

## **2.3 EVALUATION**

### **Definitions**

- A. “Best interest” has the same meaning as in O.R.C. 3109.04 and 3109.051.
- B. “Custody Evaluation” means an expert study and analysis of the needs, the development and the best interests of a child who is the subject of an action or proceeding in which child custody or parenting time is an issue and of the comparative and relative capacities of the parties and other relevant adults to care for and meet the needs and best interest of the child. Custody Evaluation shall include full or partial evaluation, and shall include a custody evaluator’s recommendations regarding allocation of parental rights and responsibilities, companionship, and parenting time.
- C. “Custody Evaluator” means an individual meeting the requirements of Sup.R. 91.08. As used in this rule, a custody evaluator can be one of the following:
  - 1. “Court-connected Evaluator,” is a court employee who is appointed by the court to perform a custody evaluation.
  - 2. “Private Custody Evaluator,” is a person in private practice who provides custody evaluation services to the court.
- D. “Evaluation” includes an investigation and an assessment.
- E. “Full evaluation” means a comprehensive examination of the best interests of a child.
- F. “Partial evaluation” means an examination of the best interests of a child that is limited in either time or scope.

### **Custody Evaluation**

#### **A. Order**

Upon motion of a party, guardian ad litem, counsel for a child, or on its own initiative, the Court may order a custody evaluation to aid in evaluating the best interest of a child in a contested custody or parenting time case.

#### **B. Description of Custody Evaluation**

Unless the Court order limits the appointment or the custody evaluator determines otherwise, a custody evaluation shall include but is not limited to all of the following:

- 1. Information obtained through joint or individual interviews with each party;

2. Information obtained through interviews with each child;
3. Information obtained through interviews with stepparents, significant others, or any other persons residing in the home;
4. Information obtained through interviews with step or half siblings residing in the home;
5. Information obtained from child care providers, schools, counselors, hospitals, medical professionals, social service agencies, guardians ad litem, and law enforcement agencies;
6. Information from home visits or observations of each child with the appropriate adults involved;
7. Results of clinical tests administered;
8. History of child abuse, domestic violence, substance abuse, psychiatric illness, and involvement with the legal system; and
9. Investigation into any other relevant information about the child's needs.

### **C. Types of Custody Evaluations**

#### **1. Full Evaluation**

- a. Completed in approximately 111 days.
- b. Typically required in cases where the parents disagree as to the designation of residential parent and legal custodian and one or all of the child/ren are under ten (10) years of age. However, the Court may require only a Partial Evaluation should mitigating circumstances and limited issues exist regarding the well-being of the child/ren and/or functioning of the parents.
- c. Typically, consists of:
  - 1) One or more joint interviews with both parents;
  - 2) One more individual interviews with each parent;
  - 3) Interviews with stepparents or significant others;
  - 4) One or more interviews with each child within the family unit;
  - 5) Collateral information from schools, counselors, hospitals, physicians, social service agencies, police, and witnesses;

- 6) Drug and alcohol screenings, if determined necessary;
  - 7) Home visits performed on each parent's household, if determined necessary;  
and
  - 8) Any other information the custody evaluator deems necessary.
- d. Resulting in a custody evaluator report which will include recommendations as to the child/ren's best interests.

## **2. Partial Evaluation**

- a. Completed in approximately 65 days.
- b. Typically required in cases where one of the following is present:
  - 1) The parents disagree as to the designation of residential parent and legal custodian and the child/ren are ten (10) years of age or older;
  - 2) A parent has filed to relocate the child/ren and the other parent does not consent to the move;
  - 3) The parents have a Shared Parenting Plan and one parent has filed for a change in the Plan to which the other parent disagrees; or
  - 4) A parent has filed to modify the parenting time schedule and the other parent disagrees.

However, the Court may require a Full Evaluation should complex circumstances and issues exist regarding the well-being of the child/ren and/or functioning of the parents.

- c. Typically, consists of:
  - 1) One joint interview with both parents;
  - 2) One interview with each child within the family unit;
  - 3) Collateral information; and
  - 4) Any other information the custody evaluator deems necessary.
- d. Resulting in a custody evaluator report which will include recommendations as to the child/ren's best interests.

## **Custody Evaluator Requirements**

### **A. Licensure Requirement**

The Court shall appoint an individual as a custody evaluator only if the individual is one of the following:

1. An Ohio licensed psychologist or a psychologist licensed in another jurisdiction and authorized by the Ohio Board of Psychology to practice psychology in this state on a temporary basis;
2. An Ohio licensed social worker, professional clinical counselor, or marriage and family therapist or a professional with an equivalent level of licensure issued by another jurisdiction and authorized by the Ohio Counselor, Social Worker, and Marriage and Family Therapist Board to practice in this state on a temporary basis;
3. A physician licensed in any state and board-certified in psychiatry or who has completed a psychiatry residency accredited by the Accreditation Council for Graduate Medical Education or a successor to that Council; or
4. A court-connected Evaluator who has a minimum of a master's degree in a mental health field that includes formal education and training in the legal, social, familial, and cultural issues involved in custody decisions.

### **B. Pre-appointment training**

1. Except as provided in division (B)(2) of this rule, the Court shall appoint an individual as a custody evaluator only if, at the time of appointment, the individual has completed an initial training program of forty (40) hours to qualify for appointment. The initial training course shall be provided by the Supreme Court of Ohio or other provider that has received prior approval of the Supreme Court. Approved topics for the initial training are detailed in the Supreme Court of Ohio's Custody Evaluator Training Guidelines.
2. An individual serving as a custody evaluator on September 1, 2022, shall have until February 1, 2024, to complete the training required under division (B)(1) of this rule.

### **C. Continuing Education**

1. **Requirement:** In each succeeding year following completion of the pre-appointment educational requirements of Sup.R. 91.08(B), a custody evaluator appointed by Court shall complete a minimum of six (6) hours of continuing education that meets all of the following requirements:
  - a. Is provided by the Supreme Court of Ohio or other provider that has received prior approval of the Supreme Court; and

- b. Is comprised of approved continuing education topics detailed in the Supreme Court of Ohio's Custody Evaluator Training Guidelines.

## **2. Failure to comply**

- a. The custody evaluator shall not be eligible for new appointments to serve as a custody evaluator until the requirement in division (C)(1) of this rule is satisfied. If the deficiency in continuing education is more than three calendar years, the custody evaluator shall complete the 40-hour pre-appointment training pursuant to Sup.R. 91.08(B) to qualify again for appointment.
- b. If the custody evaluator is currently conducting an Evaluation at the time of noncompliance, the appointing court may allow the custody evaluator to complete the evaluation and fulfill the requirements within the order of appointment.

## **D. Private Custody Evaluators**

1. All private custody evaluators must complete and submit the Application for the Custody Evaluator Appointment List (Form 12.1) to the Director of the Dispute Resolution Department. The application shall include:
  - a. A resume stating the applicant's training, experience, and expertise demonstrating the applicant's ability to successfully perform the duties and responsibilities of a custody evaluator;
  - b. Proof of compliance with the custody evaluator licensure requirements and completion of the pre-appointment training program; and
  - c. Proof of malpractice insurance.
2. A private custody evaluator shall provide copies of all reports to the Dispute Resolution Department.
3. **Annual Reporting Requirements.** On or before January 1<sup>st</sup> of each year, a private custody evaluator shall provide to the Director of the Dispute Resolution Department the following:
  - a. A list of active custody evaluation cases;
  - b. An updated resume;
  - c. Completion of Private Custody Evaluator Annual Compliance Statement (Form 12.2) certifying that he/she is unaware of any circumstances that would disqualify him/her from serving as a private custody evaluator;
  - d. Proof of malpractice insurance; and

- e. A list of continuing education completed during the previous year pursuant to division (C)(1) of this rule.

A private custody evaluator shall not be eligible for appointment until these requirements are satisfied. A custody evaluator shall immediately notify the court of any changes in contact information, changes in licensure status and disciplinary actions.

4. The Director of the Dispute Resolution Department shall complete a review of the custody evaluators on the Court's roster in January of each year. The Dispute Resolution Department will maintain a roster of private custody evaluators that are eligible for court appointment.

### **Appointment of a Custody Evaluator**

#### **A. Custody Evaluator Appointment**

Pursuant to Sup.R. 91.04, the Court may appoint a court-connected custody evaluator or a private custody evaluator to perform the evaluation. A custody evaluator shall meet the requirements of Sup.R. 91.08 and this Local Rule. The Court shall not appoint as a custody evaluator a guardian ad litem appointed to the case pursuant to Sup.R. 48. The Court shall consider only evaluations completed by a Court appointed custody evaluator.

#### **B. Order of Appointment**

The Court's appointment order shall include the following:

1. The name, business address, licensure, and telephone number of the custody evaluator;
2. The purpose and scope of the appointment;
3. The term of the appointment;
4. A provision that a written report is required and oral testimony may be required;
5. Any deadlines pertaining to the submission of reports to the Court, including the dates of any pretrial, settlement conference, or trial associated with the furnishing of reports;
6. A provision for payment of fees, expenses, and any hourly rate or fee that will be charged;
7. Any provision the Court deems necessary to address the safety and protection of all parties, the child/ren of the parties, any other child/ren residing in the home of a party, and the person being appointed;

8. Grant the custody evaluator the right to access information as authorized with the appointment;
9. Require the parties to cooperate with the custody evaluator and provide information promptly when requested to do so; and
10. Any other provisions the Court deems necessary.

#### **C. Selection of Custody Evaluator for Appointment**

The custody evaluator who meets the requirements in this Local Rule shall be selected using one of the following:

1. Court custody evaluator;
2. Rolled selection from the Court's roster of private custody evaluators;
3. Specific appointment based on the complexity of the issues, parties, counsel, and the child/ren involved as well as the experience, expertise and demeanor of the available private custody evaluators; or
4. Parties select a custody evaluator from the Court's roster of private custody evaluators.

#### **D. Removal**

The Court may remove a custody evaluator appointed to perform a custody evaluation upon a showing of good cause.

#### **E. Resignation**

A custody evaluator appointed to perform a custody evaluation may resign prior to completing the evaluation only upon a showing of good cause, a notice to the parties, an opportunity to be heard, and the approval of the Court.

#### **F. Fees and expenses**

1. Prior to the appointment of a custody evaluator, the parties shall have a right to be heard on the issue of the allocation of reasonable fees and expenses.
2. The Court shall inquire as to the rate and the terms of compensation the custody evaluator requires and shall determine the ability of any party to pay for the reasonable fees and expenses of the custody evaluator. In making this determination, the Court shall consider all of the following:

- a. The income, assets, liabilities and financial circumstances of the parties, as demonstrated with an affidavit or statement of income and expenses, testimony to the court, or evidence of qualification for any means-tested fee waiver assistance;
  - b. The complexity of the issues; and
  - c. The anticipated fees and expenses of the custody evaluator, including any fees or expenses related to potential testimony.
- 3. Upon determination that the appointment of a custody evaluator should proceed, the Court shall issue an order regarding allocation of payment of the custody evaluator's reasonable fees and expenses which shall consist of both of the following:
  - a. Any requirement for a party to pay fees and expenses, including an initial deposit; and
  - b. Any requirement for any other entity or individual to contribute toward fees and expenses.
- 4. For good cause shown, based upon a change of financial circumstances, the conduct of any party, or other unforeseen circumstances, the Court may approve additional fees or expenses, reallocate fees or expenses, or require a party to reimburse another party in part or in whole for fees or expenses paid.
- 5. **Court-Connected Custody Evaluator**
  - a. The Court shall determine fees in the appointment order.
  - b. The Court may waive the cost of a custody evaluator with a verified Fee Waiver Affidavit (Form 1.22A).
- 6. A **Private Custody Evaluator** shall do the following:
  - a. Execute a contract for services with the parties;
  - b. Set and collect fees for services; and
  - c. Submit billing statement(s) to the parties.

## **G. Custody Evaluator Comments or Complaints**

- 1. A party to a case appointed to custody evaluation may file a comment or complaint regarding the custody evaluator within one year from the termination of the appointment. Dissatisfaction with the recommendations of the custody evaluator does not constitute misconduct.

2. The comment or complaint shall be submitted to the Director of the Dispute Resolution Department, and include all of the following:
  - a. The case caption and case number;
  - b. The name of the custody evaluator;
  - c. The name and contact information for the person making the complaint;
  - d. The nature of any alleged misconduct or violation; and
  - e. The date the alleged misconduct or violation occurred.
3. The Director of the Dispute Resolution Department shall provide a copy of the comment or complaint to the custody evaluator. The custody evaluator has fourteen (14) days from the date of the receipt of the comment or complaint to respond in writing to the Director of the Dispute Resolution Department.
4. The Director of the Dispute Resolution Department shall investigate alleged misconduct or violations and shall issue a response to the person making the comment or complaint and the custody evaluator within thirty (30) days from the date the custody evaluator's response was received.
5. The Director of the Dispute Resolution Department shall maintain a record of all comments and complaints.

#### **Custody Evaluator Responsibilities**

- A. A court appointed custody evaluator pursuant to Sup.R. 91.04 shall do all of the following when performing a custody evaluation:
  1. Maintain objectivity, provide and gather balanced information from both parties to the case, and control for bias;
  2. Strive to minimize the potential psychological trauma to child/ren during the evaluation and report writing by performing responsibilities in a prompt and timely manner;
  3. Protect the confidentiality of the parties and child/ren with collateral contacts and not release information about the case to any individual except as authorized by the court or statute;
  4. Immediately identify self as a custody evaluator when contacting individuals in the course of a particular case and inform these individuals about the role of a custody evaluator and that documents and information obtained may become part of court proceedings;
  5. Refrain from any ex parte communications with the Court regarding the merits of the case;

6. Not offer any recommendations about a party unless that party has been evaluated directly or in consultation with another qualified neutral professional;
7. Consider the health, safety, welfare, and best interest of the child/ren in all phases of the process, including interviews with parents, extended family members, counsel for the child, and other interested parties or collateral contacts;
8. Not pressure child/ren to state a custodial preference;
9. Inform the parties of the custody evaluator's reporting requirements, including, but not limited to suspected child abuse and neglect and threats to harm one's self or another person;
10. Not disclose any recommendations to the parties, their attorneys, or the attorney for the child before having gathered the information necessary to support the conclusion;
11. Be conscious of the socioeconomic status, gender, race, ethnicity, sexual orientation, cultural values, religion, family structures, and developmental characteristics of the parties;
12. Notify the court in writing upon discovery of any conflicts of interest arising from any relationship or activity with parties or others involved in the case. A custody evaluator shall avoid self-dealing or associations from which the custody evaluator may benefit, directly or indirectly, except from services as a custody evaluator.

#### **B. Assistance**

When one party resides in another jurisdiction, a custody evaluator, upon order of the Court, may rely upon another qualified neutral professional for assistance in gathering information.

#### **C. Communication with the Court**

A custody evaluator may communicate with the Court when necessary to amend the scope or time frame of the Order of Appointment.

### **Custody Evaluator Report**

#### **A. General**

1. A custody evaluator shall prepare and file with the Court a written report at least 30 days prior to the final hearing. The report shall provide a detailed analysis of the relative strengths and areas in need of improvement of the parties with respect to meeting the needs of the child/ren as well as a comparative analysis of different parenting or companionship plans under consideration. The report shall not be considered an investigation pursuant to Civ.R. 75(D).

2. The written report shall include the statement:

**“The Custody Evaluator’s report shall be provided to the court for distribution to unrepresented parties and legal counsel. Unauthorized disclosure or distribution of the report may be subject to court action, including the penalties for contempt which include fines and/or incarceration.”**

3. A custody evaluator shall provide a copy of the report to unrepresented parties and parties’ legal counsel. A private custody evaluator shall provide copies of all reports to the Dispute Resolution Department.

#### **B. Court access to report**

The Court may receive and read the written report in advance of a hearing or trial for the purpose of conducting a settlement conference in the case.

#### **C. Record keeping**

A custody evaluator shall establish and maintain a record-keeping system that shall include active control of the records and reasonable precautions to prevent the loss or destruction of records in compliance with established record retention standards.

#### **D. Discovery and public access**

1. The written report shall be subject to the Ohio Rules of Civil Procedure applicable to discovery in civil actions.
2. The written report shall not be available for public access pursuant to Sup.R. 44 through 47.

#### **E. Copying and dissemination**

A party may copy a custody evaluator’s written report but, except as permitted by the Court, shall not disseminate the report by any means, including by social media. In particular, reports or the recommendations shall not be shared with minor child/ren who are the subject of the case. Unauthorized disclosure or distribution of the report may be subject to court action, including the penalties for contempt which include fines and/or incarceration.

#### **F. Testimony and report at hearing or trial**

1. The custody evaluator’s report shall be admitted into evidence at a hearing or a trial on the Court’s motion. The report shall be admitted as the Court’s exhibit in the form of the custody evaluator’s expert direct testimony. A party challenging the report

shall subpoena the custody evaluator to appear not less than fourteen (14) days before a hearing or trial.

2. The Court shall notify the custody evaluator as soon as a hearing or trial date is set. The custody evaluator shall be available to testify on cross-examination regarding the report if subpoenaed by a party not less than fourteen (14) days prior to trial.
3. All subpoenas shall be filed with the Clerk of Courts.