

## Local Domestic Rule 45; Local Juvenile Rule 44

### **Rule 44: / Rule 45:**

#### **1. Definitions.**

As used in this Rule and in Sup.R. 91.01, *et. seq.*:

##### **A. Best Interest**

“Best interest” has the same meaning as in R.C. 3109.04 and 3109.05

##### **B. Custody Evaluation**

“Custody evaluation”, as defined in Sup. R. 91.01, means an expert study and analysis, by an individual qualified to be a custody evaluator, of the needs and development 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 and parenting time shall include one or more of the following: allocation of parental rights and responsibilities, companionship, and parenting time.

A “full custody evaluation” is an evaluation that includes all items outlined in Sup.R. 91.04(B) unless contraindicated by the custody evaluator. A full evaluation shall be performed by an appropriately licensed individual who can perform both a forensic study and analysis of the situation and can administer and interpret formal assessment instruments as required in Sup.R. 91.04(B)(7). Any custody evaluator who is not able to perform formal assessments may partner with another professional to complete this portion of the custody evaluation, .

A “partial custody evaluation” may be utilized when issues in a dispute are narrowly defined, or a narrow inquiry is necessary because of time constraints. Guidance for partial investigations is provided by the Association of Family and Conciliation Courts, which are described as “brief focused evaluations.” The order of appointment shall provide specific issues to be addressed through the partial custody evaluation.

##### **C. Custody Evaluator**

“Custody evaluator” means an individual meeting the requirements of Sup. R. 91.08 and this Local Rule. A custody evaluator may be one of the following:

- (1) “Court connected evaluator”: a person employed by the court or with whom the court contracts for custody evaluation services.
- (2) “Private custody evaluator”: a person in private practice who provides custody evaluation services to the court.

#### **2. Application of Rules.**

Franklin County Local Domestic Rule 45 and Juvenile Rule 44 shall apply in any case in which the Franklin County Domestic Relations and Juvenile Court appoints a person to perform a

custody evaluation, on or after the effective date of this rule, to assist the court when child custody, parenting time, or companionship time/visitation is at issue.

### **3. Custody Evaluator Qualifications and List**

#### **A. Private Custody Evaluator List**

Pursuant to Sup.R. 91.05, the court shall maintain a list of all custody evaluators eligible to receive appointments in Franklin County. The list shall include the professional licensing of the evaluator, their hourly rate or flat fee amount, their deposit amount, and their rate for expert testimony for trial. The list of evaluators may be obtained by visiting the court's website or by contacting the court.

By agreement of the parties, and with permission of the court, a custody evaluator maintained on the Custody Evaluator List in another county in the State of Ohio may be used so long as that custody evaluator meets the qualifications as outlined in Sup. R. 91.08 and this rule.

#### **B. Licensure and Training Requirements**

A custody evaluator shall ensure that they meet the requirements of Sup.R. 91.08 and this rule. If they fail to meet these requirements at any time, they shall notify the Administrative Magistrate, or designee, immediately.

#### **C. Pre-appointment Training**

All Custody Evaluators maintained on the court's list shall complete the training requirements outlined in Sup.R. 91. However, an individual who has served as a custody evaluator shall have until February 1, 2024 to complete the training required under those rules. Approved topics for the initial training are detailed in the Supreme Court of Ohio's Custody Evaluator Training Guidelines.

#### **D. Continuing Education.**

(1) All court-connected or private custody evaluators shall comply with the continuing education requirements as outlined in Sup.R. 91.09.

(2) Custody evaluators shall provide a report to the court annually outlining their completion of these requirements. Any custody evaluator that fails to meet the continuing education requirements shall not be eligible for new custody evaluation appointments until their continuing education requirements are satisfied. However, a custody evaluator shall be permitted to complete all of their ongoing appointments. Ongoing appointments include those where the court expands or limits the scope of the evaluation after the initial order of appointment, and those changes occur after the date that the evaluator is no longer eligible to accept new appointments.

(3) In order to regain eligibility for new appointments, a custody evaluator must come current on all outstanding continuing education requirements. If the deficiency in

continuing education is more than three calendar years, the custody evaluator shall complete the initial training requirements before they may regain eligibility.

#### **4. Appointment of a Custody Evaluator.**

##### **A. Order.**

Upon motion of a party, guardian ad litem, counsel for a child, or on its own initiative, a court may order a custody evaluation to aid in evaluating the best interest of a child in a contested custody, parenting time, or visitation case. The order shall be issued on the form prescribed by the court and shall include the information included in Sup.R. 91.05(C). The order shall specifically indicate whether the custody evaluation is a full evaluation or a partial evaluation. If a partial evaluation is ordered the court shall indicate on the order the specific issue or issues to be addressed by the evaluation. The order shall also outline with specificity the payment and allocation of fees and deposits as required by Sup.R. 91.05.

##### **B. Fees and Expenses**

(1) In determining the allocation of fees and expenses for a private custody evaluator as indicated in Sup.R. 91.05(F), including advance deposit amounts, the court shall consider the flat fee or rate of reasonable compensation required by the custody evaluator and the ability of each party to pay said fees and expenses. Each party shall have the right to be heard as it relates to allocation of reasonable fees and expenses, which at the discretion of the court may include brief oral testimony, submission of narrative affidavits, and/or submission of financial affidavits that are required by other local rules or the Ohio Rules of Civil Procedure. In determining a party's ability to pay, the court shall consider:

- a. The income, assets, liabilities, and financial circumstances of the parties as demonstrated by an affidavit or statement of income and expenses, testimony to the court, or evidence of qualification for any means-tested public assistance;
- b. The complexity of the issues;
- c. The total anticipated fees and expenses of the custody evaluator, including any reasonable fees and expenses related to providing oral testimony.

(2) Upon request of any party or upon the request of the custody evaluator, and for good cause shown, the court may approve additional fees or expenses, reallocate reasonable fees or expenses, or require a party to reimburse another party in part or in whole for reasonable fees and expenses paid. Good cause shall include, but not be limited to, a change of financial circumstances, the conduct of any party, or some unforeseen circumstance. Until such time as a motion to reallocate fees is decided by the court, the parties shall continue to comply with by all existing orders regarding the allocation of fees and expenses.

##### **C. Removal of Custody Evaluator**

A judicial officer presiding over the case in which a custody evaluator was appointed may remove a custody evaluator upon a showing of good cause. Any party may file a motion in the case requesting removal and shall include specific information outlining what they believe to

be good cause for removal. The motion shall be provided to all parties and the custody evaluator.

#### **D. Resignation of Custody Evaluator**

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

#### **E. Access to Court Records**

Once the order of appointment is filed, the custody evaluator may access the court file using any designated method specifically outlined for custody evaluators. If access is provided electronically, the custody evaluator shall ensure they provide the required notice to the Clerk of Courts to terminate electronic access at the conclusion of their work on each specific case.

### **5. Responsibilities of Custody Evaluator**

#### **A. General Responsibilities**

A custody evaluator appointed by the court shall be familiar with the duties and responsibilities outlined in this local rule, the order of appointment, and Sup.R. 91.01 - 91.09, including those set forth in Sup.R. 91.06.

#### **B. Communication with the Court**

If the custody evaluator requires assistance as outlined in Sup.R. 91.06(B) when one party resides in another jurisdiction, or if they require an amendment to the order of appointment as outlined in Sup.R. 91.06(C), the custody evaluator may request a status conference with the assigned judicial officer by contacting the assigned bailiff or court officer, or as otherwise directed by the court. Any request must also be provided to all counsel and pro se parties, the guardian ad litem, and any attorney advocate, if one has been appointed.

### **6. Custody Evaluation Report**

#### **A. Dissemination and Time Frame**

A custody evaluator shall provide their Custody Evaluation Report to both the assigned judge and magistrate, and shall also provide the report to the attorneys and guardian ad litem on the case. If any party is not represented by counsel, the report shall be provided directly to that party. The written report shall be provided at least 30 days prior to the final status conference and the trial shall not start less than 60 days after the final status conference to give each party an opportunity to review the report and consult with any additional experts.

#### **B. Required Notice**

The written report shall include the statement:

“The custody evaluator’s report shall be provided to the court for distribution to all 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.”

### **C. Court Access to Report**

In accordance with Sup.R. 91.07(B), the court shall not review the report prior to trial unless the parties and counsel have agreed in advance for purposes of conducting a settlement conference. If the court reviews the report in advance, it shall not consider the report for any other purpose until it has been properly admitted into evidence.

### **D. Discovery**

The written report filed by the custody evaluator shall be subject to the Ohio Rules of Civil Procedure applicable to discovery in civil actions. Any records, information, or other materials relied upon by the evaluator may be subject to discovery pursuant to the Ohio Rules of Civil Procedure applicable to discovery in civil actions even if not filed by the custody evaluator.

### **E. Use of Report**

The court shall consider only those custody evaluations and reports completed by a custody evaluator appointed by the court. This provision shall not limit either party from retaining an additional expert or experts to review the custody evaluation and offer additional testimony as to its content.

## **7. Submission, Review, and Disposition of Comments and Complaints.**

### **A. Designation of Person to Receive and Review Complaints**

All comments or complaints submitted under this rule shall be delivered to the Administrative Magistrate or their designee. All comments and complaints received under this rule shall be reviewed by the Administrative Magistrate or their designee as may be appropriate.

### **B. Process for Submitting a Comment or Complaint.**

All comments and complaints submitted under this rule shall be made in writing on a form promulgated by the court. Comments and complaints may be submitted by electronic means as indicated on the designated form.

### **C. Receipt, Review, and Response to a Comment or Complaint.**

(1) The court shall create and maintain a file for the purposes of recording all complaints, comments, notes, and responses for each custody evaluator authorized to perform custody evaluations in Franklin County Court of Common Pleas, Division of Domestic Relations and Juvenile Branch.

(2) Upon receipt of a comment or complaint, the court shall notify the custody evaluator who is the subject of the comment or complaint by providing them with a copy of the comment or complaint. If requested by the court, the custody evaluator who is the subject of the comment/complaint shall have 30 days to respond to the comment or complaint. Said response shall be in writing and submitted to the Administrative Magistrate or their designees.

(3) Upon the receipt of the comment or complaint, a response from the custody evaluator, and any other information requested by the person reviewing the file, the Administrative Magistrate shall cause a prompt review the facts and issue a determination. The response from the court shall be final and shall be issued in writing and provided to the person making the comment/complaint and the custody evaluator who is the subject of the comment/complaint.

(4) The role of the court is to determine if the custody evaluator complied with the requirements of this rule and the Rules of Superintendence in completing their examination, and may suggest corrective action, additional training, or removal from the list. The court shall not determine matters that are left to the discretion of a professional licensing board. The Administrative Magistrate or their designee cannot make orders in any case sanctioning or removing a custody evaluator or resolve factual conflicts that should be presented to the assigned judge or magistrate in the case.

(5) Any private custody evaluator, by vote of the majority of judges, may be removed from the court's list if the court determines that a private custody evaluator continuously fails to adhere to the requirements of these rules or the Rules of Superintendence as it relates to their appointment as a custody evaluator. Loss of licensure or suspension shall result in immediate removal. Reinstatement may occur following suspension upon request and subsequent approval of the Administrative Magistrate so long as training and continuing education requirements are maintained.