

## **OHIO SUPREME COURT ADOPTS CHILD CUSTODY EVALUATOR RULES**

**By Michael R. Smalz, NOW Family Law Committee**

The Ohio Supreme Court has adopted new “rules of superintendence” setting forth required qualifications, training requirements, evaluator fees, reports, and other standards governing the performance of custody evaluators in child custody cases. The Supreme Court issued proposed rules in September, 2020. Ohio NOW, Ohio NOW Education and Legal Fund, and the ACTION OHIO Coalition for Battered Women submitted joint comments largely supporting the proposed rules. After receiving public comments and making minor changes to the proposed rules, the Supreme Court approved the custody evaluator rules of superintendence on May 11, 2021. The new rules – Rules of Superintendence 91.01 through 91.09 -- will take effect on September 1, 2022.

In general, these rules will improve the qualifications and performance of custody evaluators in Ohio family courts and should result in fairer, less biased, and more child-focused reports and recommendations by custody evaluators. These rules should also benefit victims/survivors of domestic violence and ensure that custody evaluators take into account domestic violence in evaluating the best interest of the children in contested custody or parenting time cases. A custody evaluator’s report can help to ensure that children are placed in the care of a loving, nonviolent, non-abusive parent who will help the children overcome their previous traumatic experiences and not place the child at risk of further harm.

Rule 91.03 establishes a process for submitting, accepting, considering, and resolving comments and complaints regarding the performance of custody evaluators, including requirements that the court give prompt consideration to each comment or complaint and take appropriate action, maintain a record regarding the nature and disposition of each comment or complaint, and notify the commenter/complainant and the custody evaluator of the disposition of the comment or complaint.

Rule 91.04(B) requires that the court’s order of appointment of a custody evaluator include “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.”

Rule 91.05(E) provides reasonable and equitable guidelines regarding the allocation of custody evaluator fees. Rule 91.05(E) provides that the parties have a right to be heard on the issue of the appointment and allocation of fees, requires the court to make a determination of the ability of any party to pay for the likely custody evaluator fees and expenses, and, in making that determination, requires the court to consider the financial circumstances of the parties (including qualification for any means-tested public assistance), the complexity of the issues, and the anticipated fees and expenses of the custody evaluator.

Rule 91.06 sets forth the specific responsibilities and authority of custody evaluators. For example, a custody evaluator must “protect the confidentiality of the parties and children with collateral contacts” and “may not offer any recommendations about a party unless that party has been evaluated with directly or in consultation with another qualified neutral professional.”

Rules 91.08 and 91.09 set forth reasonable and necessary pre-appointment training and continuing education requirements, including 40 hours to qualify for initial appointment as a custody evaluator and six hours of annual continuing education requirements. Notably, the continuing education requirements provide that “a child custody evaluator shall secure and document ongoing specialized training” in specific areas, including the effects of domestic abuse, child maltreatment and child sexual abuse, sexual orientation and gender identity issues, safety issues that may arise in the context of evaluation processes, and cultural competency (including sex and gender biases).

In summary, these custody evaluator rules are a great improvement over existing practices in many Ohio jurisdictions. Local court’s compliance with these standards should significantly benefit mothers and children – especially those in domestic violence situations – by enabling judges to make fairer and more reasonable child custody determinations based on the best interests of the children.

Note: This article is adapted with permission from the Summer 2021 Newsletter of the national NOW Family Law committee. The author, Michael Smalz, is a member of the Ohio NOW Board and Ohio NOW Education and Legal Fund Boards of Directors.