

What Every Divorce Lawyer Needs to Know About the Florida Administrative Code When Evaluating a Forensic Psychologist's Report

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Nearly all family law practitioners will eventually be confronted with a case where the parties do not agree on parental responsibility and time-sharing and it becomes necessary to critique an evaluation made by a forensic psychologist. When performing a review of a psychologist's report it is not enough for the family law practitioner to be familiar with the Family Law Rules of Procedure and Chapter 61. To conduct an effective cross examination, the practitioner must also have a thorough understanding of Florida Administrative Code § 64B19-18.007. This code section cannot be ignored as it governs the scope and methodology a psychologist is required to follow when conducting a court ordered parenting plan evaluation.

Authorization for an Evaluation

In any action where the parenting plan is at issue because the parents are unable to agree, F.S. 61.20(1) authorizes the court to order a social investigation and study¹ concerning all pertinent details relating to the child and each parent. The court may consider the information contained in the study in making a decision on the parenting plan, and the technical rules of evidence do not exclude the study from consideration.² In addition to F.S. 61.20, practitioners must also be aware of the rules regarding the evaluation of a minor child set forth in Fla. Fam. L. R. P. 12.363.

Professionals Authorized to Conduct a Parenting Plan Evaluation

F.S. 61.20(2) provides a broad body

of professionals can conduct a social investigation. A social investigation and study, when ordered by the court, shall be conducted by qualified staff of the court; a child-placing agency licensed pursuant to s. 409.175; a psychologist licensed pursuant to chapter 490; or a clinical social worker, marriage and family therapist, or mental health counselor licensed pursuant to chapter 491.³ Although the remainder of this article focuses on the standards applicable to psychologists, arguably said standards should be followed by anyone authorized to conduct a social evaluation.

Florida Administrative Code

When a licensed psychologist conducts an evaluation in a custody proceeding it is paramount to understand an additional set of rules found in the Florida Administrative Code governs the methodology and scope of the psychologist's evaluation and report. These rules are found in Fla. Admin. § 64B19-18.007, which is entitled "Requirements for Forensic Psychological Evaluations of Minors for the Purpose of Addressing Custody, Residence or Visitation Disputes". Said code section also incorporates the "APA Guidelines for Child Custody Evaluations in Divorce Proceedings" and "APA Specialty Guidelines for Forensic Psychologists".

The remainder of this article is dedicated to explaining the minimum standards in the Florida Administrative Code that a psychologist is required to follow when conducting a court ordered parenting plan evaluation.

Requirements of Psychologist's Report

The psychologist's report shall in-

clude all of the following elements: (1) evaluations of both parents, or legal guardian including observations, test results, and impressions; (2) evaluations of the children identified in the court order including observations and where appropriate, test results and impressions; (3) description of interactions between each parent or legal guardian and each child identified in the court order; (4) collateral sources of information as needed; and (5) requests for medical records as needed.⁴ The psychologist should document any failure to include the above referenced elements.⁵

Conflicts of Interest

The psychologist who has accepted an appointment as an evaluator shall not serve as guardian ad litem, mediator, therapist or parenting coordinator regarding the children in the case.⁶ Likewise, it is a conflict of interest for a psychologist who has treated a minor or any of the adults involved in a custody or visitation action to perform a forensic evaluation for the purpose of recommending with which adult the minor should reside, which adult should have custody, or the degree of timesharing allowed.⁷ That said, and so long as confidentiality is not violated, a treating psychologist may provide a court, or a mental health professional performing a forensic evaluation, with factual information about the minor derived from treatment, but shall not state an opinion about custody, residence or visitation disputes.⁸

APA Guidelines

Fla. Admin. § 64B19-18.007(2) incorporates the 1994 American Psy-

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**Forensic Psychologist***from preceding page*

chological Association Guidelines for Child Custody Evaluations in Divorce Proceedings ("APA Guidelines").⁹ These guidelines are supposed to apply only in child custody evaluations involving disputes over decision making, caretaking and access and do not apply to custody evaluations taken in other contexts, such as child protection matters. The APA Guidelines are informed by the American Psychological Association's "Ethical Principles of Psychologists and Code of Conduct". Although the APA Guidelines are stated to be only aspirational, said guidelines are made mandatory for Florida licensed psychologists performing a court ordered parenting plan evaluation by virtue of Fla. Admin. § 64B19-18.007(2).

Described here are several of the more notable APA Guidelines¹⁰:

Guideline #1: The primary purpose of the evaluation is to assess the best psychological interests of the child.

This factor is similar to the best interest of the child standard described in F.S. § 61.13. Psychologists should weigh and incorporate overlapping factors including family dynamics and interactions; cultural and environmental variables; relevant challenges and aptitudes for all examined parties; and the child's educational, physical, and psychological needs.

Guideline #3: The focus of the evaluation is upon parenting capacity, the psychological and developmental needs of the child, and the resulting fit.

The most useful and influential evaluations focus on skills, deficits, values, and tendencies relevant to parenting attributes and a child's psychological needs. By contrast, only minimal weight should be given to parenting plan evaluations that offer

only general personality assessments without attempting to place results in the appropriate context.

Guideline #4: The role of the psychologist is that of a professional expert who strives to maintain an objective, impartial stance.

Psychologists should monitor their own values, perceptions, and reactions actively and seek peer consultation in the face of potential loss of impartiality. In conducting evaluations psychologists should maintain vigilant maintenance of professional boundaries and adhere to standard assessment procedures throughout the evaluation process to be in the best position to identify variations that may signal impaired neutrality.

Guideline #5: The psychologist gains specialized competence.

In parenting plan evaluations, general competence in the clinical assessment of children, adults, and families is necessary but insufficient in and of itself. An evolving and up-to-date understanding of child and family development, child and family psychopathology, the impact of relationship dissolution on children, and the specialized child custody literature is critical for sustaining competent practice. Furthermore, psychologists should become and remain familiar with applicable legal standards including Florida's laws governing adjudication of parental responsibility and timesharing disputes.

Guideline #6: The psychologist is aware of personal and societal biases and engages in nondiscriminatory practices.

Psychologists must recognize their own biases and if they cannot be overcome, the psychologist must withdraw from an evaluation. When an examinee possesses a cultural, racial, or other background with which the psychologist is unfamiliar, the psychologist should prepare for and conduct the evaluation with the appropriate degree of informed peer

consultation and focal literature review.

Guideline #8: The scope of the evaluation is determined by the evaluator, based on the nature of the referral question.

Once the referral question is established by the court, the psychologist is to determine the scope of the evaluation. Although comprehensive child custody evaluations generally require an evaluation of all parents and children, as well as observations of interactions between them, the scope of the assessment in a particular case may be limited to evaluating the parental capacity of one parent without attempting to compare the parents or to make recommendations.

Guideline #11: The psychologist uses multiple methods of data gathering.

Psychologists should employ optimally diverse and accurate methods for addressing questions raised in a specific child custody evaluation. Direct methods of data gathering include psychological testing, clinical interview, and behavioral evaluation. Psychologists should attempt to gain access to documentation from a variety of sources (e.g., schools, health care providers, child care providers) and frequently make contact with members of the extended family, friends and acquaintances, and other collateral sources when the resulting information is likely to be relevant.

Guideline #13: The psychologist does not give any opinion regarding the psychological functioning of any individual who has not been personally evaluated.

Psychologists cannot give opinions on what they have not observed. This guideline, however, does not preclude a psychologist from reporting what an evaluated individual has stated or from addressing theoretical issues or hypothetical questions so long as the limited basis of the information is noted.

Guideline #14: Recommendations, if any, are based on what is in the best psychological interests of the child.

Recommendations should be based on sound psychological data and address the psychological best interest of the child. Any recommendations should be based on articulated assumptions, interpretations and inferences that are consistent with established professional and scientific standards.



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Endnotes:

- 1 The "social investigation and study" referred to in F.S. 61.20 is often referred to as a "parenting plan evaluation." Although less common than a full blown social investigation, the court may also order the examination of only a child, and not the entire family.
- 2 Stat. §61.20(1) (2011).
- 3 Fla. Stat. §61.20(2).
- 4 Fla. Admin. Code § 64B19-18.007 (2)(e) (2011).
- 5 *Id.*
- 6 Fla. Admin. Code § 64B19-18.007 (2)(b).
- 7 Fla. Admin. Code § 64B19-18.007 (3).
- 8 *Id.*
- 9 Fla. Admin. Code § 64B19-18.007 (2)(b) incorporates the 1994 version of the guidelines, which were later slightly updated and supplemented with commentary in 2009. The plain language of Fla. Admin. Code § 64B19-18.007 requires Florida psychologists adhere to the 1994 APA Guidelines, but the 2009 supplement would certainly seem to be instructive.
- 10 Explanations of the selected APA Guidelines appearing in this article are taken largely from the 2009 APA Guidelines. See American Psychological Association, Guidelines for Child Custody Evaluations in Family Law Proceedings, <http://www.apa.org/practice/guidelines/child-custody.pdf> (last visited April 18, 2012).

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