

mitted to, examinations involving physical or mental condition, employability or vocational testing, genetic testing, or any other type of examination related to a matter in controversy.

#### Commentary

**1995 Adoption.** This rule expands Florida Rule of Civil Procedure 1.360 to specify common examinations in family law matters, but this rule is not intended to be an exclusive list of allowable examinations. Rule 1.360 should be interpreted to discourage subjecting children to multiple interviews, testing, and evaluations.

### **RULE 12.363. EVALUATION OF MINOR CHILD**

#### **(a) Appointment of Mental Health Professional or Other Expert.**

(1) When the issue of time-sharing, parental responsibility, ultimate decision-making, or a parenting plan for a minor child is in controversy, the court, on motion of any party or the court's own motion, may appoint a licensed mental health professional or other expert for an examination, evaluation, testing, or interview of any minor child or to conduct a social or home study investigation. The parties may agree on the particular expert to be appointed, subject to approval by the court. If the parties have agreed, they shall submit an order including the name, address, telephone number, area of expertise, and professional qualifications of the expert. If the parties have agreed on the need for an expert and cannot agree on the selection, the court shall appoint an expert.

(2) After the examination, evaluation, or investigation, any party may file a motion for an additional expert examination, evaluation, interview, testing, or investigation by a licensed mental health professional or other expert. The court upon hearing may permit the additional examination, evaluation, testing, or interview based on good cause shown that further examinations, testing, interviews, or evaluations would be in the best interests of the minor child.

(3) Any order entered under this rule shall specify the issues to be addressed by the expert.

(4) Any order entered under this rule may require that all interviews of the child be recorded and the tapes be maintained as part of the expert's file.

(5) The order appointing the expert shall include an initial allocation of responsibility for payment.

(6) A copy of the order of appointment shall be provided immediately to the expert by the court unless otherwise directed by the court. The order shall direct the parties to contact the expert or investigator appointed by the court to establish an appointment schedule to facilitate timely completion of the evaluation.

#### **(b) Providing of Reports.**

(1) Unless otherwise ordered, the expert shall prepare and provide a written report to the attorney for each party or the party, if unrepresented, and the guardian ad litem, if appointed, a reasonable time before any evidentiary hearing on the matter at issue. The expert also shall send written notice to the court that the report has been completed and that a copy of the written report has been provided to the attorney for each party or the party, if unrepresented, and the guardian ad litem, if appointed. In any event, the written report shall be prepared and provided no later than 30 days before trial or 75 days from the order of appointment, unless the time is extended by order of the court. The expert shall not send a copy of the report to the court unless the parties and their attorneys have agreed in writing that the report will be considered by the court and filed in the court file as provided in subdivision (e).

(2) On motion of any party, the court may order the expert to produce the expert's complete file to another qualified licensed mental health professional, at the initial cost of the requesting party, for review by such qualified licensed mental health expert, who may testify.

**(c) Testimony of Other Professionals.** Any other expert who has treated, tested, interviewed, examined, or

evaluated a child may testify only if the court determines that good cause exists to permit the testimony. The fact that no notice of such treatment, testing, interview, examination, or evaluation of a child was given to both parents shall be considered by the court as a basis for preventing such testimony.

**(d) Communications with Court by Expert.** No expert may communicate with the court without prior notice to the parties and their attorneys, who shall be afforded the opportunity to be present and heard during any such communication between the expert and the court. A request for communication with the court may be informally conveyed by letter or telephone. Further communication with the court, which may be conducted informally, shall be done only with notice to the parties.

**(e) Use of Evidence.** An expert appointed by the court shall be subject to the same examination as a privately retained expert and the court shall not entertain any presumption in favor of the appointed expert's findings. Any finding or report by an expert appointed by the court may be entered into evidence on the court's own motion or the motion of any party in a manner consistent with the rules of evidence, subject to cross-examination by the parties. Any report filed in the court file shall be in compliance with Florida Rule of Judicial Administration 2.425. The report shall not be filed in the court file unless or until it is properly admitted into evidence and considered by the court. The court shall consider whether the report should be sealed as provided by Florida Rule of Judicial Administration 2.420.

#### Committee Note

**1997 Adoption.** This rule should be interpreted to discourage subjecting children to multiple interviews, testing, and evaluations, without good cause shown. The court should consider the best interests of the child in permitting evaluations, testing, or interviews of the child. The parties should cooperate in choosing a mental health professional or individual to perform this function to lessen the need for multiple evaluations.

This rule is not intended to prevent additional mental health professionals who have not treated, interviewed, or evaluated the child from testifying concerning review of the data produced pursuant to this rule.

This rule is not intended to prevent a mental health professional who has engaged in long-term treatment of the child from testifying about the minor child.

### **RULE 12.365. EXPERT WITNESSES**

**(a) Application.** The procedural requirements in this rule shall apply whenever an expert is appointed by the court or retained by a party. This rule applies to all experts including, but not limited to, medical, psychological, social, financial, vocational, and economic experts. Where in conflict, this rule shall supersede Florida Rule of Civil Procedure 1.360.

**(b) Communication with Court by Expert.** No expert may communicate with the court without prior notice to the parties and their attorneys, who shall be afforded the opportunity to be present and heard during the communication between the expert and the court. A request for communication with the court may be conveyed informally by letter or telephone. Further communication with the court, which may be conducted informally, shall be done only with notice to all parties.

**(c) Use of Evidence.** The court shall not entertain any presumption in favor of a court-appointed expert's opinion. Any opinion by an expert may be entered into evidence on the court's own motion or the motion of any party in a manner consistent with the rules of evidence, subject to cross-examination by the parties.

**(d) Evaluation of Minor Child.** This rule shall not apply to any evaluation of a minor child under rule 12.363.

#### Committee Note

**1998 Adoption.** This rule establishes the procedure to be followed for the use of experts. The District Court of Appeal, Fourth District, has encouraged the use of court-appointed experts to review financial information and reduce the cost of divorce litigation. *Tomaino v. Tomaino*, 629 So.2d 874 (Fla. 4th DCA 1993). Additionally, section 90.615(1), Florida Statutes, allows the court to call witnesses whom all