

MARYLAND JUDICIAL CONFERENCE
GOVERNMENT RELATIONS AND PUBLIC AFFAIRS

Hon. Matthew J. Fader
Chief Justice

187 Harry S. Truman Parkway
Annapolis, MD 21401

MEMORANDUM

TO: Senate Judicial Proceedings Committee
FROM: Legislative Committee
Suzanne D. Pelz, Esq.
410-260-1523
RE: Senate Bill 365
Family Law – Custody Evaluators – Qualifications and Training
DATE: January 24, 2024
(2/8)
POSITION: Oppose

The Maryland Judiciary opposes Senate Bill 365. The bill mandates that the Court appoint a child custody evaluator in a wide swath of cases (see page 3, beginning on line 20.) The unintended consequences of this mandatory appointment will fall most harshly on unrepresented and low-income litigants and increase litigation costs for all, including survivors of intimate partner violence and parents seeking to protect their children against abuse or neglect. The bill also presents operational issues that would make implementation difficult and is unnecessary given requirements already established by the courts.

Training Already Established. The Judiciary’s opposition to this bill is not opposition to custody evaluators receiving training on intimate partner violence, child abuse and neglect, and trauma or efforts to help ensure courts receive trustworthy and accurate evidence. A child’s safety is paramount, and courts need access to a full range of tools, including trained and qualified custody evaluators, to make individualized, nuanced assessments in each case.

Maryland Rule 9-205.3, a copy of which is attached, establishes qualification standards for all custody evaluators who will be appointed or approved in Maryland. The professionals who are eligible to serve are: licensed health care and mental health providers, who must satisfy continuing education requirements in their field; must have training or experience observing or performing custody evaluations; and must have current knowledge about domestic violence, child neglect and abuse, and family conflict and dynamics. The Rule also requires that a custody evaluator complete a training program that conforms with guidelines established by the Administrative Office of the Courts. This allows us to ensure that presentations are balanced, unbiased, and informed by evidence and best practices. Moreover, the Judiciary’s course is provided at no expense to the participants, which is of critical importance. Fee-based programs run the risk of financially marginalizing certain litigants and providers.

On May 15-17, 2023, the Judiciary held a three-day training course at the Maryland Judicial Center on *Custody and Visitation-Related Assessment Training*. Sixty (60) mental health professionals attended this program. **Attached please find a copy of the syllabus.** Among other topics, the course covered: Domestic Violence and Children (prevalence, coercive control, effects on children, assessing danger, protective strategies, post-separation power and control, case dynamics); Child Development and Parenting Time (attachment types, risk factors, adverse childhood experiences, children's views), Assessing for Intimate Partner Violence (guidelines for assessing intimate partner violence, prioritizing safety, minimizing opportunities for risk of post-separation abuse); Child Abuse/Neglect (mandated reporting, speaking to a child, types of abuse, relationship between intimate partner violence and child abuse, CPS findings and outcomes, cultural considerations, supervised visitation, reviewing records including forensic interviews); Checking Biases (regarding LGBTQIA+ community, patriarchal relationships, substance abuse) The Law; Practice Pointers; Elements of an Evaluation; and Special Circumstances (children with special needs, risk and protective factors, parental relocation). Course attendees learned about the relevant research and best practices in the covered areas and engaged in practical, scenario-driven exercises to practice their skills. Training faculty included experienced custody evaluators, family law attorneys, judges, a magistrate, a victim advocate from a Family Justice Center, the Mental Health Director of a Children's Advocacy Center, and a therapist with extensive clinical experience working with survivors of child abuse and domestic violence.

The AOC guidelines and the training program were developed by the Custody Evaluator Standards & Training Work Group of the Judicial Council's Domestic Law Committee and based on needs and gaps identified by Maryland custody evaluators, family law practitioners, judges, magistrates, and others. The work group was established to identify ways to improve custody and visitation-related assessments so that they are conducted fairly and objectively, and above all else, to help courts determine what is in the best interest of children based on their unique facts and circumstances. The work group remains committed to its charge.

Vague language. Several elements of the bill include vague language that will also make it difficult to implement and increase the burden on litigants. When a statute includes vague language, it is for litigants to argue and the courts to decide how that language should be interpreted. This will require additional hearings, prolong proceedings, and could lead to different results until an appellate court establishes a standard. Litigants who are unrepresented by counsel, who do not have resources, or who have fewer resources than the opposing party will be at a disadvantage if they need to establish, defend, or challenge evidence or a witness.

Section 9-101.1(d) of the bill, limiting expert evidence related to alleged abuse to evidence from a professional with "demonstrated expertise and clinical experience in working with victims of abuse that is not solely forensic in nature," is vague as to who would qualify as an expert witness. It is not unclear what "demonstrated experience"

means, how is it established, and by whom. It is also unclear what “forensic” means as it is not defined by the bill nor is it understandable in this context by its plain meaning.

In addition, this provision contradicts with Maryland Rule 5-803(b)(8)(a)(iv) which allows for the admission of Department of Social Services’ reports in final protective order cases. It is unclear whether this new provision would continue to allow for the admission of such reports or whether it would require additional hearings to determine if the person submitting such reports possesses the necessary expertise and experience.

Section 9-109(d)(2)(ii)-(iii), requiring that the training program rely on “evidence-based research by recognized experts in the types of abuse” and “not include theories, concepts, or belief systems unsupported by” that research, is also vague and will generate challenges over who is a “recognized expert” and what theories, concepts, or belief systems are “unsupported” by that research. The language in subsection (d)(2)(iv), requiring that the training “be designed” to improve the courts’ “ability to recognize and respond to” the listed forms of abuse and trauma and to “make appropriate” custody decisions prioritizing safety and cultural considerations is also vaguely worded.

Other issues. Section 9-109(e) would require courts to provide information to the parties regarding the role, availability, and cost of custody evaluations in any case in which “child support, custody, or visitation is at issue.” This is unnecessary because not all cases warrant a custody evaluation (for instance, they are rarely ordered in child support cases). This requirement may confuse or set unrealistic expectations for some litigants (e.g., those in parts of the state where there are no qualified custody evaluators available unless the parties retain and can afford their own).

Information about custody evaluations is already publicly available on the Judiciary’s website at www.mdcourts.gov/familyservices, where there is a 7½ minute video on “Custody and Specific Issue Evaluations.” The video explains in everyday language what these evaluations are, reasons they may be ordered, what the evaluation entails, the evaluator’s report and its availability, mediation and settlement conferences after a custody evaluation, the role of the evaluator at trial, and the judge’s role as an independent decision-maker. The video also explains that some courts have court-based evaluators and that otherwise, the fee usually is split between the parties. Finally, and with respect to fees in Section 9-109(f), Maryland Rule 9-205.3(g) already provides that the order for appointment of a custody evaluator shall contain a provision “concerning payment of any fee, expense, or charge, including a statement of any hourly rate that will be charged which, as to a court appointment, may not exceed the maximum rate established under section (n) of this Rule and, if applicable, a time estimate for the assessment.”

Unintended consequences.

This bill requires the court to appoint a custody evaluator or licensed health care provider if the court identifies certain issues in a custody or visitation proceeding. The bill goes beyond custody and divorce petitions filed in circuit court. For instance, judges make custody determinations in the context of protective order cases, which are set in quickly

for safety reasons. Mandating custody evaluators in these cases would cause significant delays and roadblocks to petitioners obtaining protective orders. In fiscal year 2023, there were 29,572 domestic violence/protective order cases in the District Court and 5,371 in the circuit court. Under this bill, the court would have to appoint custody evaluators in these cases, given that they involve “physical, sexual, or psychological abuse of an intimate partner or former intimate partner” as outlined in the bill. That mandate is not feasible, given the volume of cases.

Additionally, there were 24,833 absolute divorce cases in FY23, 2,581 limited divorce cases, 19,491 custody cases, and 8,846 child support cases. Mandating a custody evaluator in every one of those cases involving “coercive control”, “alcohol or substance abuse” or “trauma or toxic stress” would not be realistically possible. Many litigants in divorce and child support cases find the process stressful and might indicate that the stress was “toxic.” However, that does not necessarily require a custody evaluator. Requiring an evaluator for each would create significant delay for those litigants. From the plain language of the bill, it appears that the Court would be required to appoint an evaluator even if the parties reach an agreement.

Fiscal impact.

The requirement for the court to appoint a custody evaluator or health care provider in all of the cases delineated in the bill will also have a significant fiscal impact. It is not clear who is to pay for these appointments. The Judiciary is not able to separate out cases in which the issues delineated in §9-109(c)(1)-(8) of the bill were identified in any of the listed case types. Fees for custody evaluations paid for using Judiciary funds vary by jurisdiction and case complexity. Some courts have evaluators on staff while others have a roster of evaluators who serve at an agreed upon hourly rate or cost per evaluation. A conservative estimate of the average cost of a court-paid evaluation is \$2,000 per case. At this rate, if only a quarter of the aforementioned case types involve at least one issue listed in §9-109(c)(1)-(8) and a party who is eligible for a fee waiver, the cost to the Judiciary would be significant. The bill does not specify how courts will identify the issues delineated in subsection (c)(1)-(8) that would trigger the appointment of a provider. At this time, there is no existing screening protocol and it is difficult to project the fiscal and operational impact of developing and implementing such a protocol across the state.

Lack of Custody Evaluators

Further, if enacted, this legislation will erect additional roadblocks to the use of custody evaluators. There is a limited pool of qualified professionals available to do this work, especially in rural parts of the state. These evaluators already undergo mandatory training requirements. The additional requirements of this bill would further limit that pool. Simply put, there are not enough custody evaluators to meet the bill’s requirements.

In Maryland and other states, experienced evaluators are retiring or stepping back from the work. In highly contentious cases, it is not uncommon for custody evaluators to fear for their personal safety or to experience harassment. Hiring new evaluators is difficult;

there is no organized recruitment system; and there are very few paths for mental health professionals to gain experience as evaluators. Many mental health professionals are wary of interacting with the legal system, dealing with high-conflict parties and their attorneys, and defending against complaints to their licensing boards when litigants are unhappy. At the Judiciary's May 2023 training for custody evaluators, attendees described how their overwhelming caseloads and limited resources affect the time they can devote to any given case. There is also a dearth of affordable programming on the practical aspects of performing custody evaluations, which makes it more difficult for mental health professionals to learn the mechanics of how to conduct evaluations and financially marginalizes some providers. Without proper training on these aspects, custody evaluators can undermine custody proceedings and cause unnecessary disruptions to families.

Section 9-109 of the bill would exacerbate these challenges and create new ones by both disqualifying some providers from serving as custody evaluators and increasing the number of cases in which the court must appoint evaluators. Specifically, subsection (b)(2)(ii) would disqualify providers who have not been trained in "psychological testing." Only psychologists are licensed to do psychological testing. Social workers, counselors, and physicians likely do not have any training on psychological testing because they are barred from performing such testing. Subsection (c) of the bill would mandate the appointment of a certain custody evaluator or licensed health care provider when one or more of the issues delineated in (c)(1)-(8) are identified in a custody or visitation proceeding. As mentioned, these proceedings include protective order proceedings in District Courts, uncontested cases, and cases in which a custody evaluation is not warranted or requested by the parties. The mandate in (c) would prolong proceedings, increase costs to litigants and the Judiciary (as it often pays for evaluations for income-eligible litigants) without an appropriation, and would be unnecessary and intrusive for most families.

The training requirements in § 9-109(d), requiring custody evaluators to complete 20 hours of initial training and 15 hours of additional training every 3 years that "focus[es] solely" on domestic and sexual violence and child abuse; limiting who can provide the training ((d)(2)(i)); and setting parameters for the training content (d)(2)(ii)-(iv)), would create additional challenges. The number of hours required would limit opportunities for evaluators to receive training on other topics that are fundamental to performing effective and appropriate evaluations. The Judiciary is not aware of any program that would currently meet all of the requirements in the bill and it is unclear who would develop such a training. If not available widely before October 1, 2025, some providers will be disqualified from performing evaluations. Moreover, there is no indication that this training can be developed at low or no cost to practitioners.

Custody evaluators should absolutely have training on domestic and sexual violence and child abuse (and the Judiciary's May 2023 training covered the topics listed in §9-109(d)(1)(i)-(viii)). Mandating that custody evaluators complete a training that focus *solely* on these topics along with the other mandates in the bill will increase challenges and litigation costs. There is also an important need to ensure neutrality by balancing

these important topics with more diverse trainers (e.g., family law attorneys, judges and magistrates, and custody evaluators) and other topics including maintaining neutrality, legal and ethical prohibitions against interfering with Child Protective Services' mandates, and practical information about navigating these issues in a custody evaluation.

In short, this bill runs counter to the Judiciary's mission to provide fair, efficient and effective justice for all.

cc. Hon. Mary Beth Carozza
Judicial Council
Legislative Committee
Kelley O'Connor

West's Annotated Code of Maryland
Maryland Rules
Title 9. Family Law Actions
Chapter 200. Divorce, Annulment, Alimony, Child Support, and Child Custody (Refs & Annos)

MD Rules, Rule 9-205.3

RULE 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

Effective: July 1, 2023

[Currentness](#)

(a) Applicability. This Rule applies to the appointment or approval by a court of a person to perform an assessment in an action under this Chapter in which child custody or visitation is at issue.

Committee note: In this Rule, when an assessor is selected by the court, the term “appointment” is used. When the assessor is selected by the parties and the selection is incorporated into a court order, the term “approval” is used.

(b) Definitions. In this Rule, the following definitions apply:

(1) *Assessment.* “Assessment” includes a custody evaluation, a home study, a mental health evaluation, and a specific issue evaluation.

(2) *Assessor.* “Assessor” means an individual who performs an assessment.

(3) *Custody Evaluation.* “Custody evaluation” means a study and analysis of the needs and development of a child who is the subject of an action or proceeding under this Chapter and of the abilities of the parties to care for the child and meet the child's needs.

(4) *Custody Evaluator.* “Custody evaluator” means an individual appointed or approved by the court to perform a custody evaluation.

(5) *Home Study.* “Home study” means an inspection of a party's home that focuses upon the safety and suitability of the physical surroundings and living environment for the child.

(6) *Mental Health Evaluation.* “Mental health evaluation” means an evaluation of an individual's mental health performed by a psychiatrist or psychologist who has the qualifications set forth in subsection (d)(1)(A) or (B) of this Rule. A mental health evaluation may include psychological testing.

(7) *Specific Issue Evaluation.* “Specific issue evaluation” means a focused investigation into a specific issue raised by a party, the child's attorney, or the court affecting the safety, health, or welfare of the child as may affect the child's best interests.

Committee note: A specific issue evaluation is not a “mini” custody evaluation. A custody evaluation is a comprehensive study of the general functioning of a family and of the parties' parenting capacities. A specific issue evaluation is an inquiry, narrow in scope, into a particular issue or issues that predominate in a case. The issue or issues are defined by questions posed by the court to the assessor in an order. The evaluation primarily is fact-finding, but the court may opt to receive a recommendation. Examples of questions that could be the subject of specific issue evaluations are questions concerning the appropriate school for a child with special needs and how best to arrange physical custody and visitation for a child when one parent is relocating.

(8) *State.* “State” includes the District of Columbia.

(c) Authority.

(1) *Generally.* On motion of a party or child's counsel, or on its own initiative, the court may order an assessment to aid the court in evaluating the health, safety, welfare, or best interests of a child in a contested custody or visitation case.

(2) *Appointment or Approval.* The court may appoint or approve any person deemed competent by the court to perform a home study. The court may not appoint or approve a person to perform a custody evaluation or specific issue evaluation unless (A) the assessor has the qualifications set forth in subsections (d)(1) and (d)(2) of this Rule, or (B) the qualifications have been waived for the assessor pursuant to subsection (d)(3) of this Rule.

(3) *Cost.* The court may not order the cost of an assessment to be paid, in whole or in part, by a party without giving the parties notice and an opportunity to object.

Committee note: Nothing in this Rule precludes the court from ordering preliminary screening or testing for alcohol and substance use.

(d) Qualifications of Custody Evaluator.

(1) *Education and Licensing.* A custody evaluator shall be:

(A) a physician licensed in any State who is board-certified in psychiatry or has completed a psychiatry residency accredited by the Accreditation Council for Graduate Medical Education or a successor to that Council;

(B) a Maryland licensed psychologist or a psychologist with an equivalent level of licensure in any other state;

(C) a Maryland licensed clinical marriage and family therapist or a clinical marriage and family therapist with an equivalent level of licensure in any other state;

(D) a Maryland licensed certified social worker-clinical or a clinical social worker with an equivalent level of licensure in any other state;

(E) (i) a Maryland licensed graduate or master social worker with at least two years of experience in (a) one or more of the areas listed in subsection (d)(2) of this Rule, (b) performing custody evaluations, or (c) any combination of subsections (a) and (b); or (ii) a graduate or master social worker with an equivalent level of licensure and experience in any other state; or

(F) a Maryland licensed clinical professional counselor or a clinical professional counselor with an equivalent level of licensure in any other state.

(2) *Training and Experience.* Unless waived by the court, a custody evaluator shall have completed, or commit to completing, the next available training program that conforms with guidelines established by the Administrative Office of the Courts. The current guidelines shall be posted on the Judiciary's website. In addition to complying with the continuing requirements of his or her field, a custody evaluator shall have training or experience in observing or performing custody evaluations and shall have current knowledge in the following areas:

(A) domestic violence;

(B) child neglect and abuse;

(C) family conflict and dynamics;

(D) child and adult development; and

(E) impact of divorce and separation on children and adults.

(3) *Waiver of Requirements.* If a court employee has been performing custody evaluations on a regular basis as an employee of, or under contract with, the court for at least five years prior to January 1, 2016, the court may waive any of the requirements set forth in subsection (d)(1) of this Rule, provided that the individual participates in at least 20 hours per year of continuing education relevant to the performance of custody evaluations, including course work in one or more of the areas listed in subsection (d)(2) of this Rule.

(e) Custody Evaluator Lists and Selection.

(1) *Custody Evaluator Lists.* If the circuit court for a county appoints custody evaluators who are not court employees, the family support services coordinator for the court shall maintain a list of qualified custody

evaluators. An individual, other than a court employee, who seeks appointment by a circuit court as a custody evaluator shall submit an application to the family support services coordinator for that court. If the applicant has the qualifications set forth in section (d) of this Rule, the applicant's name shall be placed on a list of qualified individuals. The family support services coordinator, upon request, shall make the list and the information submitted by each individual on the list available to the public.

(2) *Selection of Custody Evaluator.*

(A) *By the Parties.* By agreement, the parties may employ a custody evaluator of their own choosing who may, but need not, be on the court's list. The parties may, but need not, request the court to enter a consent order approving the agreement and selection. The court shall enter the order if one is requested and the court finds that the custody evaluator has the qualifications set forth in section (d) and that the agreement contains the relevant information set forth in section (g) of this Rule.

(B) *By the Court.* An appointment of an individual, other than a court employee, as a custody evaluator by the court shall be made from the list maintained by the family support services coordinator. In appointing a custody evaluator from a list, the court is not required to choose at random or in any particular order from among the qualified evaluators on the list. The court should endeavor to use the services of as many qualified individuals as practicable, but the court may consider, in light of the issues and circumstances presented by the action or the parties, any special training, background, experience, expertise, or temperament of the available prospective appointees. An individual appointed by the court to serve as a custody evaluator shall have the qualifications set forth in section (d) of this Rule.

(3) *Selection of Assessor to Perform Specific Issue Evaluation.* Selection of an assessor to perform a specific issue evaluation shall be made from the same list and by the same process as pertains to the selection of a custody evaluator.

(f) Description of Custody Evaluation.

(1) *Mandatory Elements.* Subject to any protective order of the court, a custody evaluation shall include:

(A) a review of the relevant court records pertaining to the litigation;

(B) an interview of each party and any adult who performs a caretaking role for the child or lives in a household with the child or, if an adult who lives in a household with the child cannot be located despite best efforts by the custody evaluator, documentation or a description of the custody evaluator's efforts to locate the adult and any information gained about the adult;

(C) an interview of the child, unless the custody evaluator determines and explains that by reason of age, disability, or lack of maturity, the child lacks capacity to be interviewed;

(D) a review of any relevant educational, medical, and legal records pertaining to the child;

(E) if feasible, observations of the child with each party, whenever possible in that party's household;

(F) contact with any high neutrality/low affiliation collateral sources of information, as determined by the assessor;

Committee note: “High neutrality/low affiliation” is a term of art that refers to impartial, objective collateral sources of information. For example, in a custody contest in which the parties are taking opposing positions about whether the child needs to continue taking a certain medication, the child's treating doctor would be a high neutrality/low affiliation source, especially if he or she had dealt with both parties.

(G) screening for intimate partner violence;

(H) factual findings about the needs of the child and the capacity of each party to meet the child's needs; and

(I) a custody and visitation recommendation based upon an analysis of the facts found or, if such a recommendation cannot be made, an explanation of why.

(2) *Optional Elements -- Generally.* Subject to subsection (f)(4) of this Rule, at the discretion of the custody evaluator, a custody evaluation also may include:

(A) contact with collateral sources of information that are not high neutrality/low affiliation;

(B) a review of additional records;

(C) employment verification;

(D) a mental health evaluation;

(E) consultation with other experts to develop information that is beyond the scope of the evaluator's practice or area of expertise; and

(F) an investigation into any other relevant information about the child's needs.

(3) *Elements of Specific Issue Evaluation.* Subject to any protective order of the court, a specific issue evaluation may include any of the elements listed in subsections (f)(1)(A) through (G) and (f)(2) of this Rule. The specific issue evaluation shall include fact-finding pertaining to each issue identified by the court and, if requested by the court, a recommendation as to each.

(4) *Optional Elements Requiring Court Approval.* The custody evaluator or specific issue evaluation assessor may not include an optional element listed in subsection (f)(2)(D), (E), or (F) if any additional cost is to be assessed for the element unless, after notice to the parties and an opportunity to object, the court approved inclusion of the element.

(g) Order of Appointment. An order appointing or approving a person to perform an assessment shall include:

- (1) the name, business address, and telephone number of the person being appointed or approved;
- (2) any provisions the court deems necessary to address the safety and protection of the parties, all children of the parties, any other children residing in the home of a party, and the person being appointed or approved;
- (3) a description of the task or tasks the person being appointed or approved is to undertake;
- (4) a provision concerning payment of any fee, expense, or charge, including a statement of any hourly rate that will be charged which, as to a court appointment, may not exceed the maximum rate established under section (n) of this Rule and, if applicable, a time estimate for the assessment;
- (5) the term of the appointment or approval and any deadlines pertaining to the submission of reports to the parties and the court, including the dates of any pretrial or settlement conferences associated with the furnishing of reports;
- (6) any restrictions upon the copying and distribution of reports, whether pursuant to this Rule, agreement of the parties, or entry of a separate protective order;
- (7) as to a custody evaluation, whether a written report pursuant to subsection (i)(1)(B) of this Rule or an oral report on the record pursuant to subsection (i)(1)(A) of this Rule is required;
- (8) as to a specific issue evaluation, each issue to be evaluated and whether a recommendation is requested as to each; and
- (9) any other provisions the court deems necessary.

(h) Removal or Resignation of Person Appointed or Approved to Perform an Assessment.

(1) *Removal.* The court may remove a person appointed or approved to perform an assessment upon a showing of good cause.

(2) *Resignation.* A person appointed or approved to perform an assessment may resign prior to completing the assessment and preparing a report pursuant to section (i) of this Rule only upon a showing of good cause, notice to the parties, an opportunity to be heard, and approval of the court.

(i) Report of Assessor.

(1) *Custody Evaluation Report.* A custody evaluator shall prepare a report and provide the parties access to the report in accordance with subsection (i)(1)(A) or (i)(1)(B) of this Rule.

(A) *Oral Report on the Record.* If the court orders a pretrial or settlement conference to be held at least 45 days before the scheduled trial date or hearing at which the evaluation may be offered or considered, and the order appointing or approving the custody evaluator does not require a written report, the custody evaluator may present the custody evaluation report orally to the parties and the court on the record at the conference. The custody evaluator shall produce and provide to the court and parties at the conference a written list containing an adequate description of all documents reviewed in connection with the custody evaluation. If custody and access are not resolved at the conference, and no written report has been provided, the court shall (i) provide a transcript of the oral report to the parties free of charge and, if a copy of the transcript is prepared for the court's file, maintain that copy under seal, or (ii) direct the custody evaluator to prepare a written report and furnish it to the parties and the court in accordance with subsection (i)(1)(B) of this Rule. Absent the consent of the parties, the judge or magistrate who presides over a settlement conference at which an oral report is presented shall not preside over a hearing or trial on the merits of the custody dispute.

(B) *Written Report Prepared by the Custody Evaluator.* If an oral report is not prepared and presented pursuant to subsection (i)(1)(A) of this Rule, the custody evaluator shall prepare a written report of the custody evaluation and shall include in the report a list containing an adequate description of all documents reviewed in connection with the custody evaluation. The report shall be furnished to the parties and to the court under seal at least 45 days before the scheduled trial date or hearing at which the evaluation may be offered or considered. The court may shorten or extend the time for good cause shown but the report shall be furnished to the parties no later than 15 days before the scheduled trial or hearing.

(2) *Report of Specific Issue Evaluation.* An assessor who performed a specific issue evaluation shall prepare a written report that addresses each issue identified by the court in its order of appointment or approval and, if requested by the court, make a recommendation. The report shall be furnished to the parties and to the court, under seal, as soon as practicable after completion of the evaluation and, if a date is specified in the order of appointment or approval, by that date. The report shall include a list containing an adequate description of all documents reviewed in connection with the specific issue evaluation.

(3) *Report of Home Study.* Unless preparation of a written report is waived by the parties, an assessor who performed a home study shall prepare a written report of the home study and furnish it to the parties and to the court under seal. The report shall be furnished as soon as practicable after completion of the home study and, if a date is specified in the order of appointment or approval, by that date.

(4) *Report of Mental Health Evaluation.* An assessor who performed a mental health evaluation shall prepare a written report. The report shall be made available to the parties solely for use in the case and shall be furnished to the court under seal. The report shall be made available and furnished as soon as practicable after completion of the evaluation and, if a date is specified in the order of appointment or approval, by that date.

Committee note: An assessor's written report submitted to the court in accordance with section (i) of this Rule shall be kept by the court under seal. The only access to these reports by a judge or magistrate shall be in accordance with subsections (k)(2) and (k)(3) of this Rule. Each circuit court, through MDEC if available or otherwise, shall devise the means for keeping these reports under seal.

(j) Copying and Dissemination of Report. A party may copy a written report of an assessment or the transcript of an oral report prepared pursuant to subsection (i)(1)(A) of this Rule but, except as permitted by the court, shall not disseminate the report or transcript other than to individuals intended to be called as experts by the party.

Cross reference: See subsection (g)(6) of this Rule concerning the inclusion of restrictions on copying and distribution of reports in an order of appointment or approval of an assessor. See the Rules in Title 15, Chapter 200, concerning proceedings for contempt of court for violation of a court order.

(k) Court Access to Written Report.

(1) *Generally.* Except as otherwise provided by this Rule, the court may receive access to a report by an individual appointed or approved by the court to perform an assessment only if the report has been admitted into evidence at a hearing or trial in the case.

(2) *Advance Access to Report by Stipulation of the Parties.* Upon consent of the parties, the court may receive and read the assessor's report in advance of the hearing or trial.

(3) *Access to Report by Settlement Judge or Magistrate.* A judge or magistrate conducting a settlement conference shall have access to the assessor's report.

(l) Discovery.

(1) *Generally.* Except as provided in this section, an individual who performs an assessment under this Rule is subject to the Maryland Rules applicable to discovery in civil actions.

(2) *Deposition of Court-Paid Assessor.* Unless leave of court is obtained, any deposition of an assessor who is a court employee or is working under contract for the court and paid by the court shall: (A) be held at the courthouse where the action is pending or other court-approved location; (B) take place after the date on which an oral or written report is presented to the parties; and (C) not exceed two hours, with the time to be divided equally between the parties.

(m) Testimony and Report of Assessor at Hearing or Trial.

(1) *Subpoena for Assessor.* A party requesting the presence of the assessor at a hearing or trial shall subpoena the assessor no less than ten days before the hearing or trial.

(2) *Admission of Report Into Evidence Without Presence of Assessor.* The court may admit an assessor's report into evidence without the presence of the assessor, subject to objections based other than on the presence or absence of the assessor. If the assessor is present, a party may call the assessor for cross-examination.

Committee note: The admissibility of an assessor's report pursuant to subsection (m)(2) of this Rule does not preclude the court or a party from calling the assessor to testify as a witness at a hearing or trial.

(n) Fees.

(1) *Applicability.* Section (n) of this Rule does not apply to a circuit court for a county in which all custody evaluations are performed by court employees, free of charge to the litigants.

(2) *Fee Schedules.* Subject to the approval of the Chief Justice of the Supreme Court, the county administrative judge of each circuit court shall develop and adopt maximum fee schedules for custody evaluations. In developing the fee schedules, the county administrative judge shall take into account the availability of qualified individuals willing to provide custody evaluation services and the ability of litigants to pay for those services. A custody evaluator appointed by the court may not charge or accept a fee for custody evaluation services in that action in excess of the fee allowed by the applicable schedule. Violation of this subsection shall be cause for removal of the individual from all lists maintained pursuant to subsection (e)(1) of this Rule.

(3) *Allocation of Fees and Expenses.* As permitted by law, the court may order the parties or a party to pay the reasonable and necessary fees and expenses incurred by an individual appointed by the court to perform an assessment in the case. The court may fairly allocate the reasonable and necessary fees of the assessment between or among the parties. In the event of the removal or resignation of an assessor, the court may consider the extent to which any fees already paid to the assessor should be returned.

Source: This Rule is new.

Credits

[Adopted Sept. 17, 2015, eff. Jan. 1, 2016; June 20, 2017, eff. Aug. 1, 2017; Feb. 9, 2022, eff. April 1, 2022; Sept. 30, 2022, eff. Jan. 1, 2023; April 1, 2023, eff. July 1, 2023.]

MD Rules, Rule 9-205.3, MD R FAM LAW ACT Rule 9-205.3

Current with amendments received through December 1, 2023. Some sections may be more current, see credits for details.



Custody and Visitation-related Assessments Training

May 15 – 17, 2023 | Maryland Judicial Center | Annapolis, Maryland

Program Outline

DAY 1 – MAY 15, 2023		
Time	Topic(s)	Topics
8:30 – 8:45	Welcome	
8:45 – 9:30	LEGAL FRAMEWORK	<ul style="list-style-type: none"> • Legal framework • Maryland Rule 9-205.3 • Orders • The court’s perspective and expectations
9:30 – 10:00	THE LIFE OF A FAMILY CASE	<ul style="list-style-type: none"> • Review of court processes • DCM plans • Family services
10:00 – 10:15	BREAK	
10:15 – 11:00	CUSTODY LAW 101 & PARENTING PLANS	<ul style="list-style-type: none"> • Best interest of the child standard and factors • Who is a “parent”? • Decision-making authority and parenting time
11:00 – 11:45	DOS AND DON’TS	<ul style="list-style-type: none"> • Interactive activity
11:45 – 12:15	LUNCH	
12:15 – 12:45	INTERACTIVE ACTIVITY	<ul style="list-style-type: none"> • Work with the family fact pattern
12:45 – 2:00	PANEL	<ul style="list-style-type: none"> • Q & A with attorneys, judges, and a magistrate
2:15 – 4:30	YOUR ROLE	<ul style="list-style-type: none"> • Forensic v. clinical assessments • Neutrality (what it means/what it looks like) • Boundaries and dealing with resistance • Checking biases (regarding LGBTQIA+ families, patriarchal relationship, reproductive options, substance abuse, polyamory, corporal punishment, etc.)
4:30 – 5:30	NETWORKING	



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Program Outline

DAY 2 – MAY 16, 2023		
Time	Topic(s)	Topics
8:30 – 10:15	ELEMENTS OF AN EVALUATION	<ul style="list-style-type: none"> • Custody Evaluation • Mandatory and optional elements • Data collection framework • Normal vs. aberrant functioning • Specific Issue Evaluations (types of evaluations and considerations)
10:15 – 10:30	BREAK	
10:30 – 12:00	CHILD DEVELOPMENT AND PARENTING TIME	<ul style="list-style-type: none"> • Attachment types • Temperament types • Risk factors • Resilience/protective factors • Adverse childhood experiences • Child development and parenting time implications • Children’s views
12:00 – 12:30	LUNCH	
12:30 – 1:45	DOMESTIC VIOLENCE AND CHILDREN	<ul style="list-style-type: none"> • Prevalence, types (including coercive control), dynamics • Effects on children (witnessing violence, effects by development stage) • Assessing danger, warning signs • Protective factors • Protective strategies • Post-separation power and control, including economic power and control • Case dynamics (filings, request, restricting access to resource, compliance issues, violations of orders or agreements, using the children and third parties, use of technology, resist/refuse behaviors)
1:45 – 2:45	ASSESSING FOR DOMESTIC VIOLENCE	<ul style="list-style-type: none"> • Guidelines for assessing intimate partner violence (IPV) • Prioritizing safety • Ensuring an informed, fair, and accountable process • Focusing on the individual family • Considerations and types of recommendations • Minimizing opportunities for risk of post-separation abuse • Supporting autonomy of parents subjected to IPV



Custody and Visitation-related Assessments Training

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Program Outline

DAY 2 – MAY 16, 2023 (cont.)		
Time	Topic	Topics
2:45 – 3:00	BREAK	
3:00 – 4:30	CHILD ABUSE/NEGLECT: WHAT CUSTODY EVALUATORS SHOULD KNOW	<ul style="list-style-type: none"> • Mandated reporting (necessary information) • Speaking to a child who has been/will be forensically interviewed • Types of abuse (including child sexual abuse) and neglect • Relationship between intimate partner violence and child abuse • CPS – findings and case outcomes • Reunification with offending caregivers – considerations and when reunification is not indicated • Cultural considerations
4:30 – 4:45	THE LAW	<ul style="list-style-type: none"> • Definitions • Rejection of custody or visitation when abuse is likely • Supervised visitation
4:45 – 5:15	PRACTICE POINTERS	<ul style="list-style-type: none"> • Custody evaluators are NOT investigators • Mandated reporting • Keeping open hypotheses • Interviews • Reviewing records including forensic interviews • Risk management • Ethics • Resources
5:15 – 5:30	QUESTIONS & ANSWERS	



Custody and Visitation-related Assessments Training

May 15 – 17, 2023 | Maryland Judicial Center | Annapolis, Maryland

Program Outline

DAY 3 – MAY 17, 2023		
Time	Topic(s)	Topics
8:30 – 10:15	SPECIAL CIRCUMSTANCES (Cont.)	<ul style="list-style-type: none"> • Substance abuse/misuse, parental relocation, parent-child contact failure, LGBTQIA+ parents and families, children with special needs • Effects on children (by age) • Risk and protective factors
10:15 – 10:30	BREAK	
10:30 – 11:15	SPECIAL CIRCUMSTANCES: RELEVANT LAW AND PRACTICE POINTERS	<ul style="list-style-type: none"> • Identifying substance abuse/misuse, considerations, services • Supervised visitation • Relevant laws and standards • Data collection • Avoiding bias • Putting together the case (language and other considerations)
11:15 – 11:45	DECISION-MAKING AND HYPOTHESIS TESTING	<ul style="list-style-type: none"> • Statutory considerations • Best interest of the child factors (generally and applied to special circumstances) • Types of services and resources
11:45 – 12:15	ACCESS SCHEDULES	<ul style="list-style-type: none"> • Use of reports in mediation • Court's decisions
12:15 – 1:00	LUNCH	
1:00 – 2:00	GENERATING HYPOTHESES AND RECOMMENDATIONS	<ul style="list-style-type: none"> • Small group activity
2:00 – 2:30	GROUP SHARES/REPORTING BACK	
3:30 – 3:45	BREAK	
3:45 – 5:00	YOUR REPORT	<ul style="list-style-type: none"> • Oral vs. written reports • Testifying (depositions and at trial) – tips • Breakout groups and debrief
5:00 – 5:30	QUESTIONS & ANSWERS/CLOSING REMARKS	