

Family Law

Current Trends in Custody Evaluations

By John S. Eory

As Family Part judges and matrimonial attorneys are well aware, the costs associated with a custody battle are enormous, both emotionally and financially. Typically, the cost of a full-blown custody evaluation will be no less than \$6,000 and will likely exceed that amount depending on the nature and extent of the issues and number of persons involved.

There is also the prospect of doubling such fees if each party retains their own expert or a party disputes the court-appointed expert's conclusions and hires his or her own custody expert. In this troubled environment, attorneys and judges are seeking case-appropriate and cost-effective alternatives, as explored below.

Custody-Neutral Assessments

First and foremost, a custody-neutral assessment (CNA) is not a custody evaluation. Instead, it is a *diagnostic screening tool designed to provide clinical impressions* to assist attorneys and judges in

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identifying and resolving issues. It is most certainly not a "custody evaluation lite," as some have mistakenly or flippantly labeled it.

A CNA, whether initiated by the court or counsel, requires the entry of an appropriately framed order. A well-drafted CNA order should provide for the following:

- Attorneys' names and contact information;
- Clinician's name and designation as court-appointed evaluator;
- A specified flat fee (generally \$1,250 — \$2,500, depending on the venue); and
- A concrete mission statement, such as, "_____ is appointed to perform a custody-neutral assessment regarding the parties and provide the court and counsel with a report containing the clinician's forensic impressions."

The word *impressions*, above, is important since a CNA does *not contain recommendations*. For purposes of this article, *impressions* are defined as conclusions based on clinical experience and research but not necessarily accompanied by objective data or specific research (as in the case of the more comprehensive

evaluations discussed below).

The use of a CNA as a diagnostic screening tool is relatively new, with the exception of some southern New Jersey counties where CNAs have been successfully utilized. As with any relatively new procedure, misunderstandings have arisen. For example, some attorneys view a CNA as an inexpensive custody evaluation. Conversely, CNAs have been criticized for not containing sufficient objective data to permit the parties, their attorneys or the court to make a custody determination.

But specific custody recommendations are not the purpose of a CNA. As previously stated, *a CNA is a screening tool* used to determine the nature and extent of any issues pertinent to an initial determination of custody and parenting time, as well as if a change of custody is sought or relocation with the children outside of New Jersey is sought. It should not be overlooked that a CNA is also effective in dealing with recalcitrant or reluctant litigants and to provide guidance to the court in entering case management orders.

Brief-Focused Evaluations

Brief-focused evaluation (BFE) is not a screening tool but rather an *assessment tool*, which includes gathering objective data, interviews with collateral contacts, a review of provided documentation, etc., *with respect to a specific question* raised by the court or counsel. For example, a risk assessment incident to domestic violence or intimate partner violence — the term *intimate*

partner violence should be distinguished from *domestic violence* as it does not include a cyclical recurrence feature (it is a rapidly developing area within the mental health profession which will eventually achieve legal recognition, in my opinion) — is ideal for a BFE, as are examinations and recommendations concerning a variety of behaviors which could compromise parental fitness, such as anger management, drug abuse and fetishes.

Like a CNA, a BFE *does not include interviews of children*. What distinguishes a BFE from a CNA is depth. The BFE often includes the administration of psychometric testing. Typically, a BFE ranges from \$3,000 to \$5,000, depending on the question presented and number of persons involved. However, because the focus of a BFE is specific, the cost and time involved in the issuance of a report is substantially less than in a full custody and parenting time evaluation.

A BFE answers the question asked. It makes *limited recommendations* with respect to custody or parenting time, as opposed to rendering a *clinical impression*, as in a CNA. The BFE can be sequential to a CNA; that is, if, at the conclusion of a CNA, the parties or the court ask the clinician to investigate a specific issue arising out of the CNA, there is no bar to so proceeding; however, a new and clearly defined order should be entered.

On occasion, a BFE might reveal a serious underlying psychological problem beyond the original question. In such a case the BFE should reference the area of clinical concern and will likely lead to a full-blown custody and parenting time evaluation.

Finally, a CNA is not a prerequisite for a BFE. One example might involve whether or not to consent to or order unsu-

pervised parenting time based on allegations of anger management issues of the nonresidential parent. While a CNA might be helpful, such a situation warrants a BFE from the outset. In this case, if the evaluator were to determine that a person's anger emanates from an underlying mental health condition, the evaluator is at liberty (and some would say obligated) to disclose such information to the court and counsel with a recommendation that a custody and parenting time evaluation is appropriate.

Custody and Parenting Time Evaluations

A custody and parenting time evaluation (CPTE) is a full evaluative tool examining relevant psychological features such as parental fitness, a child's preference and capacity, the parties' ability to communicate and cooperate in the best interests of their children, domestic violence aspects and other relevant matters.

Unlike a BFE, in which a clinician may only examine one party, a CPTE examines all parties, including the children, and relies upon additional objective material to arrive at a *comprehensive evaluation with an extensive recommendation* instead of *clinical impressions* (CNA) or *limited recommendations* (BFE).

A CPTE will almost always include:

- Objective psychometric testing of the parties;
- Observations of and/or interviews with the children;
- Interviews with collateral contacts; and
- Review of materials provided by counsel.

Multiple sessions with the parties and children, sometimes individually and other times in combinations, further distinguish a CPTE from a CNA or BFE.

The time and cost of a CPTE are

directly related to the number of persons involved, data gathered by testing and other factors, including the degree of cooperation with the evaluator. Assuming both parties' timely attendance at scheduled appointments and overall compliance with the process, it is realistic that a CPTE will cost at least \$6,000, and likely more depending on the evaluator's fee structure and need to integrate his or her clinical observations with test results, research tools and professional experience to arrive at a recommendation consistent with a child's best interests.

In some situations, a CTPE is necessary from the outset. Alternatively, it may be part of the sequential process described above. In either case, it is incumbent upon the evaluator to bring his or her complete skill set to bear, including citation of relevant research upon which recommendations are made. In the absence of such protocols, a CPTE is subject to diminished evidential weight or rejection by the court as a net opinion. A properly prepared CPTE will include detailed conclusions *based upon a "best interests of the child" standard* and recommendations as to decision-making custody, residential custody, parenting time including holidays and vacations, individual, family or parent-child counseling (if appropriate), and use of mediators or parent coordinators to resolve future parenting disputes antecedent to any litigation.

Conclusion

Clearly, the availability of these clinical options expands the playing field, thus making it incumbent on counsel and the courts to choose wisely in order to meet the needs and finances of the parties, promote judicial economy and serve the best interests of children. ■