

Annot., Attorney's conduct in delaying or obstructing discovery as basis for contempt proceeding, 8 A.L.R.4th 1181 (1981)

CHAPTER 60B

EXPERT WITNESSES IN CHILD
CUSTODY PROCEEDINGS*

SCOPE

This chapter discusses the role of the psychiatrist, psychologist, and social worker, whether retained by a party or the parties or appointed by the court, as expert witnesses in child custody proceedings. The established psychiatric approaches, psychological tests, and social work evaluation methods are explained and evaluated. The practitioner is guided through the selection of the expert witness, the parent interviews, the child interviews, and the evaluation report. Forms that are frequently used with regard to these expert witnesses are included as well. This chapter also discusses and provides model questions for the qualification, direct examination, and cross-examination of these expert witnesses.

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PART C. PSYCHOLOGISTS

§ 60B.20 Background to Psychology

[1] Definition

The *practice of psychology* is an offering to the public or rendering to individuals or groups any service, including computerized procedures, that involves but is not restricted to the application of established principles, methods, and procedures of describing, explaining, and ameliorating behavior. The practice of psychology addresses normal behavior and the evaluation, prevention, and remediation of psychological, emotional, mental, interpersonal, learning, and behavioral disorders of individuals and groups, as well as the psychological concomitants of medical problems, organizational structures, stress, and health.¹ To offer psychological services, a person must be certified and licensed under the procedures outlined in the Psychologists' Certification and Licensing Act.²

[2] Training and Qualification

To be qualified for certification as a psychologist in Texas, a person must have received a doctoral degree based on a program of studies whose content was primarily psychological or its substantial equivalent in both subject matter and extent of training from a regionally-accredited educational institution.³ He or she must pass a national examination for professional practice in psychology, as well as jurisprudence and ethics examinations formulated by the state board. For licensure for independent practice, a psychologist must also have two years of experience under the supervision of another licensed psychologist. Membership in the American Psychological Association (APA), as well as in state and regional psychological associations, is generally expected of practicing psychologists. A psychologist expert should be trained in the

¹ R.C.S. Art. 4512c § 2(c).

² See R.C.S. Art. 4512c.

³ R.C.S. Art. 4512c § 11.

areas of clinical psychology of adults and children, developmental psychology, psychological tests and measurements, personality theories, scientific methodology, statistical analysis, and professional ethical issues. A certificate in clinical psychology awarded by the American Board of Examiners in Professional Psychology, membership in the National Register of Health Service Providers in Psychology, certification as a school psychologist by the state educational agency, appointment at a recognized college, university, or other professional training center, authorship of scientific or professional publications, and involvement in recent courses of professional education and training are further indices of professional expertise when child custody is involved.*

[3] Established Psychological Approaches

[a] In General

There are several well-recognized psychological theories that psychologists apply in custody-visitation cases. The most widely held theory of normal and abnormal child development is the "Neo-Freudian" or modern psychoanalytic theory.⁴ The leading contemporary spokesperson for the psychoanalytic viewpoint is Erik H. Erikson.⁵ Psychologists also utilize the theories of learning to analyze the effects of a given child custody-visitation arrangement. These theories include: (1) classical conditioning; (2) operant conditioning; and (3) social learning.⁷

These established psychological theories provide guidelines for the psychologist when answering questions such as:⁶

1. What type of custodial arrangements would be of most benefit psychologically to the child at the present time and throughout the expected period of custody?

* See 3 CHILD CUSTODY & VISITATION LAW AND PRACTICE, ch. 22, *Effective Use of Psychologists*.

⁴ See § 60B.10(3)[a].

⁵ See [b], below.

⁷ Elkind, *The Hurried Child: Growing Up Too Fast Too Soon* (Addison Wesley 1981); see [c], below.

⁶ 3 CHILD CUSTODY & VISITATION LAW AND PRACTICE, ch. 22, *Effective Use of Psychologists*.

2. What types of custodial arrangements would most likely injure the child's psychological well-being at the present time and throughout the expected period of custody?

3. What type of psychological climate would the available custody options offer the child at the present time and throughout the expected period of custody?

[b] Erikson's Theory—Stages of Development

Under the Erikson approach, it is believed that small differences in child training can have a lasting significance in formulating the child's future view of the world, sense of decency, and sense of identity.⁹ Erikson believes that family life and other interpersonal, psychosocial, and sexual experiences mold the individual's personality and social behavior. Erikson's theory suggests that there are eight stages of psychosocial development. Each person passes through these stages from birth until death. At each stage, a person must confront a key issue or crisis that involves an opportunity for healthful development, as well as a dangerous vulnerability to maldevelopment. When the individual's environment is adequate, a healthful outcome will usually result. If, on the other hand, the individual's environment is not conducive to addressing a key issue or crisis, then the outcome will usually be abnormal development. Abnormal development usually manifests itself in the form of fixation and/or regression. *Fixation* means that the person has an arrested development, while *regression* refers to a retreat to an earlier, more infantile stage of psychosocial development.

The following is a list and short description of the eight stages of psychosocial development that Erikson labeled by illustrating the psychosocial crisis involved:¹⁰

1. Trust versus mistrust. This stage occurs from birth to two years of age. The key issue here is the child's development of trust in the adult providers, the world's provisions, and one's own lovability and self-worth. A mistreated child may

⁹ Erikson, *Child and Society* (W.W. Norton Publications 1963).

¹⁰ Erikson, *Child and Society* (W.W. Norton Publications 1963).

emerge from this stage with a depressive outlook on life or a suspicious, mistrustful, or "paranoid" attitude.

2. Autonomy versus doubt and shame. This stage occurs during a child's second year of life. The key issue is the child's struggle for autonomy while the parents introduce measures aimed at socializing the child. *Socializing* refers to the learning of culturally-acceptable behaviors and attitudes. If a child is dealt with patiently and lovingly during this stage, then he or she may emerge with a strong sense of independence. A mistreated child may emerge with a sense of shame and doubt.

3. Initiative versus guilt. This stage occurs when a child is a preschooler. The key issue is the sexual identity of the child. It is believed that a child develops a strong sensuous tie with the parent of the opposite sex and experiences feelings of rivalry towards the same-sex parent. If a child is treated well during this period, he or she may emerge with a strong sense of initiative. A child who is punished often for trying to "play the big shot," as is normal during this stage, may emerge with an overpowering sense of guilt.

4. Industry versus inferiority. This stage occurs during the elementary school years until puberty. The key issue is the child's development of the skills and attitudes needed to become, eventually, an industrious contributor to his or her society. If there is an inadequate or discouraging environment at home or school, or in the community, the child may not emerge with a sense of industry, but with a sense of inferiority.

5. Identity versus identity diffusion. This stage begins at puberty and ends when the individual reaches what his or her society considers adulthood. In the American culture, this stage generally covers the teenage through the college years. The key issue is the person's struggle for a sense of identity (sexually, socially, vocationally, and politically). Some people will be unable to establish an identity and will never find themselves.

6. Intimacy and solidarity versus isolation. This stage occurs during a person's twenties and thirties. The key issues are intimacy and solidarity in love, marriage, and parenthood.

It is believed that a person will develop a sense of isolation if he or she fails to achieve these ideals.

7. **Generativity versus self-absorption.** This stage begins during a person's forties and lasts until the retirement period. The key issue is generativity versus stagnation or self-absorption. It is believed that a person needs a connection with children and youth (future generations) to gain a sense of community with the ever-changing world. A person who is unable to find this connection may feel a sense of purposelessness and barrenness.

8. **Integrity versus despair.** This stage occurs during the retirement period. The key issue is for a person to come to terms with his or her own life. A sense of integrity will emerge if the person believes he or she has lived a full life and has made the most of the opportunities life has offered the person. A person who has not lived assertively may realize that it is too late to change and may then feel a sense of despair.

[c] Examples of Basic Theories of Learning

[i] Classical Conditioning Theory

Classical conditioning is also known as "learning through association." It is believed to determine how people acquire their loves, hates, fears, and other emotional responses. Under this theory, it is believed that if two stimuli are repeatedly paired, they become functionally equivalent. The conditioned response, or acquired habit, results from the repeated pairing with the stimuli. Conditioned responses can be extinguished by repeatedly presenting one of the stimuli alone without it being followed by the other stimulus. However, nothing that is learned is ever completely lost; it is only inhibited. Conditioned responses can be relearned with fewer paired trials than were required originally.

[ii] Operant Conditioning Theory

Operant conditioning is also known as the modification of behavior by reward ("positive reinforcement") or by punishment ("negative reinforcement"). According to the principle

of the law of effect, if a behavior in a given situation is followed by some sort of satisfaction or positive effect, it will tend to recur. If, however, a behavior leads to negative effects, it is assumed that the such behavior will not recur.

[iii] Social Learning Theory

Social learning is also referred to as learning through observation and imitation of a model. It is based on two main principles: inhibitory effect and disinhibitory effect. *Inhibitory effect* refers to the tendency of a child to avoid behaviors for which he or she sees a model punished. *Disinhibitory effect* refers to a child's tendency to indulge in forbidden behaviors for which he or she sees a model is not punished or is rewarded.

[4] Established Testing Theories and Techniques

[a] General Criteria for Tests

There are certain agreed-on general criteria by which the psychological profession weighs the value of a given test result in a given case. These include the following:¹¹

1. **Standard conditions.** This means that every person taking the particular test does so under substantially similar environmental circumstances. For example, it would be unreasonable to compare the hearing test results of two persons when one person has taken the test in a noisy room and the other person has taken the test in a quiet environment.

2. **Suitable norms.** This indicates that there is a history of large scale use of the particular test by persons similar to the examinee in terms of age, sex, education, language background, subculture, and other group traits. These norms enable the psychologist to generally know what behaviors or results may be expected from the examinee.

3. **Reliability.** This refers to a test's established repeatability, consistency, dependability, interscorer agreement, or

¹¹ J CHILD CUSTODY & VISITATION LAW AND PRACTICE, ch. 22, *Effective Use of Psychologists*.

stability over substantial time periods. For example, a test score may prove reliable if there is evidence that the person, if retested, would obtain the same score or rating. Even if a test is considered reliable, though, its results may still not be valid.

4. **Validity.** This refers to the truthfulness of a test result. Validity is the ultimate consideration in determining a test's value in a given situation. Unfortunately, many psychological tests, including IQ tests, do not provide clear answers to validity questions. For example, the concept of "intelligence" has no clear definition or obvious behavioral indices for measuring it. In practice, a psychological test is considered valid to the extent that it successfully predicts the types of behavior the psychologist wants it to predict. For instance, some standard intelligence tests have demonstrated their validity in terms of having predicted successfully school grades, supervisor ratings, and performances on other established intelligence tests.

[b] Major Types of Psychological Tests

[i] Intelligence and Related Cognitive Tests

There are several types of intelligence tests commonly used by psychologists. They are identified and described as follows:¹²

1. **Wechsler Intelligence Test.** There are three Wechsler tests: (1) Wechsler Preschool and Primary Scale of Intelligence (WPPSI) for children ages four to six-and-a-half; (2) Wechsler Intelligence Scale for Children, for children ages five through 15 (WISC, original form), or for children six through 16 (WISC-R, revised form); and (3) Wechsler Adult Intelligence Scale, original or revised form (WAIS or WAIS-R), for ages 16 and above. Each Wechsler test yields three scores: (1) Verbal IQ; (2) Performance IQ; and (3) Full Scale IQ. The tests have orally-presented directions and questions; they do not require reading or writing. The verbal tests measure a person's

¹² 3 CHILD CUSTODY & VISITATION LAW AND PRACTICE, ch. 22, *Effective Use of Psychologists*.

fund of general factual knowledge, complex reasoning, social judgment, verbal concept-formation skill, numerical reasoning, immediate rote memory, and vocabulary. The performance tests measure a person's visual alertness, sequential analysis, analysis and synthesis of complex spatial configurations, complex manual assembly, and rapid eye-hand coordination learning. The three IQ scores are each called a deviation IQ. A *deviation IQ* is any score on an intelligence test that compares the individual with a standard representative sample of people of his or her age range. An IQ of 100 means that the performance level is typical of the person's age range. An IQ of less than 90 indicates that the person's score was below average. A person who scores above average will have an IQ of at least 110. Roughly two thirds of all examinees can be expected to receive IQ scores between 85 and 115. In addition to using the information obtained from the IQ scores, the psychologist's finding will also be based on an analysis of the strengths and weaknesses implied by the distribution of high and low test scores, and the examinee's idiosyncratic answers, spontaneous comments, and other test behaviors. The legal community should be cautioned that the Wechsler test has been criticized for its bias towards native-born caucasian Americans. Although the test has been revised, the validity of this particular test may be impaired when it is used in a manner substantially different from, or with persons substantially different from, that which held true of the test's standard representative sample of people in the same age group.

2. **Stanford-Binet Scale of Intelligence.** This test is widely used in assessing the intellectual functioning of individuals aged two years to adult. The test provides a Mental Age (MA) that indicates the age of the average person who performs at the level of the examinee and an IQ score that is considered comparable to the Wechsler tests' Full Scale IQ. The Stanford-Binet test is an individually-administered, orally-presented test requiring no reading or writing. In 1985, the test was revised. Although an attempt was made to minimize sexual and ethnic bias in the test, the validity of this particular test will only be established after extensive research regarding the standardization sample is conducted.

3. **Sorting Test.** In this test, the examinee is able to express his or her concept-formation behaviors. The psychologist employs a standard assortment of about 30 objects in everyday use and instructs the examinee to group those objects that belong together. The psychologist records the groupings made and the reasons for the grouping. This sheds light on a person's thought processes and reflects any impairments by maladjustment. For example, unusual groupings, that are idiosyncratic, strangely value-laden, or illogical may reflect a type of disordered thought process commonly found in cases of mental, emotional, and social maladjustment. Children's sortings of this type are usually considered less serious since such sortings may indicate immaturity rather than mental disorder. The sorting test is not used as widely as the Wechsler or Stanford-Binet IQ tests, but it can serve as a valuable adjunct to these intelligence tests when an examinee's concept-formation skills are in question.

[ii] Projective Techniques

Projective tests, in which a person is asked to interpret or respond to a standard series of ambiguous stimuli, are used by the psychologist to analyze the person's cognitive, emotional, social, personality, and behavior potentials. A psychologist with an extensive background of experience with projective tests can use the test responses, in conjunction with the person's history, observed behavior, and performance on other tests to formulate important conclusions about the person. Prudence dictates that the psychologist use such corroborative evidence with the projective test results. Projective tests have been criticized for having little or no scientific basis, and the psychologist can expect to be thoroughly cross-examined on the test results.

There are a variety of projective tests employed by psychologists. They include the following:¹³

1. **Rorschach Test.** Ten Rorschach inkblots numbered I through X are administered in numerical order and in a fairly

¹³ 3 CHILD CUSTODY & VISITATION LAW AND PRACTICE, ch. 22, *Effective Use of Psychologists*.

well-standardized manner. Five of the inkblots are gray and black, two have red added, and three are multicolored. The examinee is told to describe what the inkblots look like, what they resemble, and what they might be. The examinee is further informed that there are no right or wrong answers and that everyone sees different things in these inkblots. The psychologist's interpretations of the examinee's responses are based in part on intuition, clinical judgment, and the particular sensitivities, theories, and background of the examining psychologist. The Rorschach test is used with adults and children, but the validity and usefulness of this test with children below school age is considered extremely limited. If the psychologist employs a uniform scoring system, such as Exner's,¹⁴ the reliability and validity of the Rorschach test can be greatly increased. A uniform scoring system makes the test more objective, and thus more credible in legal situations.

2. **Thematic Apperception Test (TAT).** The TAT is a picture-story projective personality test. It is commonly used along with the Rorschach inkblot test. If, for example, the examinee's Rorschach test indicates that he or she has inner conflicts, the TAT may shed light on the sources of these conflicts. The TAT consists of a standard series of ambiguous, imaginatively stimulating visual images, generally in the form of photographs, drawings, or paintings, that are presented separately. The examinee is told to create a story for each picture. The examinee is further told that the story should be in four parts: (1) what is happening at the present time; (2) what led to that particular situation; (3) what are the thoughts and feelings of the characters involved in the story; and (4) how it will end or what the consequences will be. There is a standard set of 30 different pictures in the TAT. However, in matters of child custody, the psychologist may also use pictures of family interactions of a type relevant to the case. Most psychologists use the TAT to gather clues to the thoughts, feelings, impulses, and behavioral potentials of the examinee. The TAT has been criticized, though, for its lack of reliability and validity. Furthermore, it has been found that

¹⁴ Exner, *The Rorschach: A Comprehensive System* (John Wiley & Sons 1974).

when the examinee has an inhibited, constricted personality structure, the test results frequently tend to reveal this personality structure but not much more.

3. Children's Apperception Test (CAT). This is an animal-picture story test that was designed for use with children between the ages of three and 11. There are 10 pictures in all. The CAT is administered and interpreted in the similar manner as the TAT. It is believed that in child custody cases, it is especially important to allow children to express themselves on family life issues without necessarily making them speak directly to strangers, in an evaluative way, about their parents. Sometimes, a child's pain over divided loyalties can be avoided by focusing on external images of animal story characters, rather than on family members.

4. Bender-Gestalt Test. This test provides a means of assessing a person's visual-motor eye-hand integration and coordination. The Bender-Gestalt consists of a standard set of nine abstract and geometric shapes, drawn in black, and individually mounted on postcard-sized cards. As each card is given in a prescribed order to the examinee, the psychologist will instruct him or her to copy the shapes onto a single sheet of white paper, on which all of the figures are to be drawn. The examinee's drawings tell the psychologist how the test stimuli were perceived, organized, interpreted, simplified, distorted, added to, or otherwise handled.

5. Sentence Completion Test. In this test, the examinee is presented with "sentence stems," such as "I get angry when . . .," or "Father usually" The examinee is told to complete the sentence stems. Adults and children 12 years or older are usually given the test in written form, whereas younger children are given an oral test. Often, the psychologist will tailor selections of sentence stems to the needs of an individual case. In child custody cases, then, the psychologist will select items likely to reveal family life attitudes.

6. Drawing Test. In this projective technique, the psychologist obtains samples of drawings from the adults and children examined. The examinee is provided with pencils, erasers, and paper, and instructed to draw a picture of a whole person, and

then, to draw on the same piece of paper another person of the opposite sex. The psychologist may also ask the examinee to draw a house, a tree, a family, or that examinee's particular family. The drawings are used to estimate a person's intellectual level, or to determine a person's personality strengths, weaknesses, and problems. Family drawings are particularly helpful in examining the relationship dynamics. Drawing tests have been criticized for their lack of validity and reliability.

7. Word Association Test. Under this approach, the examinee is asked to respond with the first word that comes to mind when the stimulus word is read to him or her. The psychologist will usually select stimulus words based on the particular issues of the case. The responses are analyzed for clues to the examinee's thoughts, feelings, attitudes, values, and conflicts. Unusually slow or fast reaction-times, mental blockages (unable to respond), multiword responses, and unusual emotional displays may indicate that the examinee has "complexes" or disturbances. The test has been criticized because it does not provide sufficient material to describe the personality as a meaningful whole, and it provides indicia of emotional disturbance without indicating the nature of the disturbance. Thus, this test is not used frequently by psychologists.

8. Projective Questions Test. In this test, certain questions of an evocative nature are included in personality assessments of people, especially children. For instance, the examinee may be asked: What type of animal would you most like to be? Why? The psychologist will use the responses to this test as a means of raising issues and eliciting attitudes, and then use formal tests and/or interviews to analyze these issues and attitudes.

9. Diagnostic Play Observations. It is believed that young children, through their spontaneous play, will reveal to the trained observer as much or more than they do in formal interviews or structuralized tests. A psychologist may use this technique to form impressions of a child's mental, emotional, social, and other psychological characteristics and needs. Under this approach, the child is invited to use, as desired, any number of provided expressive play materials. Common

types of play materials used include dolls, doll houses, puppets, soldier and police toys, arts and crafts material, costume hats, and table-top games for solitary or competitive play. Critics of this approach caution against overinterpreting a given play episode, since the factors influencing a child's play remain to a large extent unknown, and children's play, like other behavior, can be altered if signs of approval or disapproval are displayed by the adult in charge. Thus, the psychologist must guard against "shaping" the child's play so that it confirms his or her suspicions or hypotheses. Prudence dictates that conclusions drawn from the diagnostic play be compared with the results of other tests administered to the child.

10. Rosenzweig Picture-Frustration Study. There are two forms of this test: one for children ages 4 to 13, and another for adolescents and adults ages 14 and over. Under this technique, the examinee is presented with a booklet of cartoons portraying frustrating social interactions. Usually, the "aggressor" is shown as having stated something to which the examinee must respond by writing in the words of the "victim." The psychologist analyzes the written responses for clues to how the examinee characteristically reacts to frustrating life experiences. The responses are classified in accordance with the type and the direction of the implied aggression. *Types of aggression* include, for example, "obstacle dominance" (when the focus is on the aggressing circumstance) and "ego-defensive" (when the focus is on the victim's suffering). *Direction of aggression* includes, for example, "extrapunitive," "externally-directed," or "self-directed." The examinee's percentages of the different types and directions of aggression are tabulated and compared with a norm. The examinee also receives a group conformity rating that compares his or her responses to the standardization sample's typical or "modal" responses. In child custody matters, the psychologist may also use individually-tailored cartoons portraying situations relevant to the case at hand.

11. Make A Picture Story Test. Under this approach, the examinee uses cardboard cut-out figures as actors against a stage background. The examinee is asked to dramatize a story

of his or her own choosing. The psychologist will record the story told, and, on a standard form, record the figures used and their stage placements. This test produces suggestive, not definitive, evidence of the examinee's mental, emotional, and behavioral potentials. The validity and reliability of this test also depends on the expert psychologist's clinical sensitivities and theories, rather than on any solid empirical data.

[iii] Objective Tests and Scales

Unlike projective tests in which "ambiguous" stimuli are used,¹⁸ objective tests and scales use "true" or "false" responses to questions. The examinee's responses are statistically compared to those of known diagnostic and other clinical samples. Three of the most common objective tests and scales used by psychologists include the following:

1. Minnesota Multiphasic Personality Inventory (MMPI, original test, and MMPI-2, revised 1989). The MMPI is the most widely used objective test for personality inventory. It was originally designed for persons aged 16 and older. The MMPI has norms that extend down to age 14, but the MMPI-2 has no norms for adolescents under age 18. The MMPI consists of 556 statements, printed either individually on cards or listed on a machine-scored or hand-scored answer sheet. The MMPI-2 has 557 statements. The examinee is asked to sort the cards, or, in the case of machine or hand-scored cards, to mark an answer sheet and indicate whether the statements, as they apply to the examinee, are "true," "false," or "cannot say." The statements involve many topics, including health, family, religious, and sexual attitudes, as well as emotional fears and problems. The test items are arranged for analysis into clusters so that separate scales are created. There are hundreds of scales used by psychologists. An especially noteworthy feature of the MMPI is a set of "validity" scales, which show the degree to which an examinee's MMPI responses result from carelessness, deficient reading ability, malingering, misunderstanding, and certain attitudes towards taking the test. There are also scales that examine a person's tendency

¹⁸ See [ii], above.

to try to present himself or herself in a favorable light. The interpretation of MMPI results also take into account the examinee's age and sex. Prudence dictates that psychologists be aware of the differences in cultural and subcultural background when interpreting an individual's MMPI profile.

2. Vineland Social Maturity Scale. The Vineland is a widely used behavior rating scale that assesses the social adjustment of individuals from infancy to 30 years of age. It is believed that it measures the abilities essential for social adequacy and occupational success. The test is scored on the basis of a number of structured interviews conducted with the examinee, or with the parent of the examinee when the child is extremely young. In child custody cases, it may be wise to ask a "neutral" adult, who knows the young child well, to serve as the informant for the child's Vineland rating. Parents involved in a child custody dispute will usually present views of their child that they believe will favor their case. The examinee is rated with a "Social Age" and "Social Quotient" (which is based on Social Age divided by chronological age), as well as individual ratings in such areas as self-help, communication, locomotion, and occupational behaviors.

3. Structured Pediatric Psychosocial Interview (SPPI). The SPPI is a technique for systematically sampling children's expressions of life concerns and emotional distress. The SPPI can be used to discover the messages children want to convey. It may be used with children and adolescents ranging in age from five to 19. The SPPI is distinct from other interviewing techniques in that there is a standard set of 50 question scenarios. While the direct responses of the children may be of value in identifying sources of stress, formal scoring of the responses provide additional clues as to how the children perceive and/or express their psychosocial distress. In the SPPI test booklet, there is a list of response alternatives below each question scenario. The psychologist decides which alternative best describes the child's statement. The child's total responses are compared to the overall responses of other children of the same age and the same sex who have been interviewed by a psychologist of a specific sex. The SPPI, therefore, is an objective test with established norms, which

allows the psychologist to compare a child's behavior in a number of areas to those of other children of the same age and sex. These areas include: the amount of fretfulness over family relationships, the child's ability to sustain selective attention, the degree of attachment to or detachment from his or her family, the child's competitiveness in relation to peers and siblings, the amount of confidence or uncertainty the child has regarding intellectual competencies, the child's resistance toward verbal disclosure or persuasion, the child's ability to remain composed in stressful situations, the level of a child's personal disenchantment, and the degree to which the child perceives injustice in life. In other words, the SPPI identifies how children feel, relate, and think.¹⁶ Findings in these areas are especially important in making recommendations in child custody cases.

§ 60B.21 Court-Appointed Psychologist

When the mental condition of a party, or of a person in the custody, conservatorship, or under the legal control of a party, is in controversy, the court may order the party to submit to a mental examination by a psychologist, or to produce for examination the person in his or her custody, conservatorship, or legal control.¹ For purposes of this rule, a *psychologist* is a person licensed or certified by a state or the District of Columbia as a psychologist.² In cases arising under Title II of the Family Code, the court, on its own motion or on the motion of a party, may appoint one or more psychologists to make any and all appropriate mental examinations of the children who are the subject of the suit or any other parties, irrespective of whether a psychologist has been listed by any party as an expert who will testify.³

Payment for psychological tests varies greatly from one jurisdiction to another. In most cases, the parties will have to pay for all or part of the tests.

¹⁶ Webb & Van Devere, *Structured Pediatric Psychosocial Interview* (Fourier, Inc. 1985).

¹ T.R.C.P. 167a(a)—amendment effective September 1, 1990.

² T.R.C.P. 167a(e).

³ T.R.C.P. 167a(d)(2).

For a detailed discussion of court-appointed experts, see § 60B.03[2]. For forms of a motion and order for a mental examination, see §§ 60B.11A and 60B.11B.

§ 60B.22 Psychologist Retained by Party

Unless the parties or the attorneys are familiar with a particular psychologist, the first step in selecting a psychologist is to seek referrals. Referrals can be obtained from other attorneys. Other sources of information include any local psychological association, a department of psychology at a leading university, or a local mental health or child guidance clinic.

The practitioner should also examine the psychologist's qualifications and training. In particular, the practitioner should find out whether the psychologist is licensed in Texas and whether the psychologist has experience in the psychological testing of adults and children.¹ Any psychologist who is certified but not licensed for independent practice must be supervised by a psychologist who is licensed. The licensed psychologist is the legally-responsible party in an evaluation that was made by a certified, unlicensed psychologist.

Additionally, the practitioner should find out whether the psychologist has prior court experience as an expert witness in child custody cases. If the psychologist has forensic training, in addition to the above qualifications, then he or she is well suited as an expert in a custody case.²

The practitioner should further understand and evaluate the psychologist's orientation, that is, what testing theories and techniques are used by the psychologist.³ If, for example, the psychologist favors only the use of projective tests,⁴ the practitioner may not want to retain the psychologist since these type of tests are highly subjective to the examiner, and the results are often disputed by other mental health professionals. It is

¹ See § 60B.20[2].

² See 3 CHILD CUSTODY & VISITATION LAW AND PRACTICE, ch. 22, *Effective Use of Psychologists*.

³ See § 60B.20[4].

⁴ See § 60B.20[4][b][iii].

suggested that the the practitioner request and review previous reports prepared by the psychologist in child custody disputes. The psychologist can omit the names to ensure the confidentiality of the reports.⁵

For a detailed discussion of experts retained by a party, see § 60B.03[3].

§ 60B.23 Interviews Conducted by Psychologist

[1] Interview of Child

The purpose of interviewing the child is to provide important psychological, educational, and social information that may not have been gathered when the child underwent psychological testing. One of the best ways to interview the child is to administer the Structured Pediatric Psychosocial Interview (SPPI).⁶ When a psychologist does not use a standardized interview, such as the SPPI, the psychologist often asks questions similar to those incorporated in the SPPI, and uses clinical judgment and experience to interpret the results rather than compare the child's responses to normative data. The following are some of the typical interview questions that the psychologist will ask the child:

1. Is your school work too difficult or too easy?
2. What would you like to become when you grow up?
3. What types of things bother you?
4. Is anyone in your family sick often?
5. Do you have any health problems?
6. Do you ever have any trouble controlling your feelings?
7. Do you hear or see things that are not really there?
8. What types of dreams do you have?
9. When was the last time you really felt upset?

⁶ See 3 CHILD CUSTODY & VISITATION LAW AND PRACTICE, ch. 22, *Effective Use of Psychologists*.

⁷ See § 60B.20[4][b][iii].

10. Does anyone ever hurt your feelings or your body?
11. Are there some bad times that you cannot forget?
12. Who is your best friend?
13. What do you like to do when you are not in school?
14. Who lives at your house now?
15. Do you ever think of leaving home?
16. What would you like to do that your parents will not allow you to do?
17. What jobs do you have to do at home?
18. What types of things make you feel happy?
19. Who seems upset the most in your family?
20. Have you ever thought about hurting yourself?

When interviewing adolescents, it is often helpful to have them complete a Personal Problems Checklist for Adolescents (PPC). Their responses to the PPC can be used to gather more information regarding areas that trouble them, and they may be significant in making a custody recommendation. The PPC contains 240 potential problem areas to be explored, among which are (1) the adolescent's self-concept and social comfort, (2) family and parental problems, (3) school, financial, and moral issues, and (4) dating, sexual, and health concerns. Vocational issues and personal crises should all be addressed during the interview with an adolescent involved in a custody situation.

[2] Interview of Parent

The purpose of interviewing the parent is to assess the parent's emotional stability and the degree to which he or she has the ability to be the primary caregiver. Interviewing can best be facilitated by administering and then interpreting a battery of objective personality tests completed by the parent. More than one test should be given to ensure that there is agreement regarding the presence or absence of important personality traits. Whereas tests like the MMPI-2 can be

effective in assessing emotional stability,² tests such as the Edwards Personal Preference Schedule (EPPS) should also be given to identify normal personality traits that may be complementary and/or a desired match to those of the child whose custody is to be determined.

Scoring of the MMPI-2 produces critical items that may require further explanation and/or clarification by the parent being interviewed. For example, if the parent indicates that he or she has made many bad mistakes in his or her life, the psychologist will want to explore the basis of this response during the parent interview.

Having the parent complete a Childrens' Problems Checklist (CPC) helps to identify how the parent perceives the child whose custody is to be determined. The CPC can be used as an outline during the interview to explore how the parent addresses problem situations.

Most psychologists also like to gather information during the interview regarding the parent's own childhood, educational background, financial stability, personal interests, and knowledge of and position regarding various child rearing approaches. The stability of the parent's personal lifestyle and his or her current physical health will also be covered during the interview.

§ 60B.24 Psychologist's Report

After the interviews and tests are completed and evaluated, the psychologist will write a psychological testing report for the court's review. Sometimes, the psychologist will confer with other mental health professionals before writing the report. In order for the report to be convincing in court, it should be as objective as possible and clearly written towards the best interests of the child involved in the custody dispute. If projective techniques were employed and corroborating evidence can be found in an objective test and/or the interview, then the report should state and explain this finding. Otherwise, on cross-examination, the psychologist's report

² See § 60B.20(4)(b)(iii).