

# **Risk Management for Child Custody Evaluations – An Overview**

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Child custody disputes are not pleasant and often represent one of the most difficult aspects of a challenging time for families. Because of the contentious nature of these disputes, providers who are involved in child custody evaluations are often the target of licensure complaints or lawsuits filed by dissatisfied parents. This article will discuss child custody evaluations in Colorado and how providers can help mitigate the risks associated with this type of work.

There are two ways in which a court in Colorado may seek an evaluation related to a child custody dispute. The court can appoint a Child and Family Investigator (CFI) to investigate, report, and make recommendations regarding issues specifically identified in a court order. These reports are relatively quick, inexpensive, and focused. A CFI may be an attorney, a mental health professional, or any other professional with training and qualifications acceptable to the court.

Alternately, the court may order a Parental Responsibilities Evaluation (PRE). These evaluations are more comprehensive than CFI reports and may only be conducted by licensed mental health professionals or social services personnel who meet statutory qualifications. This article focuses mainly on the statutes governing PREs; however, the risk management strategies discussed will apply to both types of evaluations.

In order to be qualified to conduct PREs, the court must find that evaluators are competent in the following areas:

1. The effects of divorce and remarriage on children, adults, and families;
2. Appropriate parenting techniques;
3. Child development;
4. Child and adult psychopathology;
5. Applicable clinical assessment techniques; and
6. Applicable legal and ethical requirements of PREs (Uniform Dissolution of Marriage Act, 1970).

If the evaluation is in an area beyond the training or experience of the practitioner, the statute requires consultation with a professional competent in that area. The requirement that evaluators be competent in the “applicable legal and ethical requirements of PREs” implies that they must comply with guidance that may include the APA Ethical Guidelines (American Psychological Association, 2010), the Mental Health Practice Act (The Mental Health Practice Act, 2011), the APA Guidelines for Child Custody Evaluations in Divorce Proceedings (Guidelines for Child Custody Evaluations in Family Law Proceedings, 2010) and the Association of Family and Conciliation Courts (AFCC) Model Standards for Child Custody Evaluations (Association of Family and Conciliation Courts, 2006).

Evaluators are also required to disclose any familial, financial, or social relationship that the evaluator has had with the child, parents, attorneys, or the judge within 7 days of being appointed. In addition, in order to make specific recommendations, the evaluator is required to interview and assess all parties to the dispute and have access to “pertinent information from outside sources.” There are few circumstances where an evaluator is permitted to make specific recommendations without meeting this standard, and if the requirements are not met, the evaluator must “state with particularity” the limitations on the findings and recommendations in the report.

As noted above, the nature of child custody evaluations makes them inherently risky for practitioners. While it is impossible to prevent people from suing or filing complaints, it is possible to practice in a way that minimizes the risk of a suit or complaint against a licensee being successful.

One important way to manage the risk associated with PREs is by establishing competence in the area of child custody evaluations. Providers must become familiar with the statutes governing these evaluations, with the relevant Ethics Code, and with other relevant guidelines such as those mentioned above. Practitioners should review applicable statutes in their entirety before conducting PREs to be sure they are complying with all statutory requirements and be prepared to explain the clinical rationale behind any deviations from relevant guidance in the event of a licensure complaint or lawsuit. As with any area of practice, the provider must consult with competent professionals regarding any area that is beyond the provider's own competence and training.

It is also helpful to have detailed informed consent forms for these evaluations, which specify the nature of the relationship with the provider, the purposes of the assessment, the limits of confidentiality, and other relevant issues. Both the APA and AFCC Guidelines address this issue in further detail.

Finally, it is important for providers to be aware of their role as evaluators, not therapists or advocates for the parties. Parents and attorneys will seek support for their respective sides and may put pressure on providers to advocate for one parent over the other or to express an opinion without sufficient information. Parents may also pressure an evaluator to act as a therapist for them or for the child, and providers must resist the temptation to step into multiple roles with the parties.

A full exploration of risk management strategies for child custody evaluators is beyond the scope of this article, but the above suggestions can be helpful ways to mitigate the risk of engaging in this type of work.

### References

Uniform Dissolution of Marriage Act of 1970, Colo. Rev. Stat. § 14-10-127(4).

American Psychological Association (2010). Ethical Principles of Psychologists and Code of Conduct. Retrieved from <http://www.apa.org/ethics/code/>.

The Mental Health Practice Act of 2011, Colo. Rev. Stat. § 12-43-101 *et seq.*

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