



## Psychiatry & Behavioral Science Section - 2016

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### I43 Empirical Survey in the Italian Courts

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The goal of this presentation is to define the standards and good procedures in order to consider the opinion of the expert valid and reliable on the basis of empirical evidence.

This presentation will impact the forensic science community by minimizing the discretionary power of each expert and providing all the people involved in the juridical context with professional standards.

The case of child custody litigation is governed by the Italian Law 54/2006 concerning *joint custody*, according to which the minor has the right to maintain an impartial and continuative relationship with each parent, to receive care, upbringing, and education by both parents, and to maintain a significant relationship with ascendants and relatives of both parental branches. In case of litigation, considering that parents are unable to agree on the custody of the children, the judge may have recourse to have collaboration of an Expert Witness (EW); an expert able to evaluate parenting skills and risk and protection elements concerning the entire family unit. The EW, by means of an explicative report written on the basis of clinical interviews and instruments of psychodiagnostic assessment, provides an opinion on parenting skills and on the appropriate method of custody; however, shared standards and good procedures currently need to be defined in order to consider the opinion of the expert valid and reliable, on the basis of empirical evidence.

The present qualitative-quantitative exploratory research begins from the previously mentioned statements. The sample, which consisted of 116 files established at the first instance by the courts in Velletri, Italy, and Viterbo, Italy, was randomly chosen and refers to the period of 2003-2014. The files were chosen from documents which met the following requirements: legal proceedings of judicial separation of a husband and wife concerning a minor's custody and an EW was required to evaluate parenting skills beginning from 2006 (in other words, after the Law 54/2006 concerning joint custody came into being). The objective was to examine the method used by the EWs and to investigate the criteria adopted by the judge in the final decision.

A survey was performed by using an ad hoc analysis form divided into specific macro-areas: (1) personal data; (2) legal proceedings; (3) method adopted by the EW; and, (4) the final decision of the judge. The analysis of the data regarding the method adopted by the EWs reveals that most mechanisms were used to evaluate the personality of both parents and minors. In this regard, relational dynamics in the family unit lost their importance and therefore the EW method strayed from the primary field of research, specifically parenting skills. The assessment was supported by audio/video recording only in a few cases. The two most-used scientific criteria applied to evaluate parenting skills were the access criterion (30%) and the criterion of the psychological parent (29%). In 63% of the EW cases, according to Law 54/2006, joint custody was considered the best solution. In most cases, the final decision of the judge is in line with the conclusions drawn by the designated expert. Since the opinion of the EW plays a large role in the formulation of the final decision, it is clear that unambiguous guidelines are needed to minimize the discretionary power of each expert and to provide everyone involved in the juridical context with professional standards. The final goal is, therefore, the possibility of playing each role in a responsible manner, both professionally and morally, in order to guarantee the execution of the parental role in the exclusive interest of the minor.

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#### **Child Custody, Litigation, Parental Skill**