

**DELINEATING THE ROLES OF  
GUARDIANS *AD LITEM* & CUSTODY EVALUATORS:  
WHERE DO THEIR  
LABORS INTERSECT & WHERE NOT?**

**In the Best Interest of the Child:  
2012 Guardian *ad Litem* Training and Update**

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## I. Introduction

The family court considers a multitude of factors when determining child custody in a divorce proceeding or custody dispute. In these cases, the family court's main focus is on the welfare of and the best interests of the child.<sup>2</sup>

There is no consensus in the legal literature about factors that define the best interests of the child (BIC). Several states have identified through statute or case law specific factors that the court needs to consider when making custodial determinations. Among other factors,<sup>3</sup> the court must consider: "character, fitness, attitude, conduct, attributes, and inclinations of each child."<sup>4</sup> In addition, the court should weigh psychological and emotional considerations as they relate to the child.<sup>5</sup> It is important to note that these factors have not been defined in statute or case law, and they have not been defined in the forensic psychological literature either.

The Child Abuse Prevention and Treatment Act (CAPTA) was the first legislation to introduce the legal principle that children need independent representation in a custody proceeding.<sup>6</sup> Prior to CAPTA, attorneys represented the interests of the parents while the voice of the child was often unheard or heard only through the voice of each warring parent. The lack of child representation during determinations of custody led to an awareness that

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<sup>2</sup> Moore v. Moore, 300 S.C. 75, 78, 386 S.E.2d 456, 458 (1989); Ingold v. Ingold, 304 S.C. 316, 404 S.E.2d 35 (Ct. App. 1991).

<sup>3</sup> These factors are derived from case law rather than statutorily derived.

<sup>4</sup> Woodall v. Woodall, 322 S.C. 7, 11, 471 S.E.2d 154, 157 (1996).

<sup>5</sup> *Id.*

<sup>6</sup> Rebecca H. Hartz, *Guardian Ad Litem in Child Abuse and Neglect Proceedings Clarifying the Roles to Improve Effectiveness*, 27 FAM. L.Q. 327 (1993) (citing the Child Abuse Prevention and Treatment Act, 42 U.S.C. § 5101 (1988)).



children’s voices need to be heard in a different way than through the mother or father’s attorney. Historically, courts looked to doctrines such as the “Tender Years Doctrine” to determine to whom to award custody.<sup>7</sup> However, as societal values evolved, the courts abandoned such antiquated doctrines and shifted their primary focus towards determining the “best interests of the children.”<sup>8</sup>

Traditionally, courts assumed for the most part that children’s parent(s) will act in the “best interests of the children.”<sup>9</sup> However, a parent’s perception of what may be in the best interests of the child is inevitably skewed by the parent’s bias and self-interests when fighting over custody rights.<sup>10</sup>

To assist the court in understanding the wishes and/or needs of the children, judges often appoint a guardian *ad litem* (GAL) to represent the best interests of the child. Where it is necessary to assess the psychological condition/interests of the children or where one or both parents may have psychological issues that could affect the well-being of the children, custody evaluators are typically brought into the case because neither the court nor the GAL have the credentials or the requisite training to evaluate such issues. In those circumstances, often by motion of one of the parties, and/or the GAL, the

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<sup>7</sup> Tender Years Doctrine, S.C. Code Ann. § 63-15-10 (West 2011) (abolishment effective May 18, 1994).

<sup>8</sup> Moore v. Moore, 300 S.C. 75, 78, 386 S.E.2d 456, 458 (1989); Ingold v. Ingold, 304 S.C. 316, 404 S.E.2d 35 (Ct. App. 1991).

<sup>9</sup> Margaret E. Sjostrom, *What’s a GAL to Do? The Proper Role of Guardian Ad Litem in Disputed Custody and Visitation Proceedings*, 24 Child. Legal Rts. J. 2 (2004).

<sup>10</sup> *Id.*



court should consider appointing a custody evaluator<sup>11</sup> “to aid the trier of fact in determining placement of the children and are not the triers of fact themselves.”<sup>12</sup>

## **II. Similarities and Differences Between a Guardian *ad Litem* and a Forensic Custody Evaluator**

### **A. Similarities**

A GAL is appointed by the court to represent the interests of a person who is unable to do so for themselves.<sup>13</sup> This article concentrates on GALs appointed to represent the best interests of children in contested custody matters.

The GAL can be a lawyer or non-lawyer as long as all the training and other required qualifications in South Carolina are met. In essence, a GAL is both a spokesperson and investigator who relays facts to the court that she believes are relevant to the court’s overall determination of the “best interest(s) of the child.”<sup>14</sup>

A GAL’s responsibilities include “conducting an independent, balanced, and impartial investigation to determine the facts relevant to the situation of the child and the family.”<sup>15</sup> Such investigation must include “obtaining and reviewing relevant documents” as well as accessing “the child’s school records and medical

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<sup>11</sup> If the evaluator is a psychologist, it is imperative to know about South Carolina’s licensing rules. S.C. Code § 40-55-170 states that a person who practices or offers to practice psychology without being licensed as required is guilty of a felony, may be fined up to fifty thousand dollars, or imprisoned for up to one year.

<sup>12</sup> MARC J. ACKERMAN & ANDREW W. KANE, *PSYCHOLOGICAL EXPERTS IN DIVORCE ACTIONS* 5 (5 ed. 2011).

<sup>13</sup> See South Carolina Private Guardian *ad Litem* Reform Act, S.C. Code Ann. § 20-7-1549 (Supp. 2011) (codifying the guidelines from *Patel v. Patel*, 347 S.C. 281, 555 S.E.2d 386 (2001)).

<sup>14</sup> § 20-7-1549(A)(1).

<sup>15</sup> § 20-7-1549(A)(2).



records.”<sup>16</sup> In addition, a GAL must meet and observe the child,<sup>17</sup> “visit the home settings if deemed appropriate[,]”<sup>18</sup> and “interview . . . parents, caregivers, school officials, law enforcement, and others[.]”<sup>19</sup> The GAL’s objective is to investigate the facts and provide the court with an unbiased, written report that represents facts that directly impact upon the child’s best interests.<sup>20</sup> While it may seem as if the GAL serves in a quasi-judicial role in that she is answerable only to the court and not to either party or really even to the person whose best interests she is appointed to represent (i.e. the child), she still has a fiduciary duty to the child.

Similarly, the custody evaluator inquires into and represents the “best *psychological* interests of the child.”<sup>21</sup> It is important to be aware, though, that “not all psychologists are qualified to perform child custody evaluations. Competence is gained through education, training, supervised experience, consultation, study, and professional experience.”<sup>22</sup>

In South Carolina, the licensing regulations require custody evaluators to view as a minimal practice standard the American Psychological Association’s Child Custody Guidelines and Ethical Code of Conduct.<sup>23</sup> The evaluator’s role is multifaceted. The evaluator is a psychological fact finder through his role as an investigator by reviewing documents and interviewing people with direct

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<sup>16</sup> § 20-7-1549(A)(2)(i).

<sup>17</sup> § 20-7-1549(A)(2)(ii).

<sup>18</sup> § 20-7-1549(A)(2)(iii).

<sup>19</sup> § 20-7-1549(A)(2)(iv).

<sup>20</sup> S.C. Code Ann. § 63-3-830(A)(6) (2011).

<sup>21</sup> American Psychological Association, *Guidelines for Child Custody Evaluations in Family Law Proceedings*, 65 Am. Psychologist 863 (2010).

<sup>22</sup> MARC J. ACKERMAN, CLINICIAN’S GUIDE TO CHILD CUSTODY EVALUATIONS 3 (3d ed. 2006).

<sup>23</sup> S.C. Code Ann. Regs. 100-4 (2011).



knowledge of the parents, child, and each parent-child relationship. The evaluator is also an assessor who interviews the parents, the children, and other relevant family members. He may also administer, score, and interpret psychological tests and conduct home visits during which each parent and the child(ren) are observed.

The custody evaluator is a writer who integrates the information collected during the forensic assessment into a coherent, written document that provides answers to specific questions identified by the court in its original order for custody evaluation. Finally, the evaluator is a teacher and educator to the court. The evaluator teaches the court about the methods and procedures he used in the evaluation and explains how he obtained and analyzed the data. The evaluator then explains to the court and parties how his proffered opinions are related to the data he collected or was provided upon his opinion as well as how his opinion compares to peer reviewed literature.

The evaluation report is a tool for the judge so the judge has a more complete picture of the parties' relative parenting strengths and weaknesses and the fit between each parents' parenting competencies and the psychological and developmental needs of each child. This is sometimes referred to as the "goodness of fit"<sup>24</sup> between each parent and each child.

There is a consensus in the child custody field about the procedures to be followed in a competently conducted child custody evaluation. The Forensic

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<sup>24</sup> JONATHAN W. GOULD, CONDUCTING SCIENTIFICALLY CRAFTED CHILD CUSTODY EVALUATIONS 305 (1998).



Model<sup>25</sup> used in child custody evaluations includes multiple interviews with each parent and each child (when appropriate), direct observation of parent-child interactions, review of records, interviews with collateral informants who have observed the parent-child interactions across a variety of activities, psychological testing, and a home visit, when appropriate.<sup>26</sup> The purpose of this comprehensive methodology is to obtain information about parental functioning prior to the onset of litigation as well as information about parental functioning since the separation. Often times, the most reliable information comes from historical records and observations that capture the nature and quality of the parent-child relations prior to the onset of the litigation and the changes that litigation often bring to previously competent parents, child, and family functioning.

As with the GAL's opinion, the court has discretion to decide whether to adopt the custody evaluator's recommendations.<sup>27</sup>

## **B. Differences**

There are many important differences between a child custody evaluator and a GAL. The custody evaluator is often a trained behavioral scientist who understands the process of scientific inquiry and is able to apply the principles of scientific inquiry to the custody assessment process.

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<sup>25</sup> Martindale, D.A. and Gould, J.W. *The Forensic Model: Ethics and scientific methodology applied to child custody evaluations*. *Journal of Child Custody*, 1 (2), 1 – 22.

<sup>26</sup> JONATHAN W. GOULD & DAVID A. MARTINDALE, *THE ART AND SCIENCE OF CHILD CUSTODY EVALUATIONS* 30 (2009).

<sup>27</sup> *See* S.C. R. EVID. 702 (indicating that an expert's opinion is allowed to assist the trier of fact to analyze a fact in issue); *Divine v. Robbins*, 385 S.C. 23, 35, 683 S.E.2d 286, 292 (Ct. App. 2009).



The custody evaluator is also an expert in many areas of behavioral science research relevant to understanding family functioning within the context of a post-separation family system. Areas of specialized knowledge include, but are not limited to, child development, adult development, child psychopathology and abnormal behavior, adult psychopathology and abnormal behavior, use of psychological tests, children's normal and abnormal reactions to parental separation and divorce, age-appropriate parenting plans, domestic violence and its assessment within the context of child custody disputes, alienation dynamics and its assessment within the context of child custody disputes, and parental gatekeeping and its effect on children's relationships with parents.

Experienced child custody evaluators also familiarize themselves with statutes, case law, and rules of evidence that are directly relevant to the preparation of their work product so their testimony will be admissible. Child custody evaluators are also familiar with research on types of bias that may affect their assessment process, their interpretation of data, and their presentation of data through written or oral testimony.<sup>28</sup>

GALs typically function as information gatherers. This role is an important function and one that the custody evaluator also performs. Most GALs are not trained in the behavioral sciences, are not familiar with the scientific literature, and are unfamiliar with the application of the scientific process used in collecting information in the custody evaluation process. GALs, however, are supposed to be well skilled at interviewing people, and the information they

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<sup>28</sup> S.C.R.E. 702 (2011).





gather from multiple interviews and multiple interviewees is supposed to help the court better understand the facts of the case.

A GAL has access to a broad range of documents as well as the ability to interview and observe the interactions between the parents and the child. As a lay witness, the GAL's report is based upon a broad and admittedly highly subjective investigation.<sup>29</sup> A GAL, as a lay person, even if not an attorney, can suggest that parties get psychological testing based on her personal observations of the individual(s). Under S.C.R.E. 701, a lay witness may present to the trier of fact opinions or inferences that: (a) are rationally based on the perception of the witness, (b) are helpful to a clear understanding of a witness' testimony or the determination of a fact in issue, and (c) *do not require* special knowledge, skill, experience or training."<sup>30</sup>

Many GALs use diagnostic terms drawn from the Diagnostic and Statistical Manual of Mental Disorders.<sup>31</sup> GALs are not trained in the application of diagnostic labels and are likely unaware of the significant controversy in the child custody literature about the use of diagnoses. Among the concerns in the literature are the lack of scientific foundation for some often-used psychiatric diagnoses and the lack of showing a relationship between the behaviors that constitute a diagnostic category and parenting behavior.

When there are concerns about a parent's mental health, a formal psychological evaluation is needed. It is important for the court to recognize that

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<sup>29</sup> See *Divine v. Robbins*, 385 S.C. 23, 39, 683 S.E.2d 286, 294 (Ct. App. 2009) (citing S.C.R.E. 701).

<sup>30</sup> S.C.R.E. 701 (2011) (emphasis added).

<sup>31</sup> AM. PSYCHIATRIC ASS'N, DIAGNOSTIC AND STATISTICAL MANUAL OF MENTAL DISORDERS (4TH ED. 2000).



a diagnosis alone tells us nothing about the person’s ability to parent. The psychological evaluation must include information about the parent’s parenting behavior as observed by third parties and as experienced by the child(ren). One cannot opine about a diagnosis and its relationship to parenting without having specific information about the nature and quality of the parent-child relationship.

Many different types of mental health professionals may conduct a child custody assessment. Most often, the custody evaluator is a doctoral-trained psychologist who conducts psychological testing as part of the evaluation process that includes the other methodological prongs described above.

Social workers and psychiatrists may also conduct child custody evaluations.

These mental health professionals are not trained in the administration, scoring and interpretation of psychological tests, but they are able to employ the other methodological prongs discussed above.<sup>32</sup>

Although the law requires both the GAL and the custody evaluator to proffer opinions that are free from bias,<sup>33</sup> the reality is that there are many different kinds of bias that may enter into the manner in which GALs and evaluators form their opinions.<sup>34</sup> There are several different forms of bias. Those involved in child custody assessment need to be familiar with bias and have considered ways in which to become aware of the role that different types of bias

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<sup>32</sup> JONATHAN W. GOULD, CONDUCTING SCIENTIFICALLY CRAFTED CHILD CUSTODY EVALUATIONS 197 (1998).

<sup>33</sup> S.C. Code Ann. § 63-3-830(A)(2) (2011) (indicating the guardian *ad litem*’s responsibilities); *Guidelines for Child Custody Evaluations in Family Law Proceedings*, 65 Am. Psychologist 863, 864 (2010) (“[I]t is crucial that evaluators remain as free as possible of unwarranted bias or partiality.”).

<sup>34</sup> JONATHAN W. GOULD & DAVID A. MARTINDALE, THE ART AND SCIENCE OF CHILD CUSTODY EVALUATIONS 88-97 (2007).



play in their data gathering behavior, their data analysis behavior, and their presentation of conclusions and opinions.<sup>35</sup>

### **III. How to Pick the Right Evaluator**

In a custody dispute, it is best to appoint a GAL early on in a custody dispute. Upon determination that a psychological evaluation would aid the trier of fact, the court, the attorneys jointly, and/or the GAL may refer the parties to a forensic custody evaluator. The GAL will likely become involved in the selection of the appropriate forensic custody evaluator. Once the custody evaluator is appointed, the GAL will work closely with him throughout his evaluation process.<sup>36</sup> As the representative of the minor child's best interests, it is critical for the GAL to ensure that the forensic evaluator is competent and qualified to conduct a custody evaluation.

#### **A. Who May Conduct a Custody Evaluation**

##### **i. Forensic Psychologist**

A "forensic examiner" is a "psychologist who examines the psychological condition of a person whose psychological condition is in controversy or at issue."<sup>37</sup> Forensic psychology refers to activities in which a psychologist applies "scientific, technical, or specialized knowledge of psychology to the law" to aid the trier of fact.<sup>38</sup> Thus, courts often refer and sometimes cite these experts' opinions

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<sup>35</sup> Id.

<sup>36</sup> MARC J. ACKERMAN, CLINICIAN'S GUIDE TO CHILD CUSTODY EVALUATIONS 5 (3d ed. 2006).

<sup>37</sup> *Specialty Guidelines for Forensic Psychology*, American Psychological Association, (2011) available at <http://www.apa.org/practice/guidelines/forensic-psychology.aspx>.

<sup>38</sup> Id.



in their formal written order relying upon the forensic psychologists' training and expertise.

The attorney(s) and/or GAL shall consider several factors when choosing the appropriate forensic psychologist. First, the interested parties should consider whether the psychologist has sufficient expertise, education, and training in this area.<sup>39</sup> Secondly, one must determine whether the forensic psychologist can perform his evaluation without bias, prejudice, or undue influence.<sup>40</sup> Lastly, the attorneys and GAL should weigh the credibility and sufficiency of the custody evaluator's previous reports.<sup>41</sup> For instance, the GAL should find out how many custody evaluations the psychologist has conducted, how many years of experience he has in this area, and how many of his past submitted reports reflect an unbiased record of his work. A GAL and attorney should explain to the custody evaluator that he is being hired for the purpose of speaking to the court through deposition and testimony at trial.

## **ii. Forensic Psychiatrist**

In some circumstances, the parties and/or GAL may choose to appoint a forensic *psychiatrist* as the forensic evaluator. In South Carolina and North Carolina, psychologists (v. psychiatrists) typically conduct evaluations. However, in other jurisdictions, such as New York, psychiatrists are more commonly appointed to conduct custody evaluations. The forensic psychiatrist abides by the

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<sup>39</sup> Lyn R. Greenberg, Jonathan W. Gould, Dianna Gould-Saltman, Philip M. Stahl, *Is the Child's Therapist Part of the Problem? What Judges, Attorneys, and Mental Health Professionals Need to Know About Court-related Treatment for Children*, 37 FAM. L.Q. 241, 243 (2003).

<sup>40</sup> Id.

<sup>41</sup> Id.



standards set forth by the American Academy of Child and Adolescent Psychiatrists' ethical standards.<sup>42</sup> As would a forensic psychologist, a forensic psychiatrist bases his evaluation upon the same methodology used by psychologists except psychological testing. When an evaluation is conducted by a forensic psychiatrist and a need arises to conduct psychological testing, the psychiatrist would involve a psychologist to conduct such testing.<sup>43</sup>

**B. Who May *Not* Conduct a Custody Evaluation: The Treating Therapist**

The American Psychological Association (APA) guidelines insist that a psychologist should avoid wearing “multiple hats.”<sup>44</sup> For instance, the psychologist is barred from conducting a custody evaluation if he is currently or was previously the treating therapist for the couple, one of the parents, or any of the children.<sup>45</sup> Therapists become advocates for their patients. This advocacy results in biases that might undermine the independence and neutrality of the evaluation process or create the perception that independence and neutrality are lacking.

The APA guidelines define “multiple relationships” as the circumstance when a “forensic practitioner in a professional role with a person [and is

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<sup>42</sup> <http://www.aacap.org>

<sup>43</sup> *Practice Parameter for Child and Adolescent Forensic Evaluations*, 50 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 1299, 1306-07 (2011).

<sup>44</sup> *Guidelines for Child Custody Evaluations in Family Law Proceedings*, 65 Am. Psychologist 863, 865 (2010). See also S.C. Code Ann. Regs. 100-4 (2011).

<sup>45</sup> Id. (“Psychologists conducting a child custody evaluation with their current or prior psychotherapy clients and psychologists conducting psychotherapy with their current or prior custody examinees are both examples of multiple relationships.”).



currently or previously] in a different role with the same person.”<sup>46</sup> Such a relationship may impair the evaluator’s ability to produce an impartial analysis.<sup>47</sup> Therefore, attorneys and guardians must avoid authorizing the appointment of a party’s or child’s treating therapist as the forensic evaluator. If such a situation arises, the GAL should promptly point out this error to the court because the differential roles of a treating therapist and a custody evaluator conflict with one another.

**C. Exceptions: A Therapist With a Master’s Degree in Psychology May Conduct Limited Evaluation**

A forensic psychologist with a doctoral degree can conduct a custody evaluation if he has a specialized knowledge and training in the area of child custody evaluations. The primary distinction between a master’s degree and doctoral degree, as obtained by certified psychologists, is the level of education and time dedicated to that field of study. Therefore, a therapist with a master’s in psychology may not have the requisite knowledge and training to conduct the psychological testing, if such testing is necessary, but such expert may conduct other aspects of a custody evaluation. Further, there is no definitive rule stating that testing is necessary in a child custody assessment.

**IV. How a GAL Should Interact Appropriately with the Custody Evaluator**

The GAL and custody evaluator must work together as “teammates” to properly represent the best interests of the child while not unduly influencing the

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<sup>46</sup> *Specialty Guidelines for Forensic Psychology*, American Psychological Association, at 4.02 (2011) available at

<http://www.apa.org/practice/guidelines/forensic-psychology.aspx>.

<sup>47</sup> Id.



other.<sup>48</sup> The GAL should supply the forensic evaluator with all relevant documents, but the GAL's preliminary impressions and opinions should not interfere with the investigations of the evaluator. The evaluator should take great care to avoid forming partial or biased positions.<sup>49</sup> Evaluators are continually forming hypotheses about the family. The evaluators and GALs should take care to maintain a professional distance as both pursue their investigations.

Though the parties' attorneys may be concerned about the interaction between the GAL and custody evaluator, it is imperative that the GAL maintains a professional distance, because the GAL is responsible to the child and to the court. Attorneys for the parents, on the other hand, are ethically charged with advocating for the best interests of their own clients.

The evaluator should keep notes of each contact with the GAL to help maintain the transparency of the process. Hidden or undocumented contacts raise questions of bias and undermine the transparency of the process. Both the GAL and custody evaluator should retain all records of the investigation including records of their interactions with one another. This is particularly true for the evaluator. The GAL's notes are not subject to subpoena,<sup>50</sup> but the evaluator's are.<sup>51</sup> The evaluator's notes are subject to review by the parties and the parties' attorneys, and such information is subject to cross-examination of the evaluator.

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<sup>48</sup> MARC J. ACKERMAN, *CLINICIAN'S GUIDE TO CHILD CUSTODY EVALUATIONS* 5 (3d ed. 2006).

<sup>49</sup> See *Specialty Guidelines for Forensic Psychology*, American Psychological Association, at 1.02 (2011) available at <http://www.apa.org/practice/guidelines/forensic-psychology.aspx>.

<sup>50</sup> S.C. Code Ann. § 63-3-830(5) (2011).

<sup>51</sup> S.C. R. EVID. 705.



## V. Confidentiality

In a court-ordered custody evaluation, the duty of confidentiality is *to the court rather than to the patient* because the court is the evaluator's client.<sup>52</sup> In this situation, the duty of confidentiality that typically belongs to the patient is implicitly waived by the patient. Thus, all information gathered and used in the evaluation can be disclosed to the court without violating rules of confidentiality.<sup>53</sup> Therefore, the GAL should remember that all information — both tangible and intangible — that she discloses to the evaluator is discoverable by the court and litigants.

## VI. What the Guardian *ad Litem* should Be Concerned With in the Custody Evaluator's Report

Typically, a custody evaluation is ordered or recommended when there are concerns about one or both parent's ability to support the psychological best interests of the child(ren). However, this is determined on a case-by-case analysis.

The scope of the evaluation is determined by the specific questions identified by the court in its order appointing the evaluator. If there are no specific questions identified for investigation in the court order, evaluators must identify the questions that define the scope of their work prior to its beginning. Only then can evaluators provide proper informed consent/assent to those who are evaluated.<sup>54</sup>

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<sup>52</sup> *Practice Parameter for Child and Adolescent Forensic Evaluations*, 50 J. AM. ACAD. CHILD ADOLESCENT PSYCHIATRY 1299 (2011).

<sup>53</sup> *Id.* at 1304.

<sup>54</sup> Jonathan W. Gould & David A. Martindale, *Specific-Questions Guide to Child Custody Investigations*, 27 THE MATRIMONIAL STRATEGIST 1, 1-3 (2009).





Further, an evaluator may only identify those elements from their testing that affect the court's decision about which parent might make the better custodial parent as long as the evaluator assessed both parents and each child.<sup>55</sup> Each child must be assessed in order to determine which parent is best able to provide for each child's unique needs and challenges.<sup>56</sup> Therefore, the GAL has the job of ensuring that the evaluator assesses all children involved in the custody dispute as well as both parents.

Once the forensic evaluator completes his evaluation, the parties' attorneys and the GAL should evaluate the reliability of the procedures used by the evaluator in reaching his report's conclusions, the relationship between the data generated by the procedures used by the evaluator and the evaluator's proffered opinions as well as the research evidence available to support the evaluator's opinions.

The evaluator's report is supposed to provide the parties and GAL with the evaluator's findings. In essence, such information is supposed to be gathered and presented in such a manner that another evaluator would reach the same results after reviewing the underlying information gathered to prepare the report.<sup>57</sup>

The report itself, therefore, is to summarize the information gathered during the assessment process, describe how the data led to answers to specific questions posed by the court, and explain how the data and their interpretation

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<sup>55</sup> MARC J. ACKERMAN, *CLINICIAN'S GUIDE TO CHILD CUSTODY EVALUATIONS* 30 (3d ed. 2006).

<sup>56</sup> *Id.*

<sup>57</sup> JONATHAN W. GOULD, *CONDUCTING SCIENTIFICALLY CRAFTED CHILD CUSTODY EVALUATIONS* 381 (2d ed. 2006).



led to specific expert opinions. The report should consist of the following components:

- case number,
- identification of the party,
- reason for the referral,
- psychological questions to be identified,
- documents and/or collateral sources reviewed,
- methods and procedures implemented,
- patient's background and history,
- results of in-office interviews,
- results of psychological testing,
- summary of evaluations and interviews,
- interpretation of results, and
- opinions and conclusions.<sup>58</sup>

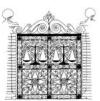
In addition, a forensic practitioner should disclose all information obtained and relied upon and even rejected in the course of the evaluation.<sup>59</sup>

In conclusion, a mental health professional's custody evaluation should assist the trier of fact in rendering a custody decision. The report should accurately portray the best interests of the child, while also educating the court

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<sup>58</sup> Id. at 381-95.

<sup>59</sup> *Supra* note 45 at 11.05.



about the methodological testing used and findings obtained.<sup>60</sup> However, the ultimate decision as to the child’s “best interests” remains for the trier of fact.<sup>61</sup>

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<sup>60</sup> JONATHAN W. GOULD, CONDUCTING SCIENTIFICALLY CRAFTED CHILD CUSTODY EVALUATIONS 3 (2d ed. 2006).

<sup>61</sup> See S.C.R.E. 702 (2011).



## Appendix

### **DELINEATING THE ROLES OF GUARDIANS AD LITEM & CUSTODY EVALUATORS: WHERE DO THEIR LABORS INTERSECT & WHERE NOT?**

*Child Custody Evaluation Standards* by the American Academy of Matrimonial Lawyers is available at  
<http://www.aaml.org/library/publications/21621/child-custody-evaluation-standards>.

*What Should We Tell the Children- A Parent's Guide for Talking About Separation and Divorce* by the American Academy of Matrimonial Lawyers is available for purchase at  
<http://order.store.yahoo.net/cgi-bin/wg-order?yhst-91795554160816+wttc>.

