



# The Impact of Court-Ordered Psychological Evaluations in Child Welfare Cases

By Maling Miranda and Classie Colinet

**F**ear. Worry. Shame. These are some feelings parents express when they learn that they are subject to child welfare requirements. These include compliance with court orders, involvement with the Division of Child Protection and Permanency (DCPP) also known as the “Division,” and the possibility that their children may be placed in foster care if the court deems it necessary.

Consider the following real-world situation: It has been six months since a mother’s 3-year-old son was removed from her custody. This mother, “Tonya” completed her inpatient drug detox program, enrolled in an outpatient substance abuse program while living at a mother and child drug rehab home, a residential program that allows young children to live with their mothers while their mother rehabilitates, avoiding unnecessary separation during the process.<sup>1</sup> Tonya’s hope was that if she complied with the Division’s demands and reached several months of sobriety, with a recommendation from her counselor, the court would return custody to her. However, the Division’s attorney argued against reunification. Tonya pointed out that her son cried at the end of visits and was harmed by continued separation. In response, the Division requested that Tonya submit to an expert who would evaluate her and be empowered with recommending whether she should reunify. Tonya complied with the evaluation. To the surprise of the Division’s attorney, the expert recommended immediate reunification and opined that the Tonya’s child would be at little to no risk in her care. Notwithstanding this recommendation, the Division attorney continued to argue that the Division was not “convinced” that Tonya was ready to have her child in her care. The court did not order reunification. Tonya believed that her history, lack of resources, and traumatic life circumstances were indelible strikes on her record, and she would



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always be presumed as unfit. Her belief may not stray far from the truth.

### **Psychological Evaluations in Child Welfare Matters**

Tonya's story is not uncommon. Most parents who are Division-involved are subjected to forensic psychological testing based upon the Division's position that forensic psychological testing is required to assess risk of harm to child and recommend services.<sup>2</sup> However, the Division is not bound to follow the recommendation of its own expert and can ignore them or request that a parent submit to numerous forensic evaluations

throughout the life of a case, even where, like Tonya, a court has never made a finding that she abused or neglected her child, did not suffer from a mental illness, but instead was involved with the Division due to poverty-related issues and drug addiction.<sup>3</sup> In fact, in 2020 approximately 70% of all DCPP complaints are based on neglect concerns.<sup>4</sup>

New Jersey family courts rely on forensic psychological evaluations or parenting assessments in private family matters, but there, the focus is different. The evaluator in private matters is generally a neutral court-appointed expert and the evaluation serves as a guide for the court in determining the legal outcomes that can lead to settlement of an outstanding custody dispute. Comprehensive forensic custody evaluations are not required in every case and cost-effective alternatives such as mediation or custody neutral assessments are explored in most instances. Further, parents take a more active role in the process and collateral information from school officials, relatives, and community supports is consulted.<sup>5</sup>

In child welfare matters, forensic psychological/parenting assessments are not neutral, and can present situations that reflect a variety of legal and ethical considerations. In child welfare matters, forensic experts are positioned to contribute significantly to provide courts and the child welfare agency information regarding a parent's functioning and opinions as to therapeutic interventions.<sup>6</sup>

Unlike a private parenting evaluation, the scope of a forensic parenting evaluation is defined by the presenting issues outlined by the Division in the Division documents and Verified Complaint, leaving the parent with limited input aside from a short interview with the evaluator. For instance, Division experts do not observe the parent with the child, conduct home observations, or consult with third-party sources as in private family litigation.

Parenting assessments in private family matters are used as guideposts in

resolving a custody dispute, but Division-directed evaluations have a more imposing role in a case. This approach in child welfare matters has created controversy within the psychological field resulting in queries about whether evaluators should make an "ultimate opinion" regarding custody and termination of parental rights.<sup>7</sup>

The American Psychological Association's new guidelines for assessment and preparation of evaluations in child welfare matters emphasize the importance of proficiency, culturally informed assessments, and the consideration of ethical concerns present in child welfare evaluations.<sup>8</sup> This is because the focus in child welfare evaluations is a parent's capacity to parent and foreseeable risk to that child. The expert's clinical interpretations and findings will result in a permanent record and can even be relied upon in a proceeding to terminate parental rights.<sup>9</sup>

### **How DCPP Assesses Parents in Child Welfare Matters**

Parents are not required to submit to forensic evaluations absent a court order, but in practice the Division can and does request that parents submit to forensic testing even before a case has been filed in court. The APA guidelines caution evaluators from conducting assessments where there is not yet a court case and the parent is not represented by counsel due to concerns relating to informed consent and the negative consequences an evaluation can have on a child and parent.<sup>10</sup>

By submitting to an evaluation, parents may believe that the Division's involvement will cease. Parents are not aware of the deleterious outcomes that an evaluation can have including removal of their child, mental health diagnoses, and testing results that anchor a court's perception of the parent without the benefit of in-court testimony.<sup>11</sup>

Even when a matter is in litigation and before a finding of abuse, the Divi-

sion and courts customarily encourage the parent to submit to an evaluation. The general premise is that evaluations are required to properly service the parent and any delays could result in lengthy government involvement or familial separation. In practice most parents consent to services even before the Division has completed its internal investigation months before trial.

Because of this, it is questionable whether psychological evaluations should be ordered in every case and whether approaches that are less time consuming, invasive, and costly should be explored especially where the majority of cases involve neglect or poverty concerns.<sup>12</sup> The Division has discretion in following its own expert opinion or recommendations, like in Tonya's case.

It is important to take a look at the families who typically are involved in child welfare litigation. Black children make up approximately 13% of New Jersey's population but account for 44% of children in foster care. In 2020, Black children represented 44% of the children awaiting adoption in New Jersey's foster care system, which means they are legal orphans due to termination of parental rights.<sup>13</sup> Approximately 50% of Black children are removed due to neglect concerns involving inadequate food, shelter, and clothing whereas only 35% of white children are removed for the same concerns.<sup>14</sup>

The average cost of a parental assessment is \$1,278.<sup>15</sup> In 2021, there were approximately 3,200 children in placement, which correlates to the Division having paid approximately \$3.8 million to experts to evaluate the parents and guardians of those children as part of DCP's assessment and service planning. This figure does not account for the fact that parents can undergo multiple evaluations, or the psychological evaluations ordered in "care and supervision" cases where children remain in the home.

In 2021, the Division served 32,138 children.<sup>16</sup> Due to the Division's expan-

sive resources and dedicated contracted consultants, the ability for a parent to oppose an evaluation can be onerous where approximately 95% of the parents are indigent.<sup>17</sup> Many parent defense practitioners argue that the cost of keeping children in care and overly assessing parents is overwhelming and much less resources would be expended if the triggering concerns such as poverty and lack of parental resources were given priority.<sup>18</sup>

### **A Closer Look at the Forensic Evaluation Process**

Psychological evaluations can be ordered by the court or requested by counsel for the following parties: the child welfare agency, the child(ren) or the parents.<sup>19</sup> Psychologists are often asked to address questions focused on child protection concerns and a parent's ability to care for and protect their child.<sup>20</sup>

The evaluation process can be intimidating because a psychologist is assessing these parents, and the results of the assessment could be used to keep their kids in foster care, if their children have been removed. Parents may find the process intimidating if their children are living with them because they fear that the evaluator may write something in a report that could be used to remove their kids or limit their success.

There can be test interpretation or language barriers too. For instance, parents and caregivers who do not speak English or are more comfortable speaking another language are often at a disadvantage because it can take longer to find an evaluator who speaks their native language.

Parents who speak a language other than English also face barriers in the testing measures that are used for evaluations, because some measures require an individual to complete a questionnaire. The questions are generally in English, and translations can change the nuances in intended meanings.

Further, the results can alter the course of the parent's life. In other words,

the results from a psychological evaluation often determine how quickly a child can return home if at all. In cases where a child or children are still in the custody of their parents, the evaluation may determine how quickly litigation can be terminated.

In October 2021, the American Psychological Association issued a written apology, acknowledging that it failed in its role leading the discipline of psychology. The APA acknowledged its role in "promoting, perpetuating, and failing to challenge racism, racial discrimination, and human hierarchy in the U.S."<sup>21</sup>

The apology letter admits that psychologists "established, participated in, and disseminated scientific models and approaches rooted in scientific racism when the discipline was first founded." The inherent racial bias embedded in the field of psychology has led to the misdiagnosis, overdiagnosis and lack of culturally sensitive diagnostic criteria to describe the mental health concerns and lived experience of people of color.<sup>22</sup>

Currently, 84% of psychologists are white, 4% are Asian, 4% are Black, 6% are Hispanic, and 2% are American Indian/Alaska Native, Native Hawaiian/Pacific Islander, and people of two or more races.<sup>23</sup> These statistics highlight the need for counsel to be aware that psychologists may not share the same ethnic or racial background of some of the parents who are ordered to undergo psychological evaluations. This means that counsel should find out what steps a psychologist has taken to be culturally competent.<sup>24</sup>

Moreover, culture matters. The high-power distance between the average Division-involved parent and the evaluator can create unintended barriers and biases. Sometimes people just cannot connect. Different cultures have varying values of hierarchy and how they view authority.<sup>25</sup> In 2020, Black and Hispanic children made up 42% and 25% of the children<sup>26</sup> in foster care respectively. It is important for evaluators to consider a

parent's culture and value system to prevent personal biases or unsupported beliefs in such high-stakes assessments.<sup>27</sup>

### An Equitable Future

Stakeholders involved in child welfare cases can at least initially help families without the use of a psychological evaluation. The focus can be on providing families in the child welfare system with access to resources, as opposed to psychological testing that can perpetuate racism.

If a psychological evaluation is deemed necessary, a family-centered approach, which would include more than just the parents, can be effective. Consider holding discussions with an individual's proverbial village such as friends, relatives, coaches, and mentors. Recommendations for services can include how a parent's community can help the parent successfully engage and complete services. It is also possible that members of the parent's community can be incorporated into some of the recommended services, which may help the parent successfully complete a recommended service.<sup>28</sup>

Psychologists who are retained to complete psychological evaluations can be most effective if they describe an individual's circumstances within the context of where they live and the type of resources to which they have access. For example, redlining, the practice in which a mortgage lender denies loans, or an insurance provider restricts services to specific areas of the community (historically this process has been used against Black people), is still prevalent today and has forced people to remain in certain neighborhoods.<sup>29</sup>

The goal can be to help the process become more fair and include a deeper consideration of the life of the parent facing this difficult process. ■

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### Endnotes

1. [https://www.drugrehabcenters.org/Category/New\\_Jersey/Drug\\_Rehab\\_Programs\\_For\\_Women\\_With\\_Childr](https://www.drugrehabcenters.org/Category/New_Jersey/Drug_Rehab_Programs_For_Women_With_Childr)

en.htm (last viewed on December 23, 2022)

2. New Jersey Department of Children and Families Guidelines for Expert Evaluations in Child Abuse/Neglect Proceedings (Mental Health) (2012), MH forensic guidelines 11-29-12 FINAL\_members (nj.gov); "Defense Strategies for Litigating DCPD: Williams Law Group: New Jersey." *Williams Law Group, LLC*, <https://familylawyersnewjersey.com/david-verses-goliath-defense-strategies-for-litigating-the-abuse-and-neglect-trial-initiated-by-division-of-youth-and-family-services/> (last viewed on December 26, 2022)

3. N.J.S.A. 30:4C-12

4. <https://datacenter.kidscount.org/> (last viewed December 27, 2022)

5. <https://armourlawfirm.com/custody-neutral-assessment/> (last viewed on December 27, 2022)

6. <https://www.apa.org/practice/guidelines/child-protection> (last viewed on December 27, 2022)

7. <https://ncd.gov/publications/2012/Sep272012/Ch8> (last viewed on December 23, 2022)

8. <https://www.apa.org/practice/guidelines/child-protection>

9. <https://ncd.gov/publications/2012/Sep272012/Ch8> (last viewed on December 23, 2022)

10. <https://www.apa.org/practice/guidelines/child-protection>

11. This is true in "FN" matters, "FN" refers to the phase of a child protective services action during which the Division is required to work with the family to stabilize and reunify children who may have been removed from their home. However, where termination of parental rights is at stake and expert opinion is relied upon, experts are generally required to testify in court, See *DCPP v. M.G 427 N.J. Super.* 154, 172-75(App. Div. 2012).

12. <https://www.nj.com/politics/2021/12/racism-in-njs-child-protection->

system.html

13. <https://datacenter.kidscount.org/> (last viewed December 24, 2022)

14. <https://www.nj.com/politics/2021/12/racism-in-njs-child-protection-system.html>

15. <https://ydcnj.org/dcpp-services> (last viewed on December 24, 2022)

16. <https://njchilddata.rutgers.edu/portal/all-children-served-by-cpp>

17. <https://www.nj.com/politics/2021/12/racism-in-njs-child-protection-system.html>

18. *Id.*

19. See <https://www.apa.org/practice/guidelines/child-protection> (last viewed on December 26, 2022)

20. *Id.*

21. See <https://www.apa.org/about/policy/resolution-racism-apology.pdf> (last viewed December 24, 2022)

22. *Id.*

23. See <https://www.apa.org/monitor/2020/11/datapoint-diverse>(last viewed December 24, 2022)

24. See <http://www.apa.org/about/policy/multicultural-guidelines.pdf> (last viewed on December 25, 2022)

25. *Id.*

26. <https://datacenter.kidscount.org/>

27. See <http://www.apa.org/about/policy/multicultural-guidelines.pdf> (last viewed on December 25, 2022)

28. See <https://www.apa.org/practice/guidelines/child-protection> (last viewed December 26, 2022)

29. David Nakamura, "Justice Dep't secures 13 million redlining settlement with N.J. Bank" Sep 28, 2022, See <https://www.washingtonpost.com/national-security/2022/09/28/lakeland-redlining-new-jersey-settlement/#:~:text=Justice,Justice%20Dept.,redlining%20settlement%20with%20N.J.%20bank&text=The%20Justice%20Department%20on%20Wednesday,communities%20in%20the%20Newark%20area> (last viewed on December 24, 2022)