

**DRAFT Version 2.2**

**Problems Encountered with Child  
Custody Evaluations in Indiana:**

**Practices and Proposed Rules for Child Custody Evaluations Performed  
by Guardian ad Litem and Court Appointed Special Advocates,  
and Proposed Indiana Code of Conduct for Guardian ad Litem and  
Court Appointed Special Advocates Acting as Child Custody Evaluators**

**Report to the Indiana Supreme Court  
Advisory Commission on Guardian ad Litem and  
Court Appointed Special Advocate**

**01 May 2014  
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## Introduction

For nearly the past ten years I have been advocating for what I view to be improvement to the statutory provisions, court rules and the attitudes of judicial officers, practitioners and parents towards child custody proceedings. I have had some ideas passed into law, most recently added to the Indiana Parenting Time Guidelines and am now introducing a series of proposals intended to improve judicial efficiency and outcomes for children.

Melton, Petrila, Poythress, & Slobogin, (2007) found that parents agree to custody arrangements in about 90% of cases. It's that remaining ten percent for which our courts are most preoccupied and towards which my efforts are aimed. While this report is narrowly targetted toward the use of the GAL or CASA in the role of a Child Custody Evaluator these considerations may be best placed within the context of guidelines or rules for GAL/CASA, for Child Custody Evaluators, or both. Based upon your specific role related to GAL/CASA I present this matter to you although it may ultimately be decided elsewhere.

Here I will present to you some anecdotal issues about Child Custody Evaluations and my proposals. The proposals are for rules and guidelines related to the use of a GAL or CASA in assisting the court in assessing the factors surrounding a child custody case. I have not prepared these in draft versions but have instead formatted them by a proposed rule, any related findings and commentary which could also be used as commentary to the rules. Where I use a gender specific pronoun the purpose is only for brevity and is not to imply any specific gender limitations. Likewise at times I may simply refer to "evaluator" which for this writing has the meaning of a GAL/CASA acting as an evaluator.

I thank you for your attention to and consideration of this matter. I eagerly anticipate working with you in any manner that you feel may be able to assist you in your evaluation or implementation of these proposals.

## Cases involving Child Custody Evaluations

In 2001, during my divorce proceeding, I was the subject of lies and misrepresentations made by a custody evaluator. Since that time I have been involved in other cases where custody evaluators clearly made biased conclusions -- evidence was either ignored or fabricated -- to fit the evaluators' predetermination of who he would recommend as the custodial parent.

In one such case the evaluator, Dr Richard Lawlor, based his findings regarding alleged sexual abuse of a child upon a particular psychological theory. However, the opposing attorney presented to Dr Lawlor the transcript of a prior similar hearing in another part of the state in which Dr Lawlor based his findings upon a particular psychological theory directly contradicting the current theory he was proposing.

This demonstrates a problem with which I grapple and am ultimately going to put to you: How do we mitigate the effects of an evaluator whose opinions shift commensurate with that of the desires of the party who has sought and paid for the evaluator's service? Do we require that a database indicating all cases in which the evaluator has been referred be maintained? Do we require that evaluators make disclosures about theory, data,

empirical evidence and similar other variables that weigh upon their claims? There currently exist guidelines for psychologists serving as Child custody Evaluators but they are not enforceable rules and are not intended to serve as a model standard of practice for the GAL or CASA. Kunin, Ebbesen, and Koneci (1992) in their review of the court records of 282 disputed child custody cases found that only two factors directly affect judges: child preference and the recommendations of the evaluator. As courts have demonstrated their reluctance to rule without the input from an evaluator and parents are less willing or have insufficient financial resources to hire a private evaluation the use of a GAL or CASA as an evaluator has increased.

For the past two years I have been providing life coaching to a father representing himself in one such case. He has been defending himself against a custody modification petition and has substantiate the lies of a GAL and the GAL's attorney.

The case is Kristy L Moore, Petitioner, v. Brian S Moore, Respondent, 49D12-0810-DR-44790. I have seen no case that provides a clearer example of why I feel implementation of rules for child custody evaluations performed by a GAL or CASA are essential to a just and timely resolution of child custody cases. In preparing this report I contacted the provider agency multiple times by email, phone and postal service seeking their input and assessment of how such a circumstance could occur. Unfortunately, I received no response to any request. Thus, you and I are left to speculate as to what circumstances led to this. This may be a blessing to us though because it keeps our focus on potential problems broad rather than being narrowly focused on one actual precise failure within the system of GAL and CASA facilitation. I have included details of this recent case in an Appendix.

### **The Role of the Guardian ad Litem**

At the outset I believe it is important to examine the traditional role of the GAL or CASA, what duties the GAL or CASA is now expected to perform and the limitations imposed upon the GAL or CASA by training and experience. The ABA Custody Standards do **not** address the role of a GAL in a custody case. The commentary to the Standards explains the reason for this deliberate omission.

*"The role of 'guardian ad litem' has become too muddled through different usages in different states, with varying connotations. It is a venerable legal concept that has often been stretched beyond recognition to serve fundamentally new functions, such as parenting coordinator, referee, facilitator, arbitrator, evaluator, mediator and advocate."*

Indiana law defines a GAL as, *inter alia*, "a volunteer . . . who is appointed by a court to represent and protect the best interests of a child; and provide the child with services requested by the court, including researching; examining; advocating; facilitating; and monitoring the child's situation." I.C. § 31-9-2-50.

Asking one GAL to perform several roles at once, to be all things for all people, is a messy, ineffective expedient. A court seeking expert or lay opinion testimony, written reports, or other non-traditional services should appoint an individual for that purpose, and make clear that that person is not serving as a lawyer, and is not a party. This person can either be a non-lawyer, or a lawyer who chooses to serve in a volunteer nonlawyer capacity.<sup>[fn1]</sup>

Therefore, although recognizing that an appropriately appointed GAL can add value to a custody case, the ABA Standards only apply to attorneys appointed to act as attorneys

in these cases. A universal standard applying to anyone, including the lay person, appointed as a GAL should reduce the incidents of the GAL or CASA being asked or trying to perform duties outside of his area of competence.

Equally important is that the role of the evaluator be clearly defined before a GAL or CASA is charged with executing that duty. This will ensure that the competence of the evaluator is paired to the disciplines used across the expectation. Different advisory bodies provide guidance as to the purpose of an evaluation. The aim of the forensic evaluation is not to relieve suffering or to treat the child but to provide objective information and informed opinions to help the court render a custody decision.<sup>[fn2]</sup> The purpose of the evaluation is to assist in determining the psychological best interests of the child.<sup>[fn3]</sup>

### **Why the GAL or CASA is charged with the Child Custody Evaluation duty**

In my role as a policy advisor I am often asked by parents or attorneys seeking to impose limits upon judicial officers that their discretion be curtailed. However, I am currently convinced that the opposite is true. While I feel that basing child support and parenting time considerations on established standards has led to greater uniformity and benefits to the parties I also hold that judges need wide latitude in case management.

Opinions from the bench about the wisdom of delegating tasks to experts vary greatly. So does the process for obtaining information through others. Some judges routinely ask for a child custody evaluation in all but the simplest cases. Others feel strongly that the judge must not hide behind experts when it comes to making a judgment about what is in the best interests of the child.<sup>[fn4]</sup>

I prefer, and propose elsewhere, that judicial officers with substantial knowledge in the cross disciplines of making proper or best interest child placement decisions be routinely assigned family law cases. Lack of training, knowledge or time to hear evidence have a more damaging impact upon custody decisions than judicial discretion. It is that time limitation that often dictates the role of ancillary decision makers.

For efficiency and cost considerations a judicial officer may appoint a GAL or CASA to assist in the determinations the court is asked to make. During the course of a dissolution proceeding, a court may appoint a GAL “for a child.” I.C. § 35-15-6-1. A GAL “may subpoena witnesses and present evidence regarding the supervision of the action, or any investigation and report that the court requires of the” GAL. I.C. § 31-15-6-7. the statutory scheme does not specifically authorize the use of a GAL to make a custody evaluation. Having a GAL perform all of these tasks may exceed his or her ability. This issue has been addressed in the ABA Judges' Guide.<sup>[fn4]</sup>

Can one expert handle all the tasks: the child's needs assessments, home studies, and mental and/or behavioral assessments? In all likelihood, yes. A clinical practice, referred to as “child custody evaluations,” has grown up around family disputes. Professional associations such as the American Psychological Association (APA), the American Academy of Child and Adolescent Psychiatry (AACAP), and the Association of Family and Conciliation Courts (AFCC), as well as some courts, have developed guidelines for their practitioners. The guidelines cover a comprehensive service: interviews, home investigations, observations of family dynamics, administration of tests if necessary, and reports to the court. A 2001 survey of psychologists indicated that the typical child

custody evaluation took about 26.4 hours (excluding court testimony and conversations with lawyers), and the average fee was \$3,335.00.<sup>[fn6]</sup>

Notwithstanding the existence of such guidelines, there is no accepted formula for conducting a child assessment and evaluation. Courts must decide the outcome based on all of the evidence of what is in the child's best interests. Ensuring that the GAL or CASA appointed can adequately assist the judge in his information gathering objective is essential to the best interest decision.

Based upon the needs of judicial officers, the best interest of children, and problems illustrated by the Moore case and others I propose the following Indiana Rules of Court for Child Custody Evaluations performed by GAL/CASA and Indiana Code of Conduct for GAL/CASA Acting as Child Custody Evaluators.

## Indiana Rules of Court for Child Custody Evaluations performed by GAL/CASA

A Child Custody Evaluator should be an impartial third party who is appointed by the court to assist in determining issues relating to the custody and parenting time decisions in any action for dissolution of marriage, legal separation, paternity, or guardianship where a minor child is involved.

Child Custody Evaluations performed by psychiatrist or psychologist can be cost prohibitive for many parents. As courts have come to rely upon GAL/CASA to perform more duties in custody case, including those with high conflict parents, the role of the GAL/CASA has been increased and has also become muddled. GAL/CASA are now being asked to perform child custody evaluations and give opinions to the court. The role of the GAL/CASA is not always clear to the parents, the court or the GAL/CASA. Although various organizations have adopted standards of practice for child custody evaluations neither have enforcement power or authority of the court. For these reasons I propose that Indiana establish these rules as a minimum threshold for defining the roles of GAL/CASA when performing a child custody evaluation.

### **Rule 1 - Ordering an Evaluation**

Courts are ordering evaluations sua sponte or upon request of the parties. While some judicial officers meticulously detail the objectives of the evaluation and set limitations upon the role of the GAL/CASA other may make an appointment only stating because "an evaluation is needed."

To provide clarity to the evaluator, the parties and their attorneys a rule should be established to require that objectives and limitations of the evaluation be clearly identified.

**In all child custody actions if the Court finds that that there is reason to believe that the best interest of the child(ren) cannot be met without facilitating the use of a child custody evaluation then the court may order an evaluation to be performed by a GAL/CASA consistent with these rules. A Child Custody Evaluator shall serve at the pleasure of the court or by agreement of the parties. The court shall state in its order specific findings as to the need for the evaluation. The evaluation shall be performed consistent with the formal order of the court, which shall clearly and specifically define the Child Custody Evaluator's scope of authority and responsibilities.**

The evaluation shall be of all parties seeking or who may be awarded custody. Haller (1981) warns against evaluations that assess only one parent. When an evaluation has not been performed as to each parent the evaluator shall not provide an opinion to the court as to the placement of the child. The scope of a child custody evaluation will vary according to the needs of a particular case and the specific issues psychologists are asked to address. Referral questions may vary in the degree to which they specify the desired parameters of the evaluation. Failure to ensure in a timely fashion that an evaluation is appropriately designed impairs the utility and acceptance of the resulting opinions and recommendations.<sup>[fn3]</sup> The rule should also include the duration of the appointment and other provisions to ensure judicial economy.

**When the court orders a custody evaluation the court shall contemporaneously set a hearing date for argument on the report of the Child Custody Evaluator.**

**The services of the custody evaluator may not be terminated without an order of the court.**

**Evaluators must file an appearance with the court that discloses the referral source(s) and who sought the services of the evaluator.**

Consistent with these rules the order appointing the evaluator should state the reason the evaluation is needed including who sought the evaluation, the duration of the appointment, the date the report is due, a subsequent hearing date and clearly defined objectives of the evaluation.

### **Rule 2 - The Report**

**The court should ensure that the Child Custody Evaluator submits the report to the court within four (4) months of the appointment by the court unless an extension, for good cause shown, is granted by the court.**

Although the evaluation may take 1 to 3 months, it may be more than 1 year before the court hears the case.<sup>[fn2]</sup>

**Upon ordering an evaluation the Court shall also determine whether the parties may file objections to the report. If objections are allowed they shall be filed with the court and served on the Child Custody Evaluator and all other parties within ten (10) days after the Evaluator files the report with the court, or within another time as the court may direct. Responses to the objections shall be filed with the court and served on the Evaluator and all other parties within ten (10) days after the objection is served. The Court shall extend the due date of the report consistent with the time for filing objections.**

**The report to the court submitted by the Evaluator must be verified at the time of submission to the court. The verification shall state, "I AFFIRM UNDER THE PENALTIES AND PAINS OF PERJURY THAT THE FOREGOING REPRESENTATIONS ARE TRUE TO THE BEST OF MY BELIEF AND ABILITY"**

### **Rule 3 - Impartiality**

**Custody evaluators must not have substantive ex parte communications with the court.**

All findings by the evaluator must be subject to the Rules of Evidence and examination by the parties. The court and the evaluator should not have any ex parte conversation outside of administrative communication. Communications between the evaluator and court should be in written form and copied to the parties and their attorneys so as to not give the appearance of any disallowed communication. This prohibition is already found in existing guidelines: Child custody evaluators shall not have substantive ex parte communications about a case with the Court or with the attorney's representing the parties.<sup>[fn5-4.4]</sup>

**The evaluator must disclose to the parties at the earliest convenience any actual or potential conflict of interest. A conflict of interest arises when any relationship between the evaluator and the participants or the subject matter of the dispute compromises or appears to compromise a evaluator's impartiality.**

**Evaluators shall not remain in the court room at times other than when they are providing testimony.**

Evaluators may need to conduct further study or consultations and should not be exposed to the legal arguments of the parties or their attorneys which may taint the objectivity of the evaluator.

#### **Rule 4 - Immunity**

**A court appointed Child Custody Evaluator serving under these rules shall have immunity from acts arising under the normal performance of the evaluator's duties as ordered by the court and consistent with the Indiana Code of Conduct for GAL/CASA Acting as Child Custody Evaluators.**

## Indiana Code of Conduct for GAL/CASA Acting as Child Custody Evaluators

**All GAL/CASA Acting as Child Custody Evaluators submitting a report to the court must adhere to the Indiana Code of Conduct for GAL/CASA Acting as Child Custody Evaluators.**

The Code is not simply a recommendation but should be seen by evaluators as a rule enforceable by contempt sanctions.

**Child custody evaluators shall secure from the court and/or attorneys reasonably detailed information concerning their role and the purpose and scope of the evaluation.**

Evaluators have the responsibility of acquiring detailed instructions as to the purpose and limits of their appointment. This should help to increase efficiency but also reduce any antagonism that may develop from asking questions of sources outside the scope of the appointment.

**An evaluator shall be patient, dignified, and courteous to litigants, lawyers, court staff, court officials, interview subjects, and others with whom the evaluator deals in an official capacity.**

It is the roll of the evaluator to collect and disseminate information for the court in an objective and unbiased manner. All persons should be treated with respect which will help to accomplish this goal.

### REPORTS

**The Child Custody Evaluator shall present his "findings" to each party prior to submitting the report to the court in an effort to get the parties to stipulate to facts.**

*This is to increase judicial efficiency by reducing the time attorneys or parties may question the evaluator about facts that are not in dispute.*

**The evaluator's testimony must be directly related to matters disclosed in the report and consistent with the Indiana Rules of Evidence, Rule 401. Evaluators shall avoid offering opinions to the court on issues that do not directly follow from the court order of appointment or signed stipulation or are not otherwise relevant to the purpose of the evaluation.**<sup>[fn5-12.5]</sup>

Offering opinions in areas for which the evaluator has not been assigned may promote a bias toward or against a party. Testimony related to matters outside of the scope of the appointment may lead to objections and reduce judicial economy.

**Evaluators shall assess each child and all parents and parent figures who are in the household of the persons who may be awarded custody or parenting time.**

This is found in existing rules and guidelines. Child custody evaluators shall strive to assess each parent and all adults who perform a caretaking role and/or live in the

residence with the children.<sup>[fn5-5.7]</sup> Child custody evaluators shall individually assess each child who is the subject of the evaluation.

(a) Evaluators shall assess each child whose placement is at issue and shall be attentive to any special developmental needs of the children. Evaluators shall consider the stated wishes and concerns of each child as these relate to the allocation of parental rights and responsibilities if the child is of sufficient developmental maturity to independently express informed views. Evaluators shall describe the manner in which information concerning a child's stated perceptions and/or sentiments was obtained and shall specify the weight given by the evaluator to the child's stated perceptions and/or sentiments.<sup>[fn5-5.8]</sup> Child custody evaluators shall assess the relationships between each child and all adults who perform a caretaking role and/or living in the residence with the child.<sup>[fn5-5.9]</sup>

Child custody evaluators shall conduct at least one in person interview with each parent and other adults who perform a caretaking role and/or are living in the residence with the child(ren). Electronic interviews that provide a visual display of the interviewee are an acceptable means for collecting data from collaterals.<sup>[fn5-5.10]</sup>

**Evaluators should also interview additional collateral sources which may contribute to the base of knowledge provided to the judicial officer through the report. Evaluators shall accept lists of collateral contacts from any of the parties involved.**

Evaluators should not rely solely upon source list from the parties or their attorneys but should consider; interviews with parents and other potential custodians, separately and together (however, in cases of domestic violence it may be dangerous to interview parents together); Interviews with the child, separately and in a family setting; Interviews with collateral important people: e.g., teachers, grandparents, neighbors; Home visits; Examination of records: e.g., school, criminal, medical, mental health, court; and, any other relevant source that may come to the evaluator's knowledge through these interviews. Psychologists may seek corroboration of information gathered from third parties and are encouraged to document the bases of their eventual conclusions.<sup>[fn3]</sup>

All collateral sources contacted shall be disclosed by the child custody evaluator.

Evaluators shall list all collateral informants who were contacted and all data sources that were utilized, whether the information obtained was utilized by the evaluators in formulating their opinions. Where unsuccessful attempts have been made to contact collaterals, those collaterals shall be identified and an appropriate notation shall be made.<sup>[fn5]</sup> If a desired examination cannot be arranged, psychologists document their reasonable efforts and the result of those efforts and then clarify the probable impact of this limited information on the reliability and validity of their overall opinions, limiting their forensic conclusions and any recommendations appropriately (Ethics Code, Standard 9.01(c)).<sup>[fn3]</sup>

Collateral source information is essential. Child custody evaluators shall disclose situations where uncorroborated information was utilized in the formulation of an opinion expressed by the evaluator. Evaluators shall acknowledge the limits in the ability to discern the truthfulness of oral reports from the primary participants and so shall seek from collateral sources information that may serve either to confirm or to disconfirm oral reports, assertions, and allegations. When assessing the reports of participants in the evaluation, evaluators shall seek from other sources information that may serve either to confirm or disconfirm participant reports on any salient issue, unless doing so is not

feasible. Where seeking such confirming or disconfirming information is not feasible, evaluators shall exercise caution in the formulation of opinions based upon unconfirmed reports and shall clearly acknowledge, within the body of their written reports, statements that are not adequately corroborated and why it may or may not be appropriate to give weight to such data.<sup>[fn5-11.2]</sup>

**Evaluators shall not provide an opinion as to the manner in which custody and parenting time should be divided.**

The evaluator should fill the role of a tool for the judge not a decision maker. There is a substantial amount of rules related to determinative opinions and conflict as to whether psychologists with competence in this area should even be entrusted with decision making recommendations.

Evaluators shall only provide opinions and testimony that are a) sufficiently based upon facts or data; b) the product of reliable principles and methods; and c) based on principles and methods that have been applied reliably to the facts of the case. In their reports and in their testimony, evaluators shall be careful to differentiate among information gathered, observations made, data collected, inferences made, and opinions formulated. Evaluators shall explain the relationship between information gathered, their data interpretations, and opinions expressed concerning the issues in dispute. There shall be a clear correspondence between the opinions offered and the data contained in both the forensic report and the case file.<sup>[fn5-12.2]</sup>

Recommendations are based upon articulated assumptions, interpretations, and inferences that are consistent with established professional and scientific standards. Although the profession has not reached consensus about whether psychologists should make recommendations to the court about the final child custody determination (i.e., “ultimate opinion” testimony), psychologists seek to remain aware of the arguments on both sides of this issue (Bala, 2005; Erard, 2006; Grisso, 2003; Heilbrun, 2001; Tippins & Wittman, 2005) and are able to articulate the logic of their positions on this issue.<sup>[fn2]</sup>

**The evaluator shall investigate all areas of assessment required by the court or agreement of the parties and any other areas that may facilitate comprehensive reporting across those areas.**

The American Academy of Child & Adolescent Psychiatry provides the following areas of assessment that should be considered in a Child Custody Evaluation;<sup>[fn7]</sup>

Continuity And Quality Of Child’s Attachments; Child’s Preferences; Parent Alienation; Child’s Special Needs; Education; Gender Issues; Sibling Relationships; Parent’s Physical And Psychiatric Help; Parent’s Work Schedules; Parent’s Finances; Styles Of Parenting And Discipline; Conflict Resolution; Social Support Systems; Cultural And Ethnic Issues; Ethics And Values; and, Religion

**Confidentiality**

**Evaluators must take measures to ensure the privacy and confidentiality of personal information including those required by statute including protection of school records, financial documents and personally identifying information.**

Evaluators are provided with sensitive personal information which should be returned or destroyed upon completion of the evaluator's term.

### **Conflict of Interest and Impartiality**

**The evaluator shall not have served or serve in the future in any other capacity to the parties or any party such as a counselor, coach, consultant, attorney or parenting coordinator.**

There are numerous rules and guidelines related to the impartiality and objectivity of the evaluator. Evaluators should behave in a manner consistent with these rules and not exhibit any behaviours that may tend to or appear to tend to lead to a bias or favouritism. Nurcombe and Partlett (1994) stress the importances of the evaluators objectivity and the ethical issue of functioning in a expert manner, not as an adversary or advocate. Family law cases involve complex and emotionally charged disputes over highly personal matters, and the parties are often deeply invested in a specific outcome. The volatility of this situation is often exacerbated by a growing realization that there may be no resolution that will completely satisfy every person involved. In this contentious atmosphere, it is crucial that evaluators remain as free as possible of unwarranted bias or partiality.<sup>[fn3]</sup>

Psychologists are encouraged to monitor their own values, perceptions, and reactions actively and to seek peer consultation in the face of a potential loss of impartiality. Vigilant maintenance of professional boundaries and adherence to standard assessment procedures, throughout the evaluation process, will place psychologists in the best position to identify variations that may signal impaired neutrality.<sup>[fn3]</sup> Regardless of the manner in which arrangements for their services have been made and regardless of the source of remuneration, evaluators shall always function as impartial examiners.<sup>[fn5]</sup>

The inherent complexity, potential for harm, and adversarial context of child custody evaluations make the avoidance of conflicts of interest particularly important.<sup>[fn3]</sup>

Custody evaluators duty to report suspected child abuse or neglect pursuant to statute or any other rule or obligation is not obviated by their role in the litigation. The evaluator is not required to disclose this report to either the parties or the court but findings by any responding agency may be appropriate to consider or include in the report. IC 31-33-5 et seq.

Child custody evaluators shall strive to be accurate, objective, fair and independent in gathering their data and shall be prepared to defend decisions made by them concerning their methodology.<sup>[fn5-5.3]</sup>

### **Competence**

**Evaluators should only provide opinion or recommendations consistent with their level of competence.**

It is essential that evaluators neither seek nor accept duties beyond their scope of competence. This is found in numerous guidelines. Evaluators shall only conduct assessments in areas in which they are competent.<sup>[fn5-1.3]</sup> A child custody evaluator

shall have specialized knowledge and training in topics related to child custody work and shall keep abreast of the ever evolving research in the field.<sup>[fn5-1.1]</sup> Evaluators shall be able to assess parenting capacity and co-parenting capacity and to construct effective parenting and co-parenting plans.

Child custody evaluators shall possess appropriate education and training. All evaluators who have fewer than two years experience are encouraged to seek ongoing supervision prior to offering to perform or accepting appointments to conduct evaluations.

Opinions expressed by child custody evaluators shall be based upon information and data obtained through the application of reliable principles and methods. Evaluators shall differentiate among information gathered, observations made, data collected, inferences made, and opinions formulated.

GAL/CASA must maintain education/training in core areas. Evaluators shall only offer opinions to the court in those areas where they are competent to do so, based on adequate knowledge, skill, experience, and education consistent with Indiana Rules of Evidence 702.<sup>[fn5-12.1]</sup> Psychologists strive to gain and maintain specialized competence. Rationale. Laws change, existing methods are refined, and new techniques are identified. In child custody evaluations, general competence in the clinical assessment of children, adults, and families is necessary but is insufficient in and of itself. The court will expect psychologists to demonstrate a level of expertise that reflects contextual insight and forensic integration as well as testing and interview skills.<sup>[fn3]</sup> Traditionally, GALs and CASAs have not had the necessary training nor proficiency in these particular disciplines.

Although psychologists take care to acquire sufficient knowledge, skill, experience, training, and education prior to conducting a child custody evaluation, this acquisition is never complete. 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 to sustaining competent practice in this area.<sup>[fn3]</sup> It may be critical to producing an effective advisor to the court in these disciplines that continuing education in certain areas of the assessment process be required.

## **Records**

**Custody evaluators shall maintain all materials received or produced during the evaluation process and bring such to the court if and when called to testify. This includes but is not limited to notes produced by the evaluator, writings received from the parties or collateral sources, recordings of interviews, public records or other records of which the court may take notice.**

This provision is already found in current rule. The Child Custody Evaluator shall maintain records in a manner that is professional, comprehensive and inclusive of information and documents that relate to the evaluation process and that support decisions by the parties and recommendations by the evaluator. Child custody evaluators shall maintain active control of their records and shall take reasonable care to prevent the loss or destruction of records.<sup>[fn5-3.3]</sup>

## Notes

[1] A Judge's Guide: Making Child-Centered Decisions In Custody Cases, Second Edition, American Bar Association Child Custody and Adoption Pro Bono Project (2006)

[2] Practice Parameters for Child Custody Evaluation, J. Am. Academy of Child Adolescent Psychiatry, 36:10 Supplement, October 1997

[3] Guidelines for Child Custody Evaluations in Family Law Proceedings, APA December 2010

[4] Bill Swann, The Dangers in Using Court-Appointed Experts in Child Custody Cases, 27 JUDGE'S J. 17, 18 (1988).

[5-(rule number)] Association of Family and Conciliation Courts *Model Standards of Practice for Child Custody Evaluations* (2006)

[6] Marc. J. Ackerman and Melissa C. Ackerman, *Child Custody Evaluation Practices: A 1996 Survey of Psychologists*, 30 FAM. L. Q. 565, 583 (1996).

[7] American Academy of Child & Adolescent Psychiatry, Practice Parameters for Child Custody Evaluations, 36 (10) J. Am. Acad. Child Adolesc. Psychiatry 57S – 68S (1997).

## APPENDIX A

### Moore v Moore

After a contentious dissolution proceeding the Moore's were able to reach a settlement agreement which was adopted by the court about a year after the dissolution proceeding was initiated. The agreement provided that the parents would share joint legal custody and provide parenting time by alternating week long periods. Less than a year later Mrs Moore sought to modify that agreement. Here is the condensed time-line of the relevant portions of the Moore proceeding.

**2010 July 20** - Mother files for modification of their equal custody and parenting time agreement seeking sole legal custody and primary physical residence.

**2011 September 09** - Mother presents her case and rests. Court wants the input of third-party advisors. GAL, Del Anderson, is appointed and DRCB is engaged.

**2012 June 13** - Pre-trial hearing held. Mother raises issue of changing children's schooling from a private academy to the public school in her district. Judge informs all parties including GAL and attorney for GAL, Cynthia Dean, that children's school is not to be changed unless ordered by the Court.

**2012 June 26** - Father requests mediation.

**2012 July 10** - Cynthia Dean, attorney for the GAL, encourages Father to accept Mother's terms of mediation -- that he pay 100% of costs and trial not be delayed. Mr Moore rejects the cost terms of the proposal.

**2012 July 10** - The Court issued its order that the parties equally share the mediation costs.

**2012 August 02** - Father files motion for Court to determine children's school

**2012 August 10** - School year begins at Cornerstone Baptist Academy in Indianapolis. Father has paid fees.

**2012 August 13 and 14** - During Mother's parenting time she does not allow children to attend school and does not provide home schooling.

**2012 August 14** - Father files motion to compel school attendance.

**2012 August 15** - Mother enrolls children in the Pendleton school system after its school year has already begun.

**2012 August 16** - The Court issues the following orders on school attendance:

#### **ORDER ON RESPONDENT'S MOTION TO COMPEL SCHOOL ATTENDANCE**

*The Respondent, having filed his Emergency Motion to Compel School Attendance on August 14, 2012, and the Court, having reviewed such Motion and being duly advised in the premises, now finds that the Respondent and Petitioner **do not have permission of the Court to have the children attend a different school then [sic] they attended during the school year of 2011- 2012 unless they both agree pursuant to the Settlement Agreement approved by the Court on December 10, 2009. If either party violates the Court's order, they may be found in contempt of Court. [emphasis added]***

*SO ORDERED this 16th day of August 2012.*

The order was distributed to the parents and Child Advocates, Inc., the employer of the GAL, Del Anderson and his attorney, Cynthia Dean.

**2012 August 16** - Father files contempt motion alleging that Mother violated joint legal custody agreement that children are to attend Cornerstone. It was also around this time that Mr Moore informed the Pendleton Elementary School that he would be coming to retrieve the children and their belongings so they could attend school as ordered by the court.

**2012 August 17** - Cynthia Dean sends the following email message to Mr Moore.

From: Cindy Dean <cdean@childadvocates.net>  
To: brian moore <indymastercraftsman@yahoo.com>; Jonathan Deenik <jdeenik@cpwglaw.com>  
Cc: Del Anderson <Del@childadvocates.net>  
Sent: Friday, August 17, 2012 2:25 PM  
Subject: Moore children

Mr. Moore,

The GAL has been contacted by a Pendleton School professional stating you have informed the school that the children are no longer to attend Pendleton schools and a hearing is set for next Wednesday, August 22 at 10:30.

I have also received the three orders issues by the Court yesterday and I would direct your attention to the **Order that states the children are not to attend Cornerstone Baptist** but instead set this matter for hearing.

If both orders are read, it would appear the children are not to attend school until order of the court. I don't believe this is the intent of the Court particularly since CBA will not admit the children without a court order and **the children are able to attend Pendleton at this time**. Clearly, everyone should agree it is in the children's best interest to attend a school awaiting Court action.

I would like to hear from you as to **whether the children will be attending school Monday through Wednesday at Pendleton**. [emphasis added]

Sincerely,

Cindy Dean </i>

Cynthia Dean particularly told the Father ["Mr. Moore"] that the Court had ordered that **"the children are not to attend Cornerstone Baptist"** and that **"the children are able to attend Pendleton at this time"**. She concludes by asking if father is going to send the children to Pendleton until the hearing.

Cynthia Dean, an attorney, knew that the Court's orders did not say that. When the Court issued an order that each party was to pay half of mediation costs she suggested to Father that he pay all. There are also numerous other emails from Dean to Father in which she implies that he will lose joint custody if he doesn't abide Mother's wishes. I have extensively detailed this information which can be accessed through this link. <http://bcchildadvocates.blogspot.com/2012/08/part-v-child-advocates-inc-attorney.html>

Ultimately the mother was found in contempt of court for violating the court's order by enrolling the children in Pendleton Elementary School.

**2012 August 28** - Cynthia Dean files an objection to mediation

**2012 November 05** - GAL submits his report to the court.

**2013 February 05** - Hearing resumes with testimony of GAL.

At this hearing the GAL testifies that the Pendleton Elementary School was placed on lock-down and that there was a police presence there because of a threat made by Mr Moore. No such allegation had been made in his report. He also raised additional adverse findings as to Mr Moore from other statements allegedly made by Mr Moore during the in-person interview. Mr Moore tendered the three hour recording of the interview to the court for the purpose of impeaching the GAL.

**2013 April 05** - Hearing concludes

At the conclusion Mr Moore presented three witnesses to rebuff Mr Anderson's school lock-down claim; the Pendleton Elementary School Principal, The Pendleton Schools Superintendent and the Pendleton Chief of Police. All testified that there was no lock-down at the school.

Responsive to my public records request the Pendleton Chief of Police told me that there was no lock-down and that any police presence around the school should not have been seen as anything other than normal as police regularly patrol that area. I have attached a copy of this response.

Mr Moore also called me to testify as to the ease at which I obtained information from collateral sources, my opinion about his parenting behaviours and the communication between the parties.

A decision in this matter is expected by June 2013. From the time the GAL was appointed to conclusion of the matter will be nearly two years. This is not in the best interest of the children and aptly demonstrates what I feel are failures of the court system to adequately protect their interest.