

Atlanta Bar Association Presents:

“Therapeutic Justice: Attorneys and Psychologists Working Together”

HOT TIP: Sometimes, all you need is a fitness evaluation.

RANDALL M. KESSLER

KESSLER | SCHWARZ, P.C.
ATTORNEYS AT LAW

**SUITE 3500, CENTENNIAL TOWER
101 MARIETTA STREET
ATLANTA, GEORGIA 30303
404-688-8810**

WWW.KESSLERSCHWARZ.COM

We all know that when we ask for the opposing party to be evaluated by a psychologist, the normal, natural reaction for the judge is to say “why don’t we just have everybody evaluated”. This, of course, allows the Court to feel it is acting in a more neutral fashion and is not prejudging any person. However, it is our job to explain to the Court that sometimes you just don’t need a full custody evaluation. We must explain this to the Court (and we may need to do it over and over until we change the mind set of judges). A custody evaluation is a completely different animal than a fitness evaluation. There are certain occasions when as a preliminary matter, the Court should investigate whether a person is fit to even have custody or be alone with the child. In these circumstances where there is obvious evidence that such an investigation is warranted, we must remind the Court that the cost of a fitness evaluation is much less than the cost of a full blown custody evaluation. The Court can certainly let everyone know that it is not prejudging anything, but that based on whatever conduct has been explained to the Court, that a fitness evaluation can only help everybody. It will either clear the party and the other party’s concerns, or it will tell the Court that the concerns are legitimate and warrant further investigation.

The most important part of our argument is to explain to the Court that the fitness evaluation is because the other party has some real issues and that there have been no such issues raised against your own client. Further, to subject your own client to a custody evaluation together with the child, will usually triple if not quadruple the cost and will raise investigation into areas where they may not be necessary. A full blown custody evaluation is more of a balancing test about which parent is better for the child; whereas a fitness evaluation is simply a determination whether that one parent is fit to take care of the child without regard to the amount of time or vis a vis the other parent. We also all know that sometimes when we seek a psychological evaluation of the other party, we learn things about our own client which psychologists can either blow out of proportion or can raise for the first time, even though the other side had no concerns regarding those issues.

Fitness evaluations, not custody evaluations, are less expensive, can be done in a quicker period of time, and can sometimes resolve a case instantaneously, be it by proving that the other party is not fit, or conversely, clearing the other party so that there is no concern about their ability to be alone with the child or children. Just a thought, consider it in the future.