

**AMENDMENTS TO THE SUPREME COURT
RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO**

The following amendments to the Rules of Superintendence for the Courts of Ohio (new Sup.R. 91.01 through 91.09) were adopted by the Supreme Court of Ohio. The history of these amendments is as follows:

| | |
|-------------------|---------------------------------|
| August 18, 2020 | Initial publication for comment |
| May 11, 2021 | Final adoption by conference |
| September 1, 2022 | Effective date of amendments |

Key to Adopted Amendments:

1. Unaltered language appears in regular type. Example: text
2. Language that has been deleted appears in strikethrough. Example: ~~text~~
3. New language that has been added appears in underline. Example: text

RULES OF SUPERINTENDENCE FOR THE COURTS OF OHIO

RULE 91.01. Definitions.

As used in Sup.R. 91.01 through 91.09:

(A) Best interest

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

(B) Custody evaluation

“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 visitation is an issue, and of the comparative and relative capacities of the parties and other relevant adults to care for and meet the needs and best interest of the child. Custody evaluation shall include full and partial evaluation. Custody and parenting visitation shall include allocation of parental rights and responsibilities, companionship, and visitation.

(C) Custody evaluator

“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.

(D) Evaluation

“Evaluation” includes an investigation and assessment.

(E) Full evaluation

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

(F) Partial evaluation

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

RULE 91.02. **Application of Rules.**

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

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

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

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

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

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

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

(4) A requirement that the court maintain a record, indicating where the filed comments and complaints will be kept, regarding the nature and disposition of the comment or complaint;

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

(B) Address other provisions as the court considers necessary and appropriate.

RULE 91.04. **Custody Evaluation.**

(A) Order

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

(B) Description of custody evaluation

Unless contraindicated in the judgment of the custody evaluator or limited by the order of appointment, a custody evaluation shall include but is not limited to all of the following:

- (1) Information obtained through interviews, joint or individual, with each party seeking custody or parenting visitation;
- (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 child care 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.

RULE 91.05. Appointment of Custody Evaluator.

(A) Custody evaluator

A court of common pleas that has ordered a custody evaluation pursuant to Sup.R. 91.04 may appoint a court-connected custody evaluator or a private custody evaluator to perform the evaluation. The custody evaluator shall meet the requirements of Sup.R. 91.08. The court shall not appoint as a custody evaluator a guardian ad litem appointed to the case pursuant to Sup.R. 48. The court shall consider only evaluations completed by a custody evaluator appointed by the court.

(B) Private custody evaluator list

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

(1) Establish criteria, which include all requirements of Sup.R. 91.01 through 91.09, for appointment and removal of private custody evaluators from the list and procedures to ensure an equitable distribution of the work load among the private custody evaluators on the list. “Equitable distribution” means 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. The court may 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.

(2) Maintain a record of all private custody evaluators eligible for appointment by the court, including the name, business address, telephone number, and electronic mail address of the evaluator. The court shall require each private custody evaluator to immediately notify the court of any changes to this information or changes in licensure status, including disciplinary actions.

(3) Require each private custody evaluator to submit to the court a resume documenting compliance with the custody evaluator qualifications and completion of the initial training program under Sup.R. 91.08(B).

(4) Require each private custody evaluator to submit to the court on or before January 1st of each year any updates to the resume and a list of continuing education training completed by the evaluator during the previous calendar year pursuant to Sup.R. 91.09, including the provider, title, date, and location of each training.

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

(C) Order of appointment

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

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

(b) The purpose and scope of the appointment;

(c) The term of the appointment;

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

(e) 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;

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

(g) 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;

(h) Any other provisions the court deems necessary.

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

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

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

(D) Removal

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

(E) Resignation

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.

(F) Fees and expenses

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

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

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

- (b) The complexity of the issues;
- (c) The anticipated fees and expenses of the custody evaluator, including any fees or expenses related to potential testimony.

(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 reasonable 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, based upon a change of financial circumstances, the conduct of any party, or other unforeseen circumstances, the court may approve additional reasonable fees or expenses, 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. Responsibilities and Authority of Custody Evaluator.

(A) Responsibilities

A custody evaluator appointed by a court of common pleas 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 himself or herself 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.

(B) Assistance

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

(C) Communication with court

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

RULE 91.07. Custody Evaluator Report.

(A) General

(1) A custody evaluator shall prepare and file with the court a written report at least 30 days prior to the final hearing. The report shall provide a detailed analysis of the relative

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 different parenting or companionship plans under consideration. The report shall not be considered an investigation pursuant to Civ.R. 75(D).

(2) The written report shall include the statement “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.”

(B) Court access to report

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) Record keeping

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

(D) Discovery and public access

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

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

(E) Copying and dissemination

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. In particular, reports or the recommendations shall not be shared with minor children who are the subject of the case. Unauthorized disclosure or distribution of the report may be subject to court action, including the penalties for contempt which include fines and/or incarceration.

(F) Testimony and report at hearing or trial

(1) 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 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.

(2) 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.

RULE 91.08 Custody Evaluator Licensure and Pre-Appointment Education Requirements.

(A) Licensure requirement

A court of common pleas shall appoint an individual as a custody evaluator only if the individual is 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.

(B) Pre-appointment training

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

(2) An individual serving as a custody evaluator on September 1, 2022, shall have until February 1, 2024, to complete the training required under division (B)(1) of this rule.

RULE 91.09 Custody Evaluator Continuing Education.

(A) Requirement

In each succeeding year following completion of the pre-appointment educational requirements of Sup.R. 91.08(B), a custody evaluator appointed by a court of common pleas shall complete a minimum of six hours of continuing education that meets all of the following requirements:

- (1) Is provided by the Supreme Court or other provider that has received prior approval of the Supreme Court;
- (2) Is comprised of approved continuing education topics detailed in the Supreme Court of Ohio's Custody Evaluator Training Guidelines.

(B) Failure to comply

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

- (1) The custody evaluator shall not be eligible for new appointments to serve as a custody evaluator until the requirement is satisfied. If the deficiency in continuing education is more than three calendar years, the custody evaluator shall complete the initial training program pursuant to Sup.R. 91.08(B) to qualify again for appointment.
- (2) If the custody evaluator is currently conducting an evaluation at the time of noncompliance, the appointing court may allow the custody evaluator to complete the evaluation and fulfill the requirements within the order of appointment.

RULE 99. Effective Date.

[Existing language unaffected by the amendments is omitted to conserve space]

(Insert division letter) New Sup.R. 91.01 through 91.09, adopted by the Supreme Court of Ohio on May 11, 2021, shall take effect on September 1, 2022.