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**To:** Members of The House Judiciary Committee

**From:** Family Law Section Council (FLSC)

**Date:** January 21, 2025

**Subject:** House Bill 152:  
Family Law- Child Custody Evaluators-Qualifications

**Position:** **UNFAVORABLE**

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The Maryland State Bar Association (MSBA) FLSC **opposes House Bill 152.**

This testimony is submitted on behalf of the Family Law Section Council ("FLSC") of the Maryland State Bar Association ("MSBA"). The FLSC is the formal representative of the Family and Juvenile Law Section of the MSBA, which promotes the objectives of the MSBA by improving the administration of justice in the field of family law and, at the same time, tries to bring together the members of the MSBA who are concerned with family laws and in reforms and improvements in such laws through legislation or otherwise. The FLSC is charged with the general supervision and control of the affairs of the Section and authorized to act for the Section in any way in which the Section itself could act. The Section has over 1,100 attorney members.

The FLSC is aware that the sponsors of HB 152 collaborated with Judiciary representatives in the interim and in the past few weeks to propose amendments to Maryland Rule 9-205.3 (Custody and Visitation-Related Assessments). We are further aware that the amendments were approved by the Rules Committee on January 10, 2025. This is excellent news and the FLSC believes this outcome should be sufficient to bring the several years of proposed iterations of this bill to a successful conclusion.

The FLSC believes that the important aspects of HB 152 have been incorporated into the Maryland Rule that Judges, attorneys and litigants use when requesting and ordering child custody evaluations. The required education and mandatory topics of training for the custody evaluators are clearly enumerated in the Rule. Maryland Rule 9-205.3 has the force of law<sup>1</sup> and will obviate the

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<sup>1</sup> In *Johnson v. Swann*, 314 Md. 285, 289-90, 550 A.2d 703 (1988), the Court of Appeals explained:

Section 18 of Article IV of the **Maryland** Constitution expressly grants to this Court the authority to adopt "**rules** and regulations concerning the practice [\*17] and procedure in and

need for a separate statute as proposed by HB 152. In fact, the FLSC is concerned that the enactment of a separate statute which overlaps Rule 9-205.3 would lead to confusion as the two would differ from the outset and may lead to an inconsistent application of the two laws. Moreover, any amendments or revisions made in the future to the inconsistent Rule and Statute may cause increased conflict in interpretation by trial Judges and Appellate Justices.

One important practical concern in the differences in HB 152 and Rule 9-205.3 is that HB 152 would cause two excellent and experienced custody evaluators in Anne Arundel County to immediately lose their jobs. I have practice family law in Anne Arundel County for many years and can attest that these two evaluators have served the families of our county for decades with distinction and would otherwise qualify under the Rule to continue in their positions as the section of the rule that grandfathered them in years ago would remain in effect. There is no evidence that these two custody evaluators should be fired and, in fact, there is evidence that such an outcome would do a great disservice to the Anne Arundel County family law court system.

For the reason(s) stated above, the MSBA FLSC **opposes House Bill 152 and urges an unfavorable committee report.**

Should you have any questions, please contact Michelle Smith at 410-280-1700 or [msmith@lawannapolis.com](mailto:msmith@lawannapolis.com).

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the administration of the appellate courts and in the other courts of this state," and provides that **rules** so adopted "shall have the **force of law**." See *Montgomery County v. McNeece*, 311 Md. 194, 206, 533 A.2d 671 (1987); *Hill v. State*, 218 Md. 120, 127, 145 A.2d 445 (1958). Under this section, the legislature may rescind, change, or modify a **rule** promulgated by the Court of Appeals. *Funger v. Mayor of Somerset*, 244 Md. 141, 150, 223 A.2d 168 (1966). The **Maryland Rules** of Procedure generally apply despite a prior statute to the contrary and until a subsequent statute would repeal or modify the **rule**. See *County Fed. S. & L. Ass'n v. Equitable S. & L. Ass'n*, 261 Md. 246, 253, 274 A.2d 363 (1971).

[In re Selby, 2019 Md. App. LEXIS 121, \\*16-17](#)