Guidelines for Expert Evaluations in Child Welfare Proceedings

The *Guidelines for Expert Evaluations in Child Welfare Proceedings* were co-sponsored by the Washington State Supreme Court Commission on Children in Foster Care and a multidisciplinary group of professionals involved in the child welfare system. With Court Improvement Program grant funding, this project was led by Dee Wilson, Director of the Northwest Institute for Children and Families, and Ken Asher, a well-known psychologist who performs dependency and termination evaluations at the request of both the Children's Administration and parents' attorneys. Joanne Moore, Director of the Washington State Office of Public Defense (OPD) and chair of the Commission on Children in Foster Care Experts and Evaluators Workgroup, provided support and assistance, along with OPD's Patrick Dowd and Amelia Watson. Approximately thirty professionals from all aspects of the child welfare system, including judges, assistant attorneys general, parents' attorneys, guardians ad litem, social workers, professors, and six experts and evaluators participated in the development of the Guidelines.

Introduction

Child Protective Services (CPS) in Washington State receives almost 80,000 referrals per year and accepts approximately 45 percent of these referrals for investigation. CPS caseworkers file dependency actions alleging child abuse or neglect on more than 4,000 children per year.

These dependency cases are often complex, and expert consultants are frequently used to assist the stakeholders in this process, i.e., child welfare caseworkers, attorneys, guardians ad litem, judicial officers, parents and other parties in planning and decision making. The experts' services are often in the form of forensic evaluations of the mental health status and/or capabilities of the parents whose children are the subjects of dependency actions. In addition, evaluators sometimes assess children's behavioral functioning or developmental status. A recent survey of stakeholders in the dependency process conducted by the Northwest Institute for Children and Families at the University of Washington found that expert evaluations are used in the majority of dependency actions and that the recommendations in these evaluations are given great weight in the court's decision making process.

For the purposes of these guidelines, forensic evaluations in child welfare proceedings are those evaluations requested by a party or the court, ordered by the court, or those that may be reasonably expected to go to the court that are obtained when they are necessary to determine issues before the court, or to assist the court in the resolution of the case. Although forensic evaluations may make treatment recommendations, their primary function is to inform the parties and court of the above issues.

Expert forensic evaluations should only be sought by parties in a dependency or

termination proceeding when they are necessary to determine issues before the court or to assist the court in the resolution of the case.

These guidelines do not cover evaluations or assessments obtained primarily for mental health treatment purposes, substance abuse, anger management, psycho-sexual evaluation or domestic violence, although any or all of these issues may be addressed in forensic psychological or parenting evaluations.

Reviews of expert evaluations indicate that evaluators employ a variety of practices and procedures. The evaluations are highly variable in their format, structure, and approach. The evaluation process has particular impact on recommendations regarding how best to achieve permanent plans that are in children's best interests.

The stakeholders who use these evaluations may have limited understanding of the knowledge on which expert evaluations are based. It is often unclear to what extent evaluators' recommendations are based on current professional knowledge and practice, or embody questionable assertions, implicit bias, or conjecture.

The guidelines that follow are intended to improve the quality of expert evaluations as well as the ability of stakeholders in the dependency process to make use of them. These guidelines are intended to be aspirational, not mandatory. They are not meant to supplant the professional judgment of evaluators regarding their response to the unique features of each case. The authors of these guidelines recognize that expert evaluations cannot be improved by insisting on uniformity or by establishing standards that cannot be met within current fee structures. Child welfare cases are too varied in the nature of referral questions to impose prescribed procedures or standard formats, or similarly inflexible requirements. Nevertheless, reasonable guidelines can be developed for flexible use by various stakeholders.

Orienting Guidelines

1. *The primary function of an evaluation is to provide relevant, professionally sound results or opinions in matters where a child's health and welfare may have been and/or in the future may be harmed.* The specific purposes of the evaluation generally will be determined by the referral questions and/or concerns provided to the evaluator by the referring party or parties. When the child already has been found by the court to be at risk of harm, the evaluation of the parent(s) generally identifies interventions intended to reduce future risk to the child, and often focuses on rehabilitation recommendations designed to protect the child and help the family. An additional purpose of such an evaluation may be to make recommendations for interventions that promote the psychological and physical well-being of the child, and when appropriate, facilitate the safe reunification of the child with the parent. Consistent with state law, evaluators appreciate the value of

expediting family reunification when possible and also understand the value of other permanent plans when reunification is not possible.

These guidelines recognize that, in child welfare cases, the emphasis is on the safety, permanency and well being of the child.

2. *The evaluation addresses the particular psychological and developmental needs of the child and/or parent(s). Relevant issues may include but are not limited to abuse or neglect of the child, safety, parental capabilities, reunification or other permanency plans.* In considering psychological factors affecting the health and welfare of the child, evaluators may focus on caregiver capacities in the context of the psychological and developmental needs of the child.

This may involve an assessment of:

(a) the adult's capacities for parenting, including those attributes, skills, strengths and abilities most relevant to abuse and/or neglect concerns;

(b) the psychological functioning and developmental needs of the child, particularly with regard to vulnerabilities and special needs of the child, as well as the quality of the child's attachment to the parent(s) and the possible developmental and emotional effects of separation from the parent(s), siblings, extended family members and other caregivers;

(c) the current and potential functional abilities of the parent(s), and when necessary for resolution of the case, other relatives to meet the needs of the child; and/or

(d) the need for and likelihood of success of clinical or other interventions for identified problems, which may include recommendations regarding treatment modalities and objectives, frequency of services, specialized interventions, parent education and the child's placement.

General Guidelines: Competencies of Expert Evaluators

3. *The expert evaluator strives to maintain an unbiased, impartial, objective stance with regard to the parties and evaluation questions.* Regardless of who retained the expert (e.g., the court, the child protection agency, the parent(s) or the guardian *ad litem* for the child), evaluators strive to maintain this unbiased, impartial, objective stance. If evaluators cannot maintain this stance, they should consider withdrawing from the case. In any case, the expert evaluator must disclose factors that may bias his or her findings and/or compromise his or her objectivity. In

performing evaluations, evaluators remain mindful of the role of the court in determining ultimate factual and legal questions, and exercise reasonable care not to intrude on the province of the court. Where possible, evaluators rely on scientifically and/or professionally derived knowledge to inform their conclusions. They recognize the value to the court of distinguishing clearly in written and oral communications scientifically or professionally derived knowledge from the evaluators' interpretations or judgments about such knowledge. Evaluators describe objectively the bases for their findings and conclusions.

4. Evaluators should gain and maintain specialized competence.

A. Expert evaluators in child protection matters are aware that special competencies and knowledge are necessary for the undertaking of such evaluations. Competence in performing expert evaluations of children, adults and families is necessary but not sufficient. Education, training, experience and/or supervision in the areas of forensic practice, child and family development, child and adult psychopathology, the impact of separation on the child, the nature and consequences of different types of child abuse and neglect, and the significance of human differences may help to prepare evaluators to participate competently in expert evaluations in child protection matters.

B. Evaluators use current knowledge of scholarly and professional developments, consistent with generally accepted clinical and scientific practice, in selecting evaluation methods and procedures[1]. They should be aware of evidence-based practices.

C. Evaluators also strive to become familiar with applicable legal and regulatory standards and procedures, including state and federal laws governing child protection issues. These may include laws and regulations addressing child abuse, neglect and termination of parental rights.

D. Evaluators describe the scientific basis for their judgments or recommendations and state when their judgments or recommendations may expand on or not be fully supported by currently accepted clinical and scientific practice.

E. Evaluators are aware of and develop their knowledge and special competencies for evaluation of specific populations including but not limited to issues related to literacy, non-English speaker needs, sensory impairment, psychological disorders, and developmental impairments.

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[1] Note: Examples of standard setting organizations include American Psychological Association, the National Association of Family and Conciliation Courts, and others.

5. *Evaluators must be aware of personal and societal biases and engage in nondiscriminatory practice.* Evaluators engaging in expert evaluations in child protection matters consider how biases regarding age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, culture and socioeconomic status may interfere with an objective evaluation and recommendations. Evaluators should be aware of the potential for defensiveness on the part of participants, given the circumstances, and will take this into account when conducting the evaluation. Evaluators recognize and strive to overcome any such biases or withdraw from the evaluation or if unable to do so, seek assistance in completing the evaluation. When interpreting evaluation results, evaluators must be aware that there are diverse cultural and community methods of child rearing, and consider these in the context of the existing state and federal laws. Also, evaluators should use, whenever available, tests validated with populations similar to those evaluated.

6. *Evaluators avoid multiple relationships.* In conducting expert evaluations in child protective matters, evaluators avoid multiple role relationships. Evaluators generally do not conduct evaluations in child protection matters in which they have provided clinical services for the child or the immediate family or have had other involvement that may compromise their objectivity. Evaluators do not provide clinical services to individuals or family members of individuals who are the subjects of a forensic evaluation conducted by the evaluator. Providing clinical services to the child or other participants following an expert evaluation is discouraged.

Procedural Guidelines: Conducting an Evaluation

Evaluators and parties understand that forensic evaluations in child protection matters may present a wide variety of legal and/or ethical considerations. Evaluators and all parties appreciate the need for timeliness in child protection matters (e.g., response to evaluation referral, scheduling appointments, completion of report).

7. *When practically feasible, the parties should obtain an order from the court that clearly states the purpose of the evaluation and incorporates the specific questions to be addressed by the evaluation.* In all cases, the referring party or parties should clearly state the purpose of the evaluation in writing and pose specific questions to be addressed in the evaluation. All parties to the proceeding should have the opportunity to respond to the referring party or parties and inform the expert conducting the evaluation.

8. *Based on the nature of the referral issues and questions, the scope of the evaluation is determined in the referral or by the court, in consultation with the*

evaluator. Once the referral questions and scope of the evaluation have been accepted by the evaluator, the expert evaluator chooses appropriate methods with which to address the questions. Evaluators may also identify relevant issues not anticipated in the referral questions that could enlarge the scope of the evaluation; these should be conveyed to the parties as early as possible. For issues outside the scope of the evaluator's competency, the evaluator considers recommending additional services or evaluations.

9. *Evaluators inform participants about the disclosure of information and the limits of confidentiality.*
A. When an evaluation is court ordered, it is not privileged and the evaluator informs the individuals of the nature of the evaluation and that the evaluation will be distributed to other parties as provided by court order. Evaluators conducting an evaluation in child protection matters ensure that the participants, including the child (to the extent feasible), are aware of the limits of confidentiality for the evaluation results. If the public agency or court is paying for the evaluation, the evaluator so informs the individual.

B. When an evaluation is not court ordered, evaluators performing evaluations in child protection matters should obtain informed consent from all adult participants and, when appropriate, children over the age of 13.

C. When an evaluation is obtained by a party in a dependency or termination proceeding without the apparent knowledge or consent of the child welfare agency, guardian ad litem and/or the court, the evaluator should advise the party being evaluated of the need to obtain and review appropriate and relevant information from the child welfare agency, guardian ad litem and/or the court.

10. *Evaluators use multiple methods of data gathering.* Evaluators generally use multiple methods of data gathering, including but not limited to, clinical interviews, observation and/or psychological testing that are sufficient to provide appropriate substantiation for their findings. Evaluators may review relevant reports (e.g., from child protection agencies, social service providers, law enforcement agencies, health care providers, child care providers, schools and institutions). In evaluating parental capacity to care for a particular child or the quality of the parent-child interaction, evaluators should make reasonable efforts to perform formal observations of the child together with the parent, unless such observation is not necessary to respond to the questions posed in the evaluation or to support the recommendations and conclusions of the evaluator. Evaluators in some circumstances may rely on formal observations conducted by other neutral and competent professionals. It is recognized that in some circumstances, parent-child observations may not be necessary or advisable for purposes of the evaluation, for example, in cases where the safety or well-being of the child is clearly in jeopardy or parental contact with the

child has been prohibited by the court. In such cases, the evaluator should note explicitly the reason(s) that a parent-child observation was not included. Evaluators may also interview extended family members and other individuals when appropriate (e.g., caretakers, grandparents and teachers). However, these should not be considered as substitutes for formal observation.

11. ***Evaluators do not over interpret clinical or assessment data.*** Evaluators refrain from drawing conclusions not adequately supported by the data or by current science. Evaluators interpret any data from interviews or formal procedures cautiously. They are knowledgeable about cultural norms and present findings in language understandable to the recipients. Evaluators acknowledge in their report any limitations in methods, science or data utilized by the evaluation. In addition, evaluators are aware and take into account in their observations that in court ordered evaluations, the situation may lend itself to defensiveness by the participant, given the potentially serious consequences of adverse findings.

12. ***Evaluators clarify financial arrangements.*** Financial arrangements are clarified and agreed upon prior to conducting a child protection evaluation. If during the course of an evaluation the evaluator identifies additional issues or any party seeks to change the focus of the evaluation or provides additional information or documentation that will increase the cost of the evaluation, the evaluator shall notify all parties to ensure their agreement to the expanded scope of the evaluation and to require that the financial arrangements be modified as necessary.