

Impressions

APPLICATIONS FOR LEGAL PRACTICE

INSIGHTS FROM THE PRACTICE
OF CLINICAL PSYCHOLOGY
MARCH 2015

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BRIEF FOCUSED ASSESSMENT IN CUSTODY LITIGATION ALTERNATIVES TO CUSTODY EVALUATIONS

In custody and visitation litigation, it can be a challenge to provide family courts with reliable information about children's needs, parental competence, and co-parenting skill especially when time is limited and financial resources are not plentiful. Traditionally, a comprehensive custody evaluation is recommended but when costs are prohibitive and litigants do not agree to this process, then frequently a custody evaluation is not undertaken. In lieu of a full custody evaluation, sometimes individual mental health evaluations of the parties are requested but many times the results of these fail to bring information about intra-family conflict to light. A Brief Focused Assessment (BFA), a model developed by the Association of Family and Conciliation Courts, can be used to support and inform judicial decision making and may preclude the need for a custody evaluation.

Both custody evaluations and BFAs may be appropriate in different phases of the same case. A BFA would be an issue-specific kind of assessment where the issues are narrowly defined, the findings are descriptive, and the conclusions would speak to the impact of the particular issue upon family functioning. If what is sought is a clear recommendation about custody, then the BFA is not the appropriate choice for an assessment. Custody recommendations can only come from the results of a comprehensive custody evaluation. However, if the issues in dispute concern, for example, visitation arrangements only or the impact upon children of particular parenting characteristics, then a BFA is the appropriate evaluation tool.

In my own practice, I have done BFAs to address questions about the impact of one parent's excessive religiosity upon the children's emotional adjustment and their relationships with the other parent. The question in this custody dispute was not one about parent's religious preferences but was about potential or realized harm to the children as a function of extreme religious preoccupations and practices by the other parent. In another visitation re-litigation, my task was to assess the harm (potential/realized) to the children brought about by one parent's severe psychological disorder which was not expected to become stable with medication. In yet another case, I have been asked to assess the potential harm to the children resulting from the legal custodian's refusal to allow any contact with the other parent, when the parental separation occurred before a second parent adoption could be finalized.

For many reasons, a custody evaluation was not the appropriate evaluation tool to respond to the core questions of the aforementioned parental disputes and individual psychological evaluations of any of the parties would not have responded to critical issues, even when the information would have otherwise been informative. The first two cases were resolved in court with the stand-alone BFAs. The third case went in another direction before a BFA could be conducted.

The advantages of BFAs are that they are efficient and cost effective; less intrusive for the family because the inquiry is circumscribed; they can be completed in less time;

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DR. EABON does psychological evaluations for custody, visitation, and education litigation. She has a psychotherapy practice for adolescent and adult clients and does parent coordination. She began doing civil commitment evaluations in 1991 for the Fairfax-Falls Church CSB. Since then she has conducted parental competence, custody and visitation evaluations (for infants, toddlers, children and adolescents,) therapeutic assessments, brief focused assessments and diagnostic evaluations. She has been qualified as an expert witness in J&DR and Circuit Courts throughout Northern Virginia, in Chicago IL and Charlotte, NC as well as in U.S. Immigration Court. Dr. Eabon also does psychological evaluations for disability determination, educational accommodations, learning and psychological disorders, adoption, citizenship exam exemption, and immigration issues.

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they can provide information quickly and assist in keeping a case on track toward resolution; and finally they may obviate the need for a comprehensive custody evaluation. In my practice, my preference is to undertake a BFA by court or consent order, where I am named as the evaluator and the narrow issues to be assessed are written clearly into the order. This way there is no doubt that the BFA is being undertaken as part of a custody litigation process with the intent that the results can be both an aid to family problem-solving and judicial decision making.

Within the context of custody litigation, any referral for assessment to a clinical psychologist needs to be undertaken thoughtfully and with an understanding of the advantages and limitations of an evaluation. ***A BFA will not result in custody recommendations.*** It is best used when a thorny, conflictual family issue is inflaming parental reasoning, adversely affecting children's present and future adjustment or safety, and/or interfering with attempts to resolve a custody dispute or to develop a case for litigation. A BFA can also be useful in re-litigation as the issues presenting themselves for continuing dispute may be narrow or continuations of circumscribed problems that were not resolved in initial litigation.

The BFA should never be regarded as an inexpensive substitute for a custody evaluation nor should the expert opinion of the psychologist completing the BFA be expected to extend to opinions about custody. In a custody evaluation the objectives of the evaluator are to collect data that responds to questions about mental health, parental fitness and competence, or co-parenting ability, as well as to thoroughly assess the children's needs, behavioral functioning, and mental health status, among many other factors. From this large pool of data, the custody evaluator will develop custody and shared parenting time recommendations and provide a written and detailed rationale for his or her conclusions, supported by the data and other information which has been gathered. In my practice, once I have filed my custody evaluation report with the court, a majority of these disputes resolve without litigation. When these conflicts do proceed to

court, the burden is upon me as the evaluator and then expert witness to testify as to my methods, evaluation design, findings, conclusions and recommendations as well as to testify to what alternative explanations and recommendations I considered. It is the challenge of counsel at trial to elicit information about all of these aspects of my evaluation so as to support his/her client's position in court. When a custody evaluation has been done thoroughly, it should not be the task of the litigator to build a case from the ground up, so to speak, as to the meaning of the evaluator's findings and recommendations.

In the case of a Brief Focused Assessment, the burden falls primarily upon the trial attorney to incorporate the BFA findings in a way that has meaning for the case, particularly when the attorney may aim for the judge to give controlling weight to the findings when ruling on the critical issue. Where, for example, the BFA uncovers issues that were not previously known, where a more specialized evaluation is recommended, or when the critical issue turns out to be a non-issue, sufficient time to address a litigation plan course correction is likely to be more necessary than it would be for a comprehensive custody evaluation.

A Brief Focused Assessment can be very useful when the issues to be evaluated are specific or when a case-study approach to a family dispute is more useful than the more analytic approach of a custody evaluation. As with all kinds of forensic psychological evaluations, it is as important for referring sources to understand both advantages and disadvantages for a particular assessment approach.

Guidelines for Brief Focused Assessment

<http://www.afccnet.org/Portals/0/PublicDocuments/Guidelines/BFATF2009final.pdf>

Brief Focused Assessments: Critical Issues

Some examples of critical issues which could be useful to explore with a Brief Focused Assessment are discussed within the article above. Examples of other disputed custody/visitation issues which lend themselves well to a BFA can include:

- ◆ The need for continued child support for the disabled adult child.
- ◆ Disagreements over educational interventions for a special needs child, including a gifted child.
- ◆ Level of child care needed for a mature elementary school age child.
- ◆ The need for diagnostic assessments or specialized interventions for the mental health needs of a child or adolescent.
- ◆ Conflict over medication interventions for a child with ADHD or other psychological disorder.
- ◆ Where a parent-child relationship is damaged, to assess the need for reunification therapies. (Also could be a Therapeutic Assessment.)
- ◆ Assessing developmentally appropriate visitation schedules for the older adolescent (14+) especially where a parent-child relationship might be estranged.
- ◆ Assessing the impact of a parent's employment upon a child's adjustment, co-parenting, or shared parenting time schedules.
- ◆ Assessment of the impact upon a child or adolescent of a grandparent hostile to one parent, especially where that grandparent may provide child care or share a residence with the child.
- ◆ Determining the effectiveness of parental substance abuse treatment.