

**PROPOSED AMENDMENTS TO THE RULES OF SUPERINTENDENCE
FOR THE COURTS OF OHIO**

Comments Requested: The Supreme Court of Ohio will accept public comments until October 16, 2020, on the following proposed amendments to the Rules of Superintendence for the Courts of Ohio.

Comments on the proposed amendments should be submitted in writing to: Kyana Pierson, Policy Counsel, Supreme Court of Ohio, 65 South Front Street, 6th Floor, Columbus, Ohio 43215-3431 or CustodyEvaluatorPublicComment@sc.ohio.gov not later than October 16, 2020. Please include your full name and mailing address in any comments submitted by e-mail.

Key to Proposed Amendments:

1. Existing language appears in regular type. Example: text
2. Existing language to be deleted appears in strikethrough. Example: ~~text~~
3. New language to be added appears in underline. Example: text

RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO

1 **RULE 91.01. Definitions.**
2

3 As used in Sup.R. 91.01 through 91.09:
4

5 **(A) Best interest**
6

7 “Best interest” has the same meaning as in R.C. 3109.04 and 3109.051.
8

9 **(B) Custody evaluation**
10

11 “Custody evaluation” means an expert study and analysis, by an individual qualified to be
12 a custody evaluator of the needs and development of a child who is the subject of an action
13 or proceeding in which child custody or parenting time is an issue, and of the comparative
14 and relative capacities of the parties and other relevant adults to care for and meet the needs
15 and best interest of the child. Custody evaluation shall include full and partial evaluation.
16 Custody and parenting time shall include allocation of parental rights and responsibilities,
17 companionship, and visitation.
18

19 **(C) Custody evaluator**
20

21 “Custody evaluator” means an objective, impartial, qualified mental health professional
22 appointed by the court to perform a child custody evaluation. As used in this rule, a custody
23 evaluator can be one of the following:
24

25 (1) “Court-connected evaluator,” a person employed by the court or with whom
26 the court contracts custody evaluation services.
27

28 (2) “Private custody evaluator,” a person in private practice who provides
29 custody evaluation services to the court.
30

31 **(D) Evaluation**
32

33 “Evaluation” includes an investigation and assessment.
34

35 **(E) Full evaluation**
36

37 “Full evaluation” means a comprehensive examination of the best interest of a child.
38

39 **(F) Partial evaluation**
40

41 “Partial evaluation” means an examination of the best interest of a child that is limited by
42 court order in either time or scope.
43

44 **RULE 91.02.** **Application of Rules.**

45
46 Sup.R. 91.01 through 91.09 shall apply in a case in which a court of common pleas appoints a
47 person to perform a custody evaluation to assist the court when child custody or parenting time is
48 at issue.

49
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51 **RULE 91.03.** **Local Custody Evaluator Rule.**

52
53 A court of common pleas that appoints custody evaluators shall adopt local rules governing
54 appointment. The local rules shall do both of the following:

55
56 (A) Establish a process for submitting in electronic format or hard copy comments and
57 complaints regarding the performance of custody evaluators appointed by the court and for
58 considering such comments and complaints. The process shall include all of the following:

59
60 (1) The designation of a person for accepting and considering comments and
61 complaints;

62
63 (2) A requirement that a copy of the submitted comment or complaint be
64 provided to the custody evaluator who is the subject of the comment or complaint;

65
66 (3) A requirement that the court give prompt consideration to the comment or
67 complaint and take appropriate action;

68
69 (4) A requirement that the court maintain a record regarding the nature and
70 disposition of the comment or complaint;

71
72 (5) A requirement that the court notify the person making the comment or
73 complaint and the custody evaluator of the disposition of the comment or
74 complaint.

75
76 (B) Address other provisions as the court considers necessary and appropriate,
77 including but not limited to indicating where filed comments and complaints will be kept.

78
79
80 **RULE 91.04.** **Custody Evaluation.**

81
82 (A) **Order**

83
84 Upon motion of a party, guardian ad litem, counsel for a child, or on its own initiative, a
85 court of common pleas may order a custody evaluation to aid the court in evaluating the
86 best interest of a child in a contested custody or parenting time case.

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90 **(B) Description of custody evaluation**

91
92 Unless contraindicated, a custody evaluation shall include but is not limited to all of the
93 following:

- 94
95 (1) Information obtained through interviews, joint or individual, with each
96 party seeking custody or parenting time;
97
98 (2) Information obtained through interviews with each child;
99
100 (3) Information obtained through interviews with stepparents, significant
101 others, or any other adult residing in the home;
102
103 (4) Information obtained through interviews with step or half siblings;
104
105 (5) Information obtained from child care providers, schools, counselors,
106 hospitals, medical professionals, social service agencies, and law enforcement
107 agencies;
108
109 (6) Information from home visits or observations of each child with the
110 appropriate adults involved;
111
112 (7) Results of clinical tests administered;
113
114 (8) History of child abuse, domestic violence, substance abuse, psychiatric
115 illness, and involvement with the legal system;
116
117 (9) Investigation into any other relevant information about the child's needs.
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119
120 **RULE 91.05. Appointment of Custody Evaluator.**

121
122 **(A) Custody evaluator**

123
124 (1) A court of common pleas that has ordered a custody evaluation pursuant to Sup.R.
125 91.04 may appoint a court-connected custody evaluator or a private custody evaluator to
126 perform the evaluation. The custody evaluator shall meet the requirements of Sup.R.
127 91.06. The court shall not appoint as a custody evaluator a guardian ad litem appointed to
128 the case pursuant to Sup.R. 48. The court shall consider only evaluations completed by a
129 custody evaluator appointed by the court.
130

131 **(B) Private custody evaluator list**

132
133 A court of common pleas that appoints custody evaluators shall establish and maintain a
134 list of private custody evaluators eligible to receive appointments from the court. The court
135 shall do all of the following with respect to the list:

136
137 (1) Establish criteria, which include all requirements of Sup.R. 91.01 through
138 91.09, for appointment and removal of private custody evaluators from the list and
139 procedures to ensure an equitable distribution of the work load among the private
140 custody evaluators on the list. “Equitable distribution” means a system through
141 which appointments are made in an objectively rational, fair, neutral, and
142 nondiscriminatory manner and are widely distributed among all private custody
143 evaluators on the list. The court may consider the complexity of the issues, parties,
144 counsel, and the children involved, as well as the experience, expertise, and
145 demeanor of available private custody evaluators.

146
147 (2) Maintain a record of all private custody evaluators appointed by the court,
148 including the name, business address, telephone number, and electronic mail
149 address of the evaluator. The court shall require each private custody evaluator to
150 notify the court of any changes to this information or changes in licensure status.
151 The court shall make this list available upon request.

152
153 (3) Require each private custody evaluator to submit to the court a resume
154 documenting compliance with the custody evaluator qualifications and completion
155 of the initial training program under Sup.R. 91.06(B). The court shall require each
156 private custody evaluator to notify the court in the event of any substantive changes
157 to the information contained in the resume.

158
159 (4) Require each private custody evaluator to submit to the court on or before
160 January 1st of each year any updates to the resume and a list of continuing education
161 training completed by the evaluator during the previous calendar year pursuant to
162 Sup.R. 91.07, including the provider, title, date, and location of each training.

163
164 (5) Develop a procedure to verify that, at a minimum on an annual basis,
165 custody evaluators on the appointment list have met the training requirements.

166
167 **(B) Order of appointment**

168
169 (1) A court of common pleas that appoints a custody evaluator pursuant to division (A)
170 of this rule shall enter an order of appointment that includes all of the following
171 information:

172
173 (a) The name, business address, licensure, and telephone number of the
174 evaluator;

175
176 (b) The purpose and scope of the appointment;

177
178 (c) The term of the appointment;

179
180 (d) A provision that a written report is required and oral testimony may be
181 required;

182
183 (e) Any deadlines pertaining to the submission of reports to the court, including
184 the dates of any pretrial, settlement conference, or trial associated with the
185 furnishing of reports;

186
187 (f) A provision for payment of fees, expenses, and any hourly rate or fee that
188 will be charged;

189
190 (g) Any provision the court deems necessary to address the safety and
191 protection of all parties, the children of the parties, any other children residing in
192 the home of a party, and the person being appointed;

193
194 (h) Any other provisions the court deems necessary.

195
196 (2) An order of appointment shall do both of the following:

197
198 (a) Grant the custody evaluator the right to access information as authorized by
199 the appointment;

200
201 (b) Require the parties to cooperate with the custody evaluator and provide
202 information promptly when requested to do so.

203
204 **(C) Removal**

205
206 The court may remove a custody evaluator appointed to perform a custody evaluation upon
207 a showing of good cause.

208
209 **(D) Resignation**

210
211 A custody evaluator appointed to perform a custody evaluation may resign prior to
212 completing the evaluation only upon a showing of good cause, notice to the parties, an
213 opportunity to be heard, and with the approval of the court.

214
215 **(E) Fees**

216
217 (1) Prior to the appointment of a custody evaluator, the parties to the case shall have a
218 right to be heard on the issue of the appointment and allocation of fees.

219
220 (2) The court shall inquire as to the rate of compensation required by the custody
221 evaluator and shall make a determination of the ability of any party to the case to pay for
222 the likely fees and expenses of the evaluator. In making this determination, the court shall
223 consider all of the following:

224
225 (a) The income, assets, liabilities, and financial circumstances of the parties, as
226 demonstrated by an affidavit or statement of income and expenses, testimony to the
227 court, or evidence of qualification for any means-tested public assistance;

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(b) The complexity of the issues;

(c) The anticipated fees and expenses of the custody evaluator.

(3) Upon determination that the appointment of a custody evaluation should proceed, the court shall issue an order regarding allocation of payment of the evaluator's fees and expenses which shall consist of both of the following:

(a) Any requirement for a party to pay fees and expenses, including an initial deposit;

(b) Any requirement for any other entity or individual to contribute toward fees and expenses.

(4) For good cause shown or based upon a change of financial circumstances, the conduct of any party, or other unforeseen circumstances, the court may reallocate fees or expenses or require a party to reimburse another party in part or in whole for fees or expenses paid.

RULE 91.06. Custody Evaluator Licensure and Pre-Appointment Education Requirements.

(A) Licensure requirement

(1) Except as provided in division (A)(2) of this rule, a court of common pleas shall appoint an individual as a custody evaluator only if the individual is one of the following:

(a) 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;

(b) 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;

(c) 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 the council;

(d) A court-connected evaluator who has the 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.

274 (2) A court may appoint a custody evaluator who does not meet the requirement of
275 division (A)(1) of this rule but has completed the training requirements division (B) of this
276 rule if the court finds that there are no qualified custody evaluators who are available within
277 a reasonable period of time or geographical proximity and the court approves the custody
278 evaluator.

279
280 **(B) Pre-appointment training**

281
282 (1) Except as provided in division (B)(2) of this rule, a court of common pleas shall
283 appoint an individual as a custody evaluator only if, at the time of appointment, the
284 individual has completed an initial training program of forty hours to qualify for
285 appointment. The initial training course shall be provided by the Supreme Court or other
286 provider that has received prior approval of the Supreme Court. Approved topics for the
287 initial training are detailed in the Supreme Court’s “Custody Evaluator Training
288 Guidelines.”

289
290 (2) An individual serving as a custody evaluator on [effective date of rule] shall have
291 until [eighteen months from the effective date] to complete the training required under
292 division (B)(1) of this rule.

293
294
295 **RULE 91.07. Custody Evaluator Continuing Education.**

296
297 **(A) Requirement**

298
299 In each succeeding year following completion of the pre-appointment educational
300 requirements of Sup.R. 91.06(B), a custody evaluator appointed by a court of common
301 pleas shall complete a continuing education course that meets all of the following
302 requirements:

303
304 (1) Is at least six hours in length;

305
306 (2) Is provided by the Supreme Court or other provider that has received prior
307 approval of the Supreme Court;

308
309 (3) Addresses approved continuing education topics detailed in the Supreme
310 Court’s “Custody Evaluator Training Guidelines.”

311
312 **(B) Failure to comply**

313
314 The following shall apply to a custody evaluator who fails to comply with the continuing
315 education requirement of division (A) of this rule:

316
317 (1) The custody evaluator shall not be eligible for new appointments until the
318 requirement is satisfied. If the deficiency in continuing education is more than three

319 calendar years, the custody evaluator shall complete the initial training program
320 pursuant to Sup.R. 91.06(B) to qualify again for appointment.

321
322 (2) If the custody evaluator is currently conducting an evaluation at the time of
323 noncompliance, the appointing court may allow the custody evaluator to complete
324 the evaluation and fulfill the requirements within the order of appointment.

325
326
327 **RULE 91.08. Responsibilities and Authority of Custody Evaluator.**

328
329 **(A) Responsibilities**

330
331 A custody evaluator appointed by a court of common pleas pursuant to Sup.R. 91.04 shall
332 do all of the following when performing the custody evaluation:

333
334 (1) Maintain objectivity, provide and gather balanced information from both
335 parties to the case, and control for bias;

336
337 (2) Strive to minimize the potential psychological trauma to children during the
338 evaluation and report writing by performing responsibilities in a prompt and timely
339 manner;

340
341 (3) Protect the confidentiality of the parties and children with collateral contacts
342 and not release information about the case to any individual except as authorized
343 by the court or statute;

344
345 (4) Immediately identify himself or herself as a custody evaluator when
346 contacting individuals in the course of a particular case and inform these individuals
347 about the role of a custody evaluator and that documents and information obtained
348 may become part of court proceedings;

349
350 (5) Refrain from any ex parte communications with the court regarding the
351 merits of the case;

352
353 (6) Not offer any recommendations about a party unless that party has been
354 evaluated directly or in consultation with another qualified neutral professional;

355
356 (7) Consider the health, safety, welfare, and best interest of the child in all
357 phases of the process, including interviews with parents, extended family members,
358 counsel for the child, and other interested parties or collateral contacts;

359
360 (8) Not pressure children to state a custodial preference;

361
362 (9) Inform the parties of the evaluator's reporting requirements, including but
363 not limited to suspected child abuse and neglect and threats to harm one's self or
364 another person;

365
366 (10) Not disclose any recommendations to the parties, their attorneys, or the
367 attorney for the child before having gathered the information necessary to support
368 the conclusion;

369
370 (11) Be sensitive to the socioeconomic status, gender, race, ethnicity, sexual
371 orientation, cultural values, religion, family structures, and developmental
372 characteristics of the parties;

373
374 (12) Upon discovery, notify the court in writing of any conflicts of interest
375 arising from any relationship or activity with parties or others involved in the case.
376 A custody evaluator shall avoid self-dealing or associations from which the custody
377 evaluator may benefit, directly or indirectly, except from services as a custody
378 evaluator.

379
380 **(B) Assistance**

381
382 When one party resides in another jurisdiction, a custody evaluator, upon order of the court,
383 may rely upon another qualified neutral professional for assistance in gathering
384 information.

385
386 **(C) Communication with court**

387
388 A custody evaluator may communicate with the court when necessary to amend the scope
389 or time frame of the order of appointment.

390
391
392 **RULE 91.09. Custody Evaluator Report.**

393
394 **(A) General**

395
396 (1) A custody evaluator shall prepare a written report to be filed with the court at least
397 thirty days prior to the final hearing. The report shall provide a detailed analysis of the
398 relative strengths and areas in need of improvement of the parties with respect to meeting
399 the needs of the child as well as a comparative analysis of different parenting or
400 companionship plans under consideration. The report shall not be considered an
401 investigation pursuant to Civ.R. 75(D).

402
403 (2) The written report shall include the statement “The custody evaluator’s report shall
404 be provided to the court for distribution to unrepresented parties and legal counsel.
405 Unauthorized disclosure or distribution of the report may be subject to court action,
406 including the penalties for contempt which include fines and/or incarceration.”

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411 **(B) Court access to report**

412
413 The court may receive and read the written report in advance of a hearing or trial for the
414 purpose of conducting a settlement conference in the case.

415
416 **(C) Record keeping**

417
418 A custody evaluator shall establish and maintain a record-keeping system that shall include
419 active control of their records and reasonable precautions to prevent the loss or destruction
420 of records in compliance with established record retention standards.

421
422 **(D) Discovery and public access**

423
424 (1) The written report shall be subject to the Ohio Rules of Civil Procedure applicable
425 to discovery in civil actions.

426
427 (2) The written report shall not be available for public access pursuant to Sup.R. 44
428 through 47.

429
430 **(E) Copying and dissemination**

431
432 A party may copy a written report of a custody evaluation but, except as permitted by the
433 court, shall not disseminate the report by any means, including by social media. Reports
434 or the recommendations shall not be shared with minor children who are subject of the
435 case. Unauthorized disclosure or distribution of the report may be subject to court action,
436 including the penalties for contempt which include fines and/or incarceration.

437
438 **(F) Testimony and report at hearing or trial**

439
440 (1) The evaluator's report shall be admitted into evidence at a hearing or trial on the
441 court's motion. The report shall be admitted as the court's exhibit in the form of the
442 evaluator's expert direct testimony. A party challenging the report shall subpoena the
443 evaluator to appear not less than fourteen days before a hearing or trial.

444
445 (2) The court shall notify the evaluator as soon as a hearing or trial date is set. The
446 evaluator shall be available to testify on cross-examination regarding the report if
447 subpoenaed by a party not less than fourteen days prior to trial.

448

449 **CUSTODY EVALUATOR TRAINING GUIDELINES**

450
451 **Initial Training Program**

452
453 The Initial Training Program shall include training on how to perform custody evaluations, the
454 interface of mental health and the legal system, as well as training in all of the following core
455 competencies:

- 456
457 (a) The dynamics of high-conflict families and parenting time disputes, including
458 parent-child relationships, blended families, extended family relationships, and
459 child resistance/refusal;
460
461 (b) The legal context within which child custody and access issues are decided
462 including statutes, legal precedents, and the rights of and rules governing the
463 parties, expert witnesses, and other involved;
464
465 (c) Trauma informed practices;
466
467 (d) How to assess parenting and co-parenting capacities and the construction of
468 effective parenting plans;
469
470 (e) How to inform all evaluation participants and collateral sources about the purpose,
471 nature, and methods of evaluation and the limits of confidentiality of forensic work
472 products and collected data;
473
474 (f) How to make relevant distinctions and avoid confusion regarding the roles of
475 custody evaluator, therapist, guardian ad litem, mediator, and parenting
476 coordinator;
477
478 (g) How to maintain objectivity and professional neutrality;
479
480 (h) Cultural competency, including but not limited to race, sex, gender, and
481 socioeconomic biases;
482
483 (i) How to write effective reports and recommendations;
484
485 (j) How to prepare for and delivery of testimony at deposition and trial;
486
487 (k) Any other topic related to the performance of custody evaluations as determined by
488 the Supreme Court.

489
490 **Continuing Education Training**

491
492 A child custody evaluator shall secure and document ongoing specialized training in the following
493 areas:
494

- 495 (a) The psychological and developmental needs and vulnerabilities of children,
496 specifically in the context of decisions about parenting time allocation and custody;
497
- 498 (b) The effects of separation, divorce, domestic violence, child maltreatment, including
499 sexual abuse, substance use and abuse, sexual orientation and gender identity
500 issues, relocation, and inter-parental conflict;
501
- 502 (c) Personality disorders and emotional and mental disorders;
503
- 504 (d) Physical disabilities, developmental disabilities, and medication use;
505
- 506 (e) Trauma informed practices;
507
- 508 (f) The significance of culture and religion in family systems;
509
- 510 (g) When and how to interview and observe adults, children, and infants;
511
- 512 (h) Safety issues that may arise in the context of evaluation processes and their
513 potential impact on all participants;
514
- 515 (i) How to gather and document information from collateral sources;
516
- 517 (j) How to recognize the limits of reliability and validity of different sources of data;
518
- 519 (k) When to consult with or incorporate additional experts and other appropriate
520 persons;
521
- 522 (l) Secondary trauma;
523
- 524 (m) How to apply comparable interview, assessment, and testing procedures that meet
525 acceptable forensic practice standards;
526
- 527 (n) How to assess parenting capacities and co-parenting capacities, and the
528 construction of effective parenting plans;
529
- 530 (o) How to maintain professional neutrality and objectivity when conducting child
531 custody evaluations;
532
- 533 (p) Cultural competency, including but not limited to race, sex, gender, and
534 socioeconomic biases;
535
- 536 (q) Any other topic related to the performance of custody evaluations as determined by
537 the Supreme Court.