

# Examining Recommendations in a Sample of Community Custody Evaluation Reports

*Marvin W. Acklin, Ph.D., ABPP, ABAP, and Sierra M. Acklin*

## Abstract

*Concern about bias in forensic decision-making has emerged as a major interest in the past decade. An evidence-based approach to forensic psychology, including child custody evaluations, requires empirical monitoring of decision-making processes. This study examined a sample of community custody evaluation reports (N = 91) to examine prevalence and type of recommendations and evidence of preferences in recommendations proffered to the family court. Findings are discussed in light of changing social and legal trends in child custody.*

## Introduction

Child custody evaluations (CCE) are controversial in the field of forensic psychology (Emery & Otto, 2005, Krauss & Sales, 2000). Commentators have argued that CCEs, unlike other areas of forensic psychology, have not achieved sufficient empirical foundation for reliable findings and admissibility to court (Tippins & Witmann, 2005). The Best Interest Standard of the Child (BICS) has been a focus of criticism (Emery, 2007). Various practice guidelines (e.g., APA Guidelines for Child Custody Evaluations (2010), AFCC Model Standards of Practice for Child Custody Evaluation (2006), and Specialty Guidelines for Forensic Psychology (2013) encourage forensic practitioners to aspire to competency, objectivity, and impartiality.

Bias in forensic evaluations has emerged as a major concern in regards to the reliability of decisions proffered in court (Neal & Grisso, 2014). Bias is associated with inappropriate personal or emotional involvement on the part of the evaluator. Bias may be implicit (outside the examiner's awareness) or partisan allegiance, an extreme form of bias in favor of the retaining party). Despite scientific criticisms, Bow and Quinell (2001, 2002, 2004) found that jurists typically found CCE's very helpful, preferred the reports of psychologists, and stressed the "paramount importance of objectivity." Examination of performance in forensic decision-making is recommended to improve the quality and objectivity of forensic reports (Wettstein, 2005; Neal & Grisso, 2014).

Custody evaluators are governed by prevailing legal standards in the jurisdiction. Hawaii Revised Statutes (HRS 571-46 (a) (1)) and case law affirms the preeminence of the child's best interests. Custody may be awarded to either parent or to both parents (*Gillespie v. Gillespie*, 40 Haw. 315, 321, 1953) and frequent, continuing, and meaningful contact of each parent is considered unless the parent is unable to act in the best interest of the child. Family court judges are granted wide discretion to weigh various factors, with no single factor being given presumptive weight (*Fisher v. Fisher*, 111 Haw. 41, 50, 137 P. 3d 355, 364, 2006).

This study examined a sample of CCE reports submitted to the Hawaii Family Court by a single community forensic psychologist (senior author) to examine child custody recommendations over a 9-year period. The study was conducted in the spirit of the “local clinical scientist” model (Stricker & Treirweiler, 1995), where empirical methods are utilized to examine and improve the scientific quality of forensic work products. This study sought to examine the frequency and percentage of recommendations, and examination for evidence of bias in a convenience sample of CCE reports submitted to the Hawaii Family Court.

## Methods

**Instruments and Procedures.** These court-appointed CCEs were designed as comprehensive family evaluations, including interviews of parents and children, parenting assessments, empirical child emotional/behavior assessments, office parent-child observations, information from collateral sources, and home visits. Evaluations were conducted based on an evidence-based methodology in concordance with the APA Guidelines (2010) AFCC Model Standards for Child Custody Evaluation (2006).

**Sampling.** A convenience sample of 91 CCE reports were reviewed and coded out of a sample of 300 CCE reports conducted by the first author according to whether or not recommendations were made and when made, the type of recommendation proffered: whether sole or joint custody, and sole mother or father custody. Selection criteria included reports written between 2006-2015, whether custody recommendations were proffered, type of custody, and which parent was recommended. Reports were selected based on presence of all inclusion factors. Reports missing data were excluded from coding.

**Coding.** A coding manual was constructed. A sample of protocols were coded to agreement. Reports were blind coded by the second author after training on sample protocols. All reports were coded blind as to identity for presence or absence of recommendation (R or NR). Where reports were coded R, a subsequent coding of S (sole) or J (joint) custody was coded. Where reports were coded S (sole), reports were further coded M (mother) or F (father). To ensure accuracy, reports were subsequently cross checked, and disagreements were conferenced to agreements by the raters. Interrater reliability was conducted by the first author blind to the initial coding on a randomly selected sample of 23 (25%) reports. Coder agreement was calculated using Cohen’s kappa. Level of agreement for recommendation presence/absence was  $k = .92$ ; level of agreement for type of recommendation was  $k = .96$ ; level of agreement for parent custody was  $kappa = .94$ . These kappas indicate “excellent” interrater agreement (Landis & Koch, 1977).

**Data Analysis.** Frequencies, percentages, and significance tests for each distribution of recommendations were calculated. The null hypothesis assumed the equiprobability of custody recommendations (.5). Significance tests examined the alternate hypothesis that outcomes deviated significantly from equiprobability. Alpha was set at  $p < .05$ .

## Results

Table 1 demonstrates findings for frequency and percentages of report recommendations.

Table 1

*Frequencies and Percentages for Recommendations*

	#	%
Recommendations	80	88
No recommendation	11	12
Total	91	100

Note.  $N = 91$ ,  $\chi^2 = 104.64$ ,  $p < .05$ .

In a significant majority of reports (88%), recommendations were included in CCE reports. Significance test results indicate a strong preference for report recommendations.

Table 2 presents frequency and percentage of type of custody recommendations.

Table 2

*Frequencies and Percentages for Type of Custody Recommendation*

	#	%
Joint	38	48
Sole	42	52
Total	80	100

Note.  $N = 80$ ,  $\chi^2 = 0.40$ ,  $p > .05$ .

Sole custody was recommended in 52 % of cases, with joint custody being recommended in 48% of cases. Significance test results indicate no statistically significant preference between joint and sole custody recommendations.

Table 3 reports frequencies and percentage for mother/father sole custody recommendations.

Table 3

*Frequencies and Percentage of Sole Custody Recommendations*

	#	%
Mother	29	69
Father	13	31
Total	42	100

Note.  $N = 42$ ,  $\chi^2 = 12.19$ ,  $p < .05$ .

In the sole custody sample, 69% of recommendations went to mothers; 31% went to fathers. Significance tests results indicate a preference for mother custody recommendations where sole custody recommendations were made.

Table 4 presents frequency and percentage data for sole custody recommendations.

Table 4

*Frequencies and Percentage of Sole Custody Recommendations in the Whole Sample*

	#	%
Mother	29	31
Father	13	14

Note.  $N = 91$ ,  $\chi^2 = 7.92$ ,  $p < .05$ .

In the whole sample, mother sole custody was recommended 31% of the time and father sole custody was recommended 14% of the time. The sole mother preference was statistically significant.

### Discussion

Findings suggest that these CCE reports demonstrated a preference for recommendations, no preferences for sole vs. joint custody, and a preference for mothers when sole custody recommendations were proffered.

Bow and Quinell (2002) found in their survey of CCE reports that recommendations were proffered in 96% of reports. Their findings were recorded prior to the influential paper of Tippins and Wittman (2005), which presented a cogent critique of custody evaluation recommendations, based on principles of empirical psychological science. The percentage of recommendations proffered in this sample (88%) was marginally lower than Bow and Quinell's sample.

The absence of preference for type of custody recommendation is a significant finding. Cancian and Meyer (1998) found that although sole mother custody was still the dominant arrangement, the previous nine-years had seen a steady increase in shared custody arrangements. They found that higher parental income increased the probability of shared parenting outcomes. Since 1998, researchers have found significant accelerating declines in mother-sole custody (Cancian, Meyer, Brown, & Cook, 2014). The proportion of mothers granted custody fell substantially; the proportion of parents who shared custody increased dramatically. Father sole custody demonstrated no significant changes. These trends over two decades reflect changes in parental roles and financial and caretaking responsibilities. Overall, trends across time suggest an "increased legal and societal preference toward more shared custody" (Cancian, Meyer, Brown, & Cook, 2014, p. 1381). It is inevitable that custody evaluators' work will be influenced by social trends, emergent legal developments, scientific literature, and professional practice guidelines.

**Limitations.** This study focused only on parents who were contesting custody where the court appointed a custody evaluator, a distinct minority among the population of divorcing parents. Therefore, it provides no information about custody base rates in general, or in non-custody contesting parents. A further possible limitation is the fact that all of these evaluations were conducted in the State of Hawaii, geographically remote from the continental US.

**Recommendations.** Child custody evaluators are encouraged to examine their CCE reports, utilize their findings to self-monitor performance, and make these findings to available

to consumers of CCE reports (attorneys, judges, and parents) to demonstrate professional objectivity.

#### About the Authors

**Marvin W. Acklin, Ph.D., ABPP, ABAP** is an Associate Clinical Professor of Psychiatry, Department of Psychiatry, John A. Burns School of Medicine, University of Hawaii at Manoa. Correspondence concerning this article should be addressed to Marvin W. Acklin, PhD, 850 W. Hind Ave, Suite 203, Honolulu, Hawaii 96821.

**Sierra M. Acklin** is a psychology and journalism major at the University of Hawaii at Manoa.

#### References

- American Psychological Association (2010). Guidelines for Child Custody Evaluations in Family Law proceedings. *American Psychologist*, 65, 9, 863-867.
- American Psychological Association (2013). Specialty Guidelines for Forensic Psychology. *American Psychologist*, 68, 1, 7-19.
- Association of Family & Conciliation Courts (2006). *Model Standards for the Practice of Child Custody Evaluation*. Madison, WI.: AFCC.  
<https://www.afccnet.org/Portals/0/ModelStdsChildCustodyEvalSept2006.pdf>
- Bow, J. D., & Quinell, F. A. (2001). Psychologists' current practices and procedures in child custody evaluations: Five years after American Psychological Association Guidelines. *Professional Psychology: Research & Practice*, 32, 261-268.
- Bow, J. D., & Quinell, F. A. (2002). A critical review of child custody evaluation reports. *Family Court Review*, 40, 2, 164-176.
- Bow, J. F., & Quinell, F. A. (2004). Critique of custody evaluation by the legal profession. *Family Court Review*, 42, 1, 115-127.
- Cancian, M., & Meyer, D. R. (1998). Who gets custody? *Demography*, 35, 2, 147-157.
- Cancian, M., Meyer, D. R., Brown, P. R., & Cook, S. T. (2014). Who gets custody now? Dramatic changes in children's living arrangements after divorce. *Demography*, 51, 1381-1396.
- Emery, R. E., Otto, R. K., & Donahue, W. T. (2005). A critical assessment of child custody evaluations. *Psychological Science*, 6, 1, 1- 29.
- Krauss, D. A., & Sales, B. D. (2000). Legal standards, expertise, and experts in the resolution of contested child custody cases. *Psychology Public Policy & Law*, 6, 866-879.
- Landis, J. R., & Koch, G. G. (1975). The measurement of observer agreement in categorical data. *Biometrics*, 33, 1, 154-179.

- Martindale, D. A. (2001). Cross-examining mental health experts in child custody litigation. *The Journal of Psychiatry & Law*, 29, 483-511.
- Neal, T. M. S., & Grisso, T. (2014). The cognitive underpinnings of bias in forensic mental health evaluations. *Psychology, Public Policy, and Law*, 20, 2, 200-211.
- Stricker, G., & Trierweiler, S.J. (1995). The local clinical scientist: A bridge between science and practice. *American Psychologist*, 50, 12, 995-2002.
- Tippins, T. M., & Wittman, J. P. (2005). Empirical and ethical problems with custody recommendations: A call for clinical humility and judicial vigilance. *Family Court Review*, 43, 2, 193-222.
- Wettstein, R. M. (2005). Quality and quality improvement in forensic mental health evaluations. *Journal of the American Academy of Psychiatry and Law*, 33, 2, 158-175.