

WHO CAN CONDUCT CHILD CUSTODY EVALUATIONS AND WHAT IS A CUSTODY EVALUATION?

Who can conduct child custody evaluations?

Here is the simple answer:

All Mental Health Professionals can conduct Custody Evaluations as long as (1) Their credentials are acceptable to the Court and (2) they are not excluded from this activity by either their State licensing agency or their professional association. Currently, Custody Evaluations are being conducted by:

Psychologists
Psychiatrists
Social Workers
Marriage and Family Therapists
Marriage and Family Counselors
Professional Counselors
Certified Mental Health Professional

What is a Custody Evaluation?

A child custody evaluation or "730 Evaluation" (in California), can be described as an in-depth study and investigation of the "family, it's members, and/or prospective members" and their relationship with the children. The evaluation is carried out by an "evaluator" with the intent of helping the court determine what custody, visitation, and/or parenting arrangement would be in the "best interest of the children."

The evaluation usually takes place over a period of time set out by the judge or evaluator (sometimes weeks and sometimes months) and includes a recommendation for what would be "in the best interests of the children", which the court is inclined to adopt. The evaluator can be called into court to testify or be cross examined. The evaluator will then have to answer questions and explain to the judge the recommendations.

Under obligation to the court, at the end of the evaluation, the evaluator will submit their findings and recommendations to the judge prior to the hearing in the form of a written report.

When it appears to the court, at any time before or during the trial of an action, that expert evidence is or may be required by the court or by any party to the action, the court on its own motion or on motion of any party may appoint one or more experts to investigate, to render a report as may be ordered by the court, and to testify as an expert at the trial of the action relative to the fact or matter as to which

the expert evidence is or may be required. The court may fix the compensation for these services, if any, rendered by any person appointed under this section, in addition to any service as a witness, at the amount as seems reasonable to the court. Nothing in this section shall be construed to permit a person to perform any act for which a license is required unless the person holds the appropriate license to lawfully perform that act.

What is involved in a Custody Evaluation?

In most cases, a custody evaluation will consist of several interviews as well as psychological testing. Interviews are conducted with all adults involved with the child, including parents, stepparents and sometimes other relatives who have significant roles in the child's life. Psychological testing provides an additional source of information that cannot be obtained through interviews alone. Some psychologists do their own psychological testing, while others will refer that portion of the evaluation to a professional who is experienced in psychological assessment. The testing is done to describe the personalities and family dynamics, and to find any potential mental health or parenting problems.

Usually several interviews are necessary, especially those that involve the child. Since circumstantial factors (such as custody exchanges and adjustment time, moods, illness, etc.) can have temporary effects on one's behavior. Multiple interviews help differentiate between temporary oscillations in one's behavior and what are continuing personality traits and/or characteristics.

In special circumstances, a custody evaluation may involve visits to the home, often called a "home visit", and/or school. These are not always necessary and in some cases can be initiated by the request of one or both of the parents.

Why a Custody Evaluation?

A custody evaluation usually arises when parties (parents) are unable to decide or do not see eye-to-eye on what each believes to be the best custody arrangement. One parent cannot simply go to court and present an individual side of the argument in hopes of a ruling in their favor. There must be evidence to support a position and a judge, not knowing the family, will depend on the opinion of an "evaluator" to describe the parties involved and the nature of their interaction.

How does a Custody Evaluation come about?

A custody evaluation can come about or occur by the following methods:

By "stipulation", or agreed to by the parties and their attorneys
Requested by either party (parent) in a custody dispute, subject to approval by a judge
Ordered by a judge

Who are the "Family, it's Members, and/or Prospective Members"?

The family is usually the blood family members such as the parents and child.

Other family members and individuals who have played a substantial role in the raising, nurturing, up bringing, and/or day-to-day activities of the children will also be of interest to the evaluator. For example, the children's grandparent(s), stepparent(s), uncle(s), aunt(s), etc.

Prospective members of the family or members that may potentially play a substantial role in the raising, nurturing, up bringing, and/or day-to-day activities of the children will also be of interest to the evaluator. For example, this may include a parent's fiancé/fianceé, girlfriend/boyfriend, etc.

Who is the "Evaluator"?

The custody evaluation is conducted by a qualified mental health professional. The qualifications include having the right training and experience set forth by the state. Qualified persons to conduct evaluations can include a licensed clinical psychologist, licensed psychiatrist, Marriage and Family Therapist (MFT), Marriage, Family, and Child Counselor (MFCC), or Licensed Clinical Social Worker (LCSW).

If there is any psychological testing to be done, and there usually is, the professional must be qualified to administer, score, and interpret the psychological test.

How is the Evaluator selected?

A child custody Evaluator is most often selected or appointed to conduct an evaluation by one of the following methods listed below:

The judge may chose the evaluator from a list the court maintains

The judge will ask the parties to submit a list of acceptable evaluators from which he or she will choose

With the help of the attorneys in the case who know various evaluators and their reputation in the community, the two sides will mutually agree on an evaluator

However, the selection process can become complicated and is often looked at by the attorneys as strategic. This is because some evaluators are considered to be "neutral" or unbiased, while others may be seen as pro-father or pro-mother. Some have gained a reputation for their thorough evaluations and others are looked at as too hasty, as some evaluators can take months to complete an evaluation, and some might finish in several weeks.

These considerations should and most likely will be weighed by the two sides, and play into the negotiations that may take place either between the two attorneys, or alternatively during a court hearing. Of course, each side hopes to get the evaluator who they believe will be in their favor, and that may prolong the selection process.

If you are a party to the proceedings and you get to have some say in the matter, it would be wise to get information and educate yourself about the evaluators you are considering. For instance, evaluators in most cases should be willing to provide a copy of their resume or curriculum vitae, to an

attorney, which can give you the opportunity to learn more about them. Your attorney may also want to ask the evaluators some pertinent questions, thereby hopefully satisfying your needs and requests. For example, it may be of interest to ask the evaluator's view on joint-custody and if he/she believes that a Father is equally capable of raising and nurturing a child, even at a very young age (under 6 months old, under 12 months old).

What factors does an "Evaluator" consider in determining what he/she believes to be in the "child's best interest"?

The evaluation is supposed to determine what is in the overall "best interest of the child";. That is the golden rule in all jurisdictions in the United States, and it is supposed to serve as the premise for the judge's custody and/or visitation order and evaluators recommendation. However, what is and is not in the child's best interest is very subjective both from a legal and psychological perspective. In order to answer the question of what is in the child's best interest, an evaluation will usually be carried out in several phases and over a period of time (which can be several weeks or several months). It is common, though not necessarily obligatory, that the evaluation process includes the following parts:

Initial interview of each parent

Observation of parents interaction with the child (often in the form of play sessions)

Psychological testing (includes tests performed on both parents and the child)

Interviews of third parties, such as family friends, teachers, therapists, counselors, and/or doctors.

Observation of other family members and/or third parties and their interaction with the child (often in the form of play sessions)

Review of reports and other information provided to or obtained by the evaluator

Home visit

What happens after the Evaluation?

After completion of the evaluation, the evaluator writes up and submits a report to the court or judge and to the two attorneys representing the parents. This is usually done early enough before the hearing in which the report will be considered, giving the parties time to examine the report and to consider and/or make any necessary objections. (The time line is regulated and varies depending on the court rules and procedures in your jurisdiction).

If the report is acceptable to both parties, the parties can agree to accept it in its entirety into evidence. If there are disagreements, the parties will have a chance to argue their points in regards to the findings found in the report and challenge its recommendations.

Upon receiving the report, most judges give heavy weight and consideration to the recommendations and findings of the evaluator found and submitted in the report. Since the judge is the ultimate

authority in making an order and not the evaluator, they can use their judicial discretion to give as much weight as they decide to the report when making a final order.

In considering the report, the judge is also likely to consider whether the data contained within the report is convincing and whether the evaluation was executed fairly. Also, consideration as to whether or not the data found in the report passes the measure of what would be considered "beyond reasonable doubt", a family law criteria. Other judicial considerations are whether the evaluator used acceptable methods, and whether their conclusions logically reflect the data in the report.

In addition, the judge will listen to and may consider any inconsistencies between the data in the report and other evidence brought to light in the case. Ultimately, in considering the report, the judge's decision must be based on the what is considered to be in the child's best interest. What if I disagree with the Evaluation report?

If either of the parties (parents or attorneys) is not satisfied with the evaluation report, and its recommendations, they may depose the evaluator, and/or have the evaluator placed on the witness stand for cross-examination.

If one does challenge the evaluation report, it may be beneficial to seek out the opinion of an outside expert or mental health professional to review and critique the evaluation process and have this placed into a formal declaration written up by your attorney. Also, the expert will need to be prepared to be cross-examined at trial. The expert should evaluate the methods used by the evaluator, the conclusions drawn from the data, and the validity of the evaluators recommendations, and report their findings within the declaration.

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