

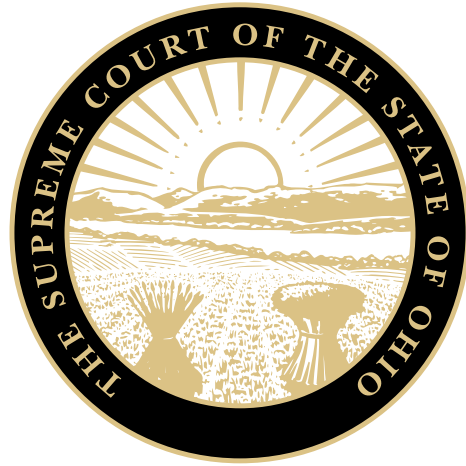


# Custody Evaluations

*Toolkit for Judicial Use*







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*Toolkit for Judicial Use*

July 2023

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## Introduction

Custody disputes are challenging to decide. It is no longer the default assumption that one parent will be awarded sole custody and the other with residual parenting time. While the number of family cases that proceed to trial is small, those that do often involve high conflict and complex issues. When parents are unable to agree on the allocation of parental rights and responsibilities or both parents appear to be unsuitable, a court can utilize custody evaluations to assist in gathering information about the family to use in their decision-making process to ensure that the child's needs are being met.

Custody evaluations seek to identify the allocation of parenting time and custody arrangements that are in the best interest of the child. These types of forensic investigations analyze the strengths of the parents and/or other individuals who may be seeking custody or companionship and visitation and how the child interacts with each individual to better inform the court about the child's relationship with the adults involved. Courts use the information gleaned from the custody evaluator's report and recommendations to help inform its decisions. Thus, the custody evaluation (and the individuals conducting the investigation) significantly affects the outcome for a child and a family.

As the use of custody evaluations has increased, concerns as to the reliability, quality, and utility of evaluations arose. In Ohio, there was no uniformity of practice nor requirements outlining the qualifications, responsibilities, training, and methodology to be used by those performing custody evaluations. In 2021, the Supreme Court adopted Rule 91 of the Rules of Superintendence for the Courts of Ohio (Sup.R. 91). This rule establishes standard requirements around the practice of custody evaluations and related expert testimony. The goal of this rule is to promote proficiency for those conducting these evaluations by incorporating national standards, such as the Association of Family & Conciliation Courts' *Guidelines for Parenting Plan Evaluations in Family Law Cases*, into Ohio's legal framework. The practices outlined in the rule seek to enhance the quality of forensic evaluations and the competency of those to whom this responsibility is delegated.

This toolkit will assist courts in implementing the requirements of Sup.R. 91. It provides an explanation of what a custody evaluation is and how it differs from other types of court-ordered investigations. It also describes factors to consider when ordering a custody evaluation, the court's responsibilities when appointing a custody evaluator, and sample documents.

## Explanation of a Custody Evaluation

A *custody evaluation* is a comprehensive investigation and written assessment, which includes information regarding the needs, health, safety, and development of the child. It also examines and provides information or recommendations related to the parties' capacity to meet the needs of the child and the allocation of parenting rights and responsibilities.

A custody evaluation can be requested by a motion of a party, the guardian ad litem, counsel for a child, or by the court to aid the court in evaluating the best interest of a child in a contested custody or parenting time case. [Sup.R. 91.04(A)] Evaluations can be *partial or brief* – covering a single issue or *full* – investigating multiple issues.

Unless contraindicated in the judgment of the custody evaluator or limited by the court's Order of Appointment, the custody evaluation should include but is not limited to all the following: [Sup.R. 91.04(B)]

- Information obtained through interviews, joint or individual, with each party seeking custody or parenting time.
- Information obtained through interviews with each child.
- Information obtained through interviews with stepparents, significant others, or any other adult residing in the home.
- Information obtained through interviews with step- or half-siblings residing in the home.
- Information obtained from childcare providers, schools, counselors, hospitals, medical professionals, social service agencies, guardians ad litem, and law enforcement agencies.
- Information from home visits or observations of each child with the appropriate adults involved.
- Results of clinical tests administered.
- History of child abuse, domestic violence, substance abuse, psychiatric illness, and involvement with the legal system.
- Investigation into any other relevant information about the child's needs.

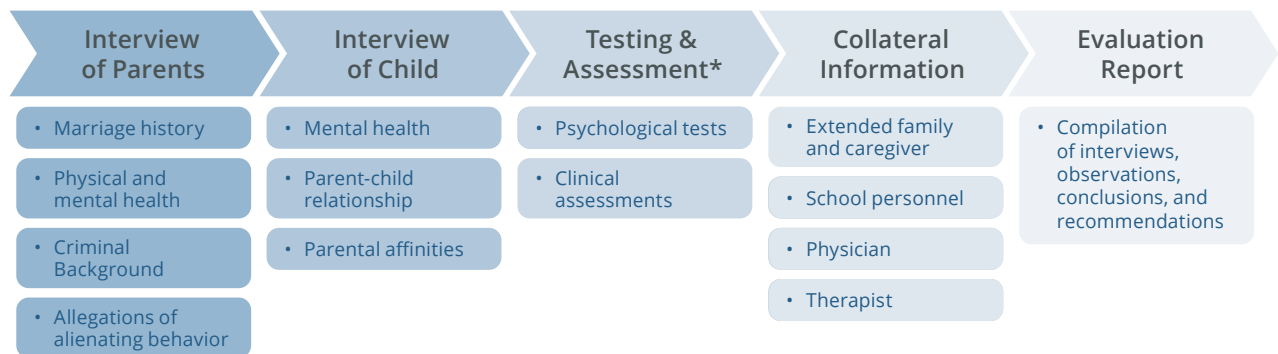
Custody evaluators gather information from multiple sources so that they glean a complete view of the family dynamics and the needs of the child. This comprehensive investigation allows them to make informed recommendations as to the parenting time and custody arrangements that will best meet the needs of the child.

## A. Forensic Approach to Custody Evaluations

There is a clear distinction between forensic custody evaluations and the advice and support that psychologists and counselors provide to families in the normal course of therapy and counseling. A custody evaluation is conducted by a licensed clinical professional with specialized training in the areas of child development, family relationships, interviewing, child and family psychopathology, and other related areas. The purpose of the evaluation is to gather and analyze information from multiple sources based on scientific models of data collection and clinical observation. Forensic evaluations “involve the application of knowledge and skills from the mental health professions to the resolution of legal matters....They are performed for the express purpose of assisting the parties and the courts in reaching legal determinations.”<sup>1</sup>

Although the custody evaluator is a mental health or medical professional, there is no doctor-patient relationship present between the parties because the evaluator is not engaged in treatment or therapy. No insurance company is billed for the time spent with the evaluator, because the custody evaluator is not offering counseling or other resources designed to provide assistance or change behavior. Rather, the custody evaluator assesses the parenting skills and attributes and how they meet the needs of the child. The custody evaluator investigates the family, conducts interviews, and performs assessments so that the court can gain a deeper understanding of the parent-child relationship and the environment in which the child is being raised.

### *Custody Evaluation Process*



*(\*) The use of testing and assessments is not always necessary in a particular custody evaluation. Formal assessment instruments such as psychological testing, clinical assessments, and inventories can be used to assist in the determination of parenting skills, maladaptive personality traits, and mental illness. They may be administered to confirm anything identified earlier in the evaluation process.*

1 Association of Family and Conciliation Courts, Guidelines for Parenting Plan Evaluations in Family Law Cases (May 11, 2022). <https://www.afccnet.org/Portals/0/PDF/2022%20Guidelines%20for%20Parenting%20Plan%20Evaluations%20in%20Family%20Law%20Cases1.pdf>.

## B. Full vs. Partial (Brief-Focused) Custody Evaluations

A custody evaluation can be full or partial. Sup.R. 91.01 (E) defines a full custody evaluation as a “comprehensive examination of the best interest of the child.” These types of evaluations are more intensive with the evaluator interviewing a wide variety of collateral contacts and conducting a thorough review of the family dynamics. A full evaluation typically includes the use of psychological testing or assessments to supplement information obtained from interviews, observations, and other information-gathering methods.

In some cases, a comprehensive full custody evaluation is not necessary, but a court may benefit from ordering a partial evaluation. A partial custody evaluation (or brief-focused evaluation) is an “examination of the best interest of a child that is limited by court order in either time or scope.” [Sup.R. 91.01 (F)] This option is appropriate when a single issue or discrete set of issues needs to be investigated to inform specific aspects of the court’s decision. The court may also limit the time that an evaluator has to conduct the evaluation. A partial evaluation is not ordered when custody or the allocation of decision-making is at issue.

Partial evaluations are also a viable alternative when the family has previously undergone a full custody evaluation and has returned to court on a singular issue, especially in situations where little time has passed since the full report was submitted. Courts should, however, be cautious not to use partial evaluation as a substitute when a full evaluation is proper.

Depending on the issue, partial evaluations are generally less intrusive, less expensive, and can be performed in less time than full evaluations. These advantages should be considered when the parties’ financial resources are limited, and when escalating tension in the family and delaying the legal process are concerns.



### PRACTICE TIP

If the parties’ resources are limited, the court should inform the custody evaluator in advance and ask if it is possible to complete what is being requested on the “budget” available. If it is not feasible, the court must determine if there are other means to achieve the services required (e.g., whether the court has special project funds it is willing to contribute; whether there is another evaluator who might compete the evaluation for less; or whether the scope of the custody evaluation can be narrowed).

When ordering a partial evaluation, the court should clearly define what is at issue or in dispute. This should be specified in the Order of Appointment and explained to the custody evaluator, attorneys, and parties involved. Scope creep can increase the cost and time needed for the evaluation.

It is beneficial for judicial officers to consult with counsel before making the Order of Appointment. A thorough discussion in advance will help to identify family-specific issues, define the scope of the examination, and formulate the specific question the evaluator will be asked to address in a partial evaluation. The right question ensures the evaluator examines the correct issue and provides the information necessary to address the concerns of the court. The scope of the evaluation is narrowed or limited in the Order of Appointment.

Full Custody Evaluation	Partial Custody Evaluation
<p>Examples of when a full evaluation may be ordered where one of the following are present:</p> <ul style="list-style-type: none"> <li>• The parents disagree as to the designation of the residential parent and legal custodian.</li> <li>• The parenting time schedule is contested.</li> <li>• The court has rejected the parents' shared parenting plans.</li> <li>• Complex circumstances and issues exist regarding the well-being of the child.</li> <li>• There are allegations of abuse, mental illness, unfitness, or substance abuse that, within the court's discretion, warrants additional investigation.</li> <li>• One parent seeks to relocate.</li> </ul>	<p>Examples of when a partial evaluation may be ordered where one of the following are present:</p> <ul style="list-style-type: none"> <li>• The school district that best meets the need of the child is in dispute.</li> <li>• One parent seeks a change to the shared parenting plan to which the other parent does not agree.</li> <li>• One parent has filed to modify the parenting time schedule and the other parent does not agree.</li> <li>• The court seeks an update to a prior custody evaluator report that was finalized within the past year.</li> </ul>

### C. When & Why Order a Custody Evaluation

Custody cases are challenging to decide, and courts have varying options to assist them with the custody determination. Depending on the complexity of the issues, resources of the parties, and parent-child relationship, the court can appoint a guardian ad litem, order an investigation, order a custody evaluation, or a combination of options.

*Guardian ad Litem (GAL)*

A guardian ad litem is an individual appointed to assist a court in its determination of the best interest of a child. A GAL may be appointed in allocation of parental rights and responsibilities cases; abuse, neglect, and dependency cases; and juvenile delinquency and unruly cases to represent the best interests of the child.

A GAL is a neutral third-party stakeholder appointed to gather information about the child's relationship with the parents, determine the child's wishes, and make recommendations to the court as to the future placement or parenting arrangements of the child. In certain types of proceedings, the GAL can serve as the child's attorney. Sup.R. 48 governs the practice of GALs. While GALs have focused training in child development, divorce, and other related topics, they are oftentimes attorneys and may not likely be educated in behavioral sciences; therefore they typically cannot render recommendations based upon scientific methodology.

Both GALs and custody evaluators gather information and make reports to assist the court in making custody and parenting decisions. However, GALs are more likely to be appointed when the issues in controversy do not rise to the level of complexity or seriousness that requires a psychologist or social worker. For example, courts may appoint a GAL in situations when a home visit is needed, when attendance at pretrial conferences and court hearings is desired, or when ongoing hands-on involvement with the child and parties during an active case is preferred.

There are also situations where a court may choose to appoint both. For example, a court may initially appoint a GAL on a case and subsequently determine there is a need for a more comprehensive custody evaluation. This may also occur if the parties request a custody evaluation. In these situations, courts should be mindful of the added time and costs for the parties.

*Note: Sup.R. 91.05 prohibits the same individual from serving as both the custody evaluator and the GAL.*

*Investigations*

In general, courts are authorized by Civ.R. 75(D), Juv.R. 32(D), and R.C. 3109.04(C) to order an investigation to examine the parties' character and family environment. There are different types of investigations. They can range from simple, less-involved home studies to comprehensive psychological evaluations now defined in Sup.R. 91.01 as a custody evaluation.

#### STATUTES AUTHORIZING INVESTIGATIONS

Civ.R. 75(D) authorizes investigations into the “character, family relations, past conduct, earning ability, and financial worth of the parties to the action;”

Juv.R. 32(D) authorizes investigations as to the “character, health, family relations, past conduct, present living conditions, earning ability, and financial worth of the parties to the action;” and

R.C. 3109.04(C) allows investigations to be ordered as to the “character, family relations, past conduct, earning ability, and financial worth of each parent and may order them to submit to medical, psychological and psychiatric examinations.”

#### *How Custody Evaluations Differ*

With the adoption of the guidelines in Sup.R. 91 for how custody evaluations are to be conducted, it is important to distinguish custody evaluations from other investigations under R.C. 3109.04(C). For purposes of this section, references made to investigations authorized by R.C. 3109.04(C) pertain to non-custody evaluation investigations that do not involve forensic examinations.

Typically, investigations pursuant to Civ.R. 75(D), Juv.R. 32(D), and R.C. 3109.04(C) are ordered for fact-finding purposes and are more limited to the subjects outlined in the rules or the statute. The individual conducting the investigation is more focused on information gathering and reporting, rather than observing and analyzing the findings in a forensic manner. Oftentimes, these types of investigations do not involve psychological assessments, are not as comprehensive, and have no prescribed methodology or standards governing how they are conducted.

There are varying practices around the state regarding the use of investigations. Because of the lack of governance over how investigations are conducted, there are no licensure and training requirements for someone completing an investigation – the investigator. An investigator may lack the specialized forensic training needed to render an expert opinion as to the care of the children.

Custody evaluations, on the other hand, are ordered when courts are seeking to obtain an evaluation of each parent’s mental health and social well-being, an intensive study of a child’s psychosocial needs, and the comparative capacity of parents to meet those needs. Mental health professionals can provide an in-depth research-based analysis of a full range of custody, psychological, and co-parenting issues that can aid judicial decision-making.

Custody evaluations are conducted by licensed mental health professionals who have the requisite education, licensure, and training. With their specialized knowledge of child development, family dynamics, psychopathology, behavior, clinical interviewing, and observation skills, evaluators can provide a deeper level of understanding and an expert opinion on root matters beyond what a guardian ad litem or investigator can offer.

Custody evaluations are commonly ordered in complex cases where there are questions involving mental health issues; domestic violence; sexual abuse; special needs children; parenting time resistance; child/parent estrangement and reunification; out-of-state relocation; substance abuse; fitness to parent; and highly polarized, contentious parenting where parents cannot seem to agree on anything. These circumstances carry long-term consequences and bear upon the right to make legal decisions and parenting time access that goes to the heart of how to allocate parental rights and responsibilities. A well-written report synthesizing the information gathered by the evaluator results in sound recommendations that can be utilized as a settlement tool by judicial officers.

Depending on the circumstances of the case, courts have various options to assist with custody and parenting time determinations. Courts consider a number of factors when determining whether to appoint a GAL, appoint a custody evaluator, or order an investigation.

	Authority	Definition	When to Use
<b>Custody Evaluation</b>	R.C. 3109.04(C) Sup.R. 91	Comprehensive examination of the parties, family dynamics, parents' ability to meet the needs of the child conducted through clinical observation and investigation.	High amount of conflict between the parents. Issues around mental health, domestic violence, or substance use. Psychological assessments and/or testing may be necessary.
<b>Investigation</b>	Civ.R. 75 Juv.R. 32 R.C. 3109.04(C)	Examination is limited to the parties' character, family relations, past conduct, earning ability, and financial worth.	Intermediary level examination into the family dynamics and parent-child relationship. No psychological assessments or testing is necessary.
<b>Guardian ad Litem</b>	R.C. 3109.04(B) R.C. 2151.281 Sup.R. 48 Juv.R. 4	Identify the best interests of the child and advocate for the child's wishes if there is a dual appointment.	Child's wishes are different from parents. Less complex issues around family dynamics.



## Overview of the Court's Responsibilities

### A. Local Rule [Sup.R. 91.03]

Courts utilizing custody evaluations must adopt a local rule governing the appointment and oversight of the custody evaluator as the court deems necessary and appropriate. The local rule shall set forth the following:

- A designee to accept and consider comments and complaints;
- A requirement that a copy of the comment or complaint is provided to the custody evaluator; and
- A requirement the court maintains a record and the disposition of the comment and the complaint.

Courts should also include in their local rule procedures for appointing and removing an evaluator, the procedure for submitting the evaluation report, payment of fees, and any predetermined costs. *See Appendix for a sample local rule.*

### B. Court-Connected Program or Private Custody Evaluator List

Custody evaluation services can be provided by:

- Court-connected evaluators who are court employees;
- Non-employee evaluators with whom a court has contracted for such services; and
- Approved outside private evaluators.

#### *Court-Connected Program*

Courts considering establishing a custody evaluation program should consider their funding sources, the volume of cases requiring such services, and the availability of qualified evaluators locally when deciding how best to offer the service. Private evaluations performed by mental health professionals in private practice are expensive and can be costly and are often paid for directly by the parties.

Several larger, urban courts have opted to provide services in-house through a dedicated department with employees who perform custody evaluations and, who in some cases, also conduct mediations and participate in neutral evaluations. If the case volume is small or resources are limited, courts may contract with an individual who has the requisite education, licensure, and training or with an agency that could provide an individual with the required education, licensure, and training to perform custody evaluations.

Court-connected evaluations tend to be considerably less costly for parties and are often completed in less time. An alternative may be to create a hybrid program with both a court-connected component and a private evaluation component to provide flexibility.

*Private Custody Evaluator List*

If a court utilizes private custody evaluators, it shall establish and maintain a list of the evaluators from which appointments are made. The court must establish criteria to ensure an equitable distribution of the workload among the private custody evaluators. Equitable distribution is defined as “a system through which appointments are made in an objectively rational, fair, neutral, and nondiscriminatory manner and are widely distributed among all private custody evaluators on the list.”<sup>2</sup>

Courts are permitted to consider the complexity of the issues, parties, counsel, and the children involved, as well as the experience, expertise, and demeanor of available private custody evaluators when making the appointment. While there is some flexibility for courts to take into consideration attorney requests or recommendations based on these factors, the court should be mindful of the requirement under Sup.R. 91.05(B)(1) that the appointments be equitably distributed.

C. Verification of Qualifications & Education Requirements

In order to become eligible for the court-appointed list or to accept an appointment as a court-connected custody evaluator, the individual must meet the licensure and education requirements set forth in Sup.R. 91.08 and the applicable local rule. Courts need to develop an application process to verify if the applicant has the proper credentials. Similarly, the applicant must demonstrate that they have completed the required 40 hours of pre-appointment education provided by the Supreme Court or another provider that has received prior approval from the Supreme Court. *See Appendix for a sample Custody Evaluator Application.*

Similarly, the court must develop a process for verifying that custody evaluators have completed the annual six hours of continuing education provided by the Supreme Court or another provider that has received prior approval from the Supreme Court to provide continuing education training. *See Appendix for a sample Annual Compliance Statement.*

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2 Sup.R. 91.05(B)(1)

**CUSTODY EVALUATOR LICENSURE REQUIREMENT [SUP.R. 91.08(A)]**

A custody evaluator must be 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;
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.

**D. Onboarding New Custody Evaluators**

There are a variety of ways to onboard a new custody evaluator depending on whether the court is utilizing court-connected or private custody evaluators. Whether the court conducts a formal orientation or just provides an informational packet, the court should communicate its expectations and outline its procedures for submitting invoices, filing reports, communicating with judicial officers, and submitting annual compliance documentation among other things. This information provides clear instructions to the custody evaluator on fulfilling their requirements and responsibilities. Be sure to include any forms or templates the court requires or encourages the custody evaluator to use.



**PRACTICE TIP**

Courts should develop an intake packet or onboarding manual outlining the responsibilities and expectations of the court. Other items to include are sample evaluation reports and report templates, glossary of legal terms, example court orders, instructions on how to obtain releases of information, and procedures for accessing case information through the court's case management system.

By setting forth these expectations at the outset, the court will have done its due diligence to set forth what is required of the custody evaluator. This in turn should make it easier to evaluate performance and provide constructive feedback when the court conducts its annual reviews for continued eligibility on the court-appointed list.

#### E. Order of Appointment [Sup.R. 91.05(C)]

An Order of Appointment sets forth the court's expectations and the duties to be performed by the custody evaluator, as well as the obligations of the parties and attorneys. The court should clearly define in the Order of Appointment the issue or dispute. If the Order of Appointment is vague, the custody evaluator will default to a full-scope evaluation and investigate matters that may be unnecessary.

##### CONTENTS OF THE ORDER OF APPOINTMENT [SUP.R. 91.05(C)]

- Name, address, licensure, and telephone number of the evaluator.
- Purpose and scope of the appointment.
- Term of the appointment.
- A provision requiring a written report and that oral testimony may be required.
- Deadlines related to the submission of reports and other court-related dates.
- A provision setting forth the payment of fees and expenses.
- Any other provisions the court deems necessary to protect the safety of the parties, children involved in the case, other children residing in the home, or the custody evaluator.

Additionally, the Order of Appointment grants the evaluator the right to access information and requires parties to cooperate and timely respond to requests for information. Courts may add a provision to the Order of Appointment requiring the parties being evaluated to sign any releases of information presented to them by the evaluator. Refusal to cooperate may cause significant delays in the investigation process.

*Purpose & Scope of the Appointment*

Courts should expressly state their expectations for the evaluation in the Order of Appointment. For example, is the evaluation related to whether a parent can appropriately experience unsupervised parenting time with a child? Or is the purpose to assess the relative strengths and weaknesses of each parent to be designated the residential parent of the child? This directs the custody evaluator's focus and determines if it is appropriate to narrow the scope of the evaluation. Expansion in scope can increase the time spent on the evaluation, the administration of unnecessary assessments, and the cost of the evaluation.

Courts should identify special issues that they want to be addressed such as:

- Custody/parenting time
- Domestic violence
- Statutory factors
- Mental illness
- Relocation
- Interference of parental rights
- Physical/sexual abuse
- Substance abuse
- Refuse/resist/parental alienation
- Co-sleeping
- Smoking
- Immunization/vaccination
- Medical treatment

*Term of the Appointment*

Generally, the custody evaluator's appointment is designated at the time of appointment until the evaluation report is submitted to the court or until the custody evaluator testifies at the final hearing, whichever is later. This is the period when the bulk of the custody evaluator's duties are performed. If necessary, the appointment can be extended beyond that time due to orders for further evaluation and report. Alternatively, the term of the appointment can be shortened should the custody evaluator be relieved of evaluation duties.



**PRACTICE TIP**

Courts should keep the custody evaluator appointment active until the case is disposed. Include language in the final order that the appointment has expired.

*Oral Testimony*

Courts need to inform the evaluator prior to making the appointment that oral testimony may be required. Many individuals do not want to testify and may not realize they cannot opt out of this.

### *Deadlines & Important Dates*

The Order of Appointment should include the deadline for submitting the report, as well as the dates and times of any pretrial, settlement conference, or trial known at the time of the appointment.



#### **PRACTICE TIP**

Courts should schedule the date of the final hearing prior to appointing the custody evaluator so that the evaluator is informed at the time of the appointment of the written report's due date.

Please note, court-connected programs may have different timelines for the completion of reports. The written report must be submitted at least 30 days prior to the final hearing. If the court wishes to receive a report prior to that date, it should specifically state that in the Order of Appointment so that the evaluator is aware. The court may want to receive the report at an earlier time to aid in settlement negotiations. However, the court needs to consider the amount of time needed to complete a thorough evaluation when determining how far in advance of the final hearing to order it due.

### *Payment of Fees & Expenses*

The Order of Appointment should specify the cost of the evaluation and how the custody evaluator will be compensated. This includes the evaluator's hourly rate or fee that will be charged, the amount of any deposits required, and the date the deposit(s) and payments will be due.

### *Safety Provisions*

Courts may include language in the Order of Appointment if they determine it is necessary to address any safety concerns they may have for the parties, child(ren) subject to the evaluation, other children residing in the home, or the custody evaluator. Courts should also address whether domestic violence, drug or alcohol abuse, use of weapons, or safety concerns are issues about which the custody evaluator should be aware. *See Appendix for a sample Order of Appointment.*

## **F. Evaluation**

Custody evaluators function as an extension of the court, therefore accountability is key to maintaining public confidence in the court process. Courts should set high expectations of the individuals serving as custody evaluators and communicate those expectations when a private custody evaluator first becomes eligible for appointment or employed as a court-connected evaluator. It is equally important to periodically remind custody evaluators of the court's expectations.



**PRACTICE TIP**

Courts should develop a regular communication strategy and evaluation system to ensure custody evaluators are informed and meeting the court's expectations.

Regular performance evaluations provide a way to ensure custody evaluators are performing satisfactorily. Courts can gather feedback from judicial officers after a case is completed using a standardized questionnaire that asks about basic duties performed during the evaluation such as whether the evaluator thoroughly interviewed the family, met with relevant collateral contacts, prepared a satisfactory report, and timely filed the report. Courts should be mindful that written feedback, whether in the form of a questionnaire or survey, is accessible to the public. *See Appendix for sample evaluation tools.*

**G. Complaint Process [Sup.R. 91.03(A)]**

Sup.R. 91.03 requires the court to establish a process for submitting comments and complaints regarding the performance of its custody evaluators. This should be a transparent process, giving a voice to stakeholders and demonstrating accountability by the custody evaluator and the court. Courts should make parties aware of the comment/complaint process and provide parties with access to a comment/complaint form. *See Resources for a Custody Evaluator Comment/Complaint Form.*



**PRACTICE TIP**

Courts should publicize the comment/complaint process in their local rules or on their websites.

A custody evaluator should be in good standing with a professional licensure board in Ohio, unless a court is using a court-connected evaluator without a professional license. Courts should accept comments or complaints that are limited to the performance of the custody evaluator's duties within the confines of those set forth in Sup.R. 91. Comments or complaints that relate to an ethical responsibility or a standard of practice governed by the professional licensure board should be directed to the board itself. This is analogous to an attorney that serves as a guardian ad litem in a case. The appointing court has oversight over the performance of duties under Sup.R. 48; however, complaints or comments related to the standard of practice in the Ohio Rules of Professional Conduct are directed to the Supreme Court's Office of Disciplinary Counsel.

Courts should timely follow up on each complaint by providing the custody evaluator with a copy of the written complaint or comment and allowing a reasonable time for a response. Courts then should thoroughly examine the reason for the complaint and notify the complaining party and custody evaluator of the disposition along with an understandable explanation of any actions taken. The complaint process should proceed in a timely manner. *See Appendix for a sample Court Response to a Custody Evaluator Complaint.*

#### H. Record Keeping [Sup.R. 91.05(B)(2)]

The court has oversight over documents related to the appointments, qualifications, training, and performance of custody evaluators. Sup.R. 91.05(B) (2) requires courts to maintain files for all applications and those individuals who have been approved for the court-appointed custody evaluator list. These files shall contain all records and information as required under Sup.R. 91, including a certificate or other documentation of compliance with the education requirements, and by any local court rule that pertains to the selection and service of a custody evaluator.

While courts are required to maintain records, they are appropriately subject to court records requests from the public. Therefore, courts should retain only information necessary to satisfy the court's oversight responsibilities. Some information may be kept in summary format once individual documents have been reviewed and needed determinations and appropriate responses have been made. Courts should review their records retention policies to ensure proper handling and disposal of custody evaluator-related records.

#### I. Removal or Resignation [Sup.R. 91.05]

Upon a showing of good cause, the court may remove a custody evaluator. The removal may be in response to a party's request that a custody evaluator to be removed. Courts should conduct a hearing on any request to remove an evaluator and use caution when making removals because, in many instances, individuals being evaluated feel they are being treated unfairly with no evidence of that occurring. Good cause reasons for removing a custody evaluator include conflict of interest, loss of licensure, or board investigations of the evaluator.

Similarly, a custody evaluator may resign prior to the completion of an evaluation after giving notice to the parties, an opportunity to be heard, and with the approval of the court upon a showing of good cause. An evaluator may request to resign due to a discovered conflict of interest, failure of cooperation of a party, or failure to pay required fees.



## The Custody Evaluator's Responsibilities

A “custody evaluator” is a licensed, objective, impartial, and qualified mental health professional the court appoints to perform a child custody evaluation. [Sup.R. 91.01] In order to accept an appointment, the individual must meet the qualifications and complete the initial education described above.

Regardless of whether the evaluation is full or partial, a custody evaluator has the following responsibilities: [Sup.R. 91.06(A)]

- Maintain objectivity, provide and gather balanced information from both parties to the case, and control for bias.
- Strive to minimize the potential psychological trauma to children during the evaluation and report writing by performing responsibilities in a prompt and timely manner.
- Protect the confidentiality of the parties and children with collateral contacts and not release information about the case to any individual except as authorized by the court or statute.
- Immediately identify themselves as custody evaluators 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.
- Refrain from any *ex parte* communications with the court regarding the merits of the case.
- Not offer any recommendations about a party unless that party has been evaluated directly or in consultation with another qualified neutral professional.
- Consider the health, safety, welfare, and best interest of the child in all phases of the process, including interviews with parents, extended family members, counsel for the child, and other interested parties or collateral contacts.
- Not pressure children to state a custodial preference.
- Inform the parties of the evaluator's reporting requirements, including, but not limited to suspected child abuse and neglect, and threats to harm one's self or another person.
- 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.
- Be conscious of the socioeconomic status, gender, race, ethnicity, sexual orientation, cultural values, religion, family structures, and developmental characteristics of the parties.

- Upon discovery, notify the court in writing 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 for services as a custody evaluator.

#### A. Confidentiality & Communication

Similar to other court appointees, custody evaluators must refrain from having *ex parte* communications with the court regarding the merits of the case. Custody evaluators speak to the court through their reports or testimony. Sup.R. 91.06(C) permits custody evaluators to communicate with the court when it is necessary to amend the scope or the timeframe of the Order of Appointment. This could occur if the custody evaluator discovers unanticipated issues or information that was not previously known prior to the appointment.

A custody evaluation involves sensitive information about the parties and their children. The report may include mental health and psychological assessments, details of treatment services, and allegations of abuse. Thus, custody evaluators have a duty to protect the confidential information of parties and the children involved in the case. [Sup.R. 91.06(A) (3)] During their investigation, they are not permitted to release details about the case to any collateral contacts being interviewed or individuals from whom they seek information.

Nevertheless, because custody evaluators are court appointees, they need to identify themselves as custody evaluators during their investigations and disclose that documents and information obtained may become part of their reports and related court proceedings. [Sup.R. 91.06(A) (4)] Custody evaluators should review the limits of their confidentiality with families and collateral interviewees so that they understand how the information being provided will be used.

#### B. Custody Evaluator Fees

Prior to the appointment, the court shall hear the parties' case regarding the allocation of fees and expenses. The court shall further determine who pays the initial deposit, fees, and expenses. The court shall further approve additional expenses or fees necessary. Courts that employ court-connected evaluators have the flexibility to set the fees for both full and partial evaluations, as well as to waive the fees for indigent parties. There is a wider variation with private evaluators. They may have a set fee or an hourly rate.

The court should be cognizant of parties who may not be able to afford a custody evaluation and identify appropriate alternatives. The court should strive to narrow the scope of each evaluation, including the number of individuals to be interviewed, records attorneys can submit for review, and other measures to provide a targeted evaluation while being economical and efficient.

### C. Custody Evaluator Testimony

Under Sup.R. 91.07(F), the custody evaluator's report will be marked as the court's exhibit and admitted into evidence at a hearing or trial on the court's motion. The report shall take the form of the custody evaluator's expert direct testimony, which then shall be subject to cross-examination by either party. While a written report will often suffice, the testimony of a custody evaluator is occasionally required and can be compelled by subpoena. A party challenging the report must subpoena the custody evaluator to testify no later than 14 days prior to the hearing or trial. [Sup.R. 91.07(F)]

The court, parties, and counsel may have questions that were not answered in the report, or circumstances may have changed since the evaluator prepared the report that merit further inquiry. Evaluators should be prepared to explain their findings and reasoning on the record as if on cross-examination.

There may be situations where a party requests a second custody evaluation or its own independent evaluator. Sup.R. 91 does not prohibit this from occurring provided the court makes an additional appointment. Courts should use great caution in granting such requests. A second evaluation increases the costs to the parties, delays the case, makes the case more adversarial, and most importantly, can cause more trauma to the child and parties.

## The Custody Evaluator Report

The goal of the custody evaluator's report is to facilitate the court's order regarding the allocation of parental rights and responsibilities. It seeks to inform the court about the relationship that the parents have with their child and to assist the court in determining the best interest of the child.

The written report shall be filed at least 30 days prior to the final hearing. [Sup.R. 91.07(A)] Courts may want the report submitted earlier such as at the time of a pretrial conference to encourage the parties to negotiate a settlement. This deadline should be specified in the Order of Appointment or subsequent order. Additionally, the evaluator's report is to be admitted into evidence at a hearing or trial on the court's motion. A party challenging the report shall subpoena the evaluator to appear no less than 14 days before a hearing or trial. [Sup.R. 91.01(F)(1)]

The report is comprised of primary data received from interviews with parents, children, and other immediate family members involved in the situation. This information provides insight into the nature of the relationship of the child with the parents and the overall family dynamics. The secondary data received from collateral sources such as school personnel or treatment providers seek to confirm what the custody evaluator learned from their initial investigations or uncover information that may not have been previously disclosed.

#### COMPONENTS OF THE CUSTODY EVALUATOR REPORT

- Demographic information about the parties and child(ren) (e.g., name, address, phone number, email address, employment, military history, marital status, household members, living arrangements).
- Contacts that the parties and child(ren) have had with the custody evaluator, including by phone/correspondence, e-contacts, and in person.
- Relevant background information, including parties' marital history, parenting history, and previous court orders and outcomes.
- Description of the collateral contacts and records received.
- Referral information/description of the motion pending before the court.
- Description of the present situation, including:
  - › Each party's concerns, views, and requests.
  - › The views of the child(ren).
  - › Parties' co-parenting dynamic.
  - › Each party's parenting style and relationship with the child(ren).
  - › Parenting time problems.
  - › Any critical issues, such as domestic violence, substance abuse, mental health, physical health, criminal history, child abuse/child protective services involvement, and financial hardship.
- Conclusions and recommendations, including a thorough analysis of the information collected and how it impacted the custody evaluator's opinion regarding the allocation of parental rights and responsibilities.

### *Recommendations*

The custody evaluator's report should provide a detailed analysis of the parents' strengths and opportunities for enhancement with respect to meeting the needs of their child. The report should set forth a comparative analysis of the different parenting plans being weighed by the court, including the advantages and disadvantages of each option. The report is treated as other pieces of evidence, questioned as to its veracity, and considered during the court's decision-making process.

Judicial officers have differing opinions on whether they want the custody evaluator to include recommendations about placement or parenting time in the report. Some judicial officers ask the custody evaluator to opine on who should get custody and what the details of the parenting plan should include (e.g., custody exchanges should occur in a neutral location or one parent will be responsible for transportation to and from school).

Alternatively, other judicial officers prefer a report that contains recommendations that are related to the family's needs (e.g., parents would benefit from anger management counseling) and not specific details of the parenting plan. These recommendations provide insight into what the parents need or the best interest of the child at a more global level. These judicial officers may prefer to ask those questions of the evaluator during their testimony.



#### PRACTICE TIP

Courts should provide clear direction to the custody evaluator on the court's expectations about the level of specificity for the report.

### *Disclosure of the Report*

The written report is to be filed with the court and provided to the attorneys of record and any unrepresented parties. A court may require the attorney or unrepresented party to sign a release requesting the report.

In accordance with Sup.R. 91.07(E), the report must contain the following disclosure statement:

*“Except as permitted by the court, a party shall not distribute the report by any means, including by social media. Reports or recommendations shall not be shared with the minor child(ren) subject to the case. Unauthorized disclosure or circulation of the report may be subject to court action including the penalties for contempt, which include fines and/or incarceration.”*

The report shall be kept in a “family file” separate from other case-related documents that would be subject to public access under Sup.R. 44-47. However, it is subject to discovery under applicable Rules of Civil Procedure. Additionally, any supporting documents used during the custody evaluation (e.g., medical records, child protective service records, police reports, etc.) may not be re-released by the custody evaluator or the court.

#### *Modifying the Report*

A custody evaluator will only modify the written report if requested to do so by the court. An update to the report is typically accomplished by adding an addendum to the previously submitted report. If an attorney or self-represented litigant contacts the custody evaluator to provide new information after the report is completed, the custody evaluator may either refuse the contact; instruct the attorney or litigant to put the concern in writing and share it with the opposing counsel or litigant; or pursue another option approved by the court.

## Resources

Association of Family and Conciliation Courts, *Guidelines for Parenting Plan Evaluations in Family Law* (May 11, 2022), [www.afccnet.org/Portals/0/PDF/Guidelines%20for%20Parenting%20Plan%20Evaluations%20in%20Family%20Law12.pdf](http://www.afccnet.org/Portals/0/PDF/Guidelines%20for%20Parenting%20Plan%20Evaluations%20in%20Family%20Law12.pdf).

American Psychological Association, *Guidelines for Child Custody Evaluations in Family Law Proceedings* (2010), [www.apa.org/practice/guidelines/child-custody](http://www.apa.org/practice/guidelines/child-custody) [As of the publication of this toolkit, these guidelines are being revised].

Association of Family and Conciliation Courts, *Guidelines for Examining Intimate Partner Violence: A Supplement to the AFCC Model Standards of Practice for Child Custody Evaluation*, (April 9, 2016), [www.afccnet.org/Portals/0/PDF/Guidelines%20for%20Examining%20Intimate%20Partner%20Violence%20\(1\).pdf](http://www.afccnet.org/Portals/0/PDF/Guidelines%20for%20Examining%20Intimate%20Partner%20Violence%20(1).pdf).

Micaiah Zwartz, *Report Writing in the Forensic Context: Recurring Problems & the Use of a Checklist to Address Them*, 25 *Psychiatry, Psychology and Law* 578 (2018).

Jeffrey Wittman, *Evaluating Evaluators: An Attorney’s Handbook for Analyzing Child Custody Reports* (2013).

William G. Austin and Leslie M. Drozd, *Judge’s Bench Book for Application of the Integrated Framework for the Assessment of Intimate Partner Violence in Child Custody Disputes*, 10 *J Child Custody* 99 (2013).

## Appendix

- A. Sample Local Rule – Custody Evaluator
- B. Sample Application for the Private Custody Evaluator Appointment List
- C. Sample Annual Compliance Statement
- D. Sample Order of Appointment
- E. Sample Custody Evaluator Bench Survey
- F. Sample Custody Evaluator Party Survey
- G. Sample Custody Evaluator Comment/Complaint Form
- H. Sample Court Response to a Custody Evaluator Complaint





## **SAMPLE LOCAL RULE 1 – CUSTODY EVALUATOR**

*This sample local rule contains language applicable for courts appointing custody evaluators.*

### **1.01. DEFINITIONS**

As used in this rule:

- A. “Custody evaluation” 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.
- B. “Custody and parenting time” shall include the 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,” a person employed by the court or with whom the Court contracts custody evaluation services.
  - 2. “Private custody evaluator,” a person in private practice who provides custody evaluation services to the Court.

### **1.02. APPLICABILITY**

This rule shall apply in all cases whenever child custody or parenting time is an issue. Pursuant to R.C. 3109.04(C), Civ.R. 75, and Juv.R. 32(D), the Court may order a custody evaluation to analyze the needs of a child who is the subject of the action and capacities of the parents or other relevant adults to meet the needs and best interest of the child. The Court shall only consider evaluations completed by a custody evaluator appointed by the Court.

### **1.03. DESCRIPTION OF CUSTODY EVALUATION**

- A. Unless contraindicated in the judgment of the custody evaluator or limited by the order of appointment, a custody evaluation shall include but not be limited to all of the following:
  - 1. Information obtained through interviews, joint or individual, with each party seeking custody or parenting time.
  - 2. Information obtained through interviews with each child.
  - 3. Information obtained through interviews with stepparents, significant others, or any other adult residing in the home.
  - 4. Information obtained through interviews with step or half-siblings residing in the home.
  - 5. Information obtained from childcare 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.
9. Investigation into any other relevant information about the child's needs.

**1.04. APPOINTMENT OF CUSTODY EVALUATOR**

- A. The Court may appoint a court-connected evaluator or a private custody evaluator to perform a custody evaluation pursuant to Sup.R. 91.04. The Court shall not appoint as a custody evaluator a guardian ad litem appointed to the case pursuant to Sup.R. 48.
- B. Qualifications
  1. A custody evaluator shall meet the requirements of Sup.R. 91.08.
  2. A custody evaluator must complete 40 hours of pre-appointment education provided by the Supreme Court of Ohio or other provider approved by the Supreme Court prior to accepting an appointment.<sup>1</sup>
- C. Private Custody Evaluator List
  1. Upon completion of the required pre-appointment education, an applicant seeking to serve as a private custody evaluator shall submit to the Court the *Application for the Private Custody Evaluator Appointment List*.
  2. The application shall provide the following documents in addition to the application:
    - a. A resume stating the applicant's education and licensure, training, experience, and expertise demonstrating the applicant's ability to successfully perform the duties and responsibilities of a custody evaluator.
    - b. A copy of the applicant's criminal background check.
  3. To remain on the Court's appointment list, the private custody evaluators must submit annually by January 1<sup>st</sup>:
    - a. The Annual Compliance Statement certifying qualifications and that the private custody evaluator is unaware of any circumstances that would disqualify the private custody evaluator from serving.
    - b. Certificate(s) of completion that the required annual six hours of continuing education required by Sup.R. 91.09 has been satisfied.
- D. If the Court determines that a custody evaluator has not met the annual continuing education requirements, that individual shall not be eligible for any new appointments until the education requirements have been satisfied. The Court shall retain discretion to continue a

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<sup>1</sup> Individuals currently serving as custody evaluators have until February 1, 2024, to complete the pre-appointment education. [Sup.R. 91.08(B)(2)]

current custody evaluator appointment pursuant to Sup.R. 91.09(B)(2) until the requirements have been fulfilled.

#### **1.05. RESPONSIBILITIES OF THE COURT**

- A. To ensure that only qualified individuals perform the duties of a custody evaluator and that the requirements of Sup.R. 91 are met, the Court shall:
1. Maintain a public list of approved private custody evaluators and maintain individual privacy pursuant to Sup.R. 44 through 47.
  2. [\[INSERT COURT'S CRITERIA\]](#), which includes all requirements of Sup.R. 91, for appointment and removal of private custody evaluators on the list and procedures to ensure an equitable distribution of the work among private custody evaluators on the list.
  3. Review a criminal and civil background check and investigation of information relevant to the fitness of the applicant to serve as a private custody evaluator.
  4. Maintain files for all applicants and for individuals approved for appointment as private custody evaluators with the Court. The files shall contain all records and information required under Sup.R. 91 and these local rules for the selection and the service of a private custody evaluator, including a certificate or other satisfactory proof of compliance with education requirements.
  5. Conduct, at least annually, a review of the Court's list to determine that private custody evaluators are in compliance with the continuing education requirements of Sup.R. 91 and these local rules, and have performed satisfactorily on all assigned cases during the preceding calendar year, and are otherwise qualified to serve.
  6. [\[INSERT COURT'S PROCESS\]](#) to receive written comments and complaints regarding the performance of custody evaluators and provide for a timely review and disposition of the comment or complaint. The Court shall maintain records related to the receipt and disposition of comments and complaints.

#### **1.06. ORDER OF APPOINTMENT**

- A. Upon request of a party or at the Court's discretion, the Court may issue an order requiring a custody evaluation and appointing a custody evaluator.
- B. The order shall include the provisions set forth in Sup.R. 91.05(C).
1. The name, business address, licensure, and telephone number of the 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 children of the parties, any other children residing in the home of a party, and the person being appointed.
  8. A provision that grants the custody evaluator the right to access information as authorized by the appointment.
  9. A provision that requires the parties to cooperate with the custody evaluator and provide information promptly when requested to do so.
  10. Any other provisions the Court deems necessary.
- C. At such time as the custody evaluation is ordered, those individuals being evaluated shall sign any releases of information so as to allow the custody evaluator to gather the information necessary to conduct the evaluation.

#### **1.07. RESPONSIBILITIES OF THE CUSTODY EVALUATOR**

- A. A custody evaluator appointed by the Court pursuant to Sup.R. 91.04 shall do all of the following when performing the 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 children during the evaluation and report writing by performing responsibilities in a prompt and timely manner.
  3. Protect the confidentiality of the parties and children with collateral contacts and not release information about the case to any individual except as authorized by the Court or statute.
  4. Immediately identify themselves 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 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 children to state a custodial preference.
  9. Inform the parties of the 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. Upon discovery, notify the Court in writing 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.

#### **1.08. CUSTODY EVALUATOR REPORTS**

- A. A custody evaluator shall prepare a written final report, including recommendations to the Court, at least 30 days prior to the final hearing. [\[Insert other applicable deadline\]](#)
- B. 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. The report shall include a detailed analysis of the strengths and areas in need of improvement of the parties with respect to meeting the needs of the child, as well as a comparative analysis of the different parenting plans or companionship plans under consideration.
- D. The report shall not be considered an investigation pursuant to Civ.R. 75(D), Juv.R. 32(D), or R.C. 3109.04(C).
- E. All reports submitted to the Court shall include the following notice: *"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."*

#### **1.09. DISCLOSURE OF THE CUSTODY EVALUATOR'S REPORT**

- A. The report is not available for public access pursuant to Sup.R. 44-47; however, it is subject to the Rules of Civil Procedure where applicable to discovery in civil actions.
- B. The report and any attachments shall be placed in the family file.
- C. At the time the report is submitted for filing, the clerk shall file a notice in the public file stating the date that the custody evaluator's report was filed.
- D. A party may copy a written report of a custody evaluation but, except as permitted by the Court, shall not disseminate the report by any means, including by social media. Any additional disclosure of this report must be approved in advance by the Court. In particular, reports or the recommendations shall not be shared with minor children who are the subject of the case.

- E. Unauthorized disclosure or distribution of the report, in whole or in part, may be subject to court action, including the penalties for contempt which include fines and/or incarceration.
- F. No individual shall be permitted to place the content of the report on any form of social media.

**1.10. TESTIMONY & REPORT AT HEARING OR TRIAL**

- A. The evaluator's report shall be admitted into evidence at a hearing or 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 evaluator to appear not less than fourteen days before a hearing or trial.
- B. The Court shall notify the evaluator as soon as a hearing or trial date is set. The evaluator shall be available to testify on cross-examination regarding the report if subpoenaed by a party not less than fourteen days prior to trial.

**1.11. COMMUNICATION TO THE COURT**

A custody evaluator speaks through their report and shall refrain from any *ex parte* communication with the Court. When necessary, a custody evaluator may communicate with the Court to amend the scope or timeframe of their appointment.

**1.12. FEES AND PAYMENTS**

- A. The Court shall issue an order regarding the allocation of payment of the custody evaluator's fees and expenses. Prior to the appointment, the parties have a right to be heard on the issue of allocation of payment.
- B. The Court shall consider the parties' ability to pay the fees and expenses of the custody evaluator. In making this determination, the Court shall consider all of the following:
  - 1. 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.
  - 2. The complexity of the issues.
  - 3. The anticipated reasonable fees and expenses of the custody evaluator, including any reasonable fees or expenses related to potential testimony.
- C. The Court shall issue an order regarding the allocation of payment of the custody evaluator's fees and expenses which shall consist of both of the following:
  - 1. Any requirement for a party to pay reasonable fees and expenses, including an initial deposit.
  - 2. Any requirement for any other entity or individual to contribute toward reasonable fees and expenses.
- D. 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 reasonable fees or expenses, or require a party to reimburse another party in part or in whole for reasonable fees or expenses paid.

### **1.13. 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.

### **1.14. REMOVAL & RESIGNATION**

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

### **1.15. CONFLICTS OF INTEREST**

- A. A custody evaluator shall avoid any actual or apparent conflict of interest arising from any relationship or activity including, but not limited to, those of employment or business or from professional or personal contacts with parties or others involved in the case. A custody evaluator shall avoid self-dealing or associations from which the custody evaluator might benefit, directly or indirectly, except for compensation for services as a custody evaluator.
  
- B. Upon becoming aware of any actual or apparent conflict of interest, a custody evaluator shall immediately take action to resolve the conflict; shall advise the Court and the parties of the action taken and may resign from the matter with leave of Court; or shall seek Court direction as necessary.
  
- C. Because a conflict of interest may arise at any time, a custody evaluator has an ongoing duty to comply with this division.





## SAMPLE APPLICATION FOR THE PRIVATE CUSTODY EVALUATOR APPOINTMENT LIST

INSTRUCTIONS: Please read Rule 91 of the Ohio Rules of Superintendence and  
Local Rule [XX] before completing this application.

### CONTACT INFORMATION

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Name: \_\_\_\_\_ Email Address: \_\_\_\_\_

Office Address: \_\_\_\_\_, Ohio \_\_\_\_\_

Office Telephone Number: \_\_\_\_\_ Fax Number: \_\_\_\_\_

Cell Phone Number: \_\_\_\_\_

### EDUCATION & TRAINING

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Undergraduate Degree(s): \_\_\_\_\_ Major: \_\_\_\_\_

School: \_\_\_\_\_ Date: \_\_\_\_\_

Graduate Degree(s): \_\_\_\_\_ Date: \_\_\_\_\_

School: \_\_\_\_\_

Name of Licensure Board: \_\_\_\_\_ State: \_\_\_\_\_

Licensure Number: \_\_\_\_\_

Name of Licensure Board: \_\_\_\_\_ State: \_\_\_\_\_

Licensure Number: \_\_\_\_\_

Name of Licensure Board: \_\_\_\_\_ State: \_\_\_\_\_

Licensure Number: \_\_\_\_\_

Are you currently in good standing with all the licensure boards listed above? \_\_\_\_\_ Yes \_\_\_\_\_ No

If no, please explain: \_\_\_\_\_

Have you ever been disciplined or suspended by any licensure board in Ohio or any other state or the District of Columbia? \_\_\_\_\_ Yes \_\_\_\_\_ No

If yes, state the reason and dates of the discipline or suspension: \_\_\_\_\_

Date Pre-Appointment Education was completed: \_\_\_\_\_

Pre-Appointment Education Provider Name: \_\_\_\_\_

Please list any specialized training in custody evaluation, psychopathology, family dynamics, child development, or other related field which may be helpful when serving as a custody evaluator: \_\_\_\_\_

\_\_\_\_\_  
\_\_\_\_\_

**BACKGROUND INFORMATION**

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Have you ever been convicted of any felonies or misdemeanors? \_\_\_\_\_ Yes \_\_\_\_\_ No If yes, please identify the case numbers for each case and explain these charges on a separate attachment.

Have you ever been arrested, indicted, or charged with any offense in any action that involved an abused, neglected, or dependent child, a violation of R.C. 2919.25, or any sexually oriented offense? \_\_\_\_\_ Yes \_\_\_\_\_ No If yes, please identify the case numbers for each case and explain these charges on a separate attachment.

Have you ever been named as a respondent in an action for a civil protection order or charged with domestic violence in any court? \_\_\_\_\_ Yes \_\_\_\_\_ No If yes, please identify the case numbers for each case and explain these charges on a separate attachment.

Has a referral ever been made to any children’s services agency alleging that you abused or neglected a child? \_\_\_\_\_ Yes \_\_\_\_\_ No If yes, please identify the allegations made in each referral and whether the allegations were substantiated, unsubstantiated or indicated, and state any other findings made on a separate attachment.

Are you presently, or have you ever been a party in a civil lawsuit in the past 5 years? \_\_\_\_\_ Yes \_\_\_\_\_ No If yes, please identify the court in which you were a party, the case numbers for each case, and a summary of the actions on a separate attachment.

**CERTIFICATION**

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I certify all the above information is accurate and am unaware of any circumstances that would disqualify me from serving as a custody evaluator.

I have completed the pre-education and/or continuing education requirements set out in Superintendence Rule 91.08 and 91.09, a statement of which I have provided to the Court. I understand my obligation to complete at least six hours of continuing education annually provided by the Supreme Court of Ohio or other provider approved by the Supreme Court.

Upon initial application, the Court will conduct a criminal and civil background check and investigation of information relevant to my fitness to serve as a custody evaluator. This will be conducted through the Ohio Court Network (OCN). I hereby provide my social security number as follows: \_\_\_\_\_ to allow the Court to conduct the OCN background check.

I understand my obligation to complete at least six hours of continuing education annually provided by the Supreme Court of Ohio or another provider approved by the Supreme Court and ongoing duty to report any circumstances that would disqualify me from serving as a custody evaluator.

Signature: \_\_\_\_\_

Date: \_\_\_\_\_



## SAMPLE ANNUAL CUSTODY EVALUATOR COMPLIANCE STATEMENT

Custody Evaluator Name: \_\_\_\_\_ Date: \_\_\_\_\_

### **Education & Training**

During the last year, I completed the following education programs to satisfy the annual continuing education requirement under Sup.R. 91.09.

<b>Date</b>	<b>Program Title/Contents</b>	<b>Location</b>	<b># Hrs Completed</b>

Please list all languages other than English in which you are fluent: \_\_\_\_\_

Please list any specialized training, education, or experience you have received which may be helpful when serving as a custody evaluator: \_\_\_\_\_

### **Disqualification & Removal as a Custody Evaluator**

Check one:

\_\_\_\_\_ I know of nothing that would disqualify me to serve as a custody evaluator.

\_\_\_\_\_ The following may disqualify me to serve as a custody evaluator: \_\_\_\_\_

*Please answer the following questions completely. Attach information on additional sheets if necessary.*

Within the past year, have you been removed from any court's court-appointed custody evaluator list?

\_\_\_\_\_ Yes \_\_\_\_\_ No If yes, please state the reason for your removal.

Please state what actions you have taken to correct the situation that caused your removal.

Within the past year, have you been disciplined or suspended from practice by any licensure boards in Ohio or in any other state or the District of Columbia? \_\_\_\_\_ Yes \_\_\_\_\_ No If yes, please state the reason for the discipline and suspension and the dates of such action.

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Are you currently in good standing with the licensure boards identified in your application to be a court-appointed custody evaluator? \_\_\_\_\_ Yes \_\_\_\_\_ No

If no, please explain: \_\_\_\_\_

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### **Background Information**

Within the past year, have you been convicted of any felonies or misdemeanors? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes, please identify the case numbers for each case and explain these charges on a separate attachment.

Within the past year, have you been arrested, indicted, or charged with any offense in any action that involved an abused, neglected, or dependent child, a violation of R.C. 2919.25, or any sexually oriented offense?  
\_\_\_\_\_ Yes \_\_\_\_\_ No If yes, please identify the case numbers for each case and explain these charges on a separate attachment.

Within the past year, have you been named as a respondent in an action for a civil protection order or charged with domestic violence in any court? \_\_\_\_\_ Yes \_\_\_\_\_ No If yes, please identify the case numbers for each case and explain these charges on a separate attachment.

Within the past year, has a referral been made to any children's services agency alleging that you abused or neglected a child? \_\_\_\_\_ Yes \_\_\_\_\_ No If yes, please identify the allegations made in each referral and whether the allegations were substantiated, unsubstantiated, or indicated, and state any other findings made on a separate attachment.

Are you presently, or have you been a party in a civil lawsuit in the past 5 years? \_\_\_\_\_ Yes \_\_\_\_\_ No  
If yes, please identify the court in which you were a party, the case numbers for each case, and a summary of the actions on a separate attachment.

### **Certification**

I certify all the above information is accurate and am unaware of any circumstances that would disqualify me from serving as a custody evaluator.

Signature: \_\_\_\_\_ Date: \_\_\_\_\_



## SAMPLE ORDER OF APPOINTMENT

### IN THE COURT OF COMMON PLEAS

\_\_\_\_\_ DIVISION  
\_\_\_\_\_ COUNTY, OHIO

In the matter of:

\_\_\_\_\_  
\_\_\_\_\_

Case No: \_\_\_\_\_

Judge: \_\_\_\_\_

Magistrate: \_\_\_\_\_

### ORDER APPOINTING CUSTODY EVALUATOR

The Court finds it is in the best interest of the minor child(ren) for a custody evaluation to be conducted in this matter relating to the allocation of parental rights and responsibilities and/or parenting time/companionship.

It is hereby **ORDERED** that:

1. \_\_\_\_\_, hereinafter referred to as "Custody Evaluator," is appointed to conduct a custody evaluation pursuant to Superintendence Rule 91 and the local rules of this Court.

Business Address: \_\_\_\_\_

Professional Board Name: \_\_\_\_\_

Licensure #: \_\_\_\_\_ Business Phone #: \_\_\_\_\_

2. Custody Evaluator shall be appointed until the evaluation report is submitted to the court or until the custody evaluator testifies at the final hearing, whichever is later.

3. The type of custody evaluation to be conducted will be:

Allocation of Parental Rights and Responsibilities

*[Comprehensive analysis of the family's issues (e.g., mental health, substance abuse, relocation, special needs, domestic violence, reunification)]*

Brief-Focused Assessment

Update of a previous custody evaluation report

Determination of parenting time schedule for the child(ren)

Determination if supervised parenting time or exchange is appropriate

Identification of school district

If child is permitted to relocate, determination of parenting time schedule

Other: \_\_\_\_\_

Companionship Dispute



Other: \_\_\_\_\_

4. Upon presentation of a copy of this order to any agency, hospital, physician, chiropractor, optometrist, dentist, nurse, or other medical, dental, or optical practitioner, psychologist, psychiatrist, or other mental health practitioner, organization, school, person, or office, including, but not limited to, the Clerk of this Court, job and family services agencies, public children's services agencies, private child placing agencies, health departments, juvenile courts, juvenile probation department, and adult probation departments, Custody Evaluator shall be permitted to inspect and copy any records related to the child(ren), and/or parents, to confirm with any and all professionals who may provide information relative to said minor child(ren) and/or parents with respect to issues pending before this Court without the consent of the child and/or parents.
5. Custody Evaluator shall make no disclosure about a case or investigation, except to the parties and their legal counsel in reports to the Court, as necessary, to perform the duties of the custody evaluator or as directed by the Court or law permits.
6. All parties shall participate in and cooperate with all aspects of the custody evaluation. All parties shall promptly provide all information requested by Custody Evaluator.
7. All parties shall attend all scheduled interviews to ensure the evaluation and report are completed expeditiously.
8. The fee for this evaluation is \_\_\_\_\_ and shall be taxed as court costs. The parties' responsibility for payment of fee(s) shall be allocated at the final hearing. [\[In the alternative insert any deposit amount or fee schedule when using a private evaluator.\]](#)
9. Custody Evaluator shall file a written report with the Court at least 30 days prior to the final hearing. Oral testimony may be required. *[Insert any additional dates of pretrial, settlement conferences, or trials known at the time this order is made.]*

The report shall include the following notice: *"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."*

10. The report shall be entered into evidence on the Court's motion as an exhibit in the form of the evaluator's expert direct testimony. A party challenging the report shall subpoena Custody Evaluator to appear not less than 14 days before a hearing or trial. Custody Evaluator shall be available to testify on cross-examination if subpoenaed.
11. Custody Evaluator shall be given notice of any hearing or trial date once set.
12. Custody Evaluator shall keep accurate records of the time spent, services rendered, and costs and expenses incurred while performing the responsibilities of a custody evaluator. Unless Custody Evaluator is court-connected, Custody Evaluator shall provide a monthly statement of fees and expenses to all parties. Upon the conclusion of their responsibilities, Custody Evaluator shall provide a motion for payment with an itemized statement and accounting to the Court, with a copy to each

party or other entity responsible for payment. The motion for payment shall contain an itemized list of duties performed, time expended, and costs and expenses. The parties or other entities responsible for payment shall pay those fees and expenses as ordered by the Court.

13. In addition to all orders set out herein, Custody Evaluator shall strictly comply with the requirements of Sup.R. 91.01 through 91.09 subject to the following: \_\_\_\_\_.

\_\_\_\_\_  
Date Approved

\_\_\_\_\_  
Judge/Magistrate

A copy of this Order was hand-delivered, mailed, or emailed to counsel of the parties or to the parties without counsel and to Custody Evaluator on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_\_.



## SAMPLE CUSTODY EVALUATOR BENCH SURVEY

### FOR INTERNAL COURT USE ONLY

*This survey is to be completed at the conclusion of a hearing by the judicial officer where a custody evaluation has been ordered. This survey is to be used for purposes of notes to assist in the Court's annual performance appraisal of the custody evaluator.*

Case Number: \_\_\_\_\_ Date: \_\_\_\_\_

Custody Evaluator Name: \_\_\_\_\_

1. Did the custody evaluator interview both parents? \_\_\_\_\_ Yes \_\_\_\_\_ No
  
2. Did the custody evaluator meet with the child(ren) independently? \_\_\_\_\_ Yes \_\_\_\_\_ No
  
3. Did the custody evaluator maintain objectivity and gather balanced information from each parent? \_\_\_\_\_ Yes \_\_\_\_\_ No
  
4. Did the custody evaluator file the report in a timely manner? \_\_\_\_\_ Yes \_\_\_\_\_ No
  
5. Did the custody evaluator's report include a thorough analysis of the information collected and how it impacted the custody evaluator's conclusions and recommendations? \_\_\_\_\_ Yes \_\_\_\_\_ No
  
6. Did the custody evaluator's report provide a detailed analysis of the parents' capacity to meet the needs of the child(ren)? \_\_\_\_\_ Yes \_\_\_\_\_ No

7. Special Considerations or factors for this case:

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Judge Initials: \_\_\_\_\_

Magistrate Initials: \_\_\_\_\_



## SAMPLE CUSTODY EVALUATOR PARTY SURVEY

CASE NO: \_\_\_\_\_

DATE: \_\_\_\_\_

SURVEY COMPLETED BY: \_\_\_\_\_

NAME OF THE CUSTODY EVALUATOR: \_\_\_\_\_

How much do you agree with each statement about the custody evaluator listed above? (Please circle your response)	Strongly Agree	Agree	Neutral	Disagree	Strongly Disagree	Does Not Apply
1. They introduced themselves to me.	😊😊	😊	😐	😞	😞😞	N/A
2. They explained their role to me.	😊😊	😊	😐	😞	😞😞	N/A
3. They treated me with respect.	😊😊	😊	😐	😞	😞😞	N/A
4. They knew what was going on with my case.	😊😊	😊	😐	😞	😞😞	N/A
5. They were prepared for the interview.	😊😊	😊	😐	😞	😞😞	N/A
6. They were on time for my interview.	😊😊	😊	😐	😞	😞😞	N/A
7. They visited my home.	😊😊	😊	😐	😞	😞😞	N/A
8. They provided a written report to me or my attorney.	😊😊	😊	😐	😞	😞😞	N/A
9. I am glad that they worked with me on my case.	😊😊	😊	😐	😞	😞😞	N/A
<b>Additional Information:</b> Is there anything else you want us to know about the custody evaluator as it relates to this case?						



**SAMPLE CUSTODY EVALUATOR COMMENT/COMPLAINT FORM**  
**IN THE COURT OF COMMON PLEAS**

\_\_\_\_\_ DIVISION  
\_\_\_\_\_ COUNTY, OHIO

In the matter of:

\_\_\_\_\_  
\_\_\_\_\_

Case No: \_\_\_\_\_

Judge: \_\_\_\_\_

Magistrate: \_\_\_\_\_

Re: \_\_\_\_\_, Custody Evaluator  
Name of Custody Evaluator

**Please describe the nature of the comment/complaint against the custody evaluator below:**

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Street Address

\_\_\_\_\_  
Signature

\_\_\_\_\_  
City

\_\_\_\_\_  
Date

\_\_\_\_\_  
State

\_\_\_\_\_  
Zip Code

\_\_\_\_\_  
Relationship to the Case

\_\_\_\_\_  
Telephone Number

\_\_\_\_\_  
Email Address

*Add instructions for where to send this form.*





## SAMPLE COURT RESPONSE TO A CUSTODY EVALUATOR COMPLAINT

### In re: Custody Evaluator Complaint

Dear \_\_\_\_\_:

Thank you for bringing your concerns about the conduct of [INSERT NAME OF CUSTODY EVALUATOR], the custody evaluator appointed in your case, [INSERT CASE NUMBER], to my attention. You filed a complaint on [INSERT DATE OF COMPLAINT].

To summarize your complaint, [INSERT SUMMARY OF COMPLAINT].

I have carefully reviewed your complaint, the response of the custody evaluator, the custody evaluator's report, and the Court's docket, including relevant motions, briefs, and orders.

It is important to remember that the custody evaluator is appointed to make *recommendations* regarding the allocation of parental rights and responsibilities and parenting time that best meets the needs of the child. It is common for the custody evaluator and the parents to have differing views on what best meets the child's needs. However, the custody evaluator is not a decision maker in your case – the assigned magistrate and, ultimately, the judge are the decision makers.

It is also important to note that the complaint process is not an opportunity to argue the merits of the underlying case or re-litigate issues the Court has decided.

After reviewing the information before me, it is my conclusion that [INSERT EXPLANATION/RATIONALE].

Based upon my findings, I conclude [INSERT FINDING].

---

Administrative Judge

CC: Custody Evaluator





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