

## **Update on Child Custody Evaluations During the Pandemic: Practice, Process and Viability**

By Kenneth B. Perlmutter, PhD

Last October, subsequent to a presentation I gave to the San Mateo County Bar Association, Family Law Section, titled "COVID, Zoom, and the New Frontier: Preparing Your Clients for Remote-Child Custody Evaluations," I wrote an article titled "Whither the State of CCEs?" published in the California Continuing Education of the Bar (November 2020).<sup>\*</sup> The article, and the presentation, explained and discussed the use of videoconference methods in Remote-Child Custody Evaluations during the pandemic in 2020.

The onset of the Covid-19 pandemic that March, which included the shelter-in-place restrictions and mandate, led to at first the cessation of all in-person contact necessary to conduct an appropriate child custody evaluation. CCEs are the most complex of all forensic evaluations and require complex assessment of many parties and their relationships in order to address important psycho-legal questions about children's best interests. It was not clear if they could continue to be done in a safe and reliable manner.

The answer to this question was found in the proposal that CCEs could be done safely and reliably using videoconferencing (VC) techniques. These techniques have historically been used in other clinical and forensic populations providing useful and reliable data with valid and trustworthy results. The key question was: in the absence of any data to indicate the effective and reliable use of VC techniques in a CCE, how could they be used safely and reliably in what would soon be termed Remote-Child Custody Evaluations (R-CCEs)? Milfred D. Dale, Ph.D., J.D. in May 2020 wrote "Making the Case for Videoconferencing and Remote Child Custody Evaluations (RCCES): The Empirical, Ethical, and Evidentiary Arguments for Accepting New Technology" which was published in the Journal of Psychology, Public Policy and Law that August.<sup>\*</sup>

My work, and the CEB article, at that time centered on examining what mental health professionals who were continuing to conduct CCEs (there was at first a debate as to whether or not it was viable to conduct CCEs-with some professionals stating they should not be done at all) were doing and experiencing in the early months of the Pandemic. In light of Dr. Dale's work and conclusion that CCE's could continue using videoconferencing methods, the question then became would these methods produce data found to be reliable and valid, which may result in conclusions and recommendations that would be useful (i.e., reliable, valid and trustworthy) to the appropriate decisions makers (i.e., parents, attorneys, and the judiciary)?

As explained in the CEB article, I conducted a survey of mental health practitioners who perform CCEs in Santa Clara and San Mateo counties asking three questions (i) how many CCEs have you started since your office closed?, ii) how many of those have you completed? and iii) do you plan to return to your office?).

The results were notable. Out of sixteen practicing evaluators, nine had continued to conduct CCEs. During the time from March through August, they started 20 CCE/BFAs. Of those twenty, nine evaluations had been completed. Four conclusions were: 1. The overall number of evaluations appeared to be substantially less than during a similar time period pre-Covid; 2. Evaluators still practicing had wholeheartedly embraced the remote videoconferencing techniques; 3. Evaluators planned to continue to use the remote techniques into 2021; 4. Evaluators started using a "hybrid" approach which included

both their office and remote techniques. It was notable that several evaluators not yet returning to practice did not plan to return to work until there is a vaccine and clear path to safety (some would attempt to proceed using only VC methods).

Subsequently, in 2021, I decided to conduct an update to the survey to poll evaluators to learn about their current methods and ascertain the reception and effectiveness of these newly formed R-CCEs. My goal was to learn more about the effectiveness, and possible limitations, of these methods and resultant work products, and to obtain data about how they were implemented and received by decision makers.

Thus in April 2021, I commenced a new survey. The time period examined started in March 2020 after the first closure of offices through the summer of 2021. First, the survey attempted to quantify the number of Remote-Child Custody Evaluations started and completed in the past year. In order to complete this survey, after providing the data on the number of CCEs, each practitioner agreed to be interviewed to discuss the follow-up questions. Questions were posed about three main areas of focus: i) how the CCEs were received and the type of forensic results following the publication of the evaluations; ii) how the process was experienced by the evaluator and the clients; and iii) how and with which methods did evaluators plan to return to their offices in the upcoming months (including Covid-19 protocols and vaccination compliance (this took place in the few months following the start of vaccinations)).

Eight evaluators from four San Francisco Bay Area counties who remained active in their forensic child custody related work completed a written questionnaire. The objective data and interviews reveal the following findings/conclusions. The eight evaluators completed 24 evaluations and, in contrast to the first survey, noted their practices had picked up to some extent since the summer of 2020. All the evaluators believed the R-CCE process worked well for the parents. There were indications that the parents were assured by the use of remote interviews and had less anxiety than when doing in person interviews. The evaluators believed these processes worked well and noted the implementation of the remote interviews required more time and attention to explaining, setting up, and carrying out these interviews. The evaluators found that the reports they generated were well received by attorneys. There was some indication that attorneys were less likely to challenge the findings and possibly more likely to resolve their matters between them with involvement of the parents. The evaluators participated in fewer trials than pre-Pandemic and those trials were all done by Zoom with no personal appearances. Evaluators who did Zoom trials (and depositions) found those experiences positive and to some extent easier than when done in person. No evaluator reported knowledge of their work product being examined by reviewing experts. This latter point is not a definitive finding as typically evaluators may not know when their work is reviewed.

The "hybrid model" was used by all evaluators. The most common process was to complete individual interviews with videoconference methods (on a secure platform) and to conduct parent-child interviews and observations in person. These in person methods occurred at parks near parents' homes, in their backyards, and some inside the homes. The hybrid model was uniformly embraced by evaluators not only as the preferred modality (as compared to conducting in office, but masked, interviews) but the one they believed allowed them to have most confidence in their work. All evaluators used a variety of Covid-19 protocols in all settings. These included having parents complete Covid Health Questionnaires (similar to those one would complete at a physician's office) in advance of in person interviews and home visits, using social distancing and masks, increased screening for vaccination status (including

disclosing their own (all were vaccinated), and conducting in person interviews only with adults who had been vaccinated).

It was hoped to get some sense of how these evaluators would return to the office. The data does not reveal a clear pattern of a uniform plan. The evaluators' comments suggest a great deal of trepidation. This is likely due to the fact that during the period they replied, the Pandemic went from easing (May) to worsening (July) when the Beta-variant caused great concern. By the end of the summer, three of the evaluators stated they had stopped taking new cases, and two of those three surmised they would cease doing evaluations completely. A majority of evaluators indicated that the Pandemic did not dissuade them from continuing their work. They were committed to continuing the Hybrid model and figuring out how to do their work in a safe and secure manner that would yield accurate, valid, and reliable data.

The results of this modest survey are by no means scientific in nature. Dr. Dale noted in a March 2021 update ("Child Custody Evaluations and Video Conferencing: What a Difference a Year Makes" (published in CO-AFCC and NY-AFCC Newsletters)\*): "While the research base about use of VC in CCEs has not grown in the past year, our experience has grown exponentially. Some evaluators have completely suspended their work. Other evaluators continued face-to-face meetings and counted on PPE and social distancing within their offices to be safe enough. But the vast majority of evaluators have chosen some kind of middle ground and continued incomplete evaluations or begun new ones using a variety of approaches."

The results of the current survey are descriptive and informative. They add to Dr. Dale's work and show that this sample of evaluators is moving forward with this much needed work. Custody evaluations are being done and a new methodology is being developed by these intrepid professionals. This is not work for the faint of heart and requires great attention to detail, rigorous application of consistent methodologies and a willingness to examine all that one does in order to be assured of the reliability and validity of the final work product.

It will likely be some time (perhaps in mid-2022) before there may be a full return to the office. With the aging population of child custody forensic mental health professionals, it is possible that some may not ever return to the in person methods necessary to conduct the comprehensive child custody evaluation. Right now there are no best practices guidelines that apply to the use of these new methods in CCEs. There is no doubt that we are in need of them and it is hoped that the panel of professionals who are just now formalizing for review the new version of the AFCC Model Standards of Practice for Child Custody Evaluation will address these new processes therein.

I hope this brief examination of such an important matter will generate both self-reflection and discussion in the AFCC-CA community. For those evaluators (especially in other parts of the state) interested in telling me more about their experience with R-CCEs, I welcome that as a larger sample of evaluators' experiences both over the past year and currently could lead to a better conceptualization of what we are doing and plan to do moving forward.

An important area of inquiry for a future survey is to poll attorneys and the judiciary to determine how these R-CCEs have been both problematic and helpful. Gathering such data will be of great help in assessing the value of R-CCEs as well as modifying existing and creating new methods of practice.

I would very much like to hear from mental health practitioners, attorneys, and the judiciary about their experiences during the Pandemic Remote CCE's and their thoughts and comments about the past, current and future of R-CCE's. I can be reached at [drperl@earthlink.net](mailto:drperl@earthlink.net).

\*Please email Dr. Perlmutter to request pdf copies of the three articles noted in the article.

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**Ken Perlmutter**, Ph.D. is a licensed psychologist practicing independently in Palo Alto for forty years. He has served children, parents and the courts in child custody related roles since 1985. His current practice focuses on various aspects of child custody matters, and he specializes in working with families in unique and complex high conflict cases. His primary work involves conducting Child Custody Evaluations and Brief Focused Assessments. He has extensive experience with, and regularly serves as, parenting coordinator, custody mediator (both confidential and recommending), and co-parenting counselor.

He enjoys consulting with attorneys as a reviewing expert, both disclosed and non-disclosed, and as a confidential child custody consultant. Since the pandemic began, he has been in the forefront of adapting custody evaluation methods to meet its challenges.

In 2021 he was elected to serve as a Member on the Board of Directors, AFCC-CA. He serves on the new Mentoring Outreach Committee. This committee focuses on the recruitment and mentorship of mental health professionals to serve as child custody evaluators. Additionally the committee is developing new language and guidelines regarding the requirements (specifically to define "materially assist") for child custody evaluators as stated in Rules of Court 5.225.

