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MARYLAND JUDICIAL COUNCIL
LEGISLATIVE COMMITTEE

MEMORANDUM

TO:	Senate Judicial Proceedings Committee
FROM:	Legislative Committee Suzanne D. Pelz, Esq. 410-260-1523
RE:	Senate Bill 25 Family Law – Child Custody Evaluators – Qualifications
DATE:	January 15, 2025 (1/28)
POSITION:	Oppose

The Maryland Judiciary opposes Senate Bill 25.

The Judiciary appreciates the sponsors' thoughtful consideration of feedback about prior iterations of this bill and their willingness to work with Judiciary representatives to ensure custody evaluators receive appropriate training. The sponsors and those representatives proposed amendments to Maryland Rule 9-205.3 (Custody and Visitation-related Assessments) that were approved, with minor stylistic changes, by the Standing Committee on Rules of Practice and Procedure (Rules Committee) on January 10, 2025. The amendments that were approved by the Rules Committee are attached here.[1]

While the Judiciary supports the goals of this bill, it is unnecessary in light of the efforts to amend Rule 9-205.3. Article IV, § 18(a) of the Maryland Constitution confers upon

[1] The amendments, subject to purely stylistic changes made by a Style Subcommittee, are on track to be in the next general Report of the Rules Committee to the Supreme Court of Maryland (likely in February or March 2025).

the Supreme Court of Maryland authority to adopt rules that "*shall have the force of law* until rescinded, changed or modified by the Supreme Court of Maryland or otherwise by law." Like the legislative process, the rulemaking process is public and deliberative, and anyone can ask the Rules Committee to consider new rules or rule changes. Maryland Rule 9-205.3 sets forth comprehensive requirements regarding custody evaluations including training and eligibility requirements for evaluators, provisions regarding fees, and other aspects beyond those included in the bill. Maintaining these requirements in the Rule gives litigants, custody evaluators, attorneys, the courts, and others one place where they can find the law regarding these evaluations (versus, for example, having to consult with both a rule and a statute).

Although there is significant overlap between the bill and rule, where they differ is that the bill would affect the jobs of two county employees and includes structurally confusing and potentially limiting language.

Court employees. When Maryland Rule 9-205.3 was first adopted in 2016, it established the licensing requirements for custody evaluators that appear in section (d)(1) of the rule and that mirror section (e) of the bill. Section (d)(3) of the rule waives the training and licensing requirements for court employees or contractors who have been performing custody evaluations for at least five (5) years prior to January 1, 2016. This wavier provision was adopted to protect the jobs of court employees who do not have one of the qualifying licenses but had other relevant education, training, and experience performing custody evaluations. The rule also requires that "waived in" evaluators complete 20 hours of continuing education relevant to the performance of custody evaluations and certain topics each year.

At this time, only two Anne Arundel County Circuit Court employees perform custody evaluations under this waiver provision. Both have relevant education and training and over 20 years of experience performing custody evaluations. The bill would disqualify these employees from their jobs. Courts are having difficulty hiring custody evaluators as the work is difficult, the pay non-competitive, and there are very few paths for mental health professionals to gain experience as evaluators.

The amendments to the rule approved by the Rules Committee protect the jobs of these two employees by making clear that only the licensing requirement can be waived, not the rule's requirement that custody evaluators receive training that conforms with guidelines established by the Administrative Office of the Courts that are referenced in (d)(2) of the rule and (f)(1) of the bill.[2] Both court employees attended a May 2023 Judiciary training program that conformed the guidelines.

Language. The Judiciary notes that the language, "dealing with allegations in the following areas," that appears in section (f)(4) of the bill is structurally confusing as items (iii)-(vi) are areas of knowledge not "allegations" (e.g., "child and adult development" is a topic not something that is alleged). With respect to items (i)

[2] The guidelines are available at https://www.mdcourts.gov/sites/default/files/import/family/pdfs/custodyvisitationtrainingguidelines.pdf.

(domestic violence) and (ii) (child abuse and neglect), "dealing with allegations" could be interpreted as limiting. Custody evaluators would benefit from training in all aspects of domestic violence and child abuse and neglect, not just allegations of the same. Guidelines referenced in (d)(2) of the Rule and (f)(1) of the bill require that evaluators receive broader training on these and other topics. The proposed amendments to Rule 9-205.3 include the same list that appears in (f)(4) of the bill as areas in which evaluators must have demonstrated knowledge and experience.

The Judiciary is happy to continue to work with the Sponsors and stakeholderes on this important issue.

cc. Hon. Mary Beth Carozza
Judicial Council
Legislative Committee
Kelley O'Connor

MARYLAND RULES OF PROCEDURE

TITLE 9 – FAMILY LAW ACTIONS

CHAPTER 200 – DIVORCE, ANNULMENT, ALIMONY, CHILD SUPPORT, AND CHILD CUSTODY

AMEND Rule 9-205.3 by adding clarifying language to subsection (c)(2); by creating new subsection (d)(1)(A) using the language of current subsection (d)(1); by adding new subsection (d)(1)(B) regarding continuing education and licensing requirements; by creating new subsection (d)(2)(A) addressing mandatory training using language from current subsection (d)(2), with modifications; by creating new subsection (d)(2)(B) concerning required experience using language from current subsection (d)(2), with modifications; by updating the topics of required knowledge and experience in subsection (d)(2)(B); by modifying the court's ability to waive licensing requirements in subsection (d)(3); and by making stylistic changes, as follows:

Rule 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

(a) Applicability

This Rule applies to the appointment or approval by a court of a person to ~~perform~~ conduct 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~~ conducts 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~~ conduct 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~~ conducted by a psychiatrist or psychologist who has the qualifications set forth in subsection ~~(d)(1)(A) or (B)~~ (d)(1)(A)(i) or (ii) of this Rule. A mental health evaluation may include psychological testing.

(7) Specific Issue Evaluation

"Specific issue evaluation" means a focused 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 as may affect the child's best interests.

Committee note: A specific issue evaluation is not a "mini" custody evaluation. A custody evaluation is a comprehensive study of the general functioning of a family and of the parties' parenting capacities. A specific issue evaluation is an inquiry, narrow in scope, into a particular issue or issues that predominate in a case. The issue or issues are defined by questions posed by the court to the assessor in an order. The evaluation primarily is fact-finding, but the court may opt to receive a recommendation. Examples of questions that could be the subject of specific issue evaluations are questions concerning the appropriate school for a child with special needs and how best to arrange physical custody and visitation for a child when one parent is relocating.

(8) State

"State" includes the District of Columbia.

(c) Authority

(1) Generally

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) Appointment or Approval

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

(3) Cost

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.

Committee note: Nothing in this Rule precludes the court from ordering preliminary screening or testing for alcohol and substance use.

(d) Qualifications of Custody Evaluator

(1) Education and Licensing

(A) Required Education and Licensure

A custody evaluator shall be:

~~(A)~~ (i) 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)~~ (ii) a Maryland-licensed psychologist or a psychologist with an equivalent level of licensure in any other state;

~~(C)~~ (iii) 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;

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

~~(E)~~ (v) ~~(i)~~ (a) a Maryland-licensed graduate or master social worker with at least two years of experience in ~~(a)~~ (1) one or more of the areas listed in subsection ~~(d)(2)~~ (d)(2)(B) of this Rule, ~~(b) performing~~ (2) conducting custody evaluations, or ~~(c)~~ (3) any combination of subsections ~~(a)~~ (d)(1)(A)(v)(a)(1) and ~~(b)~~ (d)(1)(A)(v)(a)(2); or ~~(ii)~~ (b) a graduate or master social worker with an equivalent level of licensure and experience in any other state; or

~~(F)~~ (vi) a Maryland-licensed clinical professional counselor or a clinical professional counselor with an equivalent level of licensure in any other state.

(B) Continuing Education and Licensure Requirements

A custody evaluator shall comply with all conditions necessary to maintain professional licensure, including completing all mandatory continuing education requirements.

(2) Training and Experience

(A) Mandatory Training

~~Unless waived by the court, a~~ A custody evaluator shall have completed~~, or commit to completing, the next available~~ a training program that conforms ~~with~~ to guidelines established by the Administrative Office of the Courts. ~~The current guidelines~~ Current training guidelines shall be posted on the Judiciary's website.

(B) Required Experience

~~In addition to complying with the continuing requirements of the custody evaluator's field, a~~ A custody evaluator shall have ~~training or~~ experience in conducting or observing ~~or performing~~ custody evaluations, and shall have ~~current~~ demonstrated knowledge ~~in the following areas~~ of and experience in the following topics:

~~(A)~~ (i) domestic and family violence;

~~(B)~~ (ii) child neglect and abuse;

(iii) child and adult development;

(iv) trauma and its impact on children and adults;

~~(C)~~ (v) family ~~conflict and~~ dynamics and conflict resolution;

~~(D) child and adult development;~~ and

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

(3) Waiver of Licensing Requirements

If a court employee, or an individual under contract with the court, has ~~been performing~~ regularly conducted custody evaluations ~~on a regular basis as an employee of, or under contract with, the court~~ for at least ~~five~~ fourteen years prior to January 1, ~~2016~~ 2025, the court may waive any of the requirements set forth in subsection (d)(1) of this Rule, provided that the individual ~~participates in~~ completes a training program required by subsection (d)(2)(A) of this Rule and completes at least 20 hours per year of continuing education relevant to ~~the performance of~~ conducting 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.

(3) Selection of Assessor to ~~Perform~~ Conduct Specific Issue Evaluation

Selection of an assessor to ~~perform~~ conduct a specific issue evaluation shall be made from the same list and by the same process as pertains to the selection of a custody evaluator.

(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 and any adult who performs a caretaking role for the child or lives in a household with the child or, if an adult who lives in a household with the child cannot be located despite best efforts by the custody evaluator, documentation or a description of the custody evaluator's efforts to locate the adult and any information gained about the adult;

(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) contact with any high neutrality/low affiliation collateral sources of information, as determined by the assessor;

Committee note: "High neutrality/low affiliation" is a term of art that refers to impartial, objective collateral sources of

information. For example, in a custody contest in which the parties are taking opposing positions about whether the child needs to continue taking a certain medication, the child's treating doctor would be a high neutrality/low affiliation source, especially if the doctor had dealt with both parties.

(G) screening for intimate partner violence;

(H) factual findings about the needs of the child and the capacity of each party to meet the child's needs; and

(I) 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)(4) of this Rule, at the discretion of the custody evaluator, a custody evaluation also may include:

(A) contact with collateral sources of information that are not high neutrality/low affiliation;

(B) a review of additional records;

(C) employment verification;

(D) a mental health evaluation;

(E) consultation with other experts to develop information that is beyond the scope of the evaluator's practice or area of expertise; and

(F) an investigation into any other relevant information about the child's needs.

(3) Elements of Specific Issue Evaluation

Subject to any protective order of the court, a specific issue evaluation may include any of the elements listed in subsections (f)(1)(A) through (G) and (f)(2) of this Rule. The specific issue evaluation shall include fact-finding pertaining to each issue identified by the court and, if requested by the court, a recommendation as to each.

(4) Optional Elements Requiring Court Approval

The custody evaluator or specific issue evaluation assessor may not include an optional element listed in subsection (f)(2)(D), (E), or (F) 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~~ conduct an assessment shall include:

(1) the name, business address, and telephone number of the person being appointed or approved;

(2) 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) as to a custody evaluation, whether a written report pursuant to subsection (i)(1)(B) of this Rule or an oral report on the record pursuant to subsection (i)(1)(A) of this Rule is required;

(8) as to a specific issue evaluation, each issue to be evaluated and whether a recommendation is requested as to each; and

(9) any other provisions the court deems necessary.

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

(1) Removal

The court may remove a person appointed or approved to ~~perform~~ conduct an assessment upon a showing of good cause.

(2) Resignation

A person appointed or approved to ~~perform~~ conduct 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 and the court 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 and, if a copy of the transcript is prepared for the court's file, maintain that copy under seal, or (ii) direct the custody evaluator to prepare a written report and furnish it to the parties and the court 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 and to the court under seal at least 45 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 Specific Issue Evaluation

An assessor who ~~performed~~ conducted a specific issue evaluation shall prepare a written report that addresses each issue identified by the court in its order of appointment or approval and, if requested by the court, make a recommendation. The report shall be furnished to the parties and to the court, under seal, 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. The report shall include a list containing an adequate description of all documents reviewed in connection with the specific issue evaluation.

(3) Report of Home Study

Unless preparation of a written report is waived by the parties, an assessor who ~~performed~~ conducted a home study shall prepare a written report of the home study and furnish it to the parties and to the court under seal. The report shall be furnished as soon as practicable after completion of the home

study and, if a date is specified in the order of appointment or approval, by that date.

(4) Report of Mental Health Evaluation

An assessor who ~~performed~~ conducted a mental health evaluation shall prepare a written report. The report shall be made available to the parties solely for use in the case and shall be furnished to the court under seal. The report shall be made available and furnished 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.

Committee note: An assessor's written report submitted to the court in accordance with section (i) of this Rule shall be kept by the court under seal. The only access to these reports by a judge or magistrate shall be in accordance with subsections (k)(2) and (k)(3) of this Rule. Each circuit court, through MDEC, shall devise the means for keeping these reports under seal.

(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~~ conduct 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~~ conducts 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~~ conducted by court employees, free of charge to the litigants.

(2) Fee Schedules

Subject to the approval of the Chief Justice of the Supreme Court, 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~~ conduct 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.