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# Whither the State of CCEs?

**Dr. Ken Perlmutter**

📅 November 12, 2020



**I**n March, the COVID-19 pandemic led to the abrupt closure of public courts, attorneys' legal practices and the offices of mental health practitioners. The process of child custody matters came to a halt for a period of time under the restrictions of Gov. Gavin Newsom's shelter-in-place mandates. These mandates

made carrying on daily life a fraught venture. Yet soon life continued for family law matters that were in process and those that would commence anew.

In no area of law was this change felt as strongly as in the field of child custody evaluations. The requirements of social distancing and limited, if any, in-person contact stopped the process of all phases of child custody evaluations in its tracks. There were questions about whether private mental health child custody evaluators were properly defined as essential workers and if so, whether they could carry out their roles safely. Branches of the court such as Family Court Services and judicial departments closed.

All of this led to the question of whether these evaluations -- the most complex of all forensic evaluations, which require complex assessment of many parties and their relationships in order to address important psycho-legal questions about children's best interests -- could continue to be done in a safe and reliable manner.

The answer to this question was found in the proposal that child custody evaluations (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)?

As these ideas were proffered and promulgated, two disparate camps of thought appeared. Each camp wrote a position paper in the August 2020 edition of eNews published by the Association of Family and Conciliation Courts titled "[Point Counterpoint: Online Custody Evaluations](#)." One group took the considered position that these remote methods are based on telemental health practices, which have similar scientific principles and processes and can be thoughtfully adapted to child custody evaluations as long as proper consideration is given to ethical standards, safety concerns, clinical and practical factors and all other relevant guidelines. Then it's up to the practitioner to become proficient in their use and determine if the data is useful to decision makers (parents, their attorneys, and judicial officers).

The other camp argued against using virtual technologies such as videoconferencing to perform CCEs remotely. They claimed these methods do not yield reliable data and do not conform to practice standards and ethical guidelines. They are concerned that inaccurate assessments may lead to faulty custody recommendations. They acknowledge virtual methods may work in other forensic practice roles but steadfastly reject them for CCEs. They assert there is a lack of control of the assessment environment and no accepted standards for these remote technologies, which are prone to create fatal flaws in the work products, and believe the context of the pandemic impacts families such that the data is not representative of their typical functioning and thus not generalizable for best interests purposes. They posit that with no underlying scientific or empirical basis, evaluators take on an ethical and malpractice risk that rules out the use of these techniques, and conclude it is best to wait until there's research that proves the method's effectiveness or a vaccine provides for a safe return to the office.

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 in August. This now-seminal work reviews the empirical evidence from other forensic and clinical fields to make the case stating that these videoconference methods have been reliably and effectively used in treatment and assessment. The article is a comprehensive survey and makes the case for why we can use these methods now. The author posits it is up to the practitioners to work out how to use the new techniques, and he carefully describes what is involved in that process.

As there has been no research on the effectiveness of these methods in CCEs, their use is now an open question and we're on the verge of obtaining the results of the first wave of these evaluations. Recently I conducted a Survey of Mental Health Practitioners who perform CCEs and brief focused assessments (BFAs) in Santa Clara and San Mateo counties, asking three questions: 1) How many CCEs have you started since your office closed?, 2) How many of those have you completed? and 3) Do you plan to return to your office?

The results are notable. Twenty-six responded and ten no longer do evaluations. Nine of the 16 remaining evaluators started 20 CCE/BFAs. Of those 20, nine evaluations have been completed. Four conclusions are:

1. The overall number of evaluations appears to be substantially less than during a similar time period pre-COVID.
2. Evaluators have wholeheartedly embraced the remote videoconferencing techniques.
3. Evaluators plan to continue to use the remote techniques.
4. Two have returned to their offices, and three expect to use a "hybrid" approach using both their office and remote techniques. Eleven do not plan to return, only using VC methods until there is a vaccine and clear path to safety.

Thus if CCEs will be done, and likely if there has been a hiatus to date on evaluations and at some point more will need to be done, then the majority of evaluators will rely on remote videoconferencing techniques.

We don't know the results of the quality of the first-batch CCEs and whether they are reliable, valid, trustworthy and of help to the decision makers. While these conclusions involve other factors beside the nature of the techniques, this much is clear: The data must drive the techniques, which in turn leads to the answers to the psycho-legal questions that the consumers must assess and determine if they are useful. There do not appear to be other useful options, and if we wait until a return to the pre-COVID world we may be waiting a very long time. It does appear the data to date indicate that, when they're properly done, we should accept that R-CCEs are a valid alternative that can help resolve custody disputes.

There are many signs that across the country mental health professionals are taking the lead to educate themselves and others about the use and effectiveness of these methods, as used not only in child custody evaluations but in all other areas of forensic practice (*i.e.*, alternative dispute resolution, various forms of mediation, parenting coordination and various forms of child custody-related counseling). Within the next few months, I intend to do a survey of attorneys and evaluators to ascertain the reception and effectiveness of these newly formed R-CCEs. As attorneys, mental health professionals and the judiciary continue to learn more about the effectiveness and possible limitations of these methods and resultant work products, we need data about how they are received and implemented. While the pandemic of 2020 has brought many unfortunate results to our society, it's

clear that forensic practitioners have used this crisis as an opportunity for significant and positive change to how we do this work, and to provide valuable assistance to the populations we serve.

*Dr. Ken Perlmutter is a licensed psychologist who has been in private practice in Palo Alto for forty years. His practice focuses on various aspects of child custody matters and specializes in working with families in unique, complex, high conflict cases. His primary work involves conducting child custody evaluations (he has completed over 750) and Brief Focused Assessments (he wrote the Protocol for Conducting BFAs in San Mateo County and co-wrote the BFA Attachment FM-1157 in Santa Clara County). He has extensive experience with, and regularly serves as, custody mediator (both recommending and confidential), parenting coordinator, and co-parent counselor. He enjoys consulting with attorneys as a reviewing expert, both disclosed and non-disclosed, and as a confidential child custody consultant to attorneys and their clients who are involved in other aspects of custody matters, including custody evaluations and recommending mediations. He has been qualified as an expert in San Mateo, Santa Clara, and San Francisco Counties on numerous occasions. He recently co-presented a course sponsored by the Family Law Section of the San Mateo Bar Association on this topic, called "COVID, Zoom, and the New Frontier—Preparing Your Clients for Remote-Child Custody Evaluations and Understanding Psychological Testing." He can be contacted at [drperl@earthlink.net](mailto:drperl@earthlink.net).*

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