

Rule 4-903. Uniform custody evaluations.

Intent:

To establish uniform guidelines for the preparation of custody evaluations.

Applicability:

This rule shall apply to the district and juvenile courts.

Statement of the Rule:

(1) Custody evaluations shall be performed by persons with the following minimum qualifications:

(1)(A) Social workers who hold the designation of Licensed Clinical Social Worker or equivalent license by the state in which they practice may perform custody evaluations within the scope of their licensure.

(1)(B) Doctoral level psychologists who are licensed by the state in which they practice may perform custody evaluations within the scope of their licensure.

(1)(C) Physicians who are board certified in psychiatry and are licensed by the state in which they practice may perform custody evaluations within the scope of their licensure.

(1)(D) Marriage and family therapists who hold the designation of Licensed Marriage and Family Therapist (Masters level minimum) or equivalent license by the state in which they practice may perform custody evaluations within the scope of their licensure.

(2) Every motion or stipulation for the performance of a custody evaluation shall include:

(2)(A) the name, address, and telephone number of each evaluator nominated, or the evaluator agreed upon;

(2)(B) the anticipated dates of commencement and completion of the evaluation and the estimated cost of the evaluation;

(2)(C) specific factors, if any, to be addressed in the evaluation.

(3) Every order requiring the performance of a custody evaluation shall:

(3)(A) require the parties to cooperate as requested by the evaluator;

(3)(B) restrict disclosure of the evaluation's findings or recommendations and privileged information obtained except in the context of the subject litigation or other proceedings as deemed necessary by the court;

(3)(C) assign responsibility for payment;

(3)(D) specify dates for commencement and completion of the evaluation;

(3)(E) specify any additional factors to be addressed in the evaluation;

(3)(F) require the evaluator to provide written notice to the court, counsel and parties within five business days of completion (of information-gathering) or termination of the evaluation and, if terminated, the reason;

(3)(G) require counsel or parties to schedule a settlement conference with the court and the evaluator within 45 days of notice of completion or termination unless otherwise directed by the court so that evaluator may issue a verbal report; and

(3)(H) require that any party wanting a written custody evaluation to be prepared give written notice to the evaluator after the settlement conference.

(4) In divorce cases where custody is at issue, one evaluator may be appointed by the court to conduct an impartial and objective assessment of the parties and submit a written report to the court. When one of the prospective custodians resides outside of the jurisdiction of the court two individual evaluators may be appointed. In cases in which two evaluators are appointed, the court will designate a primary evaluator. The evaluators must confer prior to the commencement of the evaluation to establish appropriate guidelines and criteria for the evaluation and shall submit only one joint report to the court.

(5) The purpose of the custody evaluation will be to provide the court with information it can use to make decisions regarding custody and parenting time arrangements that are in the child's best interest. This is accomplished by assessing the prospective custodians' capacity to parent, the developmental, emotional, and physical needs of the child, and the fit between each prospective custodian and child. Unless otherwise specified in the order, evaluators must consider and respond to each of the following factors:

(5)(A) the child's preference;

(5)(B) the benefit of keeping siblings together;

(5)(C) the relative strength of the child's bond with one or both of the prospective custodians;

(5)(D) the general interest in continuing previously determined custody arrangements where the child is happy and well adjusted;

(5)(E) factors relating to the prospective custodians' character or status or their capacity or willingness to function as parents, including:

(5)(E)(i) moral character and emotional stability;

(5)(E)(ii) duration and depth of desire for custody;

(5)(E)(iii) ability to provide personal rather than surrogate care;

(5)(E)(iv) significant impairment of ability to function as a parent through drug abuse, excessive drinking or other causes;

(5)(E)(v) reasons for having relinquished custody in the past;

(5)(E)(vi) religious compatibility with the child;

(5)(E)(vii) kinship, including in extraordinary circumstances stepparent status;

(5)(E)(viii) financial condition; and

(5)(E)(ix) evidence of abuse of the subject child, another child, or spouse; and

(5)(F) any other factors deemed important by the evaluator, the parties, or the court.

(6) In cases in which specific areas of concern exist such as domestic violence, sexual abuse, substance abuse, mental illness, and the evaluator does not possess specialized training or experience in the area(s) of concern, the evaluator shall consult with those having specialized training or experience. The assessment shall take into consideration the potential danger posed to the child's custodian and the child(ren).

(7) In cases in which psychological testing is employed as a component of the evaluation, it shall be conducted by a licensed psychologist who is trained in the use of the tests administered, and adheres to the ethical standards for the use and interpretation of psychological tests in the jurisdiction in which he or she is licensed to practice. If psychological testing is conducted with adults and/or children, it shall be done with knowledge of the limits of the testing and should be viewed within the context of information gained from clinical interviews and other available data. Conclusions drawn from psychological testing should take into account the inherent stresses associated with divorce and custody disputes.

Advisory Committee Note. The qualifications enumerated in this rule are required for the performance of a custody evaluation. However, if the qualifications are met, a practitioner from another state with a different title will not be barred from performing a custody evaluation.