

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

MD Rules, Rule 9-205.3

RULE 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

Currentness

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

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

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

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

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

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

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

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

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

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

Committee note: An example of a specific issue evaluation is an evaluation of a party as to whom the issue of a problem with alcohol consumption has been raised, performed by an individual with expertise in alcoholism.

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

(c) Authority.

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

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

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

(d) Qualifications of Custody Evaluator.

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

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

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

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

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

(2) *Training and Experience.* In addition to complying with the continuing requirements of his or her field, a custody evaluator shall have training or experience in observing or performing custody evaluations and shall have current knowledge in the following areas:

(A) domestic violence;

(B) child neglect and abuse;

(C) family conflict and dynamics;

(D) child and adult development; and

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

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

(e) Custody Evaluator Lists and Selection.

(1) *Custody Evaluator Lists.* If the circuit court for a county appoints custody evaluators who are not court employees, the family support services coordinator for the court shall maintain a list of qualified custody evaluators. An individual, other than a court employee, who seeks appointment by a circuit court as a custody evaluator shall submit an application to the family support services coordinator for that court. If the applicant has the qualifications set forth in section (d) of this Rule, the applicant's name shall be placed on a list of qualified individuals. The family support services coordinator, upon request, shall make the list and the information submitted by each individual on the list available to the public.

(2) *Selection of Custody Evaluator.*

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

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

(f) Description of Custody Evaluation.

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

- (A) a review of the relevant court records pertaining to the litigation;
- (B) an interview of each party;
- (C) an interview of the child, unless the custody evaluator determines and explains that by reason of age, disability, or lack of maturity, the child lacks capacity to be interviewed;
- (D) a review of any relevant educational, medical, and legal records pertaining to the child;
- (E) if feasible, observations of the child with each party, whenever possible in that party's household;
- (F) factual findings about the needs of the child and the capacity of each party to meet the child's needs; and
- (G) a custody and visitation recommendation based upon an analysis of the facts found or, if such a recommendation cannot be made, an explanation of why.

(2) *Optional Elements--Generally.* Subject to subsection (f)(3) of this Rule, at the discretion of the custody evaluator, a custody evaluation also may include:

- (A) contact with collateral sources of information;
- (B) a review of additional records;
- (C) employment verification;
- (D) an interview of any other individual residing in the household;
- (E) a mental health evaluation;
- (F) consultation with other experts to develop information that is beyond the scope of the evaluator's practice or area of expertise; and
- (G) an investigation into any other relevant information about the child's needs.

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

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

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

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

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

(i) Report of Assessor.

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

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

(B) *Written Report Prepared by the Custody Evaluator.* If an oral report is not prepared and presented pursuant to subsection (i)(1)(A) of this Rule, the custody evaluator shall prepare a written report of the custody evaluation and shall include in the report a list containing an adequate description of all documents reviewed in connection with the custody evaluation. The report shall be furnished to the parties at least 30 days before the scheduled trial date or hearing at which the evaluation may be offered or considered. The court may shorten or extend the time for good cause shown but the report shall be furnished to the parties no later than 15 days before the scheduled trial or hearing.

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

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

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

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

(k) Court Access to Written Report.

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

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

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

(l) Discovery.

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

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

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

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

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

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

(n) Fees.

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

(2) *Fee Schedules.* Subject to the approval of the Chief Judge of the Court of Appeals, the county administrative judge of each circuit court shall develop and adopt maximum fee schedules for custody evaluations. In developing the fee schedules, the county administrative judge shall take into account the availability of qualified individuals

willing to provide custody evaluation services and the ability of litigants to pay for those services. A custody evaluator appointed by the court may not charge or accept a fee for custody evaluation services in that action in excess of the fee allowed by the applicable schedule. Violation of this subsection shall be cause for removal of the individual from all lists maintained pursuant to subsection (e)(1) of this Rule.

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

Source: This Rule is new.

Credits

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

Current through Chapters 1 to 9, 16, 26 (except secs.4 & 5), 28, 100, 103, 116 & 142 of the 2016 Regular Session of the General Assembly