



Administrative Office of the Courts

Chief Justice Christine M. Durham
Utah Supreme Court
Chair, Utah Judicial Council

MEMORANDUM

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State Court Administrator
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To: Judges, Commissioners, Attorneys, and Custody Evaluators
From: Alicia Davis, Staff, Standing Committee on Children and Family Law
Date: March 31, 2003
Re: New Custody Evaluation Procedures

I. Introduction

Noting that custody evaluations are of varying quality, that high quality evaluations can be costly, and that waiting for evaluations stalls the legal process, the Judicial Council charged the Standing Committee on Children and Family Law to "improve the quality and timeliness of custody evaluations." Having studied the issue in depth, the Standing Committee now presents substantial revisions to Rule 4-903, "Custody Evaluations" of the Code of Judicial Administration, as well as these accompanying forms. This memo explains the process envisioned by the forms, and details the changes made to the rules.

II. Contemplated Custody Evaluation Process

Custody Evaluation forms have been approved by the Supreme Court and Judicial Council to reduce the need for extensive, formally-prepared evaluations, and to make custody considerations more accessible to the commissioner or judge on the bench. **Any custody evaluation submitted to the court must address the topics noted on these forms.**

The settlement conference procedure is designed to (1) reduce the time and expense of preparing a written report in cases where this might not be needed, (2) disclose the custody evaluation findings in such a way that is less adversarial and less damaging to family relationships, and (3) allow the parties a final opportunity to participate in the fashioning of an agreement. It allows the parties to benefit from the insights of the evaluator while still experiencing a sense of control over the decisions made about their children. Through greater participation of the parties, it is hoped that future conflict will be reduced. If no settlement is reached at or soon after this conference, a written evaluation would be prepared and a court date set. The "Settlement Conference Report" form sets forth the topics to be addressed at the settlement conference. Toward the end of the settlement conference, and depending on the wishes of the commissioner or judge, the evaluator may issue verbal custody recommendations.

The "Table of Contents" form is to be used if a formal, written custody evaluation is requested by the parties. It has been designed to allow the judge or commissioner to refer to pertinent

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information quickly while on the bench. It also serves as a guide to evaluators and ensures that the written evaluation includes all of the information listed on the forms.

Available at www.utcourts.gov/resources/forms, both forms can be downloaded, and expanded at the evaluator's preference.

The custody evaluation procedure shall be as follows:

1. Evaluator receives the court order of appointment from one of the attorneys and is notified of the web site where the new rules, forms, and custody evaluation procedure can be downloaded.
2. Evaluator commences and completes information-gathering component of the evaluation and notifies the parties or their counsel within five business days of completion of the information-gathering process.
3. Counsel arranges a Settlement Conference including the commissioner or judge, the evaluator, all counsel (including the GAL), and the parties (except children) within 45 days of notice from the evaluator that the information-gathering is complete.
4. The evaluator completes the identifying information on the "Settlement Conference Report" and makes written notations of topics to be covered verbally concerning "Summary of Children's Needs" and "Summary of Each Parent's and Stepparent's Ability and Propensity to Provide for these Children's Needs." The evaluator does not enter notations for "Rule 4-903 Considerations" or "Legal and Physical Custody Recommendations," but should be prepared to verbally present his/her conclusions. The commissioner or judge will determine if custody recommendations will be issued.
5. During the Settlement Conference, the Commissioner/Judge advises the parties of the process and lets the evaluator know if custody recommendations are to be presented. The evaluator distributes copies of the partially-completed "Settlement Conference Report" for further individual note-taking. After the evaluator presents his/her findings, the counsel and parties determine if settlement is possible, either at that time or after further negotiation. At the conclusion of the meeting, the Commissioner/Judge (a) issues restrictions on what the children are told about the findings and by whom, and (b) restricts distribution of the "Settlement Conference Report" and asks the parties' counsel to retain their clients' copies.
6. Evaluator receives, preferably within 10 days after the conference, (a) a request from any counsel/party in the case that a written report is necessary or (b) notice from counsel that a settlement has been reached and the evaluation case can be closed. If a report is necessary, any additional retainer needed is collected from the parties in the same proportion stated in the order. The evaluator completes the report and completes the "Table of Contents", which is placed on top of the report and forwarded to the court and to all counsel. If no report is needed, any retainer held for the writing of the report is returned to the parties and the case is closed.

III. Amended Rule 4-903

Effective April 1, 2003, Code of Judicial Administration Rule 4-903 has been amended to provide 1) who is competent to perform custody evaluations, 2) inclusions on motions or stipulations for the performance of custody evaluations, and 3) expanded consideration in cases in which special concerns are at issue, like domestic violence, or psychological testing.

Changes to Rule 4-903 require social workers to have a master's degree in social work and be licensed as a 'Licensed Clinical Social Worker' (LSCW) to perform custody evaluations. Social workers with lesser degrees are not qualified. 'Licensed Marriage and Family Therapists' (LMFT) are included in Rule 4-903 as those professionals qualified to perform custody evaluations. 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. In cases in which two evaluators are appointed, one in Utah and the other out-of-state, the out-of-state evaluator will be expected to meet the same criteria as the evaluator who is licensed in Utah.

To assure timely submission of evaluations, 4-903 now requires that the evaluation state the "anticipated dates of commencement and completion of the evaluation and the estimated cost of the evaluation." This information, as well as assignment of cost, will be included in the court's order for the evaluation. Including the completion date in the order will require greater timeliness from the parties.

The order shall also set forth "special" factors requiring evaluation, such as domestic violence, substance abuse, sexual abuse or mental illness. The subcommittee considered actual examples in which an evaluator's lack of experience or expertise in a particular area prevented the evaluator from assessing the risk inherent in a particular family dynamic. The amendment also recognizes that psychological testing should be dispositive in an evaluation, but should be considered within the context of all of the available data, and should take into account the inherent stresses associated with divorce and custody disputes. The amended rule can be found at www.utcourts.gov/resources/rules/ucja/index.htm.

These procedures have been considered carefully by the Standing Committee on Children and Family Law, and by the Judicial Council and Supreme Court. By addressing minimum qualifications, deadlines for completion, and addressing the special considerations of particular cases, the amendments intend to address concerns expressed with the current processes, and to alleviate those concerns.