

CHAPTER 63
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CHILD AND FAMILY REPORTERS IN CHILD CUSTODY CASES

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I. Introduction

[1] A Child and Family Reporter (CFR) is appointed by the court to gather and report factual information in cases involving the care and custody of minor children and other matters bearing on the interests or rights of children under Iowa Code chapters 598 and 600B. A CFR report provides a brief assessment of home conditions, parenting capabilities, and other matters pertinent to the best interests of the child. The court may appoint an attorney, a mental health professional, or another individual whom the court believes is able to carry out the CFR role.

[2] The purpose of these standards is to provide guidance for CFRs, to promote uniformity, consistency, and accountability in CFR reports; to promote respect for the rights of parties and their children; and to improve custody, visitation, and other outcomes for children.

[3] These standards do not add obligations to the Iowa Rules of Professional Conduct, but like the comments to those rules, they provide guidance to those serving as CFRs in custody cases for practicing in compliance with the CFRs professional ethical obligations and rules of professional conduct. In the event of any conflict between these standards and a rule of professional conduct for attorneys, the requirements of the rule take precedence.

II. Role of a Child and Family Reporter

A. The CFR gathers and reports factual data to the court.

Commentary

[1] The role of the CFR is to gather and report factual information that will assist the court in making custody, visitation, or other decisions related to the welfare of a child. Unless the appointing judge specifies otherwise, the CFR role is limited to gathering and reporting information to the court. The CFR may include recommendations in the report only if the court's appointment order authorizes inclusion of such recommendations.

B. The CFR must remain impartial and avoid conflicts of interest.

Commentary

[1] The CFR must approach all family members and parties with an attitude of respect and openness in order to hear their account of the relevant facts regardless of any allegations that have been made. The CFR must not engage in conduct

manifesting bias or prejudice based on race, religion, ethnicity, disability, age, socioeconomic status, marital status, or sexual orientation against a party, witness, counsel, or other person involved in a case.

[2] The CFR must decline or withdraw from an appointment if the CFR has a conflict of interest, information, or personal relationship that could influence the process or outcome of the investigation. If the CFR has any prior or existing direct or indirect relationship with the parties, their families, their attorneys, material witnesses, or someone else connected with the family, the CFR must consider whether the CFR's impartiality is compromised because of the relationship. The CFR must decline the appointment if:

1. The CFR (or the CFR's law firm) previously advised or acted as counsel for a party, child, or other person closely aligned to a party (such as a spouse or nonmarital partner), or a material witness;
2. The CFR has provided counseling or other services to a child, a party, another member of the family, or a material witness; or
3. The CFR has or had a family relationship or other close personal relationship (including an intimate or dating relationship) with a party, a member of the party's family, a material witness, or counsel of record.

C. The CFR does not act as an attorney or advocate.

Commentary

[1] The CFR serves as an objective and even-handed reporter. The CFR must not provide legal advice or act as an advocate or attorney for the child. The CFR does not conduct depositions or engage in direct or cross-examination of witnesses and does not file motions except as related to performance of the CFR's responsibilities. For example, a CFR might file a motion seeking access to an individual, regarding fees or seeking an additional evaluation, but should not file motions related to the substance of the proceedings. If called as a witness, the CFR may be subject to direct or cross-examination by both parties. The CFR refers the parties to their attorneys for legal advice.

D. The CFR must not serve dual or multiple roles.

Commentary

[1] The CFR must not provide legal, mental health, mediation, or other professional services to any party or the child during the investigation and pendency of the case.

[2] The CFR may not later accept an appointment as an attorney for a child or guardian ad litem in the same case or the same family. The CFR may accept the

separate role of parenting coordinator or arbitrator after all of the CFR's duties are completed and after the court has terminated the CFR appointment, but only with the written, informed consent of all parties.

E. Payment of the CFR's fees is governed by the court's order of appointment.

Commentary

[1] The court's appointment order allocates responsibility for payment of the CFR's fees based on a fixed fee or stated hourly rates. If the appointment order specifies a presumptive maximum, the CFR may not exceed this fee cap without securing permission from the court.

III. Duties of the Child and Family Reporter

A. The CFR acts pursuant to the court's order of appointment.

Commentary

[1] Upon appointment, the CFR should review the court's order of appointment and ask for clarification or modification of the order when necessary. If the order would require the CFR to act beyond the scope of the CFR's competence or perform multiple contradictory roles, the CFR should inform the court. Any issues regarding time needed to complete a report or arrangements for payment of fees should be addressed immediately upon notice of appointment and before beginning any work on the case. If any conflicts or other issues cannot be resolved, the CFR should decline the appointment or request removal from the case.

[2] The CFR appointment terminates at the time specified in the court's order but in no event later than entry of permanent orders or the post-decree order resolving the issue for which the appointment was made.

B. The CFR includes all parties in communications with the court or another party.

Commentary

[1] If the CFR needs to communicate with the court during the course of the appointment, communication should be carried out in writing with copies to the parties and their counsel, or by conference call, or at a status conference or court hearing. If the children are represented by an attorney or guardian ad litem, that individual should be treated as counsel for purposes of these communications.

[2] If the CFR sends a substantive written communication to one party or counsel, the CFR must send a copy of the communication to the opposing party or

counsel and any representative of the child. The CFR must send copies of any documents the CFR files with the court to counsel of record and self-represented parties.

C. The CFR conducts an appropriate investigation.

Commentary

[1] The CFR may investigate only those areas the court has specified in its order of appointment and may not broaden the scope of investigation without obtaining authority from the court in advance. The CFR may not perform a clinical assessment, conduct psychological testing, or conduct drug and alcohol or other evaluations unless specifically ordered by the court. If the CFR believes other evaluations would benefit the parties or the child and assist the court, the CFR should provide this information to the court as soon as possible.

[2] At the outset of the investigation, the CFR should invite all counsel and parties to provide relevant information and documents and a list of witnesses and professionals who can provide relevant information. When possible, the CFR accesses original sources of information and uses multiple sources to investigate any disputed events or facts. The CFR should spend sufficient time interviewing parties and investigating their concerns to gather relevant information to respond to the court's inquiry. The CFR decides whether to conduct home visits, and if no home visits are conducted, the CFR should explain this decision in the CFR's report.

[3] As part of the investigation, the CFR must meet with the child and allow an opportunity for the child to provide information about the child and the child's family. The CFR should communicate with the child in an age-appropriate manner and consider the child's views and wishes. When appropriate, the CFR should observe the child with each parent or party.

[4] In meeting with the parties and the child, the CFR should explain the CFR role, the purpose of the investigation, and how the information the CFR collects will be reported to the court. A party may request to have counsel present during an interview, but the CFR controls the interview and conducts the questioning. The CFR should arrange for a qualified interpreter if a party or the child is not completely comfortable or fluent using the English language.

D. The CFR preserves confidentiality.

Commentary

[1] Information gathered by the CFR is confidential. The CFR may not disclose information about the parties, the child, or the services rendered by the CFR to any person who is not a party or counsel in the case except as necessary to gather

information and complete the investigation and report, or to perform responsibilities related to the court's order of appointment. This prohibition is permanent and includes any writing, lectures, or other media communication by the CFR.

[2] Before obtaining privileged or confidential information about the parties or the children, the CFR must obtain appropriate release forms or court orders. Some third parties or providers may be unaware of the protections that apply to confidential information relating to the parties or the child, but the CFR may only review information after appropriate releases or orders have been provided. If a privilege is not properly waived, a judge may allow a motion to strike reference to the information from the CFR report.

E. The CFR seeks to preserve the safety of all participants in the process.

Commentary

[1] The CFR should inquire at the outset of the investigation about any safety risks related to the investigation for the parties, the child, or others because of any party's mental illness, substance abuse, domestic violence, child abuse, or history of violence against others. The CFR should attempt to conduct the investigation in such a manner as to avoid likely harm to the child, a party, the CFR, or others.

[2] When the CFR suspects or knows that a child is being neglected or abused, the CFR may take appropriate steps to inform law enforcement or the department of human services and must comply with all mandatory professional reporting requirements.

F. The CFR may include recommendations pursuant to the appointment order.

Commentary

[1] If the court's order of appointment authorizes it, the CFR may make recommendations regarding services, parenting schedules, or other matters as directed by the court.

IV. CFR Reports and Records

A. The CFR prepares a clear, concise, and timely report for the court, the parties, and the parties' counsel.

Commentary

[1] The CFR must present the results of the CFR's investigation in a written report to the court with copies delivered to the parties and their counsel. The report sets forth the information the CFR obtained in the course of the investigation. Any recommendations the court requests based on the facts collected should be confined to a separate section at the conclusion of the CFR's report.

[2] The CFR's report should include information about the CFR's investigation process, identifying the persons interviewed and the records reviewed. The report should be as factual and detailed as possible, as well as accurate, objective, and unbiased. The report should clearly identify the sources of all information included. If a party has failed to or refused to participate or provide information, the report should disclose this fact.

[3] The CFR must retain any notes, records, documents, recordings, or other material gathered or created during the investigation so that these materials are available for discovery, trial, appeal, and remand of the case.

B. The CFR and the court maintain the confidentiality of the CFR's report and files.

Commentary

[1] The CFR's report and underlying materials are considered sealed and not open to inspection except with consent of the court. The CFR must maintain the confidentiality of the CFR's file and report and disclose these only to the parties and their counsel or pursuant to court order.

[2] After the CFR's report has been filed and prior to any scheduled hearing in the case, upon request of the parties or their counsel, the CFR must make copies of the CFR's file and any information underlying the report available to the parties and their counsel. This includes disclosure of the names and addresses of all persons the CFR has consulted, CFR notes, and witness statements. However, if the CFR believes that release of any particular information would endanger any person's welfare, the CFR should inform counsel and the court and await further order from the court before releasing the information in question.

C. The CFR as a witness.

Commentary

[1] Pursuant to Iowa Code section 598.12B(2) (2017), the CFR's report must be submitted to the court and available to all parties. The CFR's report will be a part of the record unless the court otherwise orders. Any party may call the CFR as a witness. If called as a witness, the CFR may be cross-examined concerning the report.