

Preparing Your Client for Social Studies and Psychological Evaluations

I. UNDERSTANDING THE CHILD CUSTODY EVALUATION

A. What is a Child Custody Evaluation?

The child custody evaluation is a tool used by the Court to investigate the circumstances of all parties and the children when the parties are unable to agree to the conservatorship and/or the possession and access to the children. The evaluator will investigate and provide information regarding the strengths and weaknesses of each parent, the level of interparental conflict, parent-child relationships, and the children's developmental, social emotional, and educational needs. The evaluation considers past events, present resources, and future needs of the family. If appropriate, the Court may order that psychological testing be performed as part of the child custody evaluation. At the conclusion of this investigation, the evaluator will prepare a report that contains his/her findings and recommendations regarding conservatorship, access, and possession and any other disputed issues regarding the children. This report will be submitted to the Court and each attorney. The attorneys will use the results of the report in the settlement process. If your case proceeds to trial, the report may be introduced into evidence for the Court to consider in making its rulings on the issues related to the children.

B. What is the Role of the Evaluator?

The role of the evaluator is as a professional expert to assist the Court by conducting an impartial evaluation and submitting a report that makes recommendations regarding custody and possession and access of your children. The evaluator does not act as a judge. The judge still makes the ultimate decision applying the law to all relevant evidence. Neither does the evaluator act as an advocating attorney. The evaluator remains neutral and will not determine who is at fault or blame for your divorce. The evaluator, in a balanced, impartial manner, informs and advises the Court and the prospective parties of the relevant psychological factors pertaining to the custody, possession, and access issues.

C. What is the Scope of the Child Custody Evaluation?

The scope of evaluation is determined by the nature of the question or issues raised by either the parties or the Court. Comprehensive child custody evaluations generally require an evaluation of all parties and children involved in the lawsuit. The scope of the assessment in a particular case, however, may be limited to evaluating the parental capacity of one parent without attempting to compare the parents or to make recommendations. Likewise, the scope may be limited to evaluating the child.

D. Who Conducts the Child Custody Evaluation and What Training Is the Evaluator Required to Have?

Child custody evaluators are required to have a minimum of a master's degree in a mental health field that includes formal education and training in child development, child and adult psychopathology, interviewing techniques, and family systems. In addition, evaluators are required to possess advanced knowledge of the complexities of the divorce process, working knowledge of the legal issues in divorce or separation, and knowledge of the sources of evaluator bias and methods for maintaining neutrality. Finally, the evaluator is required to have an understanding of the many issues, legal, social familial, and

cultural, involved in custody and access cases.

E. Are There Different Types of Child Custody Evaluations?

Yes. The child custody evaluation may come in the form of a social study or a psychological evaluation. A social study will not include psychological testing. A child custody evaluation conducted by a psychologist, however, typically includes psychological testing of you, your spouse, and perhaps your children. Psychological testing may be warranted by the circumstances of your case. For example, psychological testing may be warranted when there are allegations of abuse and neglect of the parties or the children. Also, if the mental health of a party or child is at issue or there are allegations of substance abuse, then psychological testing may be appropriate.

F. Who Determines Whether a Social Study or a Psychological Evaluation Is Appropriate for My Case?

The request for a child custody evaluation may originate with the Court, one of the parties, or an attorney representing a party in a proceeding. The Judge will typically permit the attorneys and parties to agree as to whether the child custody evaluation takes the form of just a social study or whether a psychological evaluation is needed in their case. Also, if the evaluator performing the social study believes that psychological testing is needed to complete the child custody evaluation, he/she makes this request of the attorneys or Court.

G. Who Selects the Evaluator?

The Judge will typically permit the attorneys to select the professional who is to conduct the child custody evaluation. If the parties and attorneys cannot reach an agreement on whether a child custody evaluation is needed, the type of evaluation or the professional to conduct the evaluation, then either party may file a motion with the Court and request that the Court resolve the disputed issues.

H. What Is the Cost of a Child Custody Evaluation?

It is important for you to take into consideration the cost of the child custody evaluation before commencing the process. You do not want to start a child custody evaluation, if you cannot afford to finish the evaluation.

The cost of a social study is usually a fixed cost that is known prior to the time the social study is commenced. If the social study is conducted by an employee of Dallas County Family Court Services, the cost of the social study will be based on a sliding scale. If a private person conducts the social study, then the cost of the social study typically ranges from \$500.00 to \$2,000.00 *per party*.

The cost of a child custody evaluation that includes psychological testing will vary from case to case and is usually not fixed at the commencement of the evaluation. Instead, the psychologist will ask that each party pay an initial retainer. It is important to remember that this retainer may or may not cover the entire evaluation. The average cost per party is \$3,500.00. The total cost, however, can be as much as \$20,000.00 or more if the issues are complex and/or time consuming for the psychologist to sort through.

I. How Is the Child Custody Evaluation Conducted?

The evaluation consists of several different components. The evaluator will usually start by asking you to complete a questionnaire that provides detailed information about you, the other party, and your children. The evaluator will then schedule interviews with the parties, the children, and any significant other individuals in the children's lives. The interviews will often be conducted individually, and jointly with the other party or parties. In addition, the evaluator will observe you and your children interacting together. The evaluator may go to your home and assess how the child or children are doing in the home and the conditions of your home.

The evaluator also gathers information from various collateral sources. You and your attorney will have the opportunity to provide information and documents to the evaluator. The evaluator will also collect information from schools, doctors, and other professionals. You will be asked to execute releases so that the evaluator can obtain these records. Finally, the evaluator will obtain information from sources such as family members, school personnel, and daycare providers.

J. How Does the Child Custody Evaluation Affect My Case?

Child custody evaluations are given considerable weight by the Courts. In fact, the Court follows the recommendations of court ordered evaluations in the majority of cases. In short, the child custody evaluation may determine the outcome of the conservatorship, possession, and access issues related to your children.

K. What Is the Standard That the Evaluator Will Be Using in Making Recommendations to the Court?

In a child custody evaluation, the child's interests and well-being are paramount. Parents competing for custody, as well as others, may have legitimate concerns, but the child's best interests must prevail. The Texas Family Code provides that "the best interest of the child shall always be the primary consideration of the Court in determining the issues of conservatorship and possession of and access to the child." Thus, all orders regarding the conservatorship, possession, and access of the children are based on this "the best interest of the child" standard. If the parties are unable to agree on the issues of conservatorship, possession, and access, the Court will make its rulings on these issues based on the children's best interests, not the interests of anyone else.

L. What Does "Best Interests of the Children" Mean?

While the Texas Family Code does not define the term "best interest of the children," it is generally understood to encompass the following rights of children:

- Children have the right to have a continuing relationship with both parents without interference or manipulation.
- Children have the right to be safe and secure, and protected from abuse and neglect.
- Children need to not be seen as a piece of property, but as a human being recognized to have unique feelings, ideas, and desires consistent with that of an individual.
- Children need to have continuing care and proper guidance from each parent or party.
- Children need to not be unduly influenced by any party to view another party differently.
- Children need to have the freedom to express love, friendship, and respect for each party.

- Children need an explanation that the impending action of divorce was in no way caused by the child's actions.
- Children need to not be the subject and/or source of any and all arguments between the parties.
- Children need to maintain regular contact with both parents and a clear explanation for any change in plans and/or cancellations.
- Children need their parents to be supportive of their relationships with the other party and the time spent with that other party.

M. What Factors Will the Evaluator Look at to Determine the Children's Best Interest?

To determine what is in the best interests of the children, the evaluator may look at the following types of factors:

- The age and developmental stage of each child.
- The sex of each child and each party's sensitivity to the child's need for appropriate gender-role-models, as well as the quality of each party's relationship with the child.
- Social, marital, and parenting histories of each party.
- Age and health of each child and the parties with reference to any special needs or problems.
- The wishes of the children's parent or parents.
- Preferences of the children regarding custody and possession.
- The children's relationship to his/her home, school, and community.
- The mental and physical health of all parties involved.
- Interests and activities of each child and the role of each party in encouraging and developing such interests.
- Demonstrated capacity of each party to foster the growth and development of each child and to understand the individual needs of the child.
- Each party's demonstrated ability to provide continuity and stability of environment for the child.
- Relationship and attachments of each child to his or her parents, siblings, and any other persons who may have a significant effect upon the child.
- Demonstrated capacity of each of the parties to support an ongoing relationship between the children and the other parent.
- Parental alienation and its origins and meaning.
- Educational plans for the child and the appropriateness of these plans in regard to the child's educational history and needs.
- Sibling relationships.
- Parties' work schedules.
- Each party's financial situation.
- Styles of parenting and discipline.
- Ability to resolve conflicts with the other party.
- Social support systems.
- Cultural issues.

N. What You Can Do to Prepare Before the Evaluation Process Commences

The child custody evaluation process is important to your case and may be very stressful on you. However, this process can turn the course of the litigation, and perhaps head you in the direction of settlement instead of protracted litigation or determine the outcome of issues related to your children if

you proceed to trial. Take the time and make the effort to properly prepare for the evaluation. It might be the most important preparation you make during the lawsuit.

To assist you in preparing for the child custody evaluation, you should work on preparing the following information. You should also schedule an appointment with your attorney prior to your first appointment with the evaluator to go over the information you have gathered.

O. Develop a Theme for Your Case

Ask yourself why you want to have primary conservatorship of the children or limit the other party's possession and access to the children. You may have many reasons why you feel you should be awarded primary conservatorship of the children or why the other party's possession and access should be limited in some way. Having too many reasons, however, may keep you from effectively presenting your position to the evaluator. One of the most effective ways to prepare for the evaluation is to develop two or three major reasons, or themes as to why it is in the children's best interest that they be placed or remain in your care or why the other party's possession should be limited or denied. Give some thought to what you feel are the most important aspects of your case and then work with your attorney on formulating the theme of your case around these important issues. Focus on these themes and build your case around them. If you develop a theme for your case, it will help you know what information and documents are important to give to the evaluator.

P. Complete a Child Custody Questionnaire

In order for your attorney to help you through the child custody evaluation process, it is critical that your attorney have information about you, each party involved in the case, and your children. The attorney will need to know information regarding your background, marital history and relationship, your children, the parenting responsibilities of the parties, what plans are in the future with respect to the children, and any other significant fact that bears on the disputed issues regarding your children.

Attached is a Personal History Questionnaire. This questionnaire will contain most of the type of information that the evaluator will be seeking from you during the evaluation process. Please complete this form and go over the information with your attorney before you commence the evaluation process.

Q. Keep a Record of Ongoing Issues, Facts, and Incidents

You should begin keeping a record of activities, contacts with your children, and the actions of the other party. You can keep your notes in a notebook or on a calendar. Don't worry about writing down every single thing that occurs. Concentrate on keeping track of significant issues such as missed visitation periods, conflicts that arise and what happened. These notes will help you in the future to be able to provide specific information to your attorney, the evaluator and the Judge if your case proceeds to trial.

R. Compile Documents and Records

It is critical that the information you provide to the evaluator is credible. Whenever possible, use other reports or sources of information to support your statements and concerns. Compile and make copies of any document that you feel may be significant to your case and that will support your expressed concerns. After you compile these documents, you should review them with your attorney before they

are produced to the evaluator. By reviewing the documents with your attorney, the attorney will be able to guide you on the appropriateness of providing such documents to the evaluator as well as being able to give you advice on other documents that may need to be gathered and produced.

The following types of documents are typically considered to be significant:

- School records.
- Medical records.
- Police reports.
- Journals and diaries.
- Calendars.
- Child care records.
- Photographs.
- Counseling records.
- Receipts.
- Drug test results.
- E-mail correspondence with the other party.
- Employment records.

S. Make a List of Collateral Sources

Collateral contacts are a key party of any child custody evaluation. Prepare a list of people you think that it is important for the evaluator to talk to as part of the evaluation process. Such persons may include friends, family members, employers, and teachers. Be sure to include in your list the person's full address, the telephone numbers, and a brief statement as to why you believe that each person has something important to add to the process. You should discuss with your attorney this list of collateral sources before providing it to the evaluator.

II. INTERACTION WITH THE EVALUATOR DURING THE CHILD CUSTODY EVALUATION

A. Confidentiality

There is no confidentiality in court ordered evaluations. It is important for you to understand that the concerns you bring up during the interviews will be discussed with the other parent or party. If there is embarrassing personal information that is not relevant to the evaluation, then you may not want to reveal such information to the evaluator. Also, all documents that you and your attorney give the evaluator will be shared with the other party and attorney. If in doubt whether to share information or provide certain documents to the evaluator, then consult with your attorney first.

B. Completion of Questionnaire for Evaluator

The evaluator will most likely request that you complete a questionnaire as part of the evaluation process. The following are guidelines in responding to the questionnaire:

- Answer the questionnaire in a neutral tone.
- Do not lambaste the other party.
- Do not be critical of the other party or make sarcastic comments.

- Answer just the question asked.
- Provide complete answers.
- Make references to supporting documentation.
- Stick to the facts and do not embellish.
- Tell the truth.
- If you have concerns, state the reasons for your concerns.

C. Execution of Releases

You will be asked to provide releases so that the evaluator can speak to doctors, teachers, therapists, both past and present. A failure to execute the requested releases may impact the evaluator's final report and recommendations. It is important that you be completely candid with your attorney regarding any issues that may be revealed in the documents that the evaluator will receive as a result of the releases.

D. General Rules of Conduct

Custody evaluators expect you to be nervous. They understand the stress that the evaluation process can cause. Following some basic guidelines will decrease your stress and help the evaluator get a true understanding of you and your parenting style.

- Be on time.
- Keep your appointments.
- Appear at your appointment with the evaluator appropriately dressed and groomed.
- Don't become defensive.
- Be yourself.
- Make a list of specific information you want to relate or questions you want to ask before arriving at the appointment.
- Keep the evaluator apprised of any changes that occur in the information that you have provided.
- Pay attention to the questions and answer them directly and to the point. Ask for an explanation if you do not understand the question.
- Respond promptly and calmly to the evaluator's requests.
- Do not make repeated calls to the evaluator or call to see when the report will be finished.
- If you give the evaluator names of collaterals, inform the collateral sources in advance that they may be contacted so that they can prepare to speak on your behalf.

E. DO'S and DON'TS During the Child Custody Evaluation

- DO be truthful. Tell the good, the bad and the ugly. If you can be honest, this will likely be an advantage.
- DO be as objective in your reporting of the problems as you can without dwelling on a litany of negatives. In most cases, custody contests involve two people who have divergent ideas about what is in the best interests of the children. Keep this in mind and put your best foot forward, being careful not to step on the foot of your spouse.
- DO assume responsibility for your own actions. The evaluator knows that no one is perfect. It is far better to inform the evaluator of your shortcomings and explain how you are working to make any needed changes.

- DO focus on why you are a better parent, not why the other parent is a bad parent.
- DO paint pictures for the evaluator with your descriptions. For example, it does no good to state that "it is in the best interest of the children" to be with you. It is more effective to state, "while my husband worked two jobs, I stayed home with the children and did all of the cooking, cleaning, and child care."
- DO separate your personal problems with the other party from your parenting concerns.
- DO hammer the themes of your case in positive terms, by concentrating on why you are good, not why the other parent is bad.
- DO be attentive to your children's needs and focus on their interests and not yours when the evaluator is observing you with your children.
- DO separate marital problems from parenting issues. Even though your spouse may have angered or betrayed you, this behavior does not mean that your spouse is not a fit parent or that he or she does not love the children.
- DON'T be hysterical or histrionic.
- DON'T give long rambling recitations of the other parent's claimed inadequacies, otherwise, you will turn the evaluator off.
- DON'T prep your children to say negative things about the other party. It is obvious when this has occurred and is not considered a positive action on the part of the adult.
- DON'T prep your children to say certain things or to not say certain things.
- DON'T look at the custody investigation as a win/lose situation, but rather as an avenue to arrive at good plan for your children.
- DON'T lie. If you lie and the evaluator catches the lie, then the evaluator will assume that everything you have told him or her is suspect. In the end, you lose all credibility with the evaluator.
- DON'T whine.
- DON'T criticize the other party.
- DON'T speak badly of the other party. Instead stick to the facts and let the facts speak for themselves.

F. The Importance of Documentation

The more supporting documentation you can provide the evaluator, the better, so long as the documentation is relevant. Often times, documents speak louder than words because it is an objective record of an event that can be verified independently. If you can't get the documentation you need from some source, provide the name and telephone number of the person the evaluator can contact to discuss the unavailable documents. The evaluator may want to obtain certain documents directly from the source. It is helpful, however, if you go ahead and provide the records to the evaluator in the event the evaluator does not receive the records.

It is also important that when you provide the evaluator with your collateral sources that you provide the complete name, address, and telephone number of the collateral source. Your failure to supply complete contact information may slow down the process, increase the cost of the evaluation, or cause the evaluator to not contact the collateral source.

Go into the interview organized. Organize all of your information, records, phone numbers, fax numbers of any record, professional, or additional collateral contact. Being organized prevents wasting time, and it will save you money by not leaving the evaluator to do the work. Remember that the more work you do, the easier it is for the evaluator to find the facts.

G. Psychological Testing

If you are having a child custody evaluation that includes psychological testing, you will be given a battery of psychological testing. Do not try to overanalyze the questions, simply pick the answer that is mostly true or mostly false, as appropriate. The tests are designed to detect defensiveness and lies. As such, honesty in these tests is important. Efforts to paint yourself in an overly positive light will be detected and pointed out by the evaluator.

H. The Evaluator's Interaction with the Children

The evaluator will meet with your children during the evaluation process. Before the evaluator meets with the children, the children should be told that they will be meeting with someone and this person's role is to help the parties decide what is best for children. You should not coach your children — the evaluator will be able to tell if you have done so.

If it appears to the evaluator that you have coached the child to say negative things about the other party, this fact will be reflected in the evaluation and may adversely affect your case. The evaluator understands that your children will have feelings about each party involved in the evaluation process. Do not be surprised or panicked if the child expresses positive or negative feelings about you or the other party. The evaluator will explore these feelings with your children. The children may or may not be given psychological tests. If the children are administered any tests, you do not want to try and manipulate the children prior to testing.

You should not tell the child that the evaluator will decide where he or she lives or how they visit with a parent. By doing so, you are placing an inappropriate burden on the children to choose where they want to live. It is important to understand that the child will typically not be directly asked where he or she wants to live. The child may, however, state a preference as to which parent he or she wants to live with. When small children state a preference, the evaluator must assess its meaning and context. Has the child come to this opinion freely, or has a parent rehearsed or heavily influenced the child. If a child appears extremely hostile toward one of the parents or the child finds nothing positive in the relationship with that parent and prefers no contact, the evaluator will assess this apparent alienation and hypothesize its origins and meaning.

PERSONAL HISTORY QUESTIONNAIRE

1. List each person that currently lives in your home, including their age and relationship to you.
2. List the address for each of your residences in the last five (5) years.
3. List all of the jobs you have held in the last five (5) years, including in your answer the name and address of your employer, your job responsibility, and your rate of pay.
4. List all of your marriages or cohabitation relationships.
5. Have you ever been involved in any acts of family violence? If so, please describe, including the name the other persons involved.
6. Have your children ever been abused or neglected? Is so, please describe. Please include in your answer if Child Protective Services has ever been involved with you or your children.
7. Have you are anyone else in the case ever received any psychiatric or psychological treatment or counseling? If so, please identify the person receiving the treatment or counseling, the dates of treatment and the purpose of the treatment.
8. Please describe your use of alcohol, if any. Include in your answer if you have ever received any treatment for alcohol related issues and a description of such treatment. Please provide the same information regarding any other party in this case.
9. Please describe your use of illegal drugs, if any. Include in your answer if you have ever received any treatment for use of illegal drugs and a description of such treatment. Please provide the same information regarding any other party in this case.
10. If you are currently taking any prescriptions drugs, please list the drugs you are taking. Include in your answer, the name of the drug, the doctor prescribing the drug, the dosage, and the purpose for the medication. Please describe the same information regarding any other party in this case.
11. If you or any other party in this suit has a criminal history, please describe. Include in your answer any arrests and convictions, the dates of the arrests or convictions, the nature of the offense, and the outcome.
12. Which parent took care of the child(ren) during the marriage or relationship?
13. Tell what each parent did for/with the child(ren) on a daily basis?
14. What are the child(ren)'s daily routines?
15. Does the child(ren) attend school? If so, where?
16. In which grade is the child(ren)? How does the child(ren) perform in school?

17. What are the names of the child(ren)'s teachers?
18. Who attends the child(ren)'s medical appointments?
19. Who attends the child(ren)'s dental appointments?
20. Who attends the child(ren)'s parent-teacher conferences?
21. Who attends the child(ren)'s school activities parents are allowed to attend?
22. What are the child(ren)'s interests and activities not related to school?
23. Who attends the child(ren)'s activities not related to school?
24. If the child(ren) was in counseling, who attended the counseling sessions?
25. Who are the child(ren)'s doctors? When was the child(ren) last seen?
26. Who are the child(ren)'s counselors? When was the child(ren) last seen?
27. Has the other parent met the child(ren)'s teachers? If so, who? When?
28. Has the other parent met the child(ren)'s doctors? If so, who? When?
29. Has the other parent met the child(ren)'s counselors? If so, who? When?
30. Make a list of your strong points and your weak points as a parent and a person.
31. Make a list of the other party's strong points and weak points as a parent and a person.