

# **Ethical Considerations for Psychologists Involved in Early Neutral Assessments**

*By Andrew Loizeaux, Psy.D., Ethics Committee Chair and  
Julie Van Heyningen, Psy.D., Ethics Committee Member*

## **I. General Considerations**

Providing psychological services within the Domestic Relations and Juvenile Court system offers psychologists the opportunity to assist and educate the Courts and parties on issues in which psychologists have unique insight and training. A psychologist may serve as a Parental Rights Evaluator (Colorado's term for a Custody Evaluator), Child and Family Investigator, Parenting Coordinator, Decision-Maker, therapist, mediator, as well as the new role of an Early Neutral Assessor. Such services can provide assistance and be rewarding, however, they also can lead to conflicts and problems if not approached with caution and planning. This article will focus on Early Neutral Assessment, a new settlement approach offered to divorcing parents in which psychologists may participate.

First and foremost, when deciding to become involved in divorce-related services, psychologists need to understand and appreciate that the Court and the legal process have their own set of rules and purposes, and abide by those rules in order to provide services effectively. Knowledge of applicable statutes, Court orders and expectations, and relevant case law is essential for beginning any forensic work (see APA Ethics Code 2.01(f)).

It is also vitally important that psychologists recognize and follow their profession's ethical guidelines when engaging in forensic activities. Attorneys and judges are not trained in these areas and may inadvertently request or order a psychologist to engage in unethical behavior. It is the psychologist's obligation to uphold the professional ethical standards, inform the parties and the Court of ethical obligations, and to request modifications if expectations or orders violate them.

Some general ethical guidelines for psychologist to apply to forensic roles include:

- clarify what is being asked of the psychologist;
- consider whether sufficient training or expertise has been obtained to provide this service;
- determine if there have been any prior relationships with the parties involved that would prohibit this role;
- determine whether issues, such as domestic violence or cultural/language barriers, preclude providing services as requested;
- consider whether there are any potential conflicts that would bias, or create a perception of bias, on the part of the psychologist;
- determine whether providing the services requested would create a dual role in some other area.

## II. Early Neutral Assessments

A new forensic process in which psychologists may participate within the divorce arena is Early Neutral Assessment (ENA), sometimes referred to as Early Neutral Evaluation. This is a voluntary alternative dispute resolution process in which professionals provide divorcing parties with assessment perceptions and guidance to facilitate a settlement shortly after a divorce has been filed. ENA is essentially the Early Neutral Evaluation model that has been adopted in Minnesota, but the name was changed in some counties in Colorado due to concerns over statutory issues in using the term “evaluation.” In addition to lawyers, ENA team members often include psychologists or other mental health providers if matters of parental responsibility, specifically parenting time and parental decision-making, are being addressed.

The ENA process consists of the parties meeting with the ENA team, presenting their positions and answering questions of the team. At the end of this approximate two-hour meeting, the ENA team either requests additional information or provides opinions regarding parenting time and decision-making issues based on their assessment. Additionally, parenting time plans and proposals offered through the ENA process typically occur without meeting the children.

## III. Ethical Principles to guide Psychologists involved in Early Neutral Assessments

The American Psychological Association's Ethical Principles of Psychologists and Code of Conduct (hereinafter referred to as the APA Ethics Code) and the APA Guidelines for Child Custody Evaluations in Divorce Proceedings (hereinafter referred to as the APA Custody Guidelines) provide guidance for psychologists engaging in forensic activities. These principals have specific applicability to each of the forensic roles noted earlier, though this article will focus on the psychologist as an Early Neutral Assessor.

While ENA can be a valuable tool in helping parties reduce conflict and settle matters early in the process of divorce, there are some areas of controversy. For example, per ENA training, psychologists are encouraged to inform parents that the opinions that come out of the ENA are believed to be similar to the recommendations that would come from a more comprehensive evaluation, such as a Parental Responsibility Evaluation or a Child and Family Investigation. Consequently, with such an expectation, in addition to the APA Ethics Code, there are essential ethical principles from the APA Custody Guidelines that inform psychologists participating in ENA.

1. A psychologist participating in ENA will need to have clear awareness of the boundaries of his/her expertise and competence, and stay within such.

**APA Ethics Code 2.01 Boundaries of Competence** (a) Psychologists provide services, teach, and conduct research with populations and in areas only within the boundaries of their competence, based on their education, training, supervised experience, consultation, study, or professional experience.

Psychologists participating in ENA should consider whether they have adequate experience,

training and expertise to conduct the abbreviated assessments regarding issues related to parental rights and responsibilities that ENA requires. One guide for suggested training is located in Colorado's Chief Justice Directive 04-08 regarding Child and Family Investigators. Similarly, APA's Custody Guidelines, II. 5. notes areas of expertise that the psychologist should gain specialized competence in before conducting evaluations.

2. A psychologist participating in ENA will need to clarify his/her role to ensure appropriate informed consent by participating parents.

**APA Ethics Code 9.03 Informed Consent in Assessments** (a) Psychologists obtain informed consent for assessments, evaluations, or diagnostic services. Informed consent includes an explanation of the nature and purpose of the assessment, fees, involvement of third parties, and limits of confidentiality and sufficient opportunity for the client/patient to ask questions and receive answers.

As a psychologist's role in ENA could entail some components of education, assessment and mediation, such services should be clearly defined and clarified with the participants, including the limits of such. Care should be used to avoid dual and conflicting roles. An ENA psychologist should inform the participants why the services offered are not those of a Parental Responsibilities Evaluation or Child and Family Investigation.

3. A psychologist participating in ENA will need to express assessment opinions carefully, clarifying the limited validity and reliability of the opinions rendered. As psychologists typically only make recommendations in regard to parenting time and decision-making only after an assessment of the parents, children, and their relationship, the limitations of ENA will need to be clearly stated. A psychologist should refrain from offering any parenting time opinions if adequate data has not been gathered.

**APA Ethics Code 9.01 Bases for Assessments**

- (a) Psychologists base the opinions contained in their recommendations, reports, and diagnostic or evaluative statements, including forensic testimony, on information and techniques sufficient to substantiate their findings.
- (b) Except as noted in 9.01c, psychologists provide opinions of the psychological characteristics of individuals only after they have conducted an examination of the individuals adequate to support their statements or conclusions. When, despite reasonable efforts, such an examination is not practical, psychologists document the efforts they made and the result of those efforts, clarify the probable impact of their limited information on the reliability and validity of their opinions, and appropriately limit the nature and extent of their conclusions or recommendations.
- (c) When psychologists conduct a record review or provide consultation or supervision and an individual examination is not warranted or necessary for the opinion, psychologists explain this and the sources of information on which they based their conclusions and recommendations.

**APA Custody Guidelines, I. 3. The focus of the evaluation is on parenting capacity, the psychological and developmental needs of the child, and the resulting fit.**

In considering psychological factors affecting the best interests of the child, the psychologist focuses on the parenting capacity of the prospective custodians in conjunction with the psychological and developmental needs of each involved child. This involves (a) an assessment of the adults' capacities for parenting, including whatever knowledge, attributes, skills, and abilities, or lack thereof, are present; (b) an assessment of the psychological functioning and developmental needs of each child and of the wishes of each child where appropriate; and (c) an assessment of the functional ability of each parent to meet these needs, including and evaluation of the interaction between each adult and child.

**APA Custody Guidelines, III. 11. The psychologist uses multiple methods of data gathering.**

The psychologist strives for the most appropriate methods available for addressing the questions raised in a specific child custody evaluation and generally uses multiple methods of data gathering, including, but not limited to, clinical interviews, observation, and/or psychological assessments. Important facts and opinions are documented from at least two sources whenever their reliability is questionable...

#### **IV. Conclusion**

While providing psychological services within the forensic arena offers psychologists new challenges and different ways to assist clients, it also requires careful consideration of ethical issues. A psychologist should only participate in an Early Neutral Assessment if the psychologist is practicing within the bounds of competence, the psychologist's role is sufficiently defined, the limits of predictive validity are clearly delineated, and enough data can be gathered to offer an informed opinion regarding parenting time or decision-making. Psychologists participating in ENA should only provide assessment opinions when sufficient data has been gathered to support such, with the limitations of validity, reliability and applicability stated.