

1 **Rule 4-903. Uniform custody evaluations.**

2 **Intent:**

3 To establish uniform guidelines for the ~~preparation~~ performance of custody evaluations.

4 **Applicability:**

5 This rule shall apply to the district and juvenile courts.

6 **Statement of the Rule:**

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

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

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

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

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

17 (1) Custody evaluations shall be performed by professionals who have specific training in child
18 development, and who are licensed by the Utah Department of Occupational and Professional Licensing
19 as either a (a) Licensed Clinical Social Worker, (b) Licensed Psychologist, (c) Licensed Physician who is
20 board certified in psychiatry, or (d) Licensed Marriage and Family Therapist.

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

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

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

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

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

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

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

32 (3)(C) assign responsibility for payment from the beginning of the evaluation through the custody
33 evaluation conference, as well as the costs of the written report if requested;

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

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

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

39 (3)(G) require counsel ~~or~~ and parties to ~~schedule~~ complete a settlement custody evaluation
40 conference with the court and the evaluator within 45 days of notice of completion (of information
41 gathering) or termination unless otherwise directed by the court so that evaluator may issue a verbal
42 report; and

43 (3)(H) require that any party wanting a written custody evaluation report ~~to be prepared~~ give
44 written notice to the evaluator within 45 days after the settlement custody evaluation conference.

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

51 ~~(5 4)~~ The purpose of the custody evaluation will be to provide the court with information it can use to
52 make decisions regarding custody and parenting time arrangements that are in the child's best
53 interest. ~~This is accomplished by assessing the prospective custodians' capacity to parent, the~~
54 ~~developmental, emotional, and physical needs of the child, and the fit between each prospective~~
55 ~~custodian and child.~~ Unless otherwise specified in the order, evaluators must consider and respond to
56 each of the following factors:

57 ~~(5 4)(A)~~ the developmental needs of the child (including, but not limited to physical, emotional,
58 educational, medical and any special needs), and the parents' demonstrated understanding of,
59 responsiveness to, and ability to meet, those needs.

60 ~~(5 4)(A B)~~ the child's preference the stated wishes and concerns of each child, taking into the
61 consideration the child's cognitive ability and emotional maturity.

62 ~~(5 4)(B C)~~ the relative benefit of keeping siblings together;

63 ~~(5 4)(C D)~~ the relative strength of the child's bond with ~~one or both of~~ the prospective
64 custodians, meaning the depth, quality and nature of the relationship between a prospective custodian
65 and child;

66 ~~(5 4)(D E)~~ the general interest in continuing previously determined custody- parenting
67 arrangements where the child is has been happy and well adjusted;

68 ~~(5 4)(E E)~~ factors relating to the prospective custodians' character ~~or status or~~ and their
69 capacity ~~or~~ and willingness to function as parents, including:

70 ~~(5 4)(E F)(i)~~ parenting skills

71 ~~(5 4)(F)(ii)~~ co-parenting skills (including, but not limited to, the ability to facilitate the
72 child's relationship with the other parent, and to appropriately communicate with the other parent);

73 ~~(§ 4)(F)(iii)~~ moral character; ~~and~~
74 ~~(§ 4)(F)(iv)~~ emotional stability;
75 ~~(§ 4)(E F)(ii v)~~ duration and depth of desire for custody and parent-time;
76 ~~(§ 4)(E F)(iii vi)~~ ability to provide personal rather than surrogate care;
77 ~~(§ 4)(E F)(iv vii)~~ significant impairment of ability to function as a parent through drug
78 abuse, excessive drinking or other causes;
79 ~~(§ 4)(E F)(v viii)~~ reasons for having relinquished custody or parent-time in the past;
80 ~~(§ 4)(E F)(vi ix)~~ religious compatibility with the child;
81 ~~(§ 4)(E F)(vii x)~~ kinship, ~~including in extraordinary circumstances stepparent status~~ the
82 child's interaction and relationship with the child's step-parent(s), extended family members, and/or any
83 other person who may significantly affect the child's best interest;
84 ~~(§ 4)(E F)(viii xi)~~ financial ~~condition~~ responsibility; ~~and~~
85 ~~(§ 4)(E F)(ix xii)~~ evidence of abuse of the subject child, another child, or spouse; ~~and~~
86 ~~(§ 4)(G)~~ factors affecting a determination for joint legal and/or physical custody as set forth in
87 Utah Code 30-3-10.2; and
88 ~~(§ 4)(F H)~~ any other factors deemed important by the evaluator, the parties, or the court.

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

94 ~~(7 6)~~ In cases in which psychological testing is employed as a component of the evaluation, it shall be
95 conducted by a licensed psychologist who is trained in the use of the tests administered, and adheres to
96 the ethical standards for the use and interpretation of psychological tests in the jurisdiction in which he or
97 she is licensed to practice. If psychological testing is conducted with adults and/or children, it shall be
98 done with knowledge of the limits of the testing and should be viewed within the context of information
99 gained from clinical interviews and other available data. Conclusions drawn from psychological testing
100 should take into account the inherent stresses associated with divorce and custody disputes.

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