

The Revised MMPI-3 and Forensic Child Custody Evaluations: A Primer for Family Lawyers

by
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INTRODUCTION

The Minnesota Multiphasic Personality Inventory (MMPI) is the most frequently used objective psychological test of personality, with many adherents and critics.¹ As the MMPI was increasingly used in child custody evaluations to evaluate parental capacity or fitness, the debate about the scope and application of the test became the source of disagreement among forensic psychologists, including articles recently published in this Journal.² This article, however, is not an attempt to resolve that debate since it is unlikely to be resolved any time soon. Assuming the criteria for qualification and admissibility of forensic expert opinion, and the use of testing data, meet state law requirements,³ the

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¹ See Edward Helmes & John R. Reddon, *A Perspective on Developments in Assessing Psychopathology: A Critical Review of the MMPI and MMPI-2*, 113 PSYCHOL. BULL. 453, 467 (1993) (“For those who were critical of the original MMPI, the commonality of MMPI-2 with the original will bar its acceptance. For devotees of the MMPI, much that is new will be welcomed, and some that has been changed will be mourned.”).

² See Benjamin D. Garber & Robert A. Simon, *Individual Adult Psychometric Testing and Child Custody Evaluations: If the Shoe Doesn’t Fit, Don’t Wear It*, 30 J. AM. ACAD. MATRIM. LAW. 325 (2018); Sol R. Rappaport et al., *Psychological Testing Can Be of Significant Value in Child Custody Evaluations: Don’t Buy the Anti-Testing, Anti-Individual, Pro-Family Systems Woozle*, 30 J. AM. ACAD. MATRIM. LAW. 405 (2018).

³ Federal and state courts have regularly approved of these tests as meeting the reliability prong of the *Daubert* test. See, e.g., *Jacquety v. Baptista*, 538 F. Supp. 3d 325, 372 (S.D.N.Y. 2021) (“Also of little significance, Petitioner faults Dr. Cling for not administering a test known as the MMPI to assess whether Geraldine was malingering, even though Petitioner’s questioning acknowledged that the MMPI is only “sometimes” used for that purpose. And Dr. Favaro tentatively testified that the MMPI “can contribute to the tool set” and

MMPI remains an accepted means of data collection for forensic evaluations in child custody cases.⁴

The purpose of this article, therefore, is to provide family court attorneys with information concerning the newest version of the MMPI, abbreviated as the MMPI-3. The MMPI-3 is principally coauthored by Yossef Ben-Porath and Auke Tellegen, and is a 335-item self-report inventory, and an immediate revision of the MMPI-2-RF.⁵ Although the MMPI-3 is a very similar inven-

“could have been useful,” but did not say that Dr. Cling’s decision not to use it nullified her methodology or her conclusions.”); *United States v. Ganadonegro*, 805 F. Supp. 2d 1188 (D. N.M. 2011) (accepting the expert’s use of the MMPI and the Rorschach tests as methodologically reliable); *Stokes v. Xerox Corp.*, No. 05-71683, 2008 WL 275672, at *11 (E.D. Mich. Jan. 28, 2008) (rejecting the argument that the expert’s methodology was unreliable under *Daubert*, and finding that “the MMPI consists of data that is reasonably relied upon by experts in psychiatry in forming opinions”) (internal quotation marks and citation omitted).

⁴ See, e.g., *In re K.L.R.*, 162 S.W.3d 291, 304 (Tex. 2005) (“According to Burress, she administered the Minnesota Multiphasic Personal Inventory (“MMPI”) to Carla. Burress agreed that the MMPI provides several sources of behavior and symptomatic hypotheses about the person taking the test. Further, she conducted an interview with Carla and observed K.L.R. at home, at her office, and at school. Nowhere does Burress state that her testimony properly relied upon and/or utilized principles involved in her field.”). The court noted that under Texas law,

Where, as here, the trial court must address a field of study aside from the hard sciences, such as the social sciences or a field based primarily upon experience and training as opposed to the scientific method, the requirement of reliability applies but with less vigor than to the hard sciences.

Id. at 303. The court went on to state that,

Burress described her qualifications, stated her opinions regarding K.L.R. and Carla, and related the bases of her opinions. Burress testified that she had a bachelor’s and master’s degree in counseling and a doctorate in counseling and student personnel guidance. Nowhere did Burress state that counseling is a legitimate field nor can such a statement be implied from her testimony.

Id.

⁵ The internal debates among psychologists concerning the MMPI remains robust. See Yossef S. Ben-Porath & Auke Tellegen, *Leone, Mosticoni, Ianella, Biondi, and Butcher’s (2018) Effort to Compare the MMPI-2-RF with the MMPI-2 Falls Well Short*, 8 ARCHIVES ASSESSMENT PSYCHOL. 23, 28 (2018) (“This body of peer-reviewed MMPI-2-RF research, coupled with the unparalleled quantity and quality of empirical correlate data reported in the Technical

tory to the MMPI-2-RF, the MMPI updates include its normative data, as well as improved items, and improved scales. Attorneys need to understand the strengths and limitations of the MMPI-3 in the context of forensic parenting evaluations and how the new version may apply to clients and courts. Part 1 provides a history of the MMPI. In Part II, the article describes the new features of the MMPI. Part III addresses *Daubert* criteria. Part IV addresses the controversy of using psychological testing in family court evaluations, while Part V specifically addresses the use of the MMPI-3 in family court evaluations. The article closes with challenges to the MMPI-3.

I. History

The MMPI was developed by Starke Hathaway and J. Charnley McKinley with the goal of obtaining more accurate diagnoses of hospitalized patients.⁶ Yet their diagnostic system was very different from the contemporary model. The authors were guided by a Kraepelinian descriptive diagnostic classification system.⁷ The key to the original MMPI was the authors' focus on comparing a patient's answer to groups of patients who answered in a similar manner. Although the authors used empirical keying to create eight clinical scales, the scales did not perform as planned. Instead of a straightforward analysis of elevated scores equating to specific diagnoses, the research eventually demonstrated that the MMPI was best used by examining empirical correlates to scales and profile configurations.

Manual provides a comprehensive and modern empirical foundation linking the MMPI-2-RF to contemporary concepts and constructs in the fields of personality and psychopathology, and it can guide use of the inventory in empirically informed and conceptually grounded interpretation. Nothing comparable is available for the MMPI-2.”).

⁶ See Starke J. Hathaway & J. Charnley McKinley, *A Multiphasic Personality Schedule (Minnesota): I. Construction of the Schedule*, 10 J. PSYCHOL. 249 (1940). For a summary of the MMPI's history, see Robert C. Colligan, *History and Development of the MMPI*, 15 PSYCHIATRIC ANN. 524 (1985).

⁷ Kraepelin was guided by observations, which worked in many practical applications. However, there was also a focus on “natural entities” which has not aged well. See Hannah S. Decker, *How Kraepelinian Was Kraepelin? How Kraepelinian Are the Neo-Kraepelinians?—From Emil Kraepelin to DSM-III*, 18 HIST. PSYCHIATRY 337 (2007).

A new normative sample led to the MMPI-2 in the 1980s. The MMPI-2 maintained the original clinical scales to preserve the research and clinical familiarity of the inventory.⁸ The MMPI-2 had 167 scales, many of which psychologists did not focus on.⁹ The MMPI-2 was updated and restructured in 2008 with the MMPI-2-RF.¹⁰ This 2008 version did not have new norms and it maintained the original item content. Yet, the item content was more efficient since it was trimmed from 567 items to 338 items. A few major changes included improved psychometric properties, nongendered norms, and the integration of new, still groundbreaking models of psychopathology.

II. New Features of the MMPI-3

A. *New Items and Scales*

There are 72 items that are brand new to the MMPI-3. They have updated or revised awkward language in 43 items. There are five new scales: Combined Response Inconsistency, Eating Concerns, Compulsivity, Impulsivity, and Self-Importance. There are new content areas that assess eating concerns, impulsivity, and self-importance.

The new norms are impressive. The English-language normative sample was selected to approximate the 2020 census projections for race, ethnicity, education, and age. New to the MMPI-3 is a Spanish normative sample.

Most interesting, the MMPI-3 continues to use non-gender T scores, just like the MMPI-2-RF. This is important in some evaluations in which the federal Civil Rights Act of 1991 would prohibit the use of gendered norms in testing in some evaluations, such as personnel screenings.¹¹ For family court evaluations, this means that the mother's and the father's scores are not compared against their gender.

Most noteworthy for attorneys, the MMPI-3 has a number of comparison groups: Outpatient, Community Mental Health

⁸ See Ben-Porath & Tellegen, *supra* note 5.

⁹ ROGER L. GREENE, *THE MMPI-2/MMPI-2-RF: AN INTERPRETIVE MANUAL* (2011).

¹⁰ YOSSEF S. BEN-PORATH & AUKE TELLEGEN, *MINNESOTA MULTIPHASIC PERSONALITY INVENTORY – 2 RESTRUCTURED FORM* (2008).

¹¹ YOSSEF S. BEN-PORATH, *INTERPRETING THE MMPI-2-RF* (2012).

Center; Outpatient, Private Practice; Sexual Addiction Treatment Evaluatee; Spine Surgery/Spinal Cord Stimulator Candidate; College Counseling Clinic; College Student; Forensic, Disability Claimant; Prison Inmate; Personnel Screening, Police Candidate; Personnel Screening, Corrections Officer Candidate; Personnel Screening, Dispatcher Candidate; Personnel Screening, Firefighters; Bariatric Surgery Candidate. Missing from this list are the Forensic, Child Custody Litigant and Forensic, Parental Fitness Evaluatee comparison groups that exist for the MMPI-2-RF. Data is being collected for the child custody comparison group now.

B. *What's Included in the MMPI-3*

Five of the MMPI-2 RF scales were discontinued. The MMPI-3 has 52 scales, 10 validity scales, 3 higher-order scales, 8 restructured content scales, 26 specific problem scales (4 somatic/cognitive scales, 10 internalizing scales, 7 externalizing scales, and 5 interpersonal scales), and 5 Psy-5 Scales.

A key component of the MMPI-3 for forensic use is its 10 validity scales. While most forensic evaluators are likely to look for overreporting of symptoms in these validity scales, family court evaluators look closely at underreporting of symptoms in these validity scales because parents in family court often try to look good. Recent research has demonstrated that the MMPI-3 is very effective at identifying attempts to appear well-adjusted.¹²

The remaining 42 scales measure substantive clinical content. The 42 scales are organized in a hierarchical fashion with higher-order scales on top of this interpretive hierarchy. The three higher-order scales assess for broad-based domains of dysfunction that have been well-established in the psychopathology literature.¹³ The higher-order scales differentiate among emotional/internalizing problems, thought dysfunction, and externalizing/behavioral problems.

At the mid-tier of the hierarchy are the eight restructured clinical scales: Demoralization, Somatic Complaints, Low Positive Emotions, Antisocial Behavior, Ideas of Persecution, Dys-

¹² Megan R. Whitman et al., *Criterion Validity of MMPI-3 Scores in Pre-employment Evaluations of Public Safety Candidates*, 33 *PSYCHOL. ASSESSMENT* 1169 (2021).

¹³ Martin Sellbom et al., *Mapping MMPI-3 Scales onto the Hierarchical Taxonomy of Psychopathology*, 33 *PSYCHOL. ASSESSMENT* 1153 (2021).

functional Negative Emotions, Aberrant Experiences, and Hypomanic Activation.

At the bottom of the interpretive hierarchy, there are 26 specific problem scales that are narrow in focus and measure specific maladaptive traits, symptoms, or constructs.

There are five personality psychopathology (PSY-5 Scales) which are meant to reflect dimensional models of personality disorders.¹⁴ These domains are reflective of the trend toward more dimensional approaches, such as the factorial analysis-based on the Hierarchical Taxonomy of Psychopathology (HiTOP) model. The HiTOP model improves the organization and description of psychopathology by using empirical research to structure mental health symptoms into components or traits.

C. The Foundation of the MMPI-3 Has Been Subjected to Published Peer Reviews

The test authors set out to create the MMPI-3 in a manner that “would allow test users to continue to rely on the empirical foundations of the MMPI-2-RF, including forensic population studies.”¹⁵ Since this was a goal throughout the creation of the test, the authors conducted analyses to ensure that reliability and validity were maintained.

The MMPI-3 manual and the authors of the test are clear: the MMPI-2-RF research findings apply to the MMPI-3. The researchers looked at 38,850 correlations between the MMPI-2-RF and the MMPI-3. The researchers did this by comparing the scales that overlap between the MMPI-2-RF and the MMPI-3. The correlations can be found in Appendix E of the technical manual. Therefore, the extensive body of peer-reviewed publications on the MMPI-2-RF can be applied to the MMPI-3,¹⁶ ad-

¹⁴ See, e.g., Allan R. Harkness et al., *The Personality Psychopathology-Five (PSY-5): Recent Constructive Replication and Assessment Literature Review*, 24 *PSYCHOL. ASSESSMENT* 432 (2012).

¹⁵ Yossef S. Ben-Porath et al., *Using the MMPI-3 in Legal Settings*, 104 *J. PERSONALITY ASSESSMENT* 162 (2021).

¹⁶ The five new scales on the MMPI-3 do not have MMPI-2-RF comparison scales. Attorneys interested in the literature on the peer-reviewed publications of the MMPI-2-RF can find a summary here: *MMPI-3 References by Topic* (Fall 2021), <https://www.upress.umn.edu/test-division/MMPI-2-RF/mmpi-2-rf-references>.

addressing the *Daubert* factor of whether a test has been subjected to peer review and publication.

That does not mean that the more than five hundred publications on the MMPI-2-RF apply to family court evaluations, if only because many of those studies do not address the issues before the family court judge. There still are important studies that do apply:

For instance, MMPI scales “L-r and K-r are able to differentiate between individuals instructed to underreport from those who responded to standard (honest) instructions to the test.”¹⁷ Another study “showed consistency between T score elevations typically found on MMPI-2 Validity Scales L and K with scales L-r and K-r on the MMPI-2-RF.”¹⁸ Another study identified that “the MMPI-2 scales for measuring IM (i.e., L, Mp, Wsd, and Od), discriminated in line with their model predictions, that is, higher scores in the sample where IM responding was suspected, that is, higher in child custody litigants than in normal individuals.”¹⁹

There is evidence that moderate mean T-score elevations on MMPI-2 scale Pa and MMPI-2-RF RC6 are both relatively common among child custody litigants as many aspects of the litigation may lead the litigant to endorse items that ask if they feel persecuted.²⁰ In comparing custody cases that involved child maltreatment to custody cases that did not involve child maltreatment, maltreatment profiles showed elevations five to seven points higher on “scales L-r, THD, RC3, RC6, and FML,” and “about four points higher on scales RC4, RC8, PSYC, and JCP.”²¹ As noted above, due to the common feeling that their ex-spouse seeks to harm their reputation as a parent, “elevations were most likely to occur on RC6 compared to the other RC

¹⁷ Martin Sellbom & R. Michael Bagby, *Validity of the MMPI-2-RF (Restructured Form) L-r and K-r Scales in Detecting Underreporting in Clinical and Nonclinical Samples*, 20 *PSYCHOL. ASSESSMENT* 370 (2008).

¹⁸ Cassandra M. Kauffman et al., *An Examination of the MMPI-2-RF (Restructured Form) with the MMPI-2 and MCMI-III of Child Custody Litigants*, 12(2) *J. CHILD CUSTODY* 129 (2015).

¹⁹ Ramón Arce et al., *Assessing Impression Management with the MMPI-2 in Child Custody Litigation*, 22 *ASSESSMENT* 769 (2015).

²⁰ Elizabeth M. Archer et al., *MMPI-2-RF Characteristics of Custody Evaluation Litigants*, 19(1) *ASSESSMENT* 14 (2012).

²¹ Terry B. Pinsoneault & Frank R. Ezzo, *A Comparison of MMPI-2-RF Profiles Between Child Maltreatment and Non-Maltreatment Custody Cases*, 12 *J. FORENSIC PSYCHOL. PRACT.* 227, 233 (2012).

Scales in a child custody sample. Specifically, 43% of the sample elevated RC6 at or above a T score of 55 and 14% elevated the Scale in the clinical range (T>65).”²²

III. Psychological Testing in Family Court Evaluations

A. Psychological Tests and the Best Interests of the Child

An ongoing debate has centered on the question of whether or not psychological testing, including the MMPI family of tests, are helpful in determining the best interests of the child in the context of child custody laws. First, testing of any kind is one of many data points that a qualified forensic evaluator should obtain.²³ Second, the interpretation of the data must be relevant as,

Psychologists strive to identify the psychological best interests of the child. To this end, they’re encouraged to weigh and incorporate such overlapping factors as family dynamics and interactions, cultural and environmental variables, relevant challenges, and aptitudes for all examined parties and the child’s educational, physical and psychological needs.²⁴

In family court evaluations, the considerations of psychiatric diagnosis and psychopathology are only important to the extent that they might impact a parent’s ability to meet the best interest of the child. As has been articulated by David Martindale, and by me and my colleagues in Benjamin Garber et al., a mental disorder or evidence of psychopathology does not disqualify anyone from being a parent.²⁵

Evaluators use psychological testing to develop hypotheses to explore the degree to which mental health difficulties might impact the parent’s ability do their job as a parent. Psychological

²² Kauffman et al., *supra* note 18, at 145.

²³ Marc J. Ackerman et al., *Child Custody Evaluation Practices: Where We Were, Where We Are, and Where We Are Going*, 52 *PROF. PSYCHOL.: RES. & PRAC.* 406 (2021); Mark L. Goldstein, *Ethical Issues in Child Custody Evaluations*, *HANDBOOK OF CHILD CUSTODY* 3 (2016).

²⁴ American Psychological Association, *Guidelines for Child Custody Evaluations in Family Law Proceedings*, *AM. PSYCHOLOGIST* 863-67 (2010). <https://doi.org/10.1037/a0021250>.

²⁵ Benjamin Garber, Dana E. Prescott, & Chris Mulchay, *A PRACTICAL FIELD GUIDE TO UNDERSTANDING AND RESPONDING TO HIGH CONFLICT FAMILY RELATIONSHIPS: DYNAMICS NOT DIAGNOSES* (2021).

testing is frequently used in child custody evaluations, with the MMPI being the most popular, used in 75% of evaluations.²⁶

Concerns about the use of testing in CCEs have been consistently raised for the past 35 years. The use of psychological testing in child custody evaluations was most recently criticized by using Timothy Tippins and Jeffrey Wittmann's 2005 level analysis:

Tippins and Wittmann provide precisely this degree of well-informed caution with regard to the conduct of CCEs in general.²⁷ They advise that the data obtained in the course of conducting a child custody evaluation should be understood at four distinct levels. At level I, the evaluator reports direct observations (e.g., Mother told Billy to clean up). At level II, the evaluator ties direct observations to established scientific constructs (e.g., Mother is authoritarian). At level III, the evaluator ties these inferences to the question before the court (e.g., Billy will benefit from an authoritarian parent's care). At level IV, the evaluator leaps from inference to address the ultimate question, that is, the future allocation of parenting rights and responsibilities (e.g., Billy should be placed primarily in his mother's care).

Borrowing from Tippins and Wittman, we recommend that testing data must be understood similarly. It is perfectly reasonable to report direct observations about how a parent behaved when taking a test and his or her specific responses (level I). It may even be reasonable to generate hypotheses about those behaviors as they may be relevant generic constructs such as parenting or co-parenting (level II). However, we strongly believe that leaping from these generic constructs to draw inferences about how the child's needs might best be served (level III) and how the ultimate question before the court should be resolved (level IV) is statistically, empirically, and ethically untenable.²⁸

A hypothesis is a "tentative explanation" based on an observation and inferences.²⁹ "People are not very good at judging other people objectively, and most 'non-test' assessment proce-

²⁶ Nicole Mathby & Marc Ackerman, *Guidelines, Research, and Daubert: How They Work Together and When They Differ*, Association of Family and Conciliation Courts 13th Symposium on Child Custody Evaluations, Denver, CO, United States (Nov. 8-10, 2018).

²⁷ See Timothy M. Tippins & Jeffrey P. Wittmann, *Empirical and Ethical Problems with Custody Recommendations: A Call for Clinical Humility and Judicial Vigilance*, 43 FAM. CT. REV. 193 (2005).

²⁸ Garber & Simon, *supra* note 2, at 325.

²⁹ John Y. Campbell, *Understanding Risk and Return*, 104 J. POL. ECON. 298 (1996).

dures involve subjective judgment.”³⁰ It is the “fallibility of human judgment” that has led to the increase in psychological testing. Sol Rappaport, Jonathan Gould, and Milfred Dale wrote “we believe psychological testing is the part of the evaluative process where the profession actually has the most empirical information, which is why we believe there is an appropriate place for psychological testing in custody evaluations.”³¹

When used in an evaluation, psychological testing is one method of data gathering in a multi-method approach. A multi-method examination includes interviews, observations, record review, and collateral contacts. It may also include psychological testing. If and when psychological testing is used, it should be guided by the standards for educational, and psychological testing, which was most recently released in 2014.³²

Jonathan Gould and David Martindale provided attorneys with questions that might be useful in examining the relevance and reliability of a child custody evaluator’s selection, administration, scoring, and interpretation of psychological tests:

1. Upon what theoretical or rational basis was the test selected for use in the present evaluation?
2. Did each objective test possess the psychometric characteristics suggested by Otto and Edens (2003)? If not, why not?
3. Did the evaluator explain in the body of the report why each test was chosen and how its results would be used?
4. Has the evaluator reviewed and referenced in their report the peer-reviewed literature describing the use of this test in child custody assessment?
 - a. What literature supports its use?
 - b. What literature does not support its use?
5. Was each psychological test administered in a manner consistent with ethical standards and professional practice guidelines?
6. Was the specific test administered in a manner consistent with its standardized administration as described in the test manual?
7. Did the evaluator explain how test response style/bias was interpreted?
8. Did the evaluator seek external support from collateral sources to lend support to their interpretation of test scores?

³⁰ CECIL R. REYNOLDS, ET AL., *MASTERING MODERN PSYCHOLOGICAL TESTING* 26 (2021).

³¹ Rappaport et al., *supra* note 2, at 427.

³² Richard Phelps, *Extended Comments on the Draft Standards for Educational and Psychological Testing*, 7 *NONPARTISAN EDUC. REV.* 1 (2011).

9. Was the choice of each objective test clearly relevant to answering the psycholegal questions that are the focus of the evaluation? [This may include explaining how one or more tests were chosen for the purpose of obtaining information concerning the test-taker's general mental/emotional functioning, as opposed to obtaining information that bears specifically on the psycholegal questions identified either in the court order or in the pleadings.]
 - a. If not, what is the justification for this choice?
10. Was the indirect relationship between choice of objective tests and the psycholegal questions clearly explained in the report?
11. Did the evaluator clearly identify the hypotheses drawn from the psychological test data?
12. Did the evaluator examine the support from other independent data sources for each of these hypotheses?
13. Did the evaluator compare discrete sources of data drawn from the objective test data and compare them to information obtained from third-party collateral sources?³³

B. *The MMPI-3 in Family Court Evaluations*

Attorneys may be interested to know that the MMPI-3 does not directly address the psycho-legal issue. MMPI-3 results do not address specific psycho-legal questions in any type of forensic evaluation. Instead, the test results can be used to identify psychological dysfunction that might be relevant to the psycho-legal question.

The MMPI-3 does not directly measure functional parenting and it does not directly inform about an individual's ability to parent. To be clear, there is no research on predictive validity of actual parenting outcomes. Therefore, the MMPI-3 cannot be used to make any prediction of future parenting. The MMPI data indicate how a parent scored similarly to other people with research-based characteristics.³⁴

The MMPI-3 validity scales can assist with identification of possible under-reporting.

A parent may deny or minimize challenges in an effort to look better than they functionally are on a day-to-day basis. "The MMPI-3 Validity Scales (particularly L and K) can play an important role in determining how the parent approached the test, which can, in turn, inform

³³ Jonathan W. Gould & David A. Martindale, *Child Custody Evaluations: Current Literature and Practical Applications*, 11 HANDBOOK PSYCHOL. 101 (2013).

³⁴ Personal communication with Jay Flens, PhD. Jan. 4, 2022.

the examiner about how the individual may have approached the entire evaluation.³⁵

The MMPI-3 can assess a parent's psychological functioning. During a custody evaluation, the test can provide an objective source of data regarding psychopathology and maladaptive personality traits. It is the evaluator's job to explain how the data on the MMPI-3 are related to the parenting issues before the court.

The MMPI-3 is focused on current psychological functioning.

Used within a multi-method approach to data gathering, psychological testing often helps evaluators develop hypotheses about the parties' behavioral tendencies, mental health issues, and psychological functioning as they may affect parenting, parent-to-parent communication, and other custody-related areas of concern.³⁶

The MMPI-3 may be helpful when there are concerns that a parent's maladaptive personality is negatively impacting the children. Recent research has demonstrated associations between MMPI-3 substantive scale scores and the DSM-5 personality disorders.³⁷ Many attorneys and family court evaluators may hear one parent's allegations that the other parent has narcissism. Recent research links the MMP-3 Self-Importance scale to features of grandiose narcissism.³⁸

IV. Challenges to the MMPI-3

The use of "the MMPI 'in court' may best be understood as a psychological test with relevance to the legal proceeding and psychometric reliability and validity used as part of a larger evaluative process."³⁹ The MMPI-3 can be used to assess the parent's response style, particularly whether they underreported symp-

³⁵ Ben-Porath et al., *supra* note 15, at 168.

³⁶ Rappaport et al., *supra* note 2, at 405.

³⁷ Tiffany A. Brown & Martin Sellbom, *Associations Between MMPI-3 Scale Scores and the DSM-5 Personality Disorders*, 77 *J. CLINICAL PSYCHOL.* 2943 (2021).

³⁸ Martin Sellbom, *Examining the Criterion and Incremental Validity of the MMPI-3 Self-Importance Scale*, 33 *PSYCHOL. ASSESSMENT* 363 (2021); See Megan R. Whitman & Yossef S. Ben-Porath, *Distinctiveness of the MMPI-3 Self-Importance and Self-Doubt Scales*, 103 *J. PERSONALITY ASSESSMENT* 613 (2021).

³⁹ Ben-Porath et al., *supra* note 15, at 168.

toms. It can also be used to address symptoms of psychological functioning that may relate to parenting. This is a hypothesis-driven process that can inform the evaluator's next steps.

Multiple articles and books have addressed the MMPI's admissibility in *Frye* and *Daubert* jurisdictions. Most recent analysis of what happens to the MMPI in court can be found in articles by Ben-Porath et al.⁴⁰ and Neal et al.⁴¹ Ben Porath et al. identified custody cases in which the MMPI data was noteworthy:

In re B.M., 682 A.2d 477 (Vt. 1996) (the MMPI results were pertinent but could not be the sole justification for termination of parenting rights).

Williams v. Williams, 656 So.2d 325 (Miss. 1995) (The court properly relied on psychologist's evaluations of parentings, including MMPI).

In re C.N., 2017 WL 571265 (Vt. 2017) (the MMPI results are relevant to parent fitness without total reliance).

Ben Porath et al. also reviewed appellate cases in which the MMPI was limited. They found "virtually all decisions for limiting the MMPI focused on cases in which it had been used improperly."⁴² Neal et al. reviewed both trial court and appellate cases.⁴³ These two articles may be helpful to attorneys interested in understanding when and why courts restricted the use of the MMPI.

The studies suggest "challenging the use of this measure on cross-examination is unlikely to be successful when the measure is used appropriately by a qualified evaluator."⁴⁴ As the debate continues regarding the use of psychological tests in CCEs, it is clear that if the MMPI-3 is to be used, it should be as part of a multi-method approach that includes interviews, behavioral observations, collateral interviews, and record reviews.

V. Conclusion

The MMPI-3 is likely to become a widely used psychological test in family court evaluations. Given the authors' efforts to de-

⁴⁰ See Ben-Porath et al., *supra* note 15.

⁴¹ See Tess Neal, et al., *Psychological Assessments in Legal Contexts: Are Courts Keeping "Junk Science" Out of the Courtroom?*, 20 *Psychological Science in the Public Interest* 135 (2019).

⁴² *Id.* at 8.

⁴³ Neal et al, *supra* note 41.

⁴⁴ Ben-Porath et al., *supra* note 15, at 173.

velop the test to withstand a *Daubert* challenge, attorneys are encouraged to focus their challenges on the methodology employed by the evaluator instead of the test itself. The results of the MMPI-3 do not address specific psycho-legal questions in any type of forensic evaluation. Instead, they can be used to identify psychological dysfunction that might be relevant to the psycho-legal question. Evaluators should use the test as a hypothesis generator in a multimethod multi-source approach to data gathering.