

## **FORENSIC FAMILY COURT EVALUATIONS AND THE COVID-19 PANDEMIC: CONSIDERATIONS & CONCERNS**

The COVID-19 Pandemic has imposed unprecedented challenges on families, the legal community, and on the mental health practitioners whose role it is to evaluate families and make recommendations regarding the child's best interest. **While virtual communication is being relied upon by those in a myriad of professional fields at this time, it may not be suitable or advisable to conduct Forensic Family Court Evaluations (FFCEs) through virtual technologies, other than for perhaps a limited portion of the process.** By FFCE, we are referring to best interest/custody evaluations or any other evaluation involving the interview or observation of children.

While virtual platforms may be suitable at this time to conduct psychotherapy, parenting coordination, or mediation, such is not the case for evaluations. While the judicial and legal communities are coping with the crisis by using virtual platforms for some of their work, we do not believe that evaluators conducting FFCEs can do the same. There are significant scientific, pragmatic, and ethical issues with this approach that we would like to bring to your attention. Our evaluations and recommendations can only be relied upon when conducted within the legal standard of a "reasonable degree of psychological certainty," and this cannot be accomplished via the predominant use of remote or virtual technologies. Our concerns are explained below:

### **RELIABILITY AND VALIDITY CONCERNS:**

The main purpose of FFCEs is to provide guidance to separating/divorcing families, their lawyers, and the courts. To ensure the quality, accuracy, and reliability of data obtained upon which these recommendations rest, it is essential to adhere to Best Practice standards and ethical guidelines. Inaccurate assessments may potentially lead to recommendations that may not be in the best interest of the child. This has serious implications for the families with whom we work, the judicial system, and the forensic mental health community. Reliance on virtual technologies raises significant concerns including:

### **LACK OF CONTROL OF THE ASSESSMENT ENVIRONMENT:**

#### **1. UNDETECTABLE THIRD-PARTY INFLUENCE:**

Evaluations conducted in the privacy of an evaluator's office provide a controlled and standardized environment void of the direct or indirect influences of third parties, distractions, or interruptions, and the risk of being recorded. This cannot be guaranteed in virtual settings.

#### **2. LOSS OF VALUABLE DATA:**

- In person interviews provide valuable information that is impossible to obtain or duplicate remotely. Virtual technologies condense the arena in

which one can observe an individual/family's nonverbal communication, such as: small and subtle behaviors, eye contact, hygiene, etc. An evaluator would not be able to, for instance, detect the odor either of alcohol or smoking.

- The focus of these assessments is to address the best interest of the child. This includes the needs of the child, the parent-child interactions, and the different parenting styles/capacities of each of the parents. Often the most valuable information is obtained from the parent-child observational interviews in the evaluator's office and in the family's home environment. The latter can also provide important data about the home environment and the sibling/extended family member interactions. This cannot be duplicated remotely.
- Individual interviews with children are very problematic virtually. Developmentally, younger children do not do well with any form of technology, particularly with someone they do not know. The evaluator's office additionally provides a neutral setting versus one of the parents' homes in which a child might feel less comfortable speaking freely. This is particularly the case given that many children's parenting schedules have been disrupted during the constraints of the current Pandemic. Many children are presently residing only with one parent. To mitigate parental influence, evaluators usually have the parents alternate bringing the children for their individual interviews, which is sometimes impossible remotely if the child is not residing with each of them and cannot be observed in both homes.

### **3. PSYCHOLOGICAL TESTING CONCERNS:**

Psychological testing used in FFCEs is not designed for remote administration. As a result, the reliability and validity of the psychometric instruments is undermined, which in turn renders the use and interpretation of the testing highly questionable. Furthermore, psychological testing cannot be done unmonitored, freedom from distraction cannot be guaranteed, administration instructions cannot be abided, and test security and copyright concerns are compromised in a virtual-only environment. As a result, the evaluators would be left with the choice between making decisions based on faulty and uncertain data or conducting an evaluation that may not meet the reasonable degree of psychological probability threshold.

#### **4. NO ACCEPTED STANDARDS FOR REMOTE TECHNOLOGIES IN FFCEs.**

- There is no research validating the use of virtual technologies, particularly in Forensic Family Court Evaluations.
- There is no available training for remote/virtual technologies. We would, therefore, be practicing outside of our competencies in an unstandardized manner and without generalized acceptance by the Family Court evaluators/peers.
- The sophisticated equipment that has been recommended in some of the literature (Adjorlolo S & Chan H.C. 2015, Forensic Assessment via Video Conferencing: Issues and Practice Considerations, Journal of Forensic Psychology Practice 15 (3)) is either prohibitive or unattainable for forensic mental health professionals in private practice or for the family being evaluated.
- Another important consideration is the security of the platforms from possible hacking, snooping, or recording of data and information generated during the assessment. These privacy and confidentiality risks cannot all be controlled by the evaluator, but nevertheless, remain the evaluator's responsibility to ensure. Data encryption procedures, firewalls, and gateways have also been recommended, as well as Internet connections such as Ethernet.

#### **5. PANDEMIC EFFECTS ON DATA:**

The reliability of information obtained in the context of the COVID-19 Pandemic is of grave concern. The degree of stress that the families are experiencing is unprecedented and may not be representative of their usual level of functioning and/or generalizable for Best Interest of the Child purposes.

#### **6. ETHICAL CONCERNS:**

- It is of concern that evaluators would take on an ethical and malpractice risk by conducting Evaluations for which there is no underlying scientific or empirical basis. Appointment by Court Order or otherwise retained does not mitigate this risk – where there is a conflict between what we are asked to do and what our ethical and professional principles mandate, the latter prevails. More important to the legal community, as previously

indicated, we would potentially be offering a product that would not satisfy the evidentiary admissibility standard in New Jersey.

- Lastly, similar practical problems exist in the realm of malpractice concerns, licensure regulations, and the absence of guiding protocols for screening who is suitable to participate remotely. There are also technologically based complications, such as encryption issues, the quality of the audio and the video transmissions, etc.

## **CONCLUSION**

While our desire to be able to provide an important service to the families and the legal system remains unaffected, determining the role of virtual assessment and technology in FFCEs needs to be studied prospectively and thoughtfully, and not as a concession to the present urgency. We intend to review and consider psychological research and practice as it becomes available. It is for these reasons taken together that we question the feasibility of conducting complete and thorough FFCE's solely through or by the predominant use of remote-virtual methods.

Respectfully submitted May 15, 2020 by:

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## **UPDATE ON FORENSIC EVALUATIONS: REOPENING OUR OFFICES**

As professionals committed to assisting families and the Court, we thank you for your thoughtful consideration of and kind response to our May 15, 2020 paper regarding Forensic Family Court Evaluations during the COVID-19 pandemic. In our attempt to provide thorough, valid, reliable, and timely evaluations, we remain vigilant in offering opinions that will not only meet the rigors of the legal system but also give primary place to the best interest of children.

Consistent with our own professional standards, the challenging and evolving COVID-19 crisis, the State's phased opening plan, and CDC guidance, we are implementing procedures to reopen our office in a manner promoting valid and reliable assessments, employing best practices, and attending to the concerns of clients and their children.

We are:

- Reaching out to parents and attorneys to inform them that we are resuming in-person interviews.
- Reopening our offices and implementing extensive health precautions, which will promote interactions which are both safe and comfortable.
- Explaining to the parents our new office procedures and requirements to ensure that the meetings are as safe as possible.
- Whenever possible, scheduling home visits and/or child observations at a time when the weather will likely accommodate comfortable and secure outdoor interactions.

Again, we express our gratitude for your understanding and patience. Like you, we are committed to assisting families in a responsible manner while adhering to professional standards.

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Respectfully,

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