

**Characterization and operationalization of psychological expertise in custody dispute processes****Caracterização e operacionalização de perícias psicológicas em processos de disputa de guarda****Caracterización y operacionalización de las pericias psicológicas en procesos de disputa por custodia**

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Documentary and retrospective study, with mixed methods, carried out between January and May 2018, considering the period from 2008 to 2017, in notary offices in the state of Rio Grande do Sul, Brazil, in order to characterize the psychological expertise in custody disputes in Family Courts. Descriptive statistics and thematic content analysis were used. Seven notary offices (of the 29 contacted), 45 processes and 54 psychological reports were considered. The cases analyzed involved 156 people, 53 plaintiffs, 49 defendants and 54 minors. Of the main results, expert psychologists interviewed the plaintiff in 87.03% of cases and the defendant in 79.62%. Of the children, 81.48% were evaluated; the use of a playful interview was mentioned in 18.18%, and in 81.82% of children's interviews, the evaluation technique was not described. The following categories emerged from the conclusions, court decisions and referrals: a) *Procedures and methods used in the assessment* (number of meetings for assessment, people included in the assessment, psychological instruments used); b) *Conclusions, position of the professional psychologist and agreement with the magistrate*. Results indicated that: a) there is no uniformity between the aspects to be evaluated; b) interview was the most used psychological technique; and c) there is agreement between the appointment of the expert psychologist and the decision of the magistrate. The analyzed psychological skills differ in terms of how they are operationalized.

**Descriptors:** Expert testimony; Interview, Psychological; Practice, Psychological; Justice administration system.

Estudo documental e retrospectivo, com métodos mistos, realizado entre janeiro a maio de 2018, considerando o período de 2008 a 2017, nos cartórios no estado do Rio Grande do Sul, com objetivo de caracterizar as perícias psicológicas em processos de disputa de guarda em Varas de Família. Utilizou-se estatística descritiva e análise de conteúdo temática. Considerou-se sete cartórios (dos 29 contatados), 45 processos e 54 laudos psicológicos. Os processos analisados envolveram 156 pessoas, sendo 53 autores, 49 réus e 54 menores. Dos principais resultados, os peritos psicólogos entrevistaram o autor em 87,03% e o réu em 79,62%. Das crianças, 81,48% foram avaliados; em 18,18% foi mencionada o uso de entrevista lúdica, e, no caso de 81,82% das entrevistas infantis, não foi descrita a técnica de avaliação. Nas conclusões, decisões judiciais e encaminhamentos emergiram as seguintes categorias: a) *Procedimentos e métodos utilizados na avaliação* (número de encontros para avaliação, pessoas incluídas na avaliação, instrumentos psicológicos utilizados); b) *Conclusões, posicionamento do profissional psicólogo e concordância com o magistrado*. Os resultados indicaram que: a) não há uniformidade entre os aspectos a serem avaliados; b) entrevista foi a técnica psicológica mais utilizada; e c) há concordância entre a indicação do perito psicólogo e a decisão do magistrado. As perícias psicológicas analisadas divergem em relação à forma como são operacionalizadas.

**Descritores:** Prova pericial; Entrevista psicológica; Prática psicológica; Sistema de justiça.

Estudio documental y retrospectivo, con métodos mixtos, realizado entre enero y mayo de 2018, considerando el período de 2008 a 2017, en oficinas de registro del estado de Río Grande do Sul, Brasil, con el objetivo de caracterizar las pericias psicológicas en los procesos de disputa de custodia en los Tribunales de Familia. Se utilizó la estadística descriptiva y el análisis de contenido temático. Se consideraron siete oficinas (de las 29 contactadas), 45 procesos y 54 informes psicológicos. En los procesos analizados participaron 156 personas, siendo 53 demandantes, 49 demandados y 54 menores. De los principales resultados, los peritos psicólogos entrevistaron al demandante en un 87,03% y al demandado en un 79,62%. El 81,48% de los niños fueron evaluados; en el 18,18% se mencionó el uso de la entrevista lúdica, y en el caso del 81,82% de las entrevistas a niños no se describió la técnica de evaluación. En las conclusiones, decisiones judiciales y remisiones surgieron las siguientes categorías: a) *Procedimientos y métodos utilizados en la evaluación* (número de reuniones para la evaluación, personas incluidas en la evaluación, instrumentos psicológicos utilizados); b) *Conclusiones, posicionamiento del profesional psicólogo y acuerdo con el magistrado*. Los resultados indicaron que: a) no hay uniformidad entre los aspectos a evaluar; b) la entrevista fue la técnica psicológica más utilizada; y c) hay acuerdo entre la indicación del perito psicólogo y la decisión del magistrado. Los exámenes periciales psicológicos analizados difieren en relación con la forma de operacionalizarlos.

**Descritores:** Testimonio de experto; Entrevista psicológica; Prática psicológica; Sistema de justicia.

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## INTRODUCTION

**P** psychological expertise (PE), in general, has a similar structure to the psychological assessment performed in clinic. However, it has its particular characteristics, such as: a) it is deliberated by the judicial system, with a specific direction (reading of the lawsuit, identification of parties, demand, relevant issues and questions presented); b) the time for reviewing the hypotheses is shorter, as the time for the judicial psychological assessment process is restricted; c) its nature is mandatory, and the individual may present resistance to the assessment and not be collaborative (the individual may, intentionally, simulate or hide about the assessed situation); d) the psychologist is seen as part of the judicial system, and is not there to help, causing greater emotional distance between the pair of evaluators and experts; and e) the interpretation of the results of the psychological instruments and techniques takes place based on the data collected, the records of the lawsuit and the expert interview, culminating in the writing of the psychological document, which aims to answer the question that originated the expertise<sup>1-3</sup>.

Currently, PE is requested in processes of adoption, interdiction, custody dispute, regulation of visits and mediation, with a view to assisting the judge in decision making<sup>4</sup>. The professional appointed as an official expert has up to 15 days to excuse themselves from the position, arguing a legitimate reason for rejecting the realization of PE. If not, the professional is urged to carry out the assessment<sup>5</sup>. Exemption from the charge must be alleged for a legitimate reason.

There is no deadline for the delivery of the psychological report by the official expert, unless this is indicated by the judge when appointing the expert psychologist. It is customary to schedule the interview for 45 days after the court summons so that the procedural steps are fulfilled. Terms range from 20 to 90 days; however, the document must be delivered at least twenty days before the court hearing<sup>5</sup>.

In cases of custody dispute, the quality of the relationship between the parents and their ability to meet the child's needs must be evaluated, as well as whether the guardian can promote health, safety and education to the child and/or adolescent. It is imperative that parents are able to override their children's well-being at the expense of mutual resentments and personal disagreements. The PE aims to indicate which of the parties is the most suitable to take the role of guardian, suggesting unilateral or shared custody<sup>6</sup>.

In unilateral custody, only one parent has legal authority over the children; however, the other parent must supervise and support the guardian parent. The shared custody, on the other hand, must be divided between the parents, to provide for the two guardians in an equivalent way<sup>7</sup>. However, as a condition for the exercise of joint custody, there must be an agreement between the parents regarding the arrangement of the children's needs<sup>6</sup>.

In PE, a psychological report is issued, which should contribute to decision making, answer the question asked by the magistrate, present diagnostic hypotheses and plan interventions more effectively. The elaboration of the psychological document emphasizes the psychologist's competence in their practice, using their understanding to act in the exercise of legal psychology<sup>2,8,9</sup>.

The psychologist in the legal environment will never have a final decision, but give indications and notes whenever a subjective understanding of the subject is necessary. The decision-making power belongs only to the magistrate, however, it is essential for the professional psychologist to be able to carry out their observations<sup>2-5</sup>. Its role is to point out in a systemic way the context in which the subjects involved in the conflict situation are inserted, aiming at an understanding of the family dynamics<sup>7,10</sup>.

PE is a primordial practice that seeks the benefit of the individual or groups. If performed improperly, it can cause irreparable damage<sup>12</sup>. There is no specific resolution that contemplates the realization of the PE, clearly in the steps to be carried out by the psychologist. The Brazilian Federal Council of Psychology (FCP) presents two resolutions that guide the work of expert

psychologists<sup>2-13</sup>, but does not specify how PE should be carried out. Thus, it is carried out according to the knowledge and training that the psychologist obtained during graduation. Most of the time, it is performed as a clinical psychological assessment, a common mistake<sup>14</sup>.

Thus, the present study aimed to characterize the psychological expertise in custody disputes in Family Courts.

## METHODS

Documentary and retrospective study, carried out between January and May 2018, considering notary offices in the state of Rio Grande do Sul, about the custody disputes selected by the servers of each Family Court Notary, after authorization from the responsible magistrates of each Forum, who also indicated a place to carry out the data collection.

The inclusion criteria used were: a) lawsuits involving custody disputes in the period between 2008 and 2017; b) lawsuits with a final court decision; and c) files containing psychological reports issued by expert psychologists appointed by the magistrates.

A Data Recording Protocol for Dispute of Custody Lawsuits was used to properly record the data of the processes and the PEs, namely: a) process data (reason for referral, date of initiation of lawsuit, date of appointment of the expert ); b) procedures adopted in the PE and information about the psychological report; c) data on the litigant parties and children; d) conclusion and forwarding of the PE; and e) conclusion of the magistrate regarding the PE. Data extraction from each process was performed by two independent researchers, previously trained, considering a third in cases of divergence.

Data analysis was performed in a mixed way. Quantitative data were analyzed using mean, standard deviation and frequency, using the following information: process data, procedures adopted in the expertise, information on the psychological report and data on the litigant parties and children. For the qualitative analysis, we used data such as conclusion and referral (expert psychologist-judge) by the comprehensive sampling method<sup>15</sup>. Conclusions, court decisions and referrals were categorized according to content analysis<sup>16</sup>.

The project was approved by the Research Ethics Committee of the Pontifícia Universidade Católica do Rio Grande do Sul, under the No. CAAE 81091317.2.0000.5336.

## RESULTS

Twenty-nine notary offices were considered, but only seven consented to the research.

Initially, 77 cases were evaluated, and of these, 45 were selected. In turn, 54 psychological reports were analyzed, as in some disputes, more than one evaluation was carried out. Of these processes, six (13.33%) had a second evaluation, and one (2.22%) had a third evaluation. The cases analyzed had a start date range from February 2008 to May 2017. Among the cases analyzed, the average time from the beginning of the process to the appointment of the official expert was  $M=605.64$  days ( $SD=472, 57$ ). Its amplitude ranged from 50 to 1782 days, that is, from a month and a half to almost five years for the psychologist's first intervention in the custody dispute to take place.

Among the 54 psychological reports analyzed, 33 (61.11%) did not have a record of the start date and end date of the expert psychological assessment. Therefore, the data presented here regarding the execution time of the evaluation process refer to the other 21 (38.88%) processes. In addition, from the appointment of the psychologist to the end of the process with the delivery of the psychological report, the professional took an average of 90 ( $SD=82.74$ ) days to carry out and complete the evaluation process. The average time for preparation and delivery of the report, after completion of the evaluation process was 24 days ( $SD=41.47$ ). Most files did not have information on the number of interviews. Of the 54 expert reports analyzed, in 16 (29.62%) there was a record of non-attendance by the parties involved, 11 (20.37%) of

which were attributed to the defendant, four (7.40%) to the plaintiff and one (1, 85%) to the child.

The cases analyzed (No.=45) involved 156 people, being 53 plaintiffs, 49 defendants and 54 minors. Psychologists interviewed the plaintiff in 47 (87.03%) assessments. In 43 (79.62%) interviews, the defendant was evaluated and, in 1 (1.85%) case, the evaluation was not mentioned. In the evaluation of children, 44 (81.48%) minors were evaluated. In 8 (18.18%) assessments with minors, the use of a interview with a ludic approach was mentioned. In the remaining 36 (81.82%) child interviews, the technique used in the evaluation was not found.

Among the most used instruments and techniques, the use of interviews is highlighted as the most used tool in PE, and the application of combined techniques and instruments. The ludic interview and graphic tests were more frequent with minors, and the more structured and psychometric practices were applied to plaintiffs and defendants. Among the main aspects evaluated, the evaluation of personality and psychodynamic aspects stood out. The techniques used and their respective concepts can be seen in Table 1.

The other items evaluated were less recurrent and were evaluated with specific instruments for each category: a) Parenting styles; b) Intelligence factor; c) Levels of self-concept and d) Quality of the relationship between parents and children.

**Table 1.** Assessments by expert psychologists in custody disputes. Rio Grande do Sul, 2018.

Aspects evaluated	Authors	Defendants	Minors	Total	%
Personality	22	20	29	71	63.97
Family dynamics	0	1	17	18	16.21
Psychodynamics	0	2	7	9	8.12
Ludic interview	0	0	5	5	4.50
Parenting styles	1	0	3	4	3.60
Intelligence factor	1	1	0	2	1.80
Levels of self-concept	0	0	1	1	0.90
Quality of relationship between parents and children	0	1	0	1	0.90

Among the processes analyzed, 30 (66.67%) showed agreement between the expert psychologist's recommendations and the judge's decision on the custody of the minor. The minor's fixed residence was obtained in 31 (68.89%) of cases; and the regulation of visits occurred in 18 (40%) of disputes. The other indexes of agreement and disagreement between the expert psychologist's recommendations and the judge's decision can be seen in Table 2.

**Table 2.** Agreement on expert recommendations and judges decision. Rio Grande do Sul, 2018.

	Frequency	%
<b>Custody decision</b>		
The judge follows the expert psychologist's recommendation	30	66.67
The judge does not follow the expert psychologist's recommendation	7	15.56
The psychologist's decision does not appear	5	11.11
The judge's decision does not appear	3	6.67
<b>Fixed residency</b>		
The judge follows the expert psychologist's recommendation	31	68.89
The judge does not follow the expert psychologist's recommendation	6	13.33
The judge's decision does not appear	2	4.44
The psychologist's decision does not appear	5	11.11
There are no recommendation for both	1	2.22
<b>Visit regulation</b>		
The judge follows the expert psychologist's recommendation	18	40.00
The judge does not follow the expert psychologist's recommendation	1	2.22
The judge's decision does not appear	4	8.89
There are no recommendation for both	10	22.22
The psychologist's decision does not appear	12	26.67

The following categories emerged from the conclusions, court decisions and referrals: a) *Procedures and methods used in the assessment* (number of meetings for assessment, people

included in the assessment, psychological instruments used); b) *Conclusions, position of the professional psychologist and agreement with the magistrate.*

## DISCUSSION

### ***Procedures and methods used in the assessment***

Personality was taken into account by the concept presented in the House - Tree - Person (HTP)<sup>17</sup> test. The definitions of family dynamics, psychodynamics and ludic interview (choice of toys and games; toy modality; motricity; personification; creativity; symbolic capacity; tolerance to frustration and adaptation to reality) were considered based on the concepts brought up by Cunha<sup>18</sup>.

It could be seen that the analyzed PEs differ in relation to the way they are operated, especially in terms of time used, number of people evaluated, techniques used, aspects evaluated and content of the psychological report. An explanatory hypothesis for this finding would be that there is no requirement for a specific training of the psychologist to act as an expert; in itself, each professional conducts PE in a different way. Resolution No. 8/2010 of the Brazilian Federal Council of Psychology showed a great advance in the area of Legal Psychology; however, there are still issues in the particularities required in the expert assessment<sup>2,19</sup>. Most of the time, a clinical evaluation is carried out, which can lead to errors in the court decision, which can discredit the information presented<sup>20</sup>.

The PE's proposal is to investigate and verify the facts narrated in the judicial process, allowing for compromise, community security and guarantee of rights<sup>2,21,22</sup>. This is different from the assessment carried out in the clinical context, when the psychologist works with the individual's symptoms, with the purpose of helping them, supporting them in coping and, often, in living with the symptom<sup>22</sup>. Assessments in custody dispute processes must determine whether the biopsychosocial development of minors is being satisfactorily met, as well as whether negligence, abuse or any other form of non-compliance with the children's basic needs has occurred. This verification can be carried out through interviews with third parties who participate in the daily lives of those involved<sup>2</sup>.

The average time for referral to PE with a professional psychologist-expert proved to be extensive, which, consequently, increases the time for completion of the expertise and delivery of the psychological report. This delay can be a detrimental factor to the psychological assessment process, as the time elapsed since the start of the litigation is significant, and may generate a demand other than that brought about at the beginning of the legal process. The prolonged time may result from the need for a prior assessment conducted by social workers, since, in most of the analyzed processes, the social assessment took place before the request for PE<sup>23</sup>.

The average number of sessions carried out for the evaluation of the parties involved in the judicial process of custody dispute is a service with varying duration. This data is corroborated by other studies, which indicate that most experts perform the expert analysis in a single session lasting approximately two hours of interview<sup>11,24</sup>. It is suggested to increase the number of interviews so that the hypotheses are better verified, however, respecting an adequate time to complete the entire process.

The technique used to assess individuals diverged significantly. The psychological interview, applied by itself, was the most used, without the additional application of psychological instruments, validated by the Psychological Testing Assessment System (SATEPSI). Studies suggest the use of the application of psychological tests to reduce the probability of simulation and dissimulation of the individual during PE, in addition to providing technical support; however, it is not seen as mandatory in the evaluation process, being a choice of the professional<sup>1,10,19,21</sup>.

Among the PEs that used psychological tests, the projective-graphic test HTP was the most used to assess personality aspects and psychopathological signs. In Brazil, most

psychological tests and instruments used in legal evaluations were not developed for the legal sphere. With that, the results obtained through them must be adapted for the judicial purpose<sup>1</sup>.

The materials and methods used in PE must be able to measure aspects of personality, cognition, dynamics and affectivity of the individuals evaluated<sup>25</sup>. In addition, it is suggested to evaluate the mother-child and father-child interaction, to verify the family relationship. In this context, the parents and children/adolescents involved in the legal process should be summoned for expert analysis - in addition to family members or close people - to verify clarification on the facts and characteristics of the expert, a fact not observed in some of the analyzed processes<sup>26,27</sup>.

The plaintiff and the defendant were not evaluated in some analyses, despite the fact that it is a custody dispute, when, generally, the parents are involved as plaintiffs or defendants. However, it is believed that, in this context, the interview should be carried out both with the plaintiff and with the defendant, seeking confirmation or rejection of the hypotheses, always paying attention to the litigation that occurs between parents, protecting the minor from the parents' displeasure<sup>27</sup>.

Regarding minors, it was found that children were not heard in most of the assessments. This data contradicts a research that claims that the child interview is a technique and a necessary procedure for a quality PE. It must follow a ludic path and be the least traumatic as possible, considering the age of the assessed child, as well as their understanding of the expert situation<sup>3,28</sup>. It is also suggested to record or film the interview<sup>3,29</sup>.

### ***Conclusions, position of the professional psychologist and agreement with the magistrate***

There was a consensus between the psychologists' appointment of custody and the judges' decision in more than half of the cases analyzed. Regarding the regulation of visits, the magistrate followed the expert-psychologist's recommendation in less than half. On the other hand, magistrates followed the indication of fixed residence in more than half of the cases. Investigation points out that expertise can be useful for the decision of judges, if they respond to the requested demand, being a fundamental element to assist in the final decisions of judges<sup>29</sup>.

In a significant number of documents, there was no position and indication of custody. In a research carried out, the dissatisfaction of magistrates regarding the inconsistency of documents was demonstrated. A possible explanation for this finding would be that there is difficulty on the part of the expert psychologist to operationalize the analysis, especially in selecting techniques that help to answer the questions. However, it should be remembered that when an expert is appointed to carry out an evaluation, an expert is consulted on a subject in which the magistrate does not dominate, and must then take a stand<sup>25,29</sup>.

Operationalization of psychological expertise in custody dispute is suggested. Starting with the reading of the judicial process (data collection, formation of hypotheses, identification of demand and questions to be answered), evaluation planning (preparation of the place for evaluation, separation of instruments and techniques to be used), execution of the process evaluation (initial contract, interview, application of instruments and techniques), survey and interpretation of collected data, writing of the psychological report, and thus, the delivery of the psychological report according to current resolutions and complementation of the report.

## **CONCLUSION**

This study provided the opportunity for the analysis of psychological reports, identifying the lack of operationalization of PEs held in Family Courts in custody dispute, and the lack of training of psychologists who work in the field of legal psychology.

Psychologist-experts use interviews and projective tests without criteria for selecting what should really be evaluated in a custody dispute process, such as the father-or-mother-child relationship. This finding indicates the need for greater training of psychologists who

work in the judicial system in general with regard to ethical, theoretical and technical qualification. Although the need for professional specialization to work as a legal psychologist is provided for by law, this requirement is still not perceived in practice.

As limitations, we point out: difficulty in accessing judicial processes, as well as the reduced adherence of the Family Court Notaries. Furthermore, there is still a restriction on empirical studies that specifically assess the custody dispute process for theoretical foundation. On the other hand, despite these limits, this work shows gaps, thus suggesting further studies in the area of expertise of expert psychologists in relation to custody disputes.

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**Daiana Meregalli Schütz, Daiane Oliveira Hausen, Dalton Breno Costa** contributed to the design, collection and analysis of data and writing. **Raquel Alifredi Paulachi** and **Tatiana Quarti Irigaray** participated in data analysis, writing and reviewing.

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