

BEFORE THE BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
DEPARTMENT OF LABOR AND INDUSTRY
STATE OF MONTANA

In the matter of the amendment of)
ARM 24.219.301 definitions,)
24.219.501 and 24.219.601)
application procedures, and the)
adoption of NEW RULE I supervisor)
qualifications, and NEW RULES II)
through IX parenting plan evaluations)

NOTICE OF PUBLIC HEARING ON
PROPOSED AMENDMENT AND
ADOPTION

TO: All Concerned Persons

1. On May 5, 2011, at 1:00 p.m., a public hearing will be held in room B-07, 301 South Park Avenue, Helena, Montana, to consider the proposed amendment and adoption of the above-stated rules.

2. The Department of Labor and Industry (department) will make reasonable accommodations for persons with disabilities who wish to participate in this public hearing or need an alternative accessible format of this notice. If you require an accommodation, contact the Board of Social Work Examiners and Professional Counselors (board) no later than 5:00 p.m., on April 29, 2011, to advise us of the nature of the accommodation that you need. Please contact Cyndi Breen, Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; telephone (406) 841-2392; Montana Relay 1 (800) 253-4091; TDD (406) 444-2978; facsimile (406) 841-2305; e-mail dlibsdswhpc@mt.gov.

3. The rules proposed to be amended provide as follows, stricken matter interlined, new matter underlined:

24.219.301 DEFINITIONS (1) through (3) remain the same.

(4) "Exploitation" means the manipulation or use₁ or the attempted manipulation₁ or the attempted use of a professional relationship with a client, student, or supervisee for the licensee's emotional, financial, romantic, sexual₁ or personal advantage₁ or for the advancement of the licensee's personal, religious, political, or business interests.

(5) and (5)(a) remain the same.

(b) link people with systems that provide them with resources, services₁ and opportunities;

(c) through (7) remain the same.

(8) "Supervisor," when used to refer to a person who supervises the work of an applicant for licensure, means a licensed ~~clinical social worker, a licensed clinical professional counselor, a licensed psychologist, or a licensed and board-certified psychiatrist~~ person who meets the criteria set forth in [NEW RULE I].

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-22-102, 37-22-201, 37-23-101, 37-23-102, MCA

REASON: The board previously proposed amending the definition of "supervisor" in a 2009 rulemaking notice. Following public comment, the board withdrew the proposed changes on supervisor training and experience to allow supervisors time to adjust to the proposed standards and enable trainees to find qualified supervisors. The board is now satisfied that sufficient time has elapsed for those affected to adjust to the proposed new supervision standards.

Therefore, the board is amending (8) to ensure that applicants are receiving the quality of supervision that is necessary to adequately protect the public and prepare applicants for licensure. The board is proposing New Rule I within this notice to clearly set forth supervisor qualifications in a separate rule, rather than including them within the definition.

24.219.501 APPLICATION PROCEDURES (1) through (2)(v) remain the same.

(vi) supervisor must attest to the above under penalty of law. Falsification or misrepresentation of any of the above may be considered misrepresentations and a violation of professional ethics, which may result in discipline of the supervisor's license.

(3) through (7) remain the same.

(8) If an applicant has previously held a license to practice as a social worker in this state, and the previous license was terminated as a result of the applicant's failure to renew the license, the applicant shall complete ten hours of board-approved continuing education credits for each year that the applicant's license was terminated. The applicant shall submit proof of completion of these hours at the time of application.

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-306, 37-22-301, MCA

REASON: The board requires that individuals with expired licenses obtain and submit evidence of continuing education (CE) prior to license reactivation. The board concluded that individuals with terminated licenses should be held to the same standard. The board is amending ARM 24.219.501 and 24.219.601 to require that when applying for new, original licensure, terminated applicants provide proof of CE equivalent to that required for maintaining licensure. Without the amendments, terminated applicants might be held to the same standard as first-time applicants, and may be required to retake an examination or obtain supervised experience.

24.219.601 APPLICATION PROCEDURE (1) Any person seeking licensure as a professional counselor must apply on the board's official forms, which may be obtained through the board office. All requirements with documentation must be met at the time of application. Incomplete applications will not be considered by the board.

(2) through (7) remain the same.

(8) If an applicant has previously held a license to practice as a professional counselor in this state, and the previous license was terminated as a result of the applicant's failure to renew the license, the applicant shall complete ten hours of board-approved continuing education credits for each year that the applicant's license was terminated. The applicant shall submit proof of completion of these hours at the time of application.

AUTH: 37-1-131, 37-1-319, 37-22-201, MCA

IMP: 37-1-131, 37-1-306, 37-23-202, MCA

4. The proposed new rules provide as follows:

NEW RULE I SUPERVISOR QUALIFICATIONS (1) A person supervising the experience of an applicant for licensure shall meet the minimum qualifications set forth in this rule.

(2) The supervisor must be a licensed clinical social worker, licensed clinical professional counselor, licensed marriage and family therapist, licensed psychologist, or licensed and board-certified psychiatrist.

(3) The supervisor must hold an active and current license in good standing, which was issued by the licensing board or other officially recognized licensing body of the state where supervision occurs.

(4) The supervisor must have three years of post-licensure experience or board-approved training in clinical supervision.

(5) Board-approved training in supervision shall consist of a minimum of one semester hour of board-approved graduate education or 20 clock hours of board-approved training in clinical supervision.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-22-101, 37-22-301, 37-23-101, 37-23-202, MCA

REASON: The board determined that some applicants are not receiving the appropriate quality of supervision that is necessary to ensure licensure of qualified applicants. In conjunction with the amendment of the "supervisor" definition in ARM 24.219.301, the board is proposing New Rule I to specifically delineate the minimum qualifications necessary to ensure adequate protection of the public through proper supervision of applicants.

NEW RULE II ORIENTING GUIDELINES (1) The purpose of the parenting plan evaluation regulations is to protect both the public, who are the consumers of services, and the licensees, who are the providers of services. These regulations intend to ensure competency of the provider and consistency of the procedures in child custody proceedings, pursuant to Title 40, chapter 4, MCA, Termination of Marriage, Child Custody, Support.

(2) The purpose of a parenting plan evaluation is to determine, to the extent possible, what is in the best interests of the child. The "fit" between each parent and the child or children is the central issue, not the diagnosis of each parent or of each

child. If a parent or child shows any relevant mental, cognitive, physical, or other disorder, the implications of that disorder for the best interest of the child must be addressed.

(3) Two different parents showing very similar personalities and parenting styles might affect two different children in essentially different ways. It cannot be assumed that qualities generally admired by the population-at-large are necessarily those that make the better parent, or are in the best interests of the child. For example, factors such as which parent has the most money, the most friends, the largest house, is the most religious, the most physically active, has the most education, is home the most, lacks a history of diagnosis or treatment, and so on, may bear on the issue at hand, but are not the determining factors in and of themselves. How each factor supports the child's needs and well-being, or detracts from the child's needs and well-being, is a primary consideration. The intention of a parenting plan evaluation is to make a parenting recommendation that will support the child's development along the healthiest lines possible.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-22-102, 37-22-201, 37-23-102, MCA

REASON: The board determined it is reasonably necessary to adopt several new rules to set forth regulations for licensees who provide parenting plan evaluations. The board notes that a substantial percentage of the complaints filed against board licensees relate to licensees' participation in these evaluations and the number of these complaints and subsequent board discipline taken is increasing. Therefore, the board is proposing New Rules II through IX to set forth clear guidelines for licensees providing these services and ensure competent providers and consistency within the associated parenting plan procedures.

NEW RULE III ROLE OF THE LICENSEE (1) In a parenting plan evaluation, the licensee shall maintain an unbiased, impartial role. The client is the child, and recommendations must be made which are in the best interests of the child. The licensee shall clarify with all parties, attorneys, and the court the nature of the licensee's role as an objective evaluator.

(a) The licensee shall act as an impartial evaluator of the parties, assessing relevant information, and informing and advising the court and other parties of the relevant factors pertaining to the parenting issue.

(b) The licensee shall remain impartial, regardless of whether the licensee is retained by the court or by a party to the proceeding, and regardless of whom is responsible for payment.

(c) If circumstances prevent the licensee from performing in an impartial role, the licensee shall attempt to withdraw from the case. (See [New Rule IV])

(d) If the licensee is not able to withdraw, the licensee must reveal any factors that may bias the licensee's findings and/or compromise the licensee's objectivity.

(e) Communication with parents or attorneys must be conducted in such a manner as to avoid bias. The licensee must exercise discretion in informing parties or their attorneys of significant information that is gathered during the course of the

evaluation. The licensee shall not communicate essential information to one party's attorney, without also communicating the information to the other party's attorney and to the guardian ad litem, if one is appointed.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-22-102, 37-22-201, 37-23-102, MCA

NEW RULE IV DUAL RELATIONSHIPS (1) The licensee shall avoid dual relationships and other situations which might produce a conflict of interest when performing parenting plan evaluations.

(a) The licensee shall not conduct a parenting plan evaluation in a case in which the licensee has served or can reasonably anticipate serving in a therapeutic role for the child or the child's immediate family, or has had other significant involvement; e.g., social, personal, business, or professional, that may compromise the licensee's objectivity.

(b) The licensee may not accept any of the involved participants in the parenting plan evaluation as therapy clients, either during or after the evaluation.

(c) The licensee who is asked to testify regarding a therapy client who is involved in a parenting plan case, shall be aware of the limitations and possible biases inherent in such a role and the possible impact on the ongoing therapeutic relationship. If required to testify, the licensee may not give an expert opinion regarding parenting plan issues, and shall limit the licensee's testimony to factual issues.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-22-102, 37-22-201, 37-23-102, MCA

NEW RULE V COMPETENCY (1) Licensees performing parenting plan evaluations in Montana shall be licensed to practice in the state of Montana.

(2) Licensees performing parenting plan evaluations must comply with the board's rules regarding unprofessional conduct.

(3) Licensees may only perform parenting plan evaluations if they have acquired specialized training, education, and experience in the areas of assessment of children and adults, child and family development, child and family psychopathology, and the impact of divorce on families. They shall acquire current knowledge regarding diverse populations, especially as it relates to child-rearing issues.

(4) Licensees may only operate within their areas of competence and shall seek appropriate supervision when necessary.

(5) Licensees must understand the construction/ administration/interpretation of the test procedures the licensee employs.

(6) Licensees must maintain current knowledge of scientific, professional, and legal developments within their area of claimed competence, and use that knowledge, consistent with accepted clinical and scientific standards, in selecting current data collection methods and procedures for an evaluation.

(7) Licensees shall use multiple methods of data collection in a parenting plan evaluation.

(8) Licensees shall be aware of personal and societal biases and engage in nondiscriminatory practice. The licensee shall be aware of how biases regarding age, gender, race, ethnicity, national origin, religion, sexual orientation, disability, language, culture, and socioeconomic status may interfere with an objective evaluation and recommendations, and shall strive to overcome any such biases or withdraw from the evaluation.

(9) Licensees shall understand, clarify, and utilize the concept of the "best interests of the child" guidelines, as set forth in Title 40, chapter 4, MCA.

(10) Licensees shall maintain current knowledge of legal standards regarding parenting plans, divorce, and laws regarding abuse, neglect, and family violence. Licensees shall also understand the civil rights of parties in legal proceedings in which they participate, and manage their professional conduct in a manner that does not diminish or threaten those rights.

(11) Licensees shall recognize and state any limitations of their assessments and reports.

(12) Licensees shall not render diagnoses or form an expert opinion about any party not personally evaluated, and may not make parenting plan recommendations when both parents and children have not been personally evaluated by the licensee. In situations where all parties cannot be evaluated, licensees shall limit recommendations and opinions to individuals evaluated, and shall avoid making recommendations regarding placement and visitation.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-22-102, 37-22-201, 37-23-102, MCA

NEW RULE VI LIMITS OF CONFIDENTIALITY (1) Licensees shall inform all participants, including parents, children (when feasible), other family members, and third party contacts such as teachers, physicians, and child care providers, as to the limits of confidentiality, which can be expected with regard to any information they may provide to the licensee over the course of the evaluation.

(a) This includes the limits of confidentiality applicable to the general practice of social work or counseling, such as a duty to warn in instances of possible imminent danger to a participant or to others, or legal obligations to report suspected child or elder abuse, and also exceptions to confidentiality stemming from the specific requirements of a parenting plan evaluation, including:

(i) the potential need to disclose information provided by any participant to other participants, in order to obtain accounts of circumstances pertinent to the issues being evaluated;

(ii) the expectation of disclosure of relevant information provided by individual participants to the attorneys involved in the case, to the court, and to the guardian ad litem, if one has been appointed; and

(iii) the likely disclosure of the licensee's findings, professional opinions, and recommendations regarding the resolution of contested matters, which fall within the scope of the evaluation to parents, their attorneys, the court, and any other party, such as a guardian ad litem.

(2) Licensees shall obtain written waivers of confidentiality from the parents who are participating in the evaluation, encompassing all disclosures of information

to other persons, including other participants in the evaluation, attorneys, and the court.

(3) Licensees shall take reasonable precautions in their handling of children's disclosures of abuse, neglect, or any other circumstances, when such disclosure may place the child at increased risk of physical or emotional harm. Licensees shall also recognize the right of any person accused of misconduct to respond to such allegations, while placing the highest priority on the safety and well-being of the child.

(4) Licensees shall recognize that disclosures of statements by abused spouses may pose special risks to the safety and well-being of persons who claim to be victims of domestic abuse. Prior to disclosure of such allegations to an alleged perpetrator or to other persons who may support, collude with, or otherwise increase the risk of abuse, the licensee shall inform the alleged victim that the disclosure will take place. If appropriate, information will be provided as to available community resources for protection, planning, and personal assistance, and counseling for victims of domestic abuse.

(5) Licensees shall provide judges, attorneys, and other appropriate parties with access to the results of the evaluation, but make reasonable efforts to avoid the release of notes, test booklets, structured interview protocols, and raw test data to persons untrained in their interpretation. If legally required to release such information to untrained persons, licensees shall first offer alternative steps, such as providing the information in the form of a report, or releasing the information to another licensee who is qualified in the interpretation of the data, and who will discuss or provide written interpretations of the data with the person(s) who are seeking the information.

(6) Licensees shall not agree to requests by participants in a parenting plan evaluation that information shared with the licensee be concealed.

(a) When such requests are made, the licensee shall clarify the requirements of the evaluation as regards to confidentiality, and may advise the participant to consult with the participant's attorney before proceeding with the evaluation.

(7) The licensee must ultimately respect the right of any participant to withhold information from the evaluation. Whether the refusal to provide information should itself be made known to others, it must be decided by the licensee, based on the relevance of such refusal to the issues before the court, in the particular case at hand.

(8) Licensees shall recognize the possibility that the need to disclose information obtained in the evaluation may limit the validity of data acquired during the evaluation, by inhibiting the free and complete disclosure of information by participants.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-22-102, 37-22-201, 37-23-102, MCA

NEW RULE VII DISCLOSURE AND INFORMED CONSENT (1) Licensees shall obtain informed consents from parents involved in parenting plan evaluations and, to the extent feasible, inform children of significant aspects of the evaluation prior to conducting interviews, testing, or other data-gathering procedures.

Disclosure of information to the parents shall include a thorough explanation of all major aspects of the evaluation, including:

(a) a general review of the purpose, nature, methods, scope, and limitations of a parenting plan evaluation, and the potential impact of the evaluation on the outcome of litigation;

(b) clarification as to who has requested the evaluation and who will receive verbal or written feedback as to the results and recommendations;

(c) the nature of data to be collected and potential uses to which that data will be put, including data from testing and structured interview protocols;

(d) the methods of assessing and collecting fees for professional services, including specification of who will be financially responsible for the evaluation, expectations as to the timing of payments, and policies related to the collection of unpaid fees; and

(e) the nature and limits of confidentiality, both as generally applicable to professional services, and as required by the nature of the evaluation. ([See New Rule VI])

(2) Licensees shall inform the parents of the above elements and offer each parent the opportunity to discuss the proposed evaluation with an attorney before proceeding.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-22-102, 37-22-201, 37-23-102, MCA

NEW RULE VIII COLLECTION AND USE OF DATA (1) The licensee shall use generally accepted standards for the collection and use of data.

(2) In evaluating alternative hypotheses, licensees shall include data from several different sources and of several different types, such as interviews, testing, observations of interactions, questionnaires, and record reviews. The licensee shall be prepared to specify the reasons for collecting each kind of data and how it relates to the child's best interest.

(3) As data are collected, the licensee must keep comprehensive and detailed records. All raw data, including but not limited to test forms, handwritten notes, scribbles in margins, records of telephone conversations, observations of parent-child interaction, observations of parent-parent interaction, consultations with other professionals, or any audio or video tapes must be saved and made available for review, if necessary.

(4) Data that are not objective should not be treated as though they are. The licensee shall attempt to corroborate or rule out allegations that either parent has behaviors that affect the child detrimentally. If the licensee is not able to form a clear opinion based on objective data or data verified by multiple sources, the licensee should state this fact. If appropriate, the licensee may offer a method by which further data along any dimension might be gathered; for example, recommending that a child meet with a therapist over time, or that a parent undergo drug and alcohol assessment.

(5) If issues affecting what is in the child's best interest arise and cannot be investigated due to the limited scope of the evaluation as imposed by the court or an agency, the licensee shall report those issues to the parents, their attorneys, and the

court. If issues arise that the licensee does not have the expertise to investigate or form an opinion on, another licensee or specialist who does have the required expertise should be brought in to address that issue.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-22-102, 37-22-201, 37-23-102, MCA

NEW RULE IX DOCUMENTATION (1) When licensees complete a parenting plan evaluation, they shall produce a written report of the findings and recommendations.

(2) Licensees shall retain all items presented to them or a copy thereof, that are used for consideration in formulating a professional opinion (e.g., videos, photos, etc.) as well as a copy of the final report.

(3) Licensees shall maintain clear and complete records.

(4) Licensees shall retain all releases of information signed by the parties.

(5) Licensees shall maintain adequate documentation of their contacts with clients and of the clinically significant information derived from these contacts.

(6) Licensees shall create and maintain documentation of all data that form the basis for their conclusions in the detail and quality that would be consistent with reasonable scrutiny in an adjudicative forum.

(7) Licensees shall make clear to all parties that the report may be altered at any time by the licensee, until the final decision of the court is made.

(8) Licensees shall make a reasonable effort to ensure that the court, attorneys, parents, and guardian ad litem, if any, receive the report at the same time.

(9) Licensees shall recognize that all items in the case file, other than copies of tests, raw test data, and computer-generated interpretive reports may be brought into the courtroom.

(10) Licensees shall recognize that all parenting plan evaluations and reports are highly sensitive material and discretion is necessary.

AUTH: 37-1-131, 37-22-201, MCA

IMP: 37-1-131, 37-22-102, 37-22-201, 37-23-102, MCA

5. Concerned persons may present their data, views, or arguments either orally or in writing at the hearing. Written data, views, or arguments may also be submitted to the Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513, by facsimile to (406) 841-2305, or by e-mail to dlibsdswwpc@mt.gov, and must be received no later than 5:00 p.m., May 13, 2011.

6. An electronic copy of this Notice of Public Hearing is available through the department and board's site on the World Wide Web at www.swpc.mt.gov. The department strives to make the electronic copy of this notice conform to the official version of the notice, as printed in the Montana Administrative Register, but advises all concerned persons that in the event of a discrepancy between the official printed text of the notice and the electronic version of the notice, only the official printed text will be considered. In addition, although the department strives to keep its web site

accessible at all times, concerned persons should be aware that the web site may be unavailable during some periods, due to system maintenance or technical problems, and that technical difficulties in accessing or posting to the e-mail address do not excuse late submission of comments.

7. The board maintains a list of interested persons who wish to receive notices of rulemaking actions proposed by this board. Persons who wish to have their name added to the list shall make a written request that includes the name, e-mail, and mailing address of the person to receive notices and specifies the person wishes to receive notices regarding all board administrative rulemaking proceedings or other administrative proceedings. The request must indicate whether e-mail or standard mail is preferred. Such written request may be sent or delivered to the Board of Social Work Examiners and Professional Counselors, 301 South Park Avenue, P.O. Box 200513, Helena, Montana 59620-0513; faxed to the office at (406) 841-2305; e-mailed to dlibsdswwpc@mt.gov; or made by completing a request form at any rules hearing held by the agency.

8. The bill sponsor contact requirements of 2-4-302, MCA, do not apply.

9. Don Harris, attorney, has been designated to preside over and conduct this hearing.

BOARD OF SOCIAL WORK EXAMINERS
AND PROFESSIONAL COUNSELORS
LINDA CRUMMETT, LCSW, PRESIDENT

/s/ DARCEE L. MOE
Darcee L. Moe
Alternate Rule Reviewer

/s/ KEITH KELLY
Keith Kelly, Commissioner
DEPARTMENT OF LABOR AND INDUSTRY

Certified to the Secretary of State April 4, 2011