IN THE SUPREME COURT

OF THE

STATE OF SOUTH DAKOTA

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IN THE MATTER OF THE ADOPTION OF A NEW RULE ESTABLISHING MINIMUM QUALIFICATIONS OF CHILD CUSTODY EVALUATORS AND MINIMUM REQUIREMENTS OF REPORTS SETTING FORTH EVALUATOR'S FINDINGS AND RECOMMENDATIONS TO COURTS TO BE ADDED TO SDCL CHAPTER 25-4A CUSTODY AND VISITATION RIGHTS	))))))))	**AMENDED RULE 26-07**

A hearing was held on February 11, 2026, at Pierre, South Dakota, relating to the adoption of a new rule establishing minimum qualifications of child custody evaluators and minimum requirements of reports setting forth evaluator's findings and recommendations to courts to be added to SDCL chapter 25-4A Custody and Visitation Rights. Rule 26-07 was previously adopted on February 25, 2026. Following adoption of the proposed rule the Court entered an Order Delaying Effective Date of Rule 26-07, and the Court having considered the proposed adoption and oral presentation relating thereto, now, therefore, it is

ORDERED that a new rule to be placed in SDCL chapter 25-4A be adopted in its entirety as follows:

Section 1. Custody and Parenting Time Disputes - Appointment of Custody Evaluator.

In any custody or visitation dispute between parents, the court may appoint a custody evaluator to assist the court in determining the best interests of the child.

Section 2. Custody Evaluator Appointment at Party Request or on Court's Own Motion.

At the request of either party, or on the court's own motion, a custody evaluator may be appointed in any custody or parenting time proceeding. The parties may agree to use a custody evaluator, subject to approval by the court, or the court may designate a custody evaluator for the parties to use.

Section 3. Definitions.

The terms used in Sections 1 through 6 mean:

(1) Custody evaluation: An evaluation based on personal interviews, interactions and observations of the parties and minor children that makes a recommendation to the court as to custody and parenting time for minors.

(2) Custody evaluator: A person who meets the minimum qualifications set forth in Section 4 to perform custody evaluations.

Section 4. Qualifications of Custody Evaluator.

A custody evaluator must satisfy the following minimum qualifications:

(1) File an approved application on the prescribed form with the presiding judge for the circuit in which the evaluator will provide custody and parenting time evaluation services;

(2) Have a general knowledge of the South Dakota court system and its procedures in family matters;

(3) Have a general knowledge of South Dakota family law, especially as applied to custody and parenting time issues;

(4) Have a minimum of four hours of domestic violence training focusing upon the impact it has on parents and children exposed to violence;

(5) Have a minimum of forty hours custody evaluation training with competence in the following areas:

(a) Definition of the purpose and roles of the child custody evaluator;

(b) Child development and the impact of parenting practices and other influences on children's development;

(c) The impact of parental separation, divorce, family restructuring, and interparent conflict on children, adults, and families;

(d) Family violence patterns and coercive controlling behaviors, the connection between intimate partner

violence and child maltreatment, and the effects of exposure to family violence and coercively controlling behaviors on children;

(e) Parent-child contact problems and resist-refuse dynamics, including parental alienating behaviors, compromised parenting and child maltreatment;

(f) Child and adult psycho-pathology, including mental health disorders, learning disorders, and developmental disorders;

(g) Child maltreatment, including child neglect and physical, psychological, and sexual child abuse, the connection between child maltreatment and other adverse childhood experiences, and factors associated with resiliency from trauma and adversity;

(h) Impact of relocation on children, adults, and families;

(i) Resources available in the state to which the parties and the children can be referred for assistance;

(j) Review of cultural considerations, bias, and ethical issues;

(k) Utilization of psychological testing;

(l) Updates on the current research;

(m) Developmentally appropriate and empirically informed parenting plans, long distance parenting plans, methods of facilitating transitions between homes, and communication and information exchange;

(n) Interviewing, record keeping, use of technology and problem-solving techniques applicable to the family setting;

(o) Evidence-informed methods for interviewing adults and children, observing parent-child interactions, applying balanced procedures, maintaining objectivity, and interpreting data;

(p) Recognizing the limits of reliability and validity of various sources of information; and

(q) Best practices for report writing and testifying.

(6) Committed to, and participate in, at least forty hours of continuing education courses focused on the areas outlined in subdivision 5 of this section every two years;

(7) Be an attorney who is licensed to practice law in South Dakota; a psychologist who is licensed to practice in South Dakota; a psychiatrist who is licensed to practice in South Dakota; or any other South Dakota-licensed or certified professional with a master's degree or higher in social work, psychology, child development, counseling or behavioral sciences or a closely related field relevant to the duties of a custody evaluator; and

(8) Have at least twenty-four months of professional experience working with families as outlined in subsection 7.

Section 5. Appointment Upon Consent of Parties.

Any person not meeting the educational requirements of subdivision 4(7) may be appointed as a custody evaluator upon consent of the parties, and order approving the same at the court's discretion. The person is still required to comply with the training requirements of subdivisions 4(2), (3),(4), (5), (6), and (8).

Section 6. Form for Custody Evaluations.

The purpose of a custody evaluation is to provide the court with information it may consider in making decisions regarding custody and parenting time arrangements that are in the child's best interest. A custody evaluator shall consider and respond to the factors as set forth by the court in §§ 25-4A-24, 25-4-45 and sections set forth above.

A custody evaluator shall:

(1) Use interview, assessment, and testing procedures that are consistent with generally accepted clinical, forensic, scientific, diagnostic, or medical standards;

(2) Complete a fact-finding investigation;

(3) Interview service providers and other collateral sources (teachers, psychologists, psychiatrists, doctors, nurses, neighbors, and others) who are knowledgeable about the child and family; and

(4) Administer or obtain psychological evaluations only upon receiving a court order or an agreement between the parties. Psychological evaluations must only be administered and interpreted by a licensed expert.

Every custody evaluation report must contain the following:

(1) The procedures employed during the evaluation;

(2) The data collected as permitted by professional standards;

(3) Testing results;

(4) An explanation of any limitations in the evaluation or any reservations of the professional regarding the resulting recommendations;

(5) Verification of each statement of material fact upon which the evaluator relied and the sources of verification, or alternatively, the inability to verify material facts and reasons therefore;

(6) The amount of time spent with each party and child; and

(7) Application and discussion of each of the factors set forth in § 25-4A-24.

Upon receiving notice of an appointment by the court, the evaluator shall provide their anticipated timeline for commencement to the parties and to the court. Following receipt of the anticipated commencement date, either party may request the assignment of a different evaluator. After commencement of the evaluation, a report must be completed within 120 days after appointment by a court order. If the evaluation will not be completed within 120 days, upon the motion by either party, the court may expand the timeline. The evaluator shall send a status update to the parties at least once every 30 days outlining what needs to be completed or provided by each party.

Upon completion of the report, the evaluator shall provide the written report to the parties and file a copy of the report with the court.

Evaluators shall retain all documents and notes used during their custody evaluation process for at least three years after completion of the report.

IT IS FURTHER ORDERED that this rule shall become effective January 1, 2027.

DATED at Pierre, South Dakota, this 9th day of November, 2026.

BY THE COURT

Steven R. Jensen, Chief Justice

ATTEST:

Clerk of the Supreme Court
(SEAL)

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Clerk