Mental Health Evaluations in Child Welfare Settings

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Chapter 3

MENTAL HEALTH EVALUATIONS IN CHILD WELFARE SETTINGS

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Mental health professionals, especially psychologists, commonly complete evaluations in child protection matters. These evaluations may address child mental health and development, the parent-child relationship, or parenting capacity, and can be prompted by a request by the child welfare agency, the court, the child's representative, or the parent and his or her lawyer. Often, the court will order the evaluation to ensure that it happens and, in many jurisdictions, trigger the agency to pay for it.

Various mental health professionals may be involved in a single child welfare matter. The case manager may be a social worker. Therapy may be provided by a social worker, a counselor, a marriage and family therapist, or a psychologist. A psychiatrist might perform a diagnostic assessment, prescribe medication, and recommend additional treatment. A psychologist may complete a psychological evaluation of the parent and/or child, leading to an array of diagnostic impressions and treatment recommendations. In the context of a mental health evaluation, only a psychologist may utilize the full panoply of psychological tests.

The most common mental health assessment ordered in child protection matters is a psychological evaluation to assess parenting capacity. To practice independently in most jurisdictions, a psychologist must hold a doctoral degree and be fully licensed by the state. Some states license psychologists who possess master's degrees, but these psychologists typically must be supervised by a fully licensed, doctoral-level psychologist. Similarly, psychologists who have received a doctorate might not yet have obtained their license for independent practice, in which case they may possess a provisional license and require supervision from a fully licensed practitioner.

This chapter will focus mainly on parenting capacity evaluations performed by psychologists, as these evaluations tend to be the most legally fraught type of assessment in a child protection proceeding. Often, assessments of parenting capacity inform important, difficult, and potentially contentious questions in the case, including whether to remove a child from a parent's custody or maintain a child in foster care; the frequency and conditions of parent-child visitation; recommended interventions to address parenting deficiencies or problems in the parent-child relationship; and whether and when termination of
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parental rights should be considered.\textsuperscript{2} Despite their central role in providing information that goes to the very heart of child protection matters, psychological evaluations of parenting capacity are frequently riddled with serious and often unacknowledged and unchallenged shortcomings.\textsuperscript{3} It is critical that attorneys for parents, children, and child welfare agencies better understand the nature, potential, and problems of these assessments.

\section*{§ 3.2 \textbullet\ PSYCHOLOGICAL EVALUATIONS OF PARENTING CAPACITY: OVERVIEW}

A high-quality parenting capacity evaluation can offer information about the parent’s behavior, factors associated with any parenting problems, and interventions that may be effective.\textsuperscript{4} Child welfare caseworkers and judges often lack knowledge about psychological issues that may be quite common in their cases, including parental mental illness and how it affects parenting skills. They are often faced with making decisions about removing children from their parents, implementing parent-child visitation, and terminating parental rights without adequate methods at their disposal for assessing parental fitness.\textsuperscript{5} They also may not know what resources to access to help these parents improve their parenting.\textsuperscript{6} Therefore, psychological evaluations can be especially valuable sources of information and recommendations in these cases, but to be useful, these evaluations must be done properly.\textsuperscript{7}

\begin{flushright}
\textsuperscript{4} Budd, \textit{supra} note 1, at 4.
\textsuperscript{6} \textit{Id.} at 190.
\textsuperscript{7} Budd, \textit{supra} note 1, at 2.
\end{flushright}
§ 3.2.1—What A Parenting Capacity Evaluation Can Do

A high-quality psychological evaluation of parenting capacity can provide information about several important considerations in a child welfare case. First, it can describe the characteristics and patterns of parental functioning. Second, it can identify problematic behavior and possible reasons for it. Third, it can describe the potential for change. Fourth, it can identify characteristics of the parent and family’s environment that may promote or interfere with appropriate parenting. Fifth, it can describe the child’s present functioning, needs, strengths, and vulnerabilities in relation to the parent’s strengths and deficits as a parent (as opposed to more generally), and discuss the “fit” between this mix of parent and child characteristics. Finally, it can guide interventions.

In order to accomplish these objectives, assessments must “focus on the parent’s capabilities and deficits as a parent and on the parent-child relationship.” In other words, the evaluator must employ what has been described as a “functional” approach to the assessment, focusing on actual parenting abilities as opposed to focusing merely on diagnosis or general mental status. Parental competence must be seen as a relational issue between parent and child and not simply as a set of parental characteristics, because certain parental characteristics may yield different outcomes for different children. In a functional assessment, “[a]dult qualities and characteristics need to be linked to specific aspects of parental fitness or unfitness, by showing how they pose a protective factor or risk to the child, respectively, or how they enable or prevent the parent from profiting from rehabilitative services.” Functional assessment, by looking at both protective factors and risks, “embodies a constructive focus on identifying parenting strengths and areas of adequate performance, in contrast to a deficit-centered focus.” A functional approach examines three domains of child development — physical, cognitive, and social/emotional — and the parent’s

9. Id.
10. Id.
11. Id.
12. Id.
13. Id.
14. Budd, supra note 1, at 2 (emphasis in original).
15. Id. at 2, 3. See also Gary B. Melton et al., Psychological Evaluations for the Courts: A Handbook for Mental Health Professionals and Lawyers 530 (3d ed. 2007).
16. Melton et al., supra note 14, at 530.
17. Budd, supra note 1, at 2.
18. Id. at 3.
functioning in those same domains, and then looks at how the parent's functioning maps onto the child's needs in both positive and negative ways. In short, the functional approach assesses the "fit" between a given parent's capacities and the needs of his or her child.

Assessments can achieve their full potential for providing useful information to the parents, attorneys, caseworkers, court, and other professionals only if they are evidence-based, detailed in their recommendations, and focused not only on deficits but on strengths. Unfortunately, too few evaluators conduct adequate assessments, and it is up to child welfare attorneys to discern which evaluations are useful and how to approach questioning evaluators in the most effective way for their clients.

§ 3.2.2—What A Parenting Capacity Evaluation Cannot Do

Although parenting capacity evaluations may provide useful information, there are certain things that these evaluations cannot do. First, although evaluators often can diagnose mental illness based on a parenting capacity assessment, a mental health diagnosis alone is insufficient to support conclusions about parenting capacity. Second, an assessment cannot compare an individual's parental fitness to a set of universal parenting standards. Third, evaluations cannot provide conclusions about parenting adequacy based on psychological measures that do not directly measure anything about parenting. Fourth, no assessment can fully rule out the effects of the parent's situation on the assessment process, including stress, cultural factors, time limitations, and the like. Fifth, evaluations cannot predict a parent's future behavior with certainty. Finally, assessments cannot answer questions that were not presented by the referral source.

20. Budd [2005], supra note 7, at 436.
21. Id.
22. Id.
23. Id.
24. Id. See also Melton et al., supra note 14, at 530 (stating that predictions about threats to child safety and outcomes have a weak scientific foundation and must be presented with that limitation noted). It is worth mentioning that the ability of psychologists to predict future behavior is poor across many domains, not only child maltreatment.
25. Budd [2005], supra note 7, at 436.
The need to base conclusions on more than a mere psychiatric diagnosis or identified cognitive impairment is critical for attorneys, caseworkers, and judges to understand. Such conclusions have been described as "scientifically unsupportable."\textsuperscript{26} Several commenters have noted that there is a great deal of variability in the degree of functional impairment within a given psychiatric diagnosis.\textsuperscript{27} Therefore, there is not a consistent relationship between the presence of a specific diagnosis and the parent's functional capacity. Although some studies have claimed that the mere presence of a psychiatric disorder in a parent is associated with an increased risk of child maltreatment,\textsuperscript{28} those studies have not accounted sufficiently for other factors that more directly predict child abuse and neglect. Indeed, "[n]either specific diagnosis nor the mere presence of psychiatric disorder appears to hold up as a predictor of child maltreatment when more detailed factors are studied."\textsuperscript{29} Yet evaluators persist in making mere diagnosis more of a focus than the parent's actual capacities.\textsuperscript{30} Instead, a functional approach, as described above,\textsuperscript{31} should be used to determine whether specific risk factors are present, such as active mental illness symptoms and their severity, substance abuse, the parent having experienced child abuse or neglect or other significant adversity in childhood, social isolation, problems meeting the family's basic material needs, and a history of violent behavior.\textsuperscript{32} Similarly, a functional approach should examine whether protective factors are present as well.\textsuperscript{33}

The same assertions apply to cases in which an evaluator finds that a parent has a cognitive or intellectual impairment. Although many psychologists, caseworkers, judges, and lawyers assume that these parents can neither provide adequate care for their children nor learn appropriate parenting skills, scientific

\textsuperscript{26} Melton et al., supra note 14, at 522. See also Benjet, supra note 18, at 241.
\textsuperscript{27} See, e.g., Ostler, supra note 2, at 470; Ackerson, supra note 4, at 190; Mrinal Mullick et al., "Insight into Mental Illness and Child Maltreatment Risk Among Mothers with Major Psychiatric Disorders," 52 Psychiatric Servs. 488 (2001).
\textsuperscript{30} Ostler, supra note 2, at 470.
\textsuperscript{31} See notes 13-18.
\textsuperscript{32} Teresa Jacobsen et al., "Assessing Parenting Capacity in Individuals with Severe Mental Illness: A Comprehensive Service," 24 J. Mental Health Admin. 189, 192 (1997); Ackerson, supra note 4, at 190; Melton et al., supra note 14, at 530.
\textsuperscript{33} Budd, supra note 1, at 2; Budd [2005], supra note 7, at 433; Melton et al., supra note 14, at 530.
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evidence has failed to demonstrate a significant, consistent association between intellectual disability and inadequate parenting and also fails to suggest that parenting deficiencies cannot be remedied in this population. The mere presence of, for example, mild intellectual impairment in a parent is not predictive of child maltreatment. Instead, as with mental illness, evaluators should take a functional approach to assessing actual parenting deficits and strengths and identify the presence of risk and protective factors. Similarly, in the recommendations made for interventions to improve parenting skills, it would be a mistake to assume that parents with intellectual disabilities cannot learn adequate parenting skills. Indeed, the scientific literature is replete with studies demonstrating that training improves the parenting abilities of these parents.

In short, it is critical that caseworkers, lawyers, and judges guard against succumbing to the convenient but mistaken assumption that the mere presence of a specific diagnosis or cognitive or intellectual impairment automatically indicates anything about parenting capacity. To do otherwise may motivate lackluster service planning and contribute to unnecessarily long foster care stays and terminations of parental rights. When faced with an assessment that connects mere diagnosis to current or future parenting capacity, lawyers must draw on the empirical literature to highlight this error and demand a functional assessment.


35. Mild intellectual impairment, previously called mild mental retardation, is an important category to highlight, because these adults become parents in far greater numbers than those with moderate or severe intellectual impairment.

36. Melton et al., supra note 14, at 522.


Similarly, it is important to guard against a tendency to compare a given parent's abilities to universal parenting standards, because no such standards exist. "Despite decades of research on parent-child relationships that has established associations between qualities of parenting and child outcomes, absolute or culturally-transcendent standards of parenting have not been established. There is remarkable variability in definitions of 'good enough' parenting, and the field has not, and is unlikely to, define a consistent standard reflecting this quality."

Instead, evaluators should assess whether the parent's abilities are at least at the minimum level of "acceptable parenting that is sufficient to protect the safety and well being of the child." An evaluation that focuses on minimally adequate parenting should illuminate the "nexus between a child's developmental needs and the parent's caregiving skills" as well as the "nexus between the parent's competence to care for his or her own needs and for the child's needs." Although there is no generally accepted standard of minimal parenting adequacy, and legal criteria for child maltreatment vary by state and are often broad and non-specific, using a minimal standard is at least consistent with the focus of the child protection system on child safety and corresponding legal requirements. Unfortunately, psychologists who do evaluations in child protection cases may not embrace or even acknowledge the recommended "minimally adequate parenting" standard, because psychologists are trained to try to help their clients achieve optimal functioning if at all possible. A consequence of using a standard of optimal parenting in these matters is that foster care stays may be prolonged or termination of parental rights may occur in cases where the child could have been placed safely back at home. Furthermore, what is considered optimal may be substantially influenced by issues of class, culture, personal values, and educational attainment. Too often, the inferences and conclusions in parenting capacity evaluations reflect those influences rather than a functional understanding of the fit between parent and child and how that affects child safety.


40. Budd, supra note 1, at 3. See also Ackerson, supra note 4, at 191; Budd [2005], supra note 7, at 433; Jacobsen et al., supra note 31, at 190.

41. Budd, supra note 1, at 5.

42. Id. at 3.
Karen Budd details the elements that should be part of a competent psychological evaluation of parenting capacity. These elements are also reflected in American Psychological Association (APA) Guidelines for Psychological Evaluations in Child Protection Matters. Budd writes that evaluators should prepare for the assessment by reviewing background records, but it is imperative that they understand that these records may contain errors or reflect the biases of their author. Not every psychologist seems to realize that advocacy documents, such as petitions filed by the child welfare agency, are inherently one-sided, and evaluators sometimes even assume that all of the allegations contained in pleadings are true whether or not they have been proven. This failure to be skeptical of the information in such documents may lead to biased or erroneous data interpretation and inferences.

A parenting capacity evaluation should begin with a detailed clinical interview. A complete interview generally takes several hours, and it should begin with an explanation of the purpose of the evaluation and the limits of confidentiality. The clinical interview may be followed by psychometric testing. If psychological tests will be used, content areas may include “emotional distress and adjustment, childrearing beliefs and attitudes, social support, marital and family adjustment, cognitive and adaptive functioning, personality functioning, and academic achievement.” Evaluators should be careful to select tests that are

43. Budd, supra note 1, at 7-13.
45. Budd, supra note 1, at 7.
46. Negotiating which background records will be shared with evaluators and what context will be given to aid evaluators’ understanding of those records presents an opportunity for advocates to influence how psychological evaluations are conducted, as discussed in § 3.9.
47. Budd, supra note 1, at 8.
48. Id. Generally, the confidentiality of court ordered evaluations is limited, and evaluators should make it clear to parents what individuals or organizations will receive reports.
49. Id. at 9.
suitable to the examinee and interpret test results conservatively, staying within the bounds of what the test is empirically known to measure.\textsuperscript{50}

If at all possible, the psychologist should observe the parent and child together using a combination of structured and unstructured time so as to gather a sample of parental behavior, ascertain the child’s needs, and assess the parent-child relationship under a variety of circumstances.\textsuperscript{51} Given that child safety risks and protective factors are best understood within a parent-child “fit” framework consistent with the tenets of functional assessment,\textsuperscript{52} it is unfortunate that parent-child observation is so little used by most evaluators in child protection matters.\textsuperscript{53}

Interviews with collateral sources of information are another element of a competent psychological evaluation of parenting capacity.\textsuperscript{54} "Caseworkers, therapists, substance abuse counselors, previous service providers, or other professionals can report on the parent’s progress in services, problems, and strengths."\textsuperscript{55} Important information can also be obtained from extended family and friends or foster parents.\textsuperscript{56} Teachers, child care personnel, and physicians may have insights into the family’s functioning as well.\textsuperscript{57} Clearly, evaluators must be mindful of any motives that collateral sources of information may have that could cloud or bias the assessment and must make those reservations known in the evaluation report. For example, a foster parent who is keen to adopt the child may downplay parent strengths and highlight weaknesses.

\textsuperscript{50} Id. See § 3.5 for more about psychological tests.
\textsuperscript{51} Id. at 11.
\textsuperscript{52} See supra note 18.
\textsuperscript{53} Budd [2001], supra note 2, at 105. However, Budd [2001] noted that some types of assessments were more likely to include parent-child observations. These included parent-child bonding evaluations or an assessment done by a special program, the Parenting Assessment Team (PAT) in Cook County, Illinois, which conducted multidisciplinary evaluations of parents with psychiatric disabilities. Id. at 97, 105. PAT evaluations “consistently included more features recommended in the forensic literature than other assessment types” and “provided more detailed findings than the other evaluations about parents’ caregiving skills and parent-child relationships.” Id. at 105. Unfortunately, PAT evaluations were a small minority of assessments in the jurisdiction, id. at 97, and PAT-type assessments are not readily available in most jurisdictions.
\textsuperscript{54} Budd, supra note 1, at 12.
\textsuperscript{55} Id.
\textsuperscript{56} Id.
\textsuperscript{57} Id.
In some cases, a formal, in-depth evaluation of the child’s developmental, social, emotional, or behavioral functioning may be necessary in order to make valid conclusions about the fit between the child’s needs and the parent’s functional competence. Such an assessment may be especially important to obtain if the child has disabilities that create special parenting considerations. In that case, it is critical that the evaluator have specialized training in assessing children with disabilities — preferably the specific disabilities at issue — in order to ensure that the evaluation is done properly and yields accurate and reliable information.

Finally, the evaluator must produce a report that thoroughly yet accessibly describes the assessment, findings, and recommendations in a manner that is responsive to the referral questions.

§ 3.4 • MENTAL HEALTH EVALUATION REPORTS

Evaluators must report out the results of mental health assessments in child protection matters. Attorneys should insist on receiving a written report. In order to circumvent any resistance on the part of the evaluator or other party to supplying copies of the report to the parent’s attorney and the child’s representative, it is advisable to obtain a court order requiring the report’s release at the same time that the court orders the evaluation.

Reports should start off by identifying the referral source and the referral questions. It is critical that the referral questions be specific, because referral questions guide evaluations. Evaluators must stay within the scope of the referral questions. As one commenter notes, “an assessment is only as useful as the questions presented to the evaluator.” In addition, it is only through the referral questions that a clinician can determine whether he or she has the requisite expertise to perform the requested evaluation. Unfortunately, many court orders for evaluations are vague or overly general about the purposes of the

58. Id.
59. Id. at 13.
60. Melton et al., supra note 14, at 583.
61. Budd [2005], supra note 7, at 434.
62. Melton et al., supra note 14, at 585.
63. Budd, supra note 1, at 6 (internal citation omitted).
64. Melton et al., supra note 14, at 89.
referral. Specific, clear referral questions — and adherence to them by the evaluator — contribute directly to the evaluation being relevant to the issues at hand in the child protection matter, as required for admissibility under the rules of evidence.

After identifying the referral source and questions, the report should detail the dates and nature of all contacts made with the client and with collateral sources, as well as how much time was spent with the examinee. Then the report should provide a detailed narrative of the relevant history and background information. If there are potential limitations to the reliability of this information, the clinician must reveal and explain them. Only then can consumers of the information, including caseworkers and courts, place it in its proper context and determine how much weight to give it.

The report should specify what, if any, psychometric tests were used before getting into clinical findings. The findings detailed in the report should focus first on observations and test results — that is, facts rather than inferences should come first. For any test results, the examiner should give readers the statistical guidelines for their interpretation (e.g., the average score and standard deviation, with an explanation of what those numbers mean). Test results are only useful insofar as they are contextualized based on the normative sample of the test. Not only should the examinee fit into the demographics of the normative sample, but discussion of the results should use comparative language that relates the examinee's results to those found in the normative sample rather than absolute terms. For example, the evaluator should write that the client has more paranoid ideation than most people in the test's normative sample rather than declaring that the client is a paranoid person, because the latter statement lacks context.

65. Id. at 90.
66. Budd, supra note 1, at 7.
67. Melton et al., supra note 14, at 583-84.
68. Id. at 584.
69. Id.
70. Id.
71. Id.
72. Id.
73. Id.
After describing the results factually, the evaluator may move on to inferences from those results.  

74 Such inferences should be presented in a manner that is directly responsive to the referral questions and must be data-driven.  

Inferences, the results that lead to them, and the history and background information should be discussed in an even-handed manner that describes parental strengths and weaknesses, acknowledges limitations of the assessment, and leads to suggested interventions.  

77 Limitations include the coercive context of these evaluations: generally, parents are ordered to complete them and are likely experiencing significant stress because of their involvement in the child welfare system.  

78 These parents are likely to be highly anxious about the outcome of the evaluation and the case at hand.  

79 Throughout the report, empirically valid linkages between findings, inferences, conclusions, and recommendations should be made clear.  

80 Finally, it is best if evaluators write their reports in plain language; to the extent that technical terms are used, it is important for attorneys to ensure through their questioning of the evaluator that those terms are defined on the record so that the court understands them.

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**§ 3.5 • THE USE OF PSYCHOLOGICAL TESTS IN MENTAL HEALTH EVALUATIONS**

Although psychological tests are often administered in mental health evaluations in the child welfare context, most of these tests were not designed to assess parenting capacity and have not been shown to be valid for child protection evaluations.  

81 Indeed, few psychometric tests address parenting capacity.  

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74. Id.  
75. Id.; Budd [2005], supra note 7, at 435.  
76. Budd [2005], supra note 7, at 435. This point is crucial, and attorneys, caseworkers, and courts must hold evaluators to this standard. Otherwise, it is too easy for the evaluator to make inferences that exceed the scope of the evaluation or what the psychometric tests actually show. When evaluators stray from the data, they are prone to rendering conclusions based more on their personal values and biases than on data, creating a significant possibility of sending the case in the wrong direction. See also Budd, supra note 1, at 3.  
77. Budd [2005], supra note 7, at 435.  
78. Budd, supra note 1, at 3.  
79. Id.  
80. Id. at 13.  
81. Budd [2005], supra note 7, at 434; Jacobsen et al., supra note 31, at 190.  
82. Budd, supra note 1, at 4.
Commonly used tests of intelligence, achievement, and personality features can contribute to diagnostic determinations and perhaps how best to implement interventions, but they say nothing directly about parenting. Even measures that are designed to examine aspects of parenting ability are not specific to assessing parenting in a child welfare context, and the normative samples on which test results are based may bear little resemblance to parents involved in a given child welfare matter. “Thus, evaluators need to report the limitations of the [test results] and conservatively interpret findings, in keeping with the strength of the evidence.”

It is important to examine whether instruments that purport to measure parental competence and attitudes about parenting have been validated for use in actual child protection cases rather than in selected samples or only in research. For example, the Child Abuse Potential Inventory was validated in a sample that was known to have a particularly high rate of prior abuse incidents, and it is indeed successful in identifying parents with a history of such incidents. However, it has a high rate of false positive results when used predictively, so it should not be used in child protection cases to predict the risk of future abuse. It is incumbent upon advocates to do basic research on any psychometric test to determine what it was designed to do, in what context and with what population, and whether it is reliable and valid. In addition, advocates should ensure that evaluators have used the most recent version of a test, since older versions may have been normed on different samples or be otherwise obsolete (e.g., by incorporating outdated or inappropriate cultural references in the test items). Considerable information on psychological tests can be found on test publishers’ websites or in articles accessible through resources such as Google Scholar. While it would be ideal to bring in independent experts to evaluate the quality of mental health assessments in child protection matters, it is not realistic to do so in every case. That said, even informal consultation with experts behind the scenes can help attorneys better understand mental health assessments, identify their strengths and vulnerabilities, and develop questions to ask evaluators.

83. Id.; Jacobsen et al., supra note 31, at 190; Benjet, supra note 18, at 247.
84. Budd, supra note 1, at 4.
85. Id.
86. Melton et al., supra note 14, at 532.
87. Id.
88. Id. This finding is consistent with the fact that predictions about threats to child safety are premised on a weak scientific foundation and must be presented with that limitation noted. Id. at 530.
When they are developed, psychometric tests are analyzed for their validity and reliability. Put simply, validity is an indicator of whether a test actually measures what it purports to measure. 89 For example, if a test designed to detect symptoms of Attention Deficit-Hyperactivity Disorder (ADHD) correlates well with intelligence tests but poorly with tests of attentional functioning and impulse control (i.e., markers of ADHD), it has poor validity. That is, it does not measure what it was designed to measure. Reliability, on the other hand, is an indicator of whether a test yields consistent results, whether between test items that should be measuring the same construct (i.e., internal consistency), across multiple administrations over time in the same examinees (i.e., test-retest reliability), or across different evaluators administering the measure (i.e., inter-rater reliability). 90 A test can be reliable but not valid. For example, our test for symptoms of ADHD might not be effective at measuring those symptoms (i.e., it is not valid), but it could measure whatever it is measuring with remarkable consistency (i.e., it is reliable). However, a test cannot be valid if it is not reliable (e.g., lacks internal consistency), because an unreliable test does not have the consistency necessary to yield trustworthy conclusions about what it is measuring.

These concepts are worth understanding, because it is critical that advocates know for what purposes and in what populations published test instruments have been found to be reliable and valid. If tests are used outside of their purposes or proper contexts, their validity and reliability become suspect at best, and when those characteristics become suspect, the evaluator and others cannot know or make legitimate claims about what the test is actually measuring. Given that evaluation results are used to support important decisions in child protection cases, it is imperative for advocates to take the time to do basic research on the tests used by psychologists in these matters.


§ 3.6 • APPLICABLE STANDARDS FOR PSYCHOLOGICAL EVALUATIONS IN CHILD PROTECTION MATTERS

Psychologists must adhere to the ethical standards contained in the Ethical Principles of Psychologists and Code of Conduct. Psychological services provided in a manner that violates the Ethics Code may be the basis for a licensing complaint or even a malpractice action. Several of the ethical standards apply to the evaluation context. In particular, Standard Two admonishes psychologists to practice only within their areas of competence, and Standard Nine specifically addresses assessment.

The Ethics Code requires practitioners to base their opinions on an adequate examination of the individual and information and techniques that are sufficient to substantiate their findings. It also mandates that evaluators use evidence-based, valid, reliable techniques and tests. Any deviation from that requirement requires the evaluator to describe the deviation and the limitations in the findings and their interpretations that flow from it. When interpreting assessment results, evaluators must account for the purpose of the assessment and any relevant contextual factors. In addition, it is unethical for an assessment to be based on obsolete tests and test results. All psychologists must be trained in and comply with the ethical standards, so the standards may be used as a learned treatise to impeach a psychologist during cross-examination.

As mentioned above, the American Psychological Association also has developed Guidelines for Psychological Evaluations in Child Protection Matters. Although the Guidelines are not binding, they describe best practices.

92. Id. at 1063, 1071.
93. Id. at 1071. Ethical Standard 9.01. See also Standard 2.04, which requires psychologists to base their scientific and professional judgments on “established scientific and professional knowledge of the discipline.” Id. at 1064.
94. Id. Ethical Standard 9.02.
95. Id.
96. Id. at 1072. Ethical Standard 9.06. See, e.g., supra notes 77 and 78.
97. Id. Ethical Standard 9.08.
98. See, e.g., Federal Rule of Evidence 803(18). Many state rules of evidence have a similar provision.
99. APA Guidelines, supra note 43.
for conducting these evaluations and are useful for attorneys seeking to bolster or undermine the testimony of a psychologist or otherwise persuade the court to give more or less weight to an evaluation. Virtually every aspect of an evaluation is covered in the Guidelines. They first declare that the main purpose of an evaluation is "to provide relevant, professionally sound results or opinions" and then emphasize the need for impartiality and competence in considering not only the risks to the child in parental care but also in foster care.\textsuperscript{100} They then adopt the parent-child "fit" model, including a focus on parental functioning in the context of meeting the specific needs of the child involved in the case.\textsuperscript{101} The Guidelines also urge the evaluator to be cognizant of the attachment between the parent and child and the risks that separation poses to the child's well-being.\textsuperscript{102} The evaluator should discuss any inferences about the prognosis for improvement in a parent's capacity to care for the child, if supported by the findings, and recommend clinical interventions.\textsuperscript{103} Evaluators must use reliable, accepted methods and fairly describe their data and inferences.\textsuperscript{104} Plausible alternative explanations for findings must be considered and discussed.\textsuperscript{105}

Psychological evaluators in child protection matters must be competent in performing psychological evaluations of children, adults, and families, but that is merely a starting point.\textsuperscript{106} The Guidelines urge evaluators to gain competence and knowledge in forensic psychology, relevant child protection law, child welfare policies and resources, risk and protective factors in child maltreatment, the impact of familial separation, the developmental effects of child maltreatment, other forms of family violence, and cultural differences in child rearing.\textsuperscript{107} In all that they do, evaluators should be knowledgeable about current research and best practices in selecting and using evaluation methods.\textsuperscript{108}

The Guidelines direct evaluators to clarify referral questions and remain bound by them unless they receive authorization and specific guidance to broaden the scope of the evaluation.\textsuperscript{109} In addition, psychological examiners should not

\textsuperscript{100.} Id. at 22.
\textsuperscript{101.} Id. See supra notes 13 to 18.
\textsuperscript{102.} Id.
\textsuperscript{103.} Id. at 22-23.
\textsuperscript{104.} Id. at 23.
\textsuperscript{105.} Id.
\textsuperscript{106.} Id.
\textsuperscript{107.} Id. at 23-24.
\textsuperscript{108.} Id. at 24.
\textsuperscript{109.} Id. at 25-26.
§ 3.6 Child Welfare Law and Practice

offer an opinion on parent-child fit if they have not observed the parent and child together. Evaluators should make clear any limitations on their data, inferences, or conclusions, including where there remain contested or unconfirmed facts. To reduce the risk of bias and ensure that the evaluation provides useful information, the Guidelines urge evaluators to gather data from numerous sources while being mindful of the reliability of each source. When they interpret data, psychologists are required to do so in an empirically valid manner. In other words, they should neither over-interpret nor under-interpret their findings. Finally, psychological reports should be presented in an understandable way, and evaluators should clearly distinguish among data, inferences, and conclusions or opinions. Although the Guidelines are not binding, a number of them correspond to the ethical standards, which psychologists are obliged to follow. Therefore, advocates would do well to read the Guidelines and Ethics Code carefully and use their provisions to their clients' advantage.

§ 3.7 • EXPERT TESTIMONY BY MENTAL HEALTH EVALUATORS

Testimony by mental health practitioners, including their opinion about the ultimate issue in the case, is routinely admitted with little consideration of its reliability or the possibility of undo prejudice. State courts tend to rely on either the Frye test or the Daubert standard to determine whether to admit expert testimony. The Frye test holds that scientific evidence is admissible if it is based on a theory that is generally accepted in its field. Generally, under this standard, mental health testimony is readily admitted because the opinions are based on generally accepted theory. This can be problematic in child protection cases. For example, there are generally accepted assumptions that people with mental illness are inherently dangerous and that parents with developmental disabilities cannot be taught parenting skills, but these assumptions lack scientific

110. Id. at 25.
111. Id. at 26.
112. Id. at 27.
113. Id.
114. Id.
115. Id. at 28.
117. Id. at 20-21; Frye v. United States, 293 F. 1013 (D.C. Cir. 1923); Daubert v. Merrell Dow Pharms., 509 U.S. 579 (1993).
118. Melton et al., supra note 14, at 20.
119. Id.
support. Under the Frye standard, opinions based on these assumptions could be admitted without further inquiry into their relevance, reliability, validity, or prejudicial impact.

In the federal courts, the Daubert standard superseded the Frye test when the United States Supreme Court declared that trial courts serve as gatekeepers in determining whether to admit expert testimony based on whether the methodology behind the testimony is scientifically valid and can properly be applied to the facts at issue. Under Daubert, courts can ask about error rates associated with methods, and there is a much greater focus on reliability and validity and not mere general acceptance. On the one hand, this approach may lead to the admission of testimony based on newer methods that are not yet generally accepted, so long as they are reliable and valid and appropriate to apply to the facts at hand. On the other hand, some generally accepted ideas may be excluded because they lack reliability and validity. There is an emphasis under Daubert on peer-reviewed evidence.

It is important for advocates to know whether their state still follows the Frye standard or has adopted Daubert. Advocates should explore the psychological evaluator’s training in clinical assessment, child development, and child maltreatment. The psychologist’s familiarity with ethical and professional standards should be examined with a focus on whether the psychologist has adhered to those standards. In many jurisdictions, the same psychologists routinely testify in child protection matters, yet their actual expertise may have gone largely unexamined. If their qualifications as experts are debatable, it is up to the lawyers in these cases to question these proposed experts thoroughly, even if their testimony has been admitted frequently in previous cases.

121. Melton et al., supra note 14, at 20.
122. Id.
123. Id. at 21.
124. Id.
125. Id.
126. Id.
127. Id. at 23; Budd, supra note 1, at 5.
128. Id.
Unfortunately, mental health evaluations in child protection matters are frequently riddled with problems. In an important study of the quality of parenting capacity assessments in a large jurisdiction, Karen Budd found numerous shortcomings. Referral questions were too vague and only rarely asked specific questions about parenting ability or the parent-child relationship.\(^{129}\) Evaluators focused far more on weaknesses than strengths.\(^{130}\) There was little discussion of the parent-child relationship or of the parent’s skills relative to the child’s needs.\(^{131}\) Assessments were usually completed in a single session and included no home visit or parent-child observation of any sort.\(^{132}\) Few evaluators made any contemporary collateral contacts, and there was little evidence of record review.\(^{133}\) In addition, there was virtually no discussion of how reliable and valid the data might be and the limitations of the assessment.\(^{134}\) In fact, evaluators rarely described the parent’s child rearing qualities, missing the entire point of these evaluations.\(^{135}\) Taken together, Budd concluded that “these shortcomings render many clinical assessments of parents inadequate to serve as a basis for child protection decisions.”\(^{136}\)

Budd is not alone in her concerns. Too often, tests that are not designed to assess parenting are being used in child welfare evaluations and interpreted as if they do yield information directly about parenting capacity.\(^{137}\) In addition, many evaluators compare examinees to their personal vision of optimal parenting rather than using an “adequate parenting” standard.\(^{138}\) Many psychologists use too few assessment tools, draw conclusions beyond those supported by those tools, and see the parent in only one context.\(^{139}\) Too few examiners observe the parent and child together.\(^{140}\) Many rely on mere diagnosis to draw conclusions rather

\(^{129}\) Budd [2001], \textit{supra} note 2, at 102-03.
\(^{130}\) \textit{Id}. at 104.
\(^{131}\) \textit{Id}.
\(^{132}\) \textit{Id}. at 105.
\(^{133}\) \textit{Id}.
\(^{134}\) \textit{Id}.
\(^{135}\) \textit{Id}.
\(^{136}\) \textit{Id}.
\(^{137}\) Jacobsen et al., \textit{supra} note 31, at 190; Ackerson, \textit{supra} note 4, at 190.
\(^{138}\) Jacobsen et al., \textit{supra} note 31, at 190.
\(^{139}\) \textit{Id}.
\(^{140}\) Budd [2005], \textit{supra} note 7, at 434.
than taking a functional approach to the assessment of parenting capacity, the child’s needs, and the fit between the two.\textsuperscript{141}

In short, many mental health evaluations in child protection proceedings are frankly unethical or, at best, fail to employ many — or any — best practices. High-quality evaluations are time-intensive and require significant expertise and skill.\textsuperscript{142} The market cost of such evaluations is high, far above what child welfare agencies wish to spend.\textsuperscript{143} Thus, it is difficult to attract top psychologists to do these evaluations, a problem that is only compounded by the reluctance of many psychologists to take on cases that may require court testimony. In some jurisdictions, it is routine to request psychological evaluations of the parents, but they may not be necessary in many cases.\textsuperscript{144} The overuse of psychological evaluations contributes to high costs, leaving insufficient funds remaining to obtain high-quality assessments where they are truly necessary.\textsuperscript{145}

Substandard evaluations pose a significant risk of unnecessarily poor outcomes in child welfare matters. Not only do low-quality assessments fail to provide useful information, “but they may inadvertently mislead parents, attorneys, agencies, and the courts, diminishing the prospects for good case management, reunification service planning, and legal decision-making.”\textsuperscript{146} These evaluations fail to meet the standards for expert testimony in the rules of evidence and should not be tolerated by the courts or the parties.

\section*{§ 3.9 • OPPORTUNITIES FOR ADVOCACY}

There are several opportunities to advocate on behalf of a client when a mental health evaluation is being considered, has been ordered, or is being presented in court. Attorneys must start at the front end, when the referral questions are being developed, by insisting that whoever requests the evaluation articulate a specific rationale for it.\textsuperscript{147} Attorneys should inquire about what the referral source is trying to uncover through the evaluation. An explicit rationale

\textsuperscript{141} Ostler, \textit{supra} note 2, at 470.
\textsuperscript{142} Rosenblum \& Kay, \textit{supra} note 38, at 9.
\textsuperscript{143} \textit{ld}.
\textsuperscript{144} \textit{ld}.
\textsuperscript{145} \textit{ld}.
\textsuperscript{146} \textit{ld}.
\textsuperscript{147} Kay, \textit{supra} note 28, at 50.
for an assessment leads naturally to the development of detailed referral questions about parental functioning, creating the impetus and boundaries of the evaluation and priming the psychologist to adopt a functional approach. In contrast, “a muddy rationale for requesting the assessment is likely to lead to overly broad referral questions and, in turn, an inadequate or even inappropriate evaluation that lacks specificity and fails to produce useful recommendations.” In addition to specific referral questions, the request for the mental health evaluation should include a request for recommendations about treatment options, parenting time, and other necessary services. Attorneys should keep in mind that direct negotiation with whomever is requesting the evaluation may yield more targeted referral questions, and those questions can be included in the court order for the evaluation.

Similarly, attorneys can discuss with the various parties and the court what background documents are to be shared with the examiner and what kind of explanation is provided with those documents. For example, an attorney might resist allowing the petition to be shared, or might provide additional information, such as which allegations have been proven. The attorney might even ensure that only those allegations that have been proven will be shared with the psychologist. A parent’s attorney can make sure that any favorable reports from service providers are included. The child’s representative can ensure that information about the child’s development, behavior, or special needs is forwarded to the psychologist.

Attorneys can influence how the evaluation is completed by bringing forward what is known about best practices. For example, the attorney can point out that any evaluation of parent-child fit should include observation of the parent and child together if at all possible, relying on the APA Guidelines. The attorney can also insist on the use of multiple sources of information to guard against bias and enhance the reliability and validity of the data and the psychologist’s inferences, again pointing to the APA Guidelines for support.

If special expertise is required for the evaluation, an attorney can play an important role in ensuring that a psychologist with that expertise is selected. For example, if the parent is suspected of having significant mental illness, an

148. Budd, supra note 1, at 6.
149. Kay, supra note 28, at 50.
150. Budd, supra note 1, at 6.
152. See id. at 27.
intellectual impairment, or a physical or cognitive disability, the parent's attorney can push the agency to find an evaluator with expertise in performing assessments of these populations.\textsuperscript{153} If a child with a disability will be evaluated, the child's representative can insist on having the assessment performed by a psychologist with the appropriate expertise. These are not minor considerations. An assessment performed by an inexpert evaluator can result in gross inadequacies in the interview, test selection and administration, data interpretation, and conclusions and recommendations to a degree that is fatal to the reliability and validity of the assessment. Such an evaluation can fail to answer referral questions adequately and mislead the parties and the court.

If possible, attorneys may benefit from having another psychologist review the evaluation and point out its merits and flaws. Even without access to that kind of expertise, "attorneys should read through reports carefully, look up information about each test used to make sure that it was up-to-date and used for the purpose for which it was made, and be familiar with applicable ethical requirements to determine that they were followed.\textsuperscript{154} Attorneys can also look up the licensing status of any mental health professional working on a case — many states have this information online, and it can illuminate any disciplinary history or other licensing problems. It can also indicate whether the evaluator is licensed to practice independently. If not, the attorney should determine whether there is evidence that the evaluator had the required supervision for the assessment.

Attorneys can ensure that strengths are highlighted as much as deficits in any report, bringing out any bias during the examination of the witness. Lawyers can also determine whether and how to challenge or bolster the designation of a witness as an expert or limit or expand that designation. Throughout the process, including at the inception of the evaluation and when questioning the evaluator, attorneys can insist that detailed recommendations are made. A useful way to approach this is to consider what it would take to put a recommendation into action. If it is not clear how to do so, it may be that the recommendation itself lacks the requisite specificity.

Finally, attorneys should challenge psychologists to support and explain, with a clear empirical basis, any linkages between their inferences and the underlying data. Unsupportable inferences must be confronted vigorously. For

\textsuperscript{153} For further discussion of representing parents with disabilities, see Kay, \textit{supra} note 119.

\textsuperscript{154} Kay, \textit{supra} note 28, at 50.
example, too many evaluators declare parents dangerous or incapable based only on a diagnosis of mental illness, despite the fact that considerable research undermines that conclusion.\textsuperscript{155} Similarly, there is a broadly held belief that parents with intellectual impairments cannot be taught adequate parenting skills, yet numerous research and clinical findings say otherwise.\textsuperscript{156} It is critical for attorneys to make sure that the court and all participants in the process understand that the value of clinical testimony is only realized if the conclusions are considered probabilistic and not absolutely predictive or certain.\textsuperscript{157} No one in child protection proceedings — children, parents, the agency, or society — is well served when false assumptions are allowed to direct how these cases are decided or handled.

\section*{§ 3.10 \textbullet{} CONCLUSION}

Mental health evaluations have the potential to provide unique, valuable information in child welfare matters. A high quality assessment can illuminate important issues of parenting capacity, a child's developmental needs, and the fit between the two, all with an eye toward understanding factors that contribute to an increased risk of, or protection from, child maltreatment. Competent evaluators do excellent interviews of examinees and collateral sources, carefully select psychometric instruments, collect accurate and complete data, draw empirically supported inferences, and craft conclusions and recommendations in order to provide specific feedback and direction in a case. Unfortunately, high quality evaluations are all too rare, and it is incumbent on attorneys to do all they can to ensure that assessments comply with ethical requirements and best practices so that all parties and the court have the information they need for successful case planning and decision making. To do so, attorneys should ensure that referral questions are specific and detailed and that evaluators use a functional approach to explore examinee strengths and deficits, properly select and use psychological tests, and offer inferences and recommendations in an unbiased, data-driven, and specific manner.

\footnotesize
\begin{itemize}
\item 155. Melton et al., \textit{supra} note 14, at 522.
\item 156. \textit{See supra} note 36.
\item 157. \textit{See} Melton et al., \textit{supra} note 14, at 22.
\end{itemize}