How to Build a Successful Practice at the Crossroads of Law and Behavioral Health and Still Keep Your Sanity, Your License, and a Positive Perspective on Human Nature

Presented by
G. Andrew H. Benjamin, JD, PhD, ABPP
Trauma Informed Custody Cases

G. Andrew H. Benjamin, JD, PhD, ABPP

Web sites:
http://washington.academia.edu/GAndrewHBenjamin/About

or http://depts.washington.edu/petp
Looking at Family Law in the 21st century

- Redefining how we look at and intervene in family law cases
- Moving toward settlement based evaluations and interventions
- Using empirically based evaluations and interventions

Defining Comprehensive Parenting Evaluation

- Court ordered or agreed entry
- Allegation/issue/concern driven
- Exercises fair and thorough process to obtain multiple measure corroboration
- Operationalizes how parent behaviors may affect parenting with no recommendations about unrelated issues

Overview of PETP’s Evaluation-Parallel Process Throughout Eval.
- Phase 1 - Pre-eval procedures
- Phase 2 - Clinical Interview
- Phase 3 - Observations of Parents and Child(ren)
- Phase 4 - Collateral Information
- Phase 5 - Interview and Report Findings to Parties
- Phase 6 - Presentation to Attorneys

Broad-based, multiple-measured evaluation of both parties: Measures

- Questionnaires to identify all allegations
- Psychological tests
- Clinical interviews
- Parent/child(ren) observations
- Collateral documentation and interviews
How to seem fair?

- We are in a mine field of malpractice, ethical complaints, unpaid bills and a lot of client dissatisfaction....
- Use videotape
- No surprises

Phase 1- Critical Pre-evaluation procedures

- Screen and refer inappropriate cases
- Obtain concrete referral questions
- Distribute and receive back disclosure forms and outline of the steps of evaluation process
- Collect the first advanced fee
- Distribute initial testing and consider the results to inform the first interview

Practice Management – Adequate Disclosure

- Party boundaries - sufficient written disclosures before evaluation begins
  - Processing fee
  - Fee policy - advance fees required
  - Confidentiality policy
  - Description of evaluation process & videotaping policy
  - Child(ren)'s interests come first

Practice Management: The appearance of fairness

- Limit Ex Parte communication:
  - Any contact with either lawyer is written, and always copied to other lawyer
  - All contact with parties or collaterals throughout the case occurs in writing, and reviewed by the party and collateral to assure a meeting of the minds has occurred
  - Create a written record of contacts
Practice Management - parallel process

.Evaluators proceed to the next phase of the evaluation only when both parties have completed the same phase

. Declaration of Noncompliance

Collection of allegations

- The first advanced fees cover the mailing of the disclosure form and the Parenting History Survey (PHS; Greenberg & Humphreys (1998)
  - a 32-page, 107-item self-report questionnaire about demographics, family history, areas of parental conflict and hostility, mental health and substance abuse issues, each parent’s strengths and weaknesses, and adult- and child-related concerns of the custody dispute

Conducting The Evaluation
Phase 2- Clinical Interview

1. Modify structured interview for party.
2. Complete the disclosure process.
3. Administer psychological testing.
4. Conduct the interview.
5. Prepare the release-of-information forms.
6. Obtain records for later review.
7. Fill out an allegation form as an example.
9. Integrate data immediately afterward.

6. Indicate below any major adult-oriented concerns that you have had (or that you presently have) about the other parent. Answer by completing the statement: "The other parent did (or may) . . .

- threatened to mistreat me.
- emotionally mistreat me.
- physically mistreat me.
- other, list

- use alcohol to excess.
- use drugs to excess.
- have a long term emotional or physical impairment.
- threaten to harm him/her self?
- withhold contact or access to the children from me.
- physically harm him/her self.
- other, list
Practice Management - Obtain second advance fee

- Collect an amount sufficient to cover the clinical work of a comprehensive evaluation and the report writing
- Avoid a party or lawyer accusing the evaluator of being affected by the lack of fee payment

Modify Structured Clinical Interview

Questions focus upon:
- Family of origin
- School history and work history
- Previous and current relationship
- Parenting history
- Events leading to the separation, and allegations of the present custody dispute

Psychological Testing

- Psychological testing of high-conflict parties is of questionable validity and reliability (Emery, et al. (2005))
- Data from psychological testing used to generate hypotheses

Conducting Interview

- Standardized questions (Emery, et al. (2005))
- Informed by party concerns
- Parties directed back to lawyers for advice, support
  - No multiple relationships (p. 865)
Obtain Records
- Each party is given two weeks in which to obtain and forward all of the records pertaining to each allegation
- Contact both lawyers if a complete set of records is not provided

Release-of-information forms
- Only people with first hand information or the professionals who received contemporaneous reports from parties
- Provide declarations of non-professionals

Practice Management-Scheduling
- Schedule the next part of the evaluation process before a party leaves the office
- Save time and appearance of conflict by avoiding telephone call discussions
- Prepare the party for the next step of the evaluation process

Practice Management-Integrate Data Immediately
- Minimize errors of clinical judgment
- Embed within the psychosocial section additional questions for party to answer
- Send to each party their psychosocial section and allegation section of the report for review and additions
- Depend on convergence of multiple measures before arriving at a finding
Clinical Judgment

- The validity of clinical judgments is unrelated to experience level of the professional (Garb, 1989, 2005)
- Errors of clinical judgment include inaccuracies because of over-reliance on memory, confirmatory and hindsight bias, and over-reliance on unique data

Phase 2- Critical Procedures

- Focus on allegation driven data from psychosocial interview & testing to generate hypotheses
- Integrate data immediately
- Send out psychosocial section of evaluation and allegation sections

Phase 3- Observations of Parents and Child(ren)

1. Instructions for Parent–Child Obs
2. Expected baseline parenting behaviors
3. Ending of observation process and scheduling of last appointments with parties
4. Immediate writing of preliminary evaluation

Practice Management- Gaining most from phase 3

- Videotape parent-child observation
- No board or card games- transitions needed
- Shift to next phase of observation only if on plateau for a few minutes, at 12-20 minutes
- Observe multitasking abilities
- Do not enter room after clean-up for at least five minutes
Expected baseline parenting behaviors

- Observe compliance, noncompliance, inappropriate behavior, indirect questions, approach behavior or critical comments
- Note ability to use direct instruction, descriptive statements, reflective listening, labeled praise, unlabeled praise, or ignore inappropriate behavior

Ending Phase 3

- Inquire as whether typical play occurred
- Schedule last appointment
- Keep videotape running until the party has exited the room
- Observe how the party and the child(ren) exit the office

Practice Management-Report Writing

- Write up results of observations after back to back review
- Do not read collateral data or contact others until report is drafted
- Flesh out hypotheses with data to date
- Note uncorroborated allegations
- Operationalized behaviors that affect current and future parenting competencies

Implement a common language for Attorneys and Judge

- Use legal factors to organize psychological data for discussion section of report
- And discussion of limiting factors
Discussion Section- Frame the Evidence by Using Calif. Law

  - Court-ordered child custody evaluations-- Rule 5.220

Relocation Factors
Also, see Navarro v. LaMusga (2004)– factors:
http://www.thelizlibrary.org/lamusga/LAMUSGA-DECISION-S107355.PDF

Practice Management-
Building the Final Report

As the discussion section is being written, prepare the following to avoid having to reread collateral documentation:
- Questions for particular collaterals
- Questions for first-hand witnesses
- Clarifications for the parties
- Statements about independent evidence that led to particular findings

Broad-based, multiple-measured evaluation of both parties

- Findings only made if admissions or multiple measures led to corroboration of the allegation
Phase 4 - Collateral Information

1. Prepare questions for specific collaterals
2. Decide whether to interview particular collaterals just before the closing interview with influential party
3. Interview collaterals
4. Write and send summary of interview and insert corrected summaries into the report

Phase 4—Collateral Information Critical Choices

- Wait to interview particular people before the closing interview with influential party
- Reject material that does not directly bear on allegations or protecting the children

Collateral Information & Clinical Judgment Traps

Noteworthy are:

- Any allegations that lack any corroborating evidence
- Hypotheses that are not corroborated by two or more independent measures
- Alleged first-hand evidence or reports made contemporaneously to witnesses about an alleged incident that are not borne out

Prepare questions for specific collaterals

- Build a list of open-ended questions to ask relevant collaterals during the interviews
- Prepare questions to assess the collateral’s objectivity and judgment about the parties
- Review collateral documentation to supplement initial questions for each collateral, particularly about conflicting data
Interview collaterals

- Use reflective listening to avoid unduly influencing the responses
- Obtain concrete examples of specific behavior
- Don’t say things you don’t mean
- Don’t say things you don’t know
- Don’t get into an adversarial role

Collateral Interviews

Section of Report

- Cut off later party complaint by sending summary of the interview to collateral to supplement
- Reject material that does not directly bear on the party allegations or protecting the child(ren) (APA ethical standards 3.04, 4.04)
- Include collateral evidence into the discussion that either confirms or strongly calls into question any of the hypotheses and discuss

Phase 5 - Interview and Report

Findings to Parties

- Clarify factual inconsistencies.
- Discuss evidence that supports findings
- Provide additional time to submit contradictory evidence in declarations with releases

Preparing for Closing Interviews

- Identify all of the findings about the party with the facts that support each finding
- Recite only facts that emerged from at least two independent measures
- Can you use videotape in vivo?
- Use your monitor
Closing Interview - Lay out the evidence supporting findings

- Recite all facts that emerged
- Gently challenge any inconsistencies or discrepancies
- APA ethics standards 3.04, 9.01, 9.06, 9.10
- Gain admissions and more examples

Closing Interview - Meeting Ethical Guidelines

- Permit party to express dissatisfaction with the evaluation and you
- No matter what the provocation from the client, maintain composure and respect for the dignity of the client
- Continue to videotape interactions

Phase 6 - Presentation to Attorneys and Court

1. Prepare for case review with the attorneys.
2. Meet with the attorneys and the GAL.
3. Prepare and act as an expert witness for discovery, and maybe trial.
4. Meet a party that requests more interaction about the findings of the evaluation after a final settlement or court order is issued.

Attorney Questions and Testimony

- Answer questions directly and concisely without volunteering unsolicited information
- Respond to understandable questions only
- Draw reasonable inferences between the data of the case and your expert knowledge
- Use plain language: Explain all technical terms, so that a lay, undereducated audience would understand
- Refrain from stating that any single article or text is authoritative
More details and forms

**Family Evaluation in Custody Litigation: Promoting Optimal Outcomes and Reducing Ethical Risks, 2d edition**
*(American Psychological Association Press, in press)*


References


References

- The Trouble with Evan, see, [http://www.cbc.ca/player/play/2662849760](http://www.cbc.ca/player/play/2662849760)