Louisiana Licensed Professional Board of Examiners

LPC Guidelines for Conducting Child Custody Evaluations

Preface:

The child custody evaluation process involves a comprehensive compilation of information and the formulation of opinions pertaining to the custody or child access. It also involves the dissemination of that information and those opinions to the court, to the litigants, and to the litigant's attorneys so that judges have adequate information about the family that allows the court to make custody decisions that promote the welfare and best interest of the child.

The intent of this document is to provide Louisiana Licensed Professional Counselors (LPCs) who have the knowledge, training, and experience to conduct child custody evaluations with additional guidance and direction in this area. It is expected that all LPCs who perform child custody evaluations will do so in accordance the LPC Practice Act and the LPC Board's Rules, Regulations, and Procedures. The following material was developed from child custody evaluation practice guidelines published through the American Psychological Association Practice Guidelines (2009), the Louisiana Social Work Board of Examiners Guidelines for Child Custody Evaluations (1998), the American Academy of Child and Pediatric Psychiatry Practice Guidelines (1997), the Association of Family and Conciliatory Courts Best Practice Guidelines (2006), and the American Counseling Association Code of Ethics (2005).

Goals of Child Custody Evaluation

The purpose of a child custody evaluation is to determine what is in the psychological best interest of the child. While parents' concerns should be respected and considered, the child's best interest should be the most important consideration.

In Louisiana, factors to consider in determining the child's best interest are specified by LA Civil Code Article 134. This list is nonexclusive and the weight to be given to each factor is within the discretion of the trial court.

> Art. 134. Factors in determining child's best interest
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> The court shall consider all relevant factors in determining the best interest of the child. Such factors may include:
>
> (1) The love, affection, and other emotional ties between each party and the child.
>
> (2) The capacity and disposition of each party to give the child love, affection, and spiritual guidance and to continue the education and rearing of the child.

(3) The capacity and disposition of each party to provide the child with food, clothing, medical care, and other material needs.

(4) The length of time the child has lived in a stable, adequate environment, and the desirability of maintaining continuity of that environment.

(5) The permanence, as a family unit, of the existing or proposed custodial home or homes.

(6) The moral fitness of each party, insofar as it affects the welfare of the child.

(7) The mental and physical health of each party.

(8) The home, school, and community history of the child.

(9) The reasonable preference of the child, if the court deems the child to be of sufficient age to express a preference.

(10) The willingness and ability of each party to facilitate and encourage a close and continuing relationship between the child and the other party.

(11) The distance between the respective residences of the parties.

(12) The responsibility for the care and rearing of the child previously exercised by each party.

II. Guidelines for Evaluator Competence

Becoming a child custody evaluator is a specialty area of practice involving an advanced level of education, knowledge, training, and supervision. Any LPC conducting evaluations shall obtain appropriate education and professional training prior to offering to perform or accept an appointment as an evaluator. Competence may be obtained through academic coursework, continuing education workshops, and supervised practice. LPCs who choose to conduct child custody evaluations are required to closely monitor their competence to practice in this area and refrain from practicing outside of their scope of competence. They are responsible for keeping abreast of best practices in the field and for seeking ongoing professional development, supervision, and consultation.

While Louisiana law does not require specific areas of training for custody evaluation, best practices in the field indicate a need for advanced knowledge and skill in a wide range of topics, including but not limited to the following:

(1) Psychological and developmental needs of children, especially as these needs relate to decisions about child custody and access

(2) Family dynamics, including parent child relationships, blended families, and extended family relationships, and the effects of divorce, relocation, and or remarriage on children

(3) Family systems theories related to attachment theory, trauma theories, and knowledge of crisis and transition in families

(4) Effects of domestic violence, substance abuse, child alienation, child maltreatment including child sexual abuse on the psychological and developmental needs of children, adolescents, and adults,

(5) The significance of culture and religion in the lives of parties and on the process of separation and divorce

(6) Safety issues that may arise during evaluation process and potential effects on all participants

(7) When and how to interview or assess adults, infants, and children regarding child custody and access

(8) How to gather information from collateral sources

(9) How to collect and assess relevant data and recognize limits of reliability and validity of different sources of data

(10) How to address issues such as mental health, medication use, and learning or physical disabilities

(11) How to apply comparable interview and assessment procedures that meet generally accepted forensic standards for all parties

(12) When to consult with or involve additional experts or other appropriate persons

(13) How to inform litigants, children, other participants of the purpose, nature, and methods of evaluation and limits of confidentiality

(14) How to assess parenting capacity and co-parenting capacity

(15) The legal context within which child custody and access issues are decided and additional legal and ethical standards to consider when serving as a child custody evaluator, including applicable statues, case law, and local rules governing child custody.

(16) How to make the relevant distinctions among roles of evaluator, mediator, therapist, parenting coordinator

(17) How to write reports for the courts to which they will be presented

(18) How to prepare for and give testimony at deposition or at trial

(19) How to reduce evaluator bias and maintain professional neutrality and objectivity when conducting child custody evaluations.

Areas of additional specialized training include:

(1) Assessment of allegation of child sexual abuse issues

(2) Assessment of children's best interest in context of relocation requests by one parent

(3) Assessment of substance abuse

(4) Assessment of child abuse and domestic violence and assessment of safety plans for both parents and children

III. Guidelines for Establishing the Evaluator Role

(a) Establish an impartial, objective, and culturally informed role

The counselor is charged with maintaining a critical, impartial role throughout the evaluation process, regardless of how arrangements for services were made and regardless of the source of payment (ACA Ethical Codes E.13.a). The counselor's role as evaluator is to fulfill the needs of and directives of the court. If the counselor cannot accept this neutral role for any reason, the counselor should decline the appointment or withdraw from the evaluation.

In addition, counselors are obligated to provide nondiscriminatory evaluations and to practice in a culturally competent manner. Counselors should first be aware of their own cultural biases in the areas of age, gender, gender identity, race, ethnicity, national origin, religion, sexual orientation, disability, language, cultural and socioeconomic status, and the ways in which these biases might potentially interfere with the evaluation process. They should also be knowledgeable of the ways in which an individual's cultural background may influence his or her behaviors within the family and during the evaluation process. The LPC

will need to withdraw from the case if he or she is not able to overcome biases or lack of cultural competence.

(b) **Avoid multiple relationships.**

To avoid a conflict of interest, it is essential that the counselor not engage in multiple roles (e.g., personal, professional, legal, financial, or other relationships) that might result in impaired impartiality, competence, or effectiveness, or which might expose the person with whom the professional relationship exists to harm or exploitation.

- It is particularly important for counselors to refrain from conducting evaluations in cases in which the counselor previously served in any type of therapeutic role for the child, family, or any of the parties involved. In addition, counselors should not accept any individuals involved in an evaluation case as future therapy clients.

- Because of his or her training as a professional counselor, it is vital that LPCs clearly distinguish between the role of counselor and evaluator. The goal of counseling is to form an alliance with clients and use counseling interventions to help clients overcome their problems. In contrast, the role of the evaluator is to provide the court with impartial, objective information and informed opinions that will assist the court in making custody and access decisions. LPCs should remain mindful of this distinction and clearly inform all participants.
- In the role of evaluator, the LPC should take great caution not to provide therapeutic interventions or to offer advice to participants. It is permissible to use counseling skills to form relationships with clients and build rapport to enhance the interviewing process. When the need arises, it is also permissible to intervene in crisis situations (e.g., in the cases of imminent danger to self or others, disclosures of child abuse) and to make referrals for counseling services, but these instances should be clearly documented and this information should be forwarded to the attorney(s) involved with the parties in the evaluation.
- LPCs should refrain from substantive ex parte communication, which is defined as oral or written off-the-record communication between the counselor and the party's

attorney or judge without the other party or attorney being present or having knowledge of the nature of the discussion. If communication is required, the evaluator is to take reasonable steps to limit discussions to administrative or procedural matters and to refrain from receiving or providing significant information to others. The evaluator should also refrain from making interim recommendations regarding custody or access prior to the completion of the written report.

- When the LPC becomes aware of a multiple relationship that exists between him/herself and any of the parties involved in the evaluation, the LPC should provide the following written information to the appointing attorney or judge: a full disclosure of professional and social relationships with any of the parties involved in the evaluation, a description of the disadvantages of these multiple roles to the integrity of the evaluation, and a request for removal from one of the roles. If the court or attorneys decline the request, it is necessary to again inform the appointing agents of the limitations of the multiple roles and to clearly document these relationships and their impact on the evaluation process.

III. Guidelines for Evaluation Procedures

Part One: Referral Process

a) Before agreeing to accept an appointment to complete a child custody evaluation, LPCs should seek to secure from the court and/or attorneys information concerning their role and the purpose/scope of the evaluation. LPCs should ask for court order or a stipulated agreement from all parties (and their legal representatives) in which they are specifically named and in which their role, the purpose of the evaluation, and the scope of the evaluation are all clearly defined. If for any reason during the course of the evaluation the LPC deems that the evaluation should be broadened beyond the scope of the original order, any changes in scope should be put in writing and agreed to by the court or by all attorneys as applicable.

b) LPCs are to obtain the informed consent from all parties involved in the evaluation in an effort to honor the legal rights and personal dignity of the individuals. If the examinee is legally incapable of providing informed consent, the LPC should provide a developmentally appropriate explanation, seek the

individual's assent, consider the individual's preferences and best interests, and obtain appropriate consent from the legally authorized individual.

A primary aspect of informed consent is fully informing all participants that the normal boundaries of confidentiality are not applicable. The LPC should notify participants that the results of the evaluation will be used in forthcoming litigation and in any related proceedings deemed necessary by the court. Participants should also be aware of legal reporting requirements (e.g., imminent danger to self or others) that because LPCs are mandated reporters in the state of Louisiana, the LPC will be obligated to report any child or elder abuse, neglect, or suspected abuse that is disclosed during the course of the evaluation.

It is strongly suggested that LPCs provide a written disclosure document specifically designed for the purposes of child custody evaluation cases. This document should include but not be limited to the following information:

1. Purpose, nature, and scope of the evaluation
2. Limits of confidentiality and signed waiver of confidentiality (as described above),
3. Intended uses of the information obtained
4. Who will have access to records and the report, and all parties to whom the evaluation report will be released
5. Financial arrangements, with a fee schedule describing services such as depositions, court appearances, etc. The document should clarify that services rendered are not considered health services and that no claims for health insurance reimbursement will be completed (or claimed) by the evaluator.
6. Estimated length of the evaluation process
7. Credentials and training of the evaluator
8. Informed consent for the release of information pertinent to the evaluation
9. Arrangement for consulting with other professionals
10. Informed consent for authorization to contact collateral sources (e.g., extended family, friends, others involved in the child's life). Releases should contain parents' permission to contact the collateral informants, areas in which information will be sought, and how the information will be used.

11. Actual evaluation procedures to be used, including interviews, observations, or home visits

12. Use of screening tools, if used

13. Mutual responsibilities of the LPC and each party

    In addition, all collateral informants who are contacted during the course of the evaluation should be informed in writing of the purpose of the evaluation, the limits of confidentiality, the party who retained the evaluators' services, and the manner in which the information they provide will be used. When the evaluator is not able to secure written informed consent from collaterals due to time constraints, the evaluator may orally notify the individual of this information. Notification procedures should be clearly documented in the evaluator's records.

Part Two: Data Gathering

To enhance the reliability and validity of findings, evaluators should use multiple methods for gathering evaluation data, including methods such as clinical interviews, observations, review of court records and other documents (e.g., school and medical records), collateral interviews, and use of formal assessment instruments, if applicable. In addition, evaluators should use procedures for data gathering that are as balanced and fair as possible to all parties. For example, interview times with both parties should be equivalent, and evaluative criteria should be the same for each parent/child combination.

Evaluators should also maintain appropriate records that safeguard privacy, confidentiality, and legal privilege. Records should be created and maintained so that other professionals who are legally entitled to possess and or review them will have access to copies in a timely manner. Records should be kept so that other professionals will be able to refer to them in analyzing, understanding, and/or challenging opinions offered in the evaluation report. There should be a clear correspondence between recommendations made in the report and the data contained in the case file.

Guidelines for Conducting Interviews

- It is recommended that the LPC meet first with both parents to explain the evaluation process, obtain primary concerns, and review the informed consent document. The data gathering plan and interviewing schedule can then be developed based upon the needs of the particular evaluation. Before conducting interviews with adults and children, it is imperative that evaluators be well trained in interview strategies that are most effective for child custody evaluation. Some general guidelines for interviews are as follows:

- The LPC should conduct in-person interviews with primary parties. Telephone interviews are acceptable only for obtaining information from collateral sources and for collecting supplemental information from primary parties. A log of all in-person interviews and telephone contacts should be recorded in the case file.
- The LPC should individually interview each parent, caregiver, and all adults who perform a caretaking role with the child or who live in the same residence as the child. As allegations arise against a party in the case, and when these allegations have a bearing on the evaluation recommendations, the evaluator should schedule subsequent interview(s) to allow the other individual to respond to the allegations. LPCs should refuse to listen to recordings made by one parent of the other party, especially if the recording was made without the knowledge or permission of the other individual.
- Children approximately ages three and up should be interviewed alone without the presence of the parent/caregiver using procedures appropriate to the developmental level of the child. The evaluator should be fully trained and skilled in interview strategies with children and should follow established procedures designed to minimize potential harm to the child. Evaluators should be aware of and adhere to published research guidelines addressing the effects of interviews on children's responses to various forms of questioning.
- Evaluators should seek information that confirms or disconfirms the information provided by the primary parties in a child custody evaluation. All allegations, reports, and assertions made by primary parties should be corroborated and documented by at least two sources if their reliability is in question. Collateral interviews with extended family, friends, acquaintances, etc. may be used to confirm/disconfirm information provided by other sources.
- Evaluators should also refrain from giving interim recommendations to either party prior to the completion of the evaluation.

Guidelines for observation sessions

- As part of the evaluation, all children should be observed in the presence of their parents, unless verifiable threats to children's physical or psychological safety will create foreseeable risk of significant harm to the child or where conducting an observation is impossible.
- Parent child observations should be scheduled and overt. Parents should be provided with information regarding the purpose of the parent-child observation,

the ways in which these sessions differ from other sessions (e.g., structured, unstructured, or home visits), and any guidelines for the visit. If sessions are recorded, all statements made by the evaluator during the session should be included on the recording.

Use of formal assessment instruments

Best practices in the field indicate that the use of formal assessment instruments is not required in custody evaluation and may not always be appropriate. Those LPCs who choose to use formal assessment instruments as part of evaluation should be qualified and privileged to use appraisal instruments (see LPC Board Position Statement on the Use of Appraisal Instruments, 2009). It is the duty of the LPC to ensure that any screening and appraisal instruments used in custody evaluations are used only for the purposes for which they were validated. It should be noted that in the state of Louisiana, LPC use of psychological test is prohibited. IF the evaluator deems that psychological testing or evaluation is necessary, these services should be referred to a mental health professional who is licensed to perform these services. Evaluators should be trained and regularly assess for issues such as domestic violence, substance abuse, child alienation, child maltreatment, and child sexual abuse, should any of these concerns arise during the evaluation process. Counselors should use established and systematic procedures for assessing for these issues, for making mandated reports/referrals, and for handling these issues within the context child custody evaluation proceedings.

Part Three: Preparation of Findings

All evaluation findings should be substantiated based upon sound evidence and data gathered, not upon personal biases or unsupported allegations. LPCs should be prepared to offer testimony to explain how different sources and different types of information were considered and weighed in the formation of an opinion. All recommendations should be based upon the LPC's clinical judgmental based on clinical data, in accordance with established professional standards, and in support of the best interests of the child. In addition:

- LPCs should consider the impact of context. When making conclusions and recommendations. LPCs should consider all data collected in light of the fact that it was collected in the context of a custody dispute. Be aware of the fact that individuals' responses and behaviors may be influenced by the dispute, the interview process, and the evaluator's presence during any observation sessions.

- LPCs should make all efforts to encourage relevant parties to participate in the evaluation process, and if necessary, should draw upon court resources to encourage participation. If a particular party refuses to participate in the evaluation, the evaluator should document all efforts taken, the result of these efforts, and clarify the impact this lack of information will have on the reliability and validity of the overall opinions expressed.

- LPCs are not to give opinions on the psychological functioning of any person they have not personally evaluated. An evaluator can report on/testify about the characteristics or parenting abilities for individuals only when they have conducted a direct examination of the individual and have obtained sufficient information to form an adequate opinion.

- In an evaluation report or in testimony, the LPC may decline to give an opinion if he or she does not have enough information in order to provide an informed opinion. When directly asked to give opinions, LPCs should clearly define the limits of their reports or testimony, especially when an examination of the person has not been conducted.

Part Four: Report Writing

General guidelines for report writing:

- Reports and testimony should be accurate, objective, and independent. Evaluators should attempt to be as accurate and as nonpartisan as possible, and resist pressure to communicate their opinions in a manner that might be misleading.
- LPCs should be aware that the use of diagnostic labels can be potentially harmful to individuals and can often divert attention away from the focus of the evaluation. Best practices indicate that great caution should be used before including diagnostic labels in reports. When these labels are used, the evaluator should specify the ways in which the diagnosis and associated deficiencies directly bear upon the issues before the court.
- Evaluators should also refrain from including extraneous information that does not bear directly on the issues before the court. Information that is not relevant to the issues in dispute might be harmful and prejudicial to the outcome of the case.

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