

## **Idaho Rules of Civil Procedure Rule 16(q). Parenting Time Evaluation**

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(1) **Definition of Parenting Time Evaluation.** A "parenting time evaluation" is an expert investigation and analysis of the best interest of children with regard to disputed parenting time issues. The parenting time evaluation shall not include interim parenting time recommendations/brief focused assessment. The purpose of a parenting time evaluation is to provide the Court with information it may consider to make decisions regarding custody and parenting time arrangements that are in the child's best interest. This is accomplished, among other things, by assessing the capacity to parent, and the developmental, emotional, and physical needs of the child. Unless otherwise specified in the order, evaluators must consider and respond to the factors set forth at Idaho Code Section 3 2-71 7.

(2) **Matters in Which Appointment May be Made.** The court, upon a motion of any party, agreement of the parties or upon its own motion, may order a parenting time evaluation in any action involving custody of minor children to assist the trier of fact with matters that affect the best interest of the child.

(3) **Selection of a Parenting Time Evaluator.** The court may permit the parties to select an evaluator, or the court may appoint an evaluator. The evaluator must meet the qualifications set forth in this rule. If the court intends to appoint its own evaluator, it shall follow the show cause procedure set forth in Rule 706, Idaho Rules of Evidence.

### **(4) Qualifications of Evaluator.**

(A) A parenting time evaluator must have at least one of the following minimum qualifications:

(i) licensed physician who is Board certified in psychiatry;

(ii) licensed psychologist;

(iii) licensed clinical social worker;

(iv) licensed social worker in independent practice;

(v) licensed clinical professional counselor; or

(vi) licensed marriage and family therapist. Family Court Services' staff who do not meet the qualifications set forth above may perform a parenting time evaluation when such evaluation is performed under the direct supervision of another Family Court Services' staff person who does meet the minimum qualifications set forth in this section.

(B) The Court may appoint or the parties may stipulate to the appointment of a parenting time evaluator who does not meet the minimum professional credentials, provided that the evaluator has a license in an area relevant to the scope of appointment and has conducted at least twenty (20) court ordered evaluations in the past five (5) years.

(C) An evaluator must be licensed in the State of Idaho or other jurisdiction approved by the court and must perform the parenting evaluation within the scope of their licensure.

(D) A person who has the qualifications under 1 or 2 above must also have completed a minimum of five (5) parenting time evaluations under the direct supervision of a qualified parenting time evaluator.

**(5) Motion/ Stipulation/ Order of Evaluation.**

(A) Every motion or stipulation for the performance of a parenting time evaluation shall include:

(i) The name, address, and telephone number of the evaluator;

(ii) Specific factors, if any, to address in the evaluation, including but not limited to whether a specific parenting access schedule is needed.

(B) Every order requiring the performance of a parenting evaluation shall:

(i) Include the name of the evaluator;

(ii) Require the parties to cooperate as requested by the evaluator;

(iii) With the exception of mediation records, provide for the evaluator to have access to all records, public or private, that bear upon the physical or mental health of the parties, the children and other persons who are part of the household and for any child whose custody is at issue, including but not

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limited to, medical and dental records, school records, day care records, drug test results, court records including civil and criminal domestic violence petitions, orders of protection, previous assessments or evaluations of either party and child protective services records;

(iv) Require each party to sign releases for such information as requested by the evaluator;

(v) Restrict disclosure of the evaluation's findings or recommendations and privileged information to the child of the subject litigation or as deemed necessary by the court;

(vi) Assign responsibility for payment;

(vii) Specify the anticipated dates of commencement and completion of the evaluation;

(viii) Specify any additional factors to be addressed in the evaluation;

(ix) Require the evaluator to provide written notice to the court, counsel and parties within five business days of completion or termination of the evaluation and, if terminated, the reason;

(x) Require a written custody evaluation report to be prepared unless the court orders otherwise; and

(xi) Shall include language that the court and the parties acknowledge the evaluator is appointed by the authority of the court and that the evaluator is under the direction and control of the court and as such, is performing a judicial function and is entitled to judicial immunity. 4

(6) **Scope of Evaluation.** All evaluations must be conducted in accordance with the Association of Family and Conciliation Courts (AFCC) Model Standards of Practice for Child Custody Evaluations, American Academy of Matrimonial Lawyers, or the American Psychological Association (APA) Guidelines for Child Custody Evaluations in Family Law Proceedings and shall include, at a minimum:

(A) A written explanation of the process that clearly describes the:

(i) Purpose of the evaluation;

(ii) Procedures used and the time required to gather and assess information and, if psychological

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tests will be used, the role of the results in confirming or questioning other information or previous conclusions;

(iii) Scope and distribution of the evaluation report;

(iv) Limitations on the confidentiality of the process; and

(v) Cost and payment responsibility for the evaluation.

(B) Data collection and analysis sufficient to allow the evaluator to observe and consider each party in comparable ways and to substantiate (from multiple sources when possible) interpretations and conclusions regarding each child's developmental needs; the quality of attachment to each parent and that parent's social environment; and reactions to the separation, divorce, or parental conflict. This process shall include:

(i) Reviewing pertinent documents related to custody, including court records and local police records;

(ii) Interviewing parents conjointly, individually, or both conjointly and individually (unless contraindicated in cases involving domestic violence), to assess:

(a) Capacity for setting age-appropriate limits and for understanding and responding to the child's needs;

(b) History of involvement in caring for the child;

(c) Methods for working toward resolution of the child custody conflict;

(d) History of child abuse, domestic violence, substance abuse, and psychiatric illness; and

(e) Psychological and social functioning.

(iii) Conducting age-appropriate interviews and observation of the child or children with each parent, stepparent (s), step-and half-siblings conjointly, separately, or both conjointly and separately, unless contraindicated to protect the best interest of the child;

(iv) Collecting relevant corroborating information or documents as permitted by law; and

(v) Consulting with other experts to develop information that is beyond the evaluator's scope of practice or area of expertise.

(C) An evaluator must provide a written report unless the parties agree and the court order allows for an oral report of findings. In any presentation of findings, the evaluator must:

(i) Summarize the data-gathering procedures, information sources, time spent, and present all relevant information, including information that does not support the conclusions reached;

(ii) Describe any limitations in the evaluation that result from unobtainable information, failure of a party to cooperate, or the circumstances of particular interviews;

(iii) Only make a custody or visitation recommendation for a party who has been evaluated;

(iv) Address each factor set forth in Idaho Code Section 32-717, and any other relevant factors;

(v) 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;

(vi) In cases in which psychological testing is employed it shall be conducted by a licensed individual who is trained in the use of the tests administered. The evaluator shall adhere 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; and

(vii) Provide detailed recommendations that are consistent with the best interest of the child or children and include an example (s) of a parenting time schedule. In cases where the evaluator concludes the case is inappropriate for a parenting time evaluation or recommendations, or the data available is insufficient for this purpose, the evaluator will submit the basis for the evaluator's decision to terminate the evaluation process and reason for not making recommendations.

(7) **Form of the Report and Transmittal to the Court.** The written report shall be submitted to the Court provided that copies are contemporaneously distributed to the parties. The parties shall have an opportunity to cross-examine the parenting time evaluator if the contents of the evaluation are introduced into evidence in the form of expert testimony or a written report. If the report is oral, the court shall not hear the contents of the report and findings unless both parties are present.

(8) **Communications Between Evaluator, the Court, the Parties, and Attorneys.** Any contacts between the parenting time evaluator and the court shall either be in writing to all parties, conference call with parties and/or their attorneys, or at court hearings with the parties and/or their attorneys. Evaluators may communicate with the court and attorneys separately with respect to scheduling and administrative matters.

(9) **Admissibility of Reports.** A report prepared consistent with this rule shall be admissible into evidence, subject to cross-examination. The court may consider the information contained in the report in making a decision on the parenting plan, and the Idaho Rules of Evidence do not exclude the report from consideration.

(10) **Judicial Immunity.** Any parenting time evaluator appointed by the court or a court approved, stipulated evaluator is performing a judicial function when conducting an evaluation and is entitled to qualified judicial immunity.

(Amended April 29, 2013, effective July 1, 2013.)

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