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RULE PROPOSALS

**LAW AND PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF PSYCHOLOGICAL EXAMINERS**

41 N.J.R. 3024(a)

Proposed Amendment: *N.J.A.C. 13:42-3.6*

Proposed New Rules: *N.J.A.C. 13:42-12*

[Click here to view Interested Persons Statement](#)

Custody/Parenting Time Evaluations

Authorized By: State Board of Psychological Examiners, J. Michael Walker, Executive Director.

Authority: *N.J.S.A. 45:14B-13*.

Calendar Reference: See Summary below for explanation of exception to the calendar requirement.

Proposal Number: PRN 2009-248.

Submit written comments by October 16, 2009 to:

J. Michael Walker, Executive Director
State Board of Psychological Examiners
124 Halsey Street
P.O. 45017
Newark, NJ 07101

The agency proposal follows:

Summary

The New Jersey Board of Psychological Examiners (the Board) proposes amendments to *N.J.A.C. 13:42-3.6* and

new Subchapter 12 to establish rules for conducting custody/parenting time evaluations. *N.J.A.C. 13:42-3.6* prohibits permit holders from performing evaluations in custody cases. The Board proposes to amend this rule, so that this prohibition reflects the terminology used in proposed new Subchapter 12.

Proposed new Subchapter 12 sets forth the qualifications for licensees who will perform custody/parenting time evaluations and licensee responsibilities when such evaluations are performed. Proposed new rule N.J.A.C. 13:42-12.1 sets forth the purpose and scope of the subchapter. Proposed new rule N.J.A.C. 13:42-12.2 establishes qualifications for licensees who will perform custody/parenting time evaluations. Licensees who will perform these evaluations are required to have education, training and/or supervision in specific subjects and must maintain documentation that indicates that they have complied with these requirements.

Proposed new rule N.J.A.C. 13:42-12.3 prohibits a licensee who is treating or has treated a person who is part of a custody/parenting time evaluation from assuming the role of an evaluator. A licensee acting as an evaluator may assume the role of a treating therapist, but he or she shall no longer act as an evaluator.

Proposed new rule N.J.A.C. 13:42-12.4 sets forth the parties to whom a licensee must provide information when performing custody/parenting time evaluations. Proposed new rule N.J.A.C. 13:42-12.5 requires licensees to provide certain information to the parties to assist them in understanding the nature of the custody/parenting time evaluation and the implications of their agreement to participate. Licensees must also inform the parties about the purpose of any assessment instruments, interview techniques and the use of any information collected.

N.J.A.C. 13:42-12.6 establishes a licensee's responsibility when handling fees. Prior to commencing the evaluation, a licensee must inform the party or parties responsible for paying the fees what the estimated fees will be for all anticipated services. The rule also imposes specific requirements on licensees who accept payment of fees by retainers or fee schedules.

N.J.A.C. 13:42-12.7 requires that written reports be completed in a timely manner and prohibits a licensee from providing an opinion regarding any individual whom the licensee has not personally evaluated. N.J.A.C. 13:42-12.7 also designates the individuals to whom the licensee must submit the report.

The Board has determined that the comment period for this notice of proposal shall be 60 days; therefore, pursuant to *N.J.A.C. 1:30-3.3(a)5*, this notice is excepted from the rulemaking calendar requirement.

Social Impact

The proposed new rules at Subchapter 12 will have a positive social impact upon the public by ensuring that licensees who perform custody/parenting time evaluations are qualified to provide such services. The proposed new rules and amendment will positively affect the regulated community by clarifying their responsibilities when performing custody/parenting time evaluations.

Economic Impact

The proposed new rules at Subchapter 12 may have an economic impact upon licensees who wish to perform custody/parenting time evaluations. Such licensees may incur costs to obtain the education, training and/or supervision required by the proposed new rules. The Board does not believe that the proposed new rules and amendment will have any other economic impact.

Federal Standards Statement

A Federal standards analysis is not required because there are no Federal laws or standards applicable to the proposed new rules or amendment.

Jobs Impact

The Board does not believe that the proposed new rules and amendment will increase or decrease the number of jobs in New Jersey.

Agriculture Industry Impact

The Board believes the proposed new rules and amendment will have no impact upon the agriculture industry in New Jersey.

Regulatory Flexibility Analysis

Since psychologists are individually licensed by the Board, they may be considered "small businesses" under the Regulatory Flexibility Act (the Act), *N.J.S.A. 52:14B-16 et seq.*

Costs that small businesses may incur are the same for all licensees as summarized in the Economic Impact above. The Board does not believe that licensees will need to employ any professional services in order to comply with the proposed new rules and amendment. The proposed new rules and amendment impose compliance, recordkeeping and reporting requirements as summarized in the Summary above.

As the proposed new rules and amendment protect the health, safety and welfare of patients who are the subject of custody/parenting time evaluations performed by licensees, the Board believes that the rules must be uniformly applied to all licensees and no exemptions are provided based on the size of the licensee's business.

Smart Growth Impact

The Board does not believe that the proposed new rules and amendment will have any impact upon the achievement of smart growth or upon the implementation of the State Development and Redevelopment Plan.

Housing Affordability Impact

The proposed new rules and amendment will have an insignificant impact on affordable housing in New Jersey and there is an extreme unlikelihood that the rules would evoke a change in the average costs associated with housing because the proposed rules concern custody/parenting time evaluations performed by licensed psychologists.

Smart Growth Development Impact

The proposed new rules and amendment will have an insignificant impact on smart growth and there is an extreme unlikelihood that the rules would evoke a change in housing production in Planning Areas 1 or 2 or within designated centers under the State Development and Redevelopment Plan in New Jersey because the proposed rules concern custody/parenting time evaluations performed by licensed psychologists.

Full text of the proposal follows (additions indicated in boldface **thus**; deletions indicated in brackets [thus]):

13:42-3.6 Responsibilities of applicant for one-year unsupervised and three-year supervised temporary permits

(a)-(j) (No change.)

(k) A one-year unsupervised and three-year supervised **temporary** permit holder shall be prohibited from performing **custody/parenting time** evaluations [in custody cases] **and termination of parental rights evaluations**.

[page=3025] **SUBCHAPTER 12. CUSTODY/PARENTING TIME EVALUATIONS**

13:42-12.1 Purpose and scope

The rules in this subchapter set forth the minimum requirements for licensed psychologists who perform custody/parenting time evaluations and termination of parental rights evaluations.

13:42-12.2 Qualifications

(a) A licensee shall be qualified to perform custody/parenting time evaluations through education, training and/or supervision in all of the following categories:

1. Child growth and development;
2. Psychological testing;
3. Parent-child bonding;
4. Scope of parenting;
5. Adult development and psychopathology;
6. Family functioning;
7. Child and family development;
8. Child and family psychopathology;
9. The impact of divorce or family dissolution on children; and
10. The impact of age, gender, race, ethnicity, national origin, language, culture, religion, sexual orientation/identity, disability and socioeconomic status on custody/parenting time evaluations.

(b) When the following topics are involved, a licensee shall have education, training and/or supervision in the specific topic or the licensee shall refer to a licensed health care provider who has education, experience, training and/or supervision in the following topics:

1. Physical, sexual or psychological abuse of spouse or children;
2. Neglect of children;
3. Alcohol or substance abuse that impairs the ability to parent;
4. Medical/physical/neurological impairment that affects the ability to parent; or
5. Other areas beyond the licensee's expertise that are relevant to the custody/parenting time evaluation.

(c) Any licensee using psychometric instruments in the course of performing custody/parenting time evaluations shall comply with the requirements set forth at *N.J.A.C. 13:42-10.5*.

(d) Applicants for licensure who hold a temporary permit pursuant to *N.J.A.C. 13:42-3.1* and *3.2* shall not perform custody/parenting time evaluations and termination of parental rights evaluations.

(e) A licensee shall maintain documentation that demonstrates the licensee's education, training, supervision or self-study in the topics from (a) and (b) above.

(f) If a licensee consults with an expert pursuant to (b) above, the licensee shall document the consultation.

13:42-12.3 Dual relationships

(a) If a licensee is or has been a treating therapist for any person who is part of the custody/parenting time evaluation, the treating therapist shall not assume the role of evaluator in the custody/parenting time evaluation and shall advise any party or court of this prohibition.

(b) A licensee whose initial involvement with a case has been as an evaluator may agree to function subsequently as a treating therapist, but shall no longer function as an evaluator in the case.

13:42-12.4 Communications

(a) If a licensee is court-appointed, the licensee shall communicate any substantive information only to the court and both parties or their attorneys simultaneously, either in writing or through a conference call.

(b) If a licensee is selected by both parties without a court appointment, the licensee shall communicate any substantive information only to both parties or their attorneys simultaneously, either in writing or through a conference call.

(c) If a licensee is selected by only one party, the licensee shall communicate any information only to that party or the party's attorney.

13:42-12.5 Required disclosures

(a) A licensee shall provide information, in writing, to the parties to assist them in understanding the nature of the custody/parenting time evaluation and the implications of their agreement to participate. This information shall include the following:

1. Purpose, procedures and methods;

2. Fees;

3. Responsibility of parties for payment of the fees and whether payment will be required prior to the delivery of any report;

4. Limits of confidentiality;

5. Special policies pertaining to issues, such as canceled and/or missed appointments; and

6. Limitation on communications, as set forth in *N.J.A.C. 13:42-12.4*.

(b) A licensee shall inform the parties about the purpose of any assessment instruments, interview techniques and the use of any information collected. The licensee shall provide this information, as appropriate, to children,

to the extent that they are able to understand.

13:42-12.6 Fees

(a) Before commencing the custody/parenting time evaluation, a licensee shall inform the party or parties responsible for paying the fees, in writing, of the estimated fees for all anticipated services and any additional fees should the licensee be required, requested or mandated to perform additional services.

(b) A licensee shall provide the party or parties responsible for paying the fees with complete documentation of all fees, itemizing time, charges and services as appropriate.

(c) A licensee may accept payment of fees by retainer or by a pre-arranged fee schedule.

1. If a partial retainer is accepted, a licensee shall inform the court, attorneys and/or parties of the schedule for payment of the remainder and of any contingent relationship between complete payment and final delivery of services. A licensee shall inform the court, attorneys and/or parties that payment in excess of the reasonable estimate is expected if delivery of services unforeseeably exceeds that anticipated. A licensee shall inform the court, attorneys and/or parties that unused fees will be refunded as soon as possible, upon completion of the professional services.

2. If payment by a fee schedule is accepted, a licensee shall provide a complete explanation of the expected per-visit payment or other scheduled costs.

(d) A licensee may require payment for a report prior to its delivery provided that prior notification has been given to the parties under (a) above.

13:42-12.7 Reports and recommendations

(a) A licensee shall complete written reports in a timely manner. Delays of more than two months from the final session with any party to the custody/parenting time evaluation are considered excessive. In the event of extenuating circumstances, such as inability to collect final documents from collateral contacts, the licensee shall provide, in writing, the reasons for the delay in accordance with (c), (d) and (e) below.

(b) A licensee shall not provide any opinion regarding the psychological functioning of any individual who has not been personally evaluated. A licensee may report what an evaluated individual has stated or address theoretical issues or hypothetical questions, as long as the limited basis of the information is explained.

(c) A licensee who is court-appointed shall submit the report only to the court and to both parties or their attorneys, unless otherwise specified in a court order.

(d) A licensee who is selected by both parties shall submit the report only to both parties or their attorneys, unless otherwise specified in a consent order.

(e) A licensee who is selected by only one party shall submit the report only to that party or that party's attorney.