

Parenting Plans and Timesharing Evaluations

By Robert A. Evans, Ph.D.

It is certainly understood that the decision of who conducts a parenting plan and timesharing (formerly referred to as child custody) evaluation is so important. The best interests of the children who are exposed to high conflict divorces are truly at stake. Among the professions who are, by statute, legally permitted to conduct such evaluations in Florida are licensed: under FL Chapter 491, i.e., Mental Health Counselors, Marriage and Family Therapists, Clinical Social Workers; and those licensed under FL Chapter 490, i.e., Psychologists and School Psychologists; other licensees covered under other FL Chapters are permitted as well. Licensees under FL Chapters 490 and 491, however, are the primary professions who typically conduct these evaluations. The following excerpts are taken from the statutes of the State of Florida.

1. The Florida Family Law Rules of Procedure, Section I. Rule 12.363. Evaluation of Minor Child states a Court may appoint "...a licensed mental health professional or other expert [licensed mental health professional is defined in Chapter 456, see endnote 4]... to conduct a social or home study investigation".¹
2. FL Statute 61.046 states that a "Parenting Plan [Parenting Plan defined in Endnote 2] ... made by a ... mental health practitioner [see Chapter 456 see Endnote 4] or other professional designated by section 61.20, 61.401 or mental health practitioner Florida Family Law Rule of Procedure 12.363...".²
3. FL Statute 61.125 states Parenting Coordinators can create and implement a Parenting Plan and further states a "...mental health professional [defined in Chapter 456, endnote 4] licensed under chapter 490 or chapter 491" is qualified to do so³
4. Chapter 456 of FL Statutes defines A "Health Care Practitioner" is defined as "any person" licensed under Chapter 490 [Psychologists and School Psychologists are licensed under FL Chapter 490], Chapter 491, and others.⁴
5. FL Statute 61.20 states "A social investigation ... shall be conducted by those licensed under chapter 491 as well as ... a psychologist licensed pursuant to chapter 490...".⁵
6. FL issues licenses to two types of psychologists: a School Psychologist and Psychologist⁶. When the amalgamation of the American Association of Applied Psychology (AAAP) and the American Psychological Association (APA) took place in 1945, School Psychology was among the Charter Divisions cited in the first Bylaws of the new organization. The APA considers School Psychologists, Psychologists!

Sometimes a concern is raised in that it is alleged that that school psychologists cannot diagnose mental disorders. The rationale behind this statement is that the word "diagnose" is not cited in the scope of practice of a licensed school psychologist but is under licensed psychologist in FL Chapter 490. If the absence of a specific job function is

criteria to argue that the licensee is not permitted to do something, then all one has to observe is nowhere in Chapter 490 are the words "parenting plan and timesharing evaluation or child custody evaluation". By this omission are we to assume that no one licensed by Chapter 490 can do such evaluations, including psychologists? Of course not, such evaluations are governed by other statutes.

Further, diagnosing has no place in a child custody evaluation. The Court is not interested in diagnoses, only in the parenting skills of the parties. People with mental health diagnoses can be and are parents. The critical issue is the way a person's disorder affects their parenting ability not the specific diagnostic terminology per se.

In addition, FL Chapter 490 provides an exception to the law and states in 490.014 Exemptions "(b) No provision of this chapter shall be construed to ... prevent qualified members of other professions from doing work of a nature consistent with their training ...".

If a licensed professional has specific continuing education in the use and interpretation of the DSM-IV that is used for diagnosing mental disorders that would constitute relevant training. Licensed private practitioners who are eligible to accept insurance reimbursements have to diagnose disorders frequently in order to be reimbursed. Again, diagnosing is a non-issue in child custody evaluations.

Finally, the Scope of Practice for school psychologists is sometimes interpreted incorrectly to mean a school psychologist only practices within schools or their work is limited only to school related contexts. If one carefully reads the Scope of Practice⁷ for licensed school psychologists it is clear that they can offer their services to a relatively broad range of settings and functions. The most relevant area of practice to parenting plan and timesharing evaluations is the Assessment category. This includes "assessment for...individuals or groups (regarding)...adjustment needs."

Divorce has been cited numerous times in the forensic literature as the greatest adjustment need for children and families. This logical thinking clearly establishes school psychologists as a professional member of the team that helps prepare parenting plans and timesharing evaluations.

Lastly, the definition of an expert witness from the **Florida Rules of Civil Procedure 1.390 Depositions of Expert Witnesses**. (a) Definition. The term "expert witness" as used herein applies exclusively to a person duly and regularly engaged in the practice of a profession who holds a professional degree from a university or college and has had special professional training and experience, or one possessed of special knowledge or skill about the subject upon which called to testify.

It is noteworthy that holding a particular license is not necessary to be an expert witness. This is supported by case law from the history of forensic psychology⁸.

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Endnotes

¹ **Florida Family Law Rules of Procedure** Section I. Family Law Rules of Procedure Rule 12.363. Evaluation of Minor Child

(a) Appointment of Mental Health Professional or Other Expert.

(1) When the issue of visitation, parental responsibility, or residential placement of a child is in controversy, the court, on motion of any party or the court's own motion, may appoint a licensed mental health professional or other expert for an examination, evaluation, testing, or interview of any minor child or to conduct a social or home study investigation. The parties may agree on the particular expert to be appointed, subject to approval by the court. If the parties have agreed, they shall submit an order including the name, address, telephone number, area of expertise, and professional qualifications of the expert. If the parties have agreed on the need for an expert and cannot agree on the selection, the court shall appoint an expert.

² **Florida Statutes 61.046:**

(14) "Parenting plan" means a document created to govern the relationship between the parents relating to decisions that must be made regarding the minor child and must contain a time-sharing schedule for the parents and child. The issues concerning the minor child may include, but are not limited to, the child's education, health care, and physical, social, and emotional well-being. In creating the plan, all circumstances between the parents, including their historic relationship, domestic violence, and other factors must be taken into consideration.

(15) "Parenting plan recommendation" means a nonbinding recommendation concerning one or more elements of a parenting plan made by a court-appointed mental health practitioner or other professional designated pursuant to s. 61.20, s. 61.401, or Florida Family Law Rules of Procedure 12.363.

³ **Chapter 61.125** (4) QUALIFICATIONS OF A PARENTING COORDINATOR.--A parenting coordinator is an impartial third person whose role is to assist the parents in successfully creating or implementing a parenting plan. Unless there is a written agreement between the parties, the court may appoint only a qualified parenting coordinator.

(a) To be qualified, a parenting coordinator must:

1. Meet one of the following professional requirements:

a. Be licensed as a mental health professional under chapter 490 or chapter 491.

⁴ **Chapter 456 of FL Statutes** defines, under paragraph (4) a "Health care practitioner" means any person licensed under chapter 457; chapter 458; chapter 459; chapter 460; chapter 461; chapter 462; chapter 463; chapter 464; chapter 465; chapter 466; chapter 467; part I, part II, part III, part V, part X, part XIII, or part XIV of chapter 468; chapter 478; chapter 480; part III or part IV of chapter 483; chapter 484; chapter 486; **chapter 490**; or chapter 491.

⁵ **FL Statute 61.20 Social investigation and recommendations regarding a parenting plan.**

(2) 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. If a certification of indigence based on an affidavit filed with the court pursuant to s. 57.081 is provided by an adult party to the proceeding

and the court does not have qualified staff to perform the investigation and study, the court may request that the Department of Children and Family Services conduct the investigation and study.

6 Florida licenses two (2) titles of **Psychologists** under Chapter 490 of FL Statutes. These are: Psychologist and School Psychologist. A school psychologist is a psychologist.

7 **From FL Chapter 490: (5) "Practice of school psychology"** means the rendering or offering to render to an individual, a group, an organization, a government agency, or the public any of the following services:

(a) Assessment, which includes psychoeducational, developmental, and vocational assessment; evaluation and interpretation of intelligence, aptitudes, interests, academic achievement, adjustment, and motivations, or any other attributes, in individuals or groups, that relate to learning, educational, or adjustment needs.

(b) Counseling, which includes short-term situation-oriented professional interaction with children, parents, or other adults for amelioration or prevention of learning and adjustment problems. Counseling services relative to the practice of school psychology include verbal interaction, interviewing, behavior techniques, developmental and vocational intervention, environmental management, and group processes.

(c) Consultation, which includes psychoeducational, developmental, and vocational assistance or direct educational services to schools, agencies, organizations, families, or individuals related to learning problems and adjustments to those problems.

(d) Development of programs, which includes designing, implementing, or evaluating educationally and psychologically sound learning environments; acting as a catalyst for teacher involvement in adaptations and innovations; and facilitating the psychoeducational development of individual families or groups.

8 In the **Handbook of Forensic Psychology**, I. B. Weiner & A. K. Hess (Eds.), C. R. Bartol and A. M. Bartol make reference to the first influential decision on this matter in *People v. Hawthorne*, a Michigan case, the Michigan Supreme Court ruled the standard for determining expert status was not the proposed expert's degree but the extent of the witness's knowledge. In another case referred to by the authors, *Hidden v. Mutual Life Insurance* (1954), the 4th Circuit Court of Appeals, eliminated licensure as criteria for qualifying as an expert. And in *Jenkins v. United States* (1962), the Court of Appeals for the District of Columbia ruled a judge may not automatically disqualify a witness as an expert because of their degree or lack thereof. Trial judges were warned to look closely at the credentials of the proposed expert before ruling on their expert status (pp. 14 - 16).