriate. The purpose of this conference is to discuss with each party the recommendations that are to be made and the rationale for each of these recommendations. As with interviewing of parties and other procedures, evaluators should follow the expectation to be equitable.

**III. AREAS OF EVALUATION**

**A. Quality of relationship between parent or caretaker and the child**

This shall include assessment of the strength and quality of the relationship, emotional closeness, perceptions of each other, and the ability of the parent or potential caretaker to support appropriate development in the child(ren) and to understand and respond to the child(ren)'s needs. The evaluator shall consider ethnic, cultural, lifestyle, and/or religious factors where relevant.

**B. Quality of relationship between the contesting parents or potential caretakers**

This shall include assessment of each parent's or potential caretaker's ability to support the child(ren)'s relationship with the other parent and to communicate and cooperate with the other parent regarding the child(ren). The evaluator shall consider the relevancy of ethnic, cultural, lifestyle, and/or religious factors in assessing these relationships. Also, some consideration of the contribution of each parent to the marital and subsequent discord might be helpful in this regard.

**C. Ability of each parent or caretaker to parent the child**

This shall include assessment of the parent's or potential caretaker's knowledge of the child(ren), knowledge of parenting techniques, awareness of what is normal development in children, ability to distinguish his or her own needs from the needs of the child(ren), and ability to respond empathically to the child(ren). The evaluator shall consider the relevancy of ethnic, cultural, lifestyle, and/or religious factors in assessing these relationships.

Also to be taken into account is the ability and/or willingness of the parent, who perhaps has not had the opportunity to learn these skills, to learn them, to demonstrate an interest in learning them and to try to use them in whatever time he or she has with the child.

**D. Psychological health of each parent or potential caretaker**

This shall include assessment of the parent's adaptation to the divorce, ability to develop relationships, ability to provide a stable home for the child(ren), ability to encourage development in the child(ren), and ability to support the child(ren)'s relationship with the other parent or caretaker. Assessment should also be made of factors that might affect parenting, such as alcohol or drug use, domestic violence, or unstable relationships.

**E. Psychological health of each child**

This shall include assessment of special needs of each child, for example, health or developmental problems. It shall also include assessment of the child(ren)'s adjustment to school, friends, community, and extended family. Children shall not be asked to choose between parents. Their overt and covert wishes and fears about their relationships with their parents shall be considered but shall not be the sole bases for making a recommendation.

**F. Patterns of domestic violence**

In cases in which domestic violence is alleged or a pattern of domestic violence exists the evaluator shall take into consideration both the danger to the other parent or caretaker and the potential danger to and effect on the children. The social worker shall consider the following in all custody and parenting recommendations including:

- (a) risks to the safety and well-being of the child;
- (b) effects of exposure to domestic violence on the child;
- (c) safety of the abused parent (or caregiver) including a safety plan;
- (d) available supports to the family;
- (e) response of the parties to prescribed intervention.

**IV. THE EVALUATION REPORT**

**A. Style**

The evaluation report shall be written clearly and without jargon so that it can be understood by the court, attorneys, and clients. It shall convey an attitude of understanding and empathy for all of the individuals involved, adults and children, and shall be written in a way that conveys respect for each individual, and sensitivity to the impact of the information on the participants.

**B. Contents**

In preparing reports, evaluators shall be aware that their own professional observations, opinions, recommendations and conclusions must be distinguished from legal facts, opinions, and conclusions. The report shall include identifying information, reasons for the evaluation, procedures used, family history, evaluation of

each child and each parent and caretaker, and evaluation of the relationships among parents and children and among the adults. Conclusions about the individuals and the relationships shall lead logically to the recommendations for custody, access, and visitation. Recommendations should take into consideration local rules, statutes and guidelines.

**C. Distribution**

a. The evaluation report shall be distributed according to the rules established by each jurisdiction.

b. It should be made clear to each party that these are the recommendations that are to be presented to the court in the evaluation report; acceptance and use by the court cannot be guaranteed.

**V. ETHICAL PRINCIPLES**

**A. Ethical principles of professions**

Social workers must adhere to the ethical principles of their own profession. When there is a conflict between these ethical principles and another's needs, the evaluator will remove themselves from the process by giving written notice to all parties involved (clients, attorneys and the court).

**B. Prior relationships**

An evaluator must disclose any prior relationship between the evaluator and any member of the family and should not perform a custody evaluation if there is a prior relationship of any kind. In addition, a person who has been a mediator or a therapist for any or all members of the family should not perform a custody evaluation.

**C. Post-relationships**

After the completion of an evaluation, the evaluator should not switch roles to that of either mediator or therapist, or engage in any other relationship with the family or persons who participated in the evaluation.

**D. Issues beyond the evaluator's expertise**

In cases where issues arise that are beyond the scope of the evaluator's expertise, the evaluator shall seek consultation with a professional in the area of concern.

**E. Responsibility for Third Party Records**

In utilizing health, mental health, school, child welfare and other private/sensitive records, evaluators should follow the rules of the entity that generated the record to the greatest extent possible. Evaluators must protect the privacy of parties' records by applying caution and respect to how those records are summarized in the report and by refraining from sharing those records with any other entity without an order from the court.

#### **F. Limitation on evaluator's recommendations**

Evaluators shall make every effort to include all parties involved in the custody dispute in the evaluation process itself. Evaluators shall not make statements of fact or inference about parties whom they have not seen. On occasion, evaluators will be unable to see all parties in a custody evaluation dispute, either because of refusal of one party to participate or because of logistical factors such as geography. In these cases the evaluator may perform a limited evaluation, but must limit his or her observations and conclusions.

The evaluator may report on those individuals who have been seen and on their interactions with each other and may draw conclusions regarding the nature of those relationships, such as whether they should continue, not continue, or be modified in some way.

### **CONCLUSION**

Responsibility and authority for final decisions regarding custody and access rest with the court. As the conclusions of the evaluator are but one piece of the evidence before the court, these conclusions are to be framed as recommendations.

### **ACKNOWLEDGEMENTS**

The above guidelines were drawn from general social work practice ethics, guidelines for social work, custody evaluators in other states and countries, and from knowledge of best practice in the area of child custody evaluation. Specific documents consulted were:

- British Columbia Standards of Practice: Child Custody and Access
- Association of Family and Conciliation Courts: Model Standards of Practice for Child Custody Evaluation
- Louisiana State Board of Social Work Examiners: Guidelines for Child Custody Evaluations
- National Association of Social Workers: Code of Ethics

The Model Standards of Practice for Child Custody Evaluations were developed by the Ethics Committee of Oregon Chapter NASW in 2005. They were approved by the Oregon Chapter NASW Board of Directors and the Oregon State Licensure Board of Clinical Social Workers. For further information, please contact Krystal Ashling, LCSW, 971-207-4235 or [kash@seadream.org](mailto:kash@seadream.org).