

"We are forensic mental health professionals who strive to use our knowledge and skills to directly serve the family courts and to enhance our professions by educating our colleagues regarding the evolving understanding of the intersection of law, ethics, and science."



Care and feeding of your child custody evaluator: communications and records issues every attorney should consider

We want you to understand this stuff so you can properly counsel and educate your clients. The better you can help your clients to understand the process they are entering into the better they will be able to engage in it. That leads to improved information gathering and analysis by the evaluator, in turn increasing the usefulness of any recommendations the evaluator can provide. We like win-win outcomes.

What's the code say?

TFC 107.0513(d) "A social study evaluator shall disclose to each attorney of record any communication regarding a substantive issue between the evaluator and an attorney of record representing a party in a disputed suit. This subsection does not apply to a communication between a social study evaluator and an attorney ad litem or amicus attorney."

Disclosure:

- Not for scheduling or other "ministerial" duties – but be careful trying to "pitch" a case to an evaluator
- Be careful about your staff doing the same

How/When

Some evaluators prefer various methods of contact over others. Often this has to do with their office setup and personal preferences in how they handle their workflow. Your evaluator should tell you how they want to be contacted in their initial advisement forms.

- Web page – many evaluators will have a page you can go to 24/7 for information such as their mailing address, phone numbers, forms, etc.
- Telephone – please don't call to "chat" about a case. Your smart evaluators are going to begin thinking that you're up to something. If you have a specific question regarding procedures, where things are at in the process, etc., great. For those of us lucky enough to have secretaries many times they can provide this information.
 - BE NICE TO OUR STAFF. The person answering our phones probably has no more power to change office policy than your receptionist does. Being crappy to them doesn't help anyone.
 - This is a business; calls during BUSINESS hours are appreciated. Yes, you may have our cel number, but with great power also comes great responsibility.

- Likewise, we don't need to "chat" with the client on the phone – we will have interview appointments with them. Different evaluators are going to have different levels of tolerance for this, but if they need a therapist get them a therapist. Or a dog. Dogs are good to talk to as well.
- Fax – faxes are a great way to send *short* messages.
 - Please don't send War and Peace via fax. Your evaluator will appreciate you printing and/or scanning long documents and sending them to us via the mail in hardcopy or on disk.
 - Faxes are also great for "cc:ing" the other side(s) to a case on communication – this saves the evaluator from having to then play mailman for you and forward the communication.
- Speaking of the mail, it's an oldie but goodie. Many of us use mailbox services (U.S. Post, UPS Store, FedEx/Kinkos, etc.) so make sure if you're sending something outside of USPS that it can be delivered to that address (i.e. post offices can't accept UPS, etc.).
 - PLEASE send mail to our business mailing addresses. Many evaluators work in multiple locations and/or offer contracted services to other agencies. Many also do not have extensive staff, and we're not going to be happy if we have to interrupt an appointment with a client to deal with a delivery.
 - NEVER contact an evaluator at their home. Nothing says "I'm stalking you and your family is at risk" like work stuff showing up on your front door.
- E-mail – Love it or hate it, it's here to stay.
 - Please make sure you're using the right e-mail address for the evaluator. Many of us have personal e-mail addresses. If you are sending case information to our personal e-mail address it might not get attended to the way it needs to.
 - Some of us have staff to help us route and prioritize things, or who can respond to issues. Again, sending to the wrong address bypasses these support staff and may be less helpful even if it is seen as more "direct."
 - If we ask you not to give our e-mail address to clients, please don't give our e-mail addresses to clients. It's hard to extend professional courtesy when our fellow professionals don't behave with reciprocal courtesy.
- Social media – FaceBook, LinkedIn, Twitter, Instagram, etc.
 - Please respect your evaluator's preferences for how they use social media. Just because we don't want to be your friend does not mean we don't like you.
 - Social media is a great way to share general information – office news, interesting articles, etc., but it's questionable whether you should use it for case related information.
- Another note on "when" – if your client is accused of having no boundaries, being manic, etc. is it really a good idea for them to call and leave the evaluator 4 messages between 2:00 a.m. and 4:00 a.m.?

What

Just like there is variation in how evaluators approach e-mail, social media, etc., there's going to be differences in their preference in what information they want to get. The best time to work out what information will be submitted to the evaluator is BEFORE appointing the evaluator. A good court order cures many potential problems.

- Relevant legal paperwork – in addition to whatever intake forms the evaluator asks the clients to complete the evaluator is usually going to want copies of the relevant legal paperwork
 - The emphasis here is on relevant – the evaluator isn't going to need every single boiler plate filing, motions from previous litigation, etc.
 - It really helps if you let us know (i.e. via a cover letter) why you think something is relevant – a protective order finding family violence is likely going to be self-evident, something buried on page 60 of a 100 page final order might get missed.
- Audio/Visual recordings – there are some significant evidentiary issues with recordings of telephone calls and conversations.
 - If the evaluator relies on something that is later deemed inadmissible it may result in the evaluator's report being tossed out, and possibly the evaluator being barred from testifying (we've seen examples of both).
 - So with the stakes that high many judges have recommended not reviewing A/V recordings without either the explicit agreement of the attorneys to do so, or clear permission from the court
 - If the attorneys are going to fight over this issue who wouldn't much rather they do it before the report rather than after?
- Electronic information – FaceBook? Texts? E-mails? The problem is authentication.
 - Y'all do know clients lie, right?
 - There isn't a clear/consistent approach on this, and the range seems to be from treating them like A/V recordings (see above) to just accepting everything
 - One approach is to split the difference, requiring electronic information be provided via the attorneys who, as officers of the court, have professional obligations not to provide false information
 - Our Family Wizard – so much easier to authenticate, but don't expect that an evaluator is going to want to read through thousands of messages back and forth. Again, relevant information is critical here.
- Depositions – again a wide range of how these are handled
 - Again there are admissibility/evidentiary issues that are outside of our pay grade as evaluators to address
 - Conflicting input from various sources on this, with corresponding varied follow up from the evaluator community, again ranging from treating like A/V recordings to accepting everything

- Mediation and settlement discussions – aren't these supposed to be confidential? Then why do we have people trying to send them to us?
 - Seems like an attempt to set up the evaluator in some ways, as many evaluators don't realize they've been given settlement offers.
 - It's important to stop folks when they begin to discuss the other side's conduct in mediation. Confidential means confidential.
 - Even when they're talking about their own offers, our job is not to do a post-mortem on why they failed to reach a settlement (and clients often omit their own little poison pills that led to impasse).
 - Additionally, there's a genuine public policy interest in settlement/mediation being confidential. Some evaluators feel if we violate this and allow them to become positioning and prelude to a custody evaluation we're doing families a disservice.

Other issues

- Ping-pong information – finally there's the issue of Side A sends something, Side B sends refuting information, Side A refutes the refuting information, Side B refutes the refutation of their original refutation, etc., etc.
 - Providing additional factual information (police reports, hospital records, etc.) is one thing, but unsupported rhetoric back and forth does not help
 - We understand that the parents differ over what something *means* - frankly they may never agree about some of that.
 - This problem is compounded in courts that issue orders that that *all* communication with an evaluator be disclosed. While well-intentioned (and as the result of unethical evaluators failing to meet their professional obligations) this can lead to significant extra costs, and in some cases infinite feedback loops of notifications.
 - Evaluations should not be back-door discovery; write orders to reflect that.

Interested in more information on the intersection of family law and mental health? Looking for a comprehensive site you could visit to find local forensic resources? Check out:

www.CoParentingTexas.com

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| • Detailed listings of services – no more time wasted with calls to see if they're taking new patients, work with children, etc. | • Information available on short notice – no more need to put someone's name in a MSA or Order and hope they're available |
| • Provider control for updates of contact information, pricing, availability, etc. | • Easy-to-access postings for upcoming trainings of interest |
| • Networking to find specialty referrals | • <i>Free!</i> No cost for providers to be listed or service seekers to search |