

**PICKAWAY COUNTY COMMON PLEAS COURT**  
**PROBATE & JUVENILE DIVISIONS**  
207 South Court Street, Circleville, Ohio 43113-1648

**SHELLY R. HARSHA**  
JUDGE

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NOTICE OF PROPOSED  
ADOPTION OF LOCAL JUVENILE RULE 35

In accordance with Rule 8 of the Rules of Superintendence for the Court of Ohio, notice is hereby given of the proposed adoption of Local Juvenile Rule 35 to the Local Rules of the Pickaway County Court of Common Pleas, Juvenile Division. The proposed local rule is listed below and will be in effect January 30, 2023.

Comments regarding the proposed local rules can be forwarded in writing for consideration to Judge Shelly R. Harsha, 207 South Court Street, Circleville, Ohio on or before January 27, 2023.

2022 DEC 29 PM 1:47  
SHELLY R. HARSHA  
JUVENILE COURT JUDGE  
PICKAWAY COUNTY, OHIO

FILED

## **RULE 35. CUSTODY EVALUATION.**

### (A) Definitions:

1. “Custody evaluation”, as defined in Sup. R. 91.01, 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 time 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 time shall include allocation of parental rights and responsibilities, companionship, and visitation.
2. “Custody evaluator” means an objective, impartial, qualified mental health professional appointed by the court to perform a child custody evaluation.
3. A “full custody evaluation” is an evaluation that includes all items outlined in Sup.R. 91.04(B) unless contraindicated by the custody evaluator. A full evaluation shall be performed by an appropriately licensed individual who can perform both a forensic study and analysis of the situation and can administer and interpret formal assessment instruments as required in Sup.R. 91.04(B)(7). Any custody evaluator who is not able to perform formal assessments may partner with another professional to complete this portion of the custody evaluation.
4. A “partial custody evaluation” may be utilized when issues in a dispute are narrowly defined, or a narrow inquiry is necessary because of time constraints. The order of appointment shall provide specific issues to be addressed through the partial custody evaluation.

### (B) Custody Evaluator Qualifications and List:

1. Private Custody Evaluator List  
Pursuant to Sup.R. 91.05, the court shall maintain a list of all custody evaluators eligible to receive appointments in Pickaway County. The list shall include the professional licensing of the evaluator, their hourly rate or flat fee amount, their deposit amount, and their rate for expert testimony for trial. The list of evaluators may be obtained by contacting the court.  
By agreement of the parties and with permission of the court, a custody evaluator maintained on the Custody Evaluator List in another county in the State of Ohio may be used so long as that custody evaluator meets the qualifications as outlined in Sup. R. 91.08 and this rule.  
The Judge shall annually review the court’s compliance with Sup.R. 91.05(B).
2. Licensure and Training Requirements  
A custody evaluator shall ensure that they meet the requirements of Sup.R. 91.08 and this rule. If they fail to meet these requirements at any time, they shall notify the appointing Judge or Magistrate immediately.
3. Pre-appointment Training

All Custody Evaluators maintained on the court's list shall complete the training requirements outlined in Sup.R. 91. However, an individual who has served as a custody evaluator shall have until February 1, 2024 to complete the training required under those rules. Approved topics for the initial training are detailed in the Supreme Court of Ohio's Custody Evaluator Training Guidelines.

#### 4. Continuing Education

- (a) All court-connected or private custody evaluators shall comply with the continuing education requirements as outlined in Sup.R. 91.09.
- (b) Custody evaluators shall provide a report to the court annually outlining their completion of these requirements. Any custody evaluator that fails to meet the continuing education requirements shall not be eligible for new custody evaluation appointments until their continuing education requirements are satisfied. However, a custody evaluator shall be permitted to complete all of their ongoing appointments. Ongoing appointments include those where the court expands or limits the scope of the evaluation after the initial order of appointment, and those changes occur after the date that the evaluator is no longer eligible to accept new appointments.
- (c) In order to regain eligibility for new appointments, a custody evaluator must become current on all outstanding continuing education requirements. If the deficiency in continuing education is more than three calendar years, the custody evaluator shall complete the initial training requirements before they may regain eligibility.

#### (C) Appointment of a Custody Evaluator:

##### 1. Court Order

Upon motion of a party, guardian ad litem, counsel for a child, or on its own initiative, a court may order a custody evaluation to aid in evaluating the best interest of a child in a contested custody, parenting time, or visitation case. The order shall be issued on the form prescribed by the court and shall include the information included in Sup.R. 91.05(C). The order shall specifically indicate whether the custody evaluation is a full evaluation or a partial evaluation. If a partial evaluation is ordered the court shall indicate in the order the specific issue or issues to be addressed by the evaluation. The order shall also outline with specificity the payment and allocation of fees and deposits as required by Sup.R. 91.05.

##### 2. Fees and Expenses

- (a) Prior to the appointment of a custody evaluator, the parties to the case shall have a right to be heard on the issue of appointment and the allocation of fees.
- (b) In determining the allocation of fees and expenses for a private custody evaluator as indicated in Sup.R. 91.05(F), including advance deposit amounts, the court shall consider the flat fee or rate of reasonable compensation required by the custody evaluator and the ability of each party to pay said fees and expenses. Each party shall have the right to be heard as it relates to allocation of reasonable fees and expenses, which at the discretion of the court may include brief oral testimony, submission of narrative affidavits, and/or submission of financial affidavits that are required by other local rules or the Ohio Rules of Civil Procedure. In determining a party's ability to pay, the court shall consider:

1. 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;
2. The complexity of the issues;
3. The total anticipated fees and expenses of the custody evaluator, including any reasonable fees and expenses related to providing oral testimony.

(c) Upon request of any party or upon the request of the custody evaluator, and for good cause shown, the court may approve additional fees or expenses, reallocate reasonable fees or expenses, or require a party to reimburse another party in part or in whole for reasonable fees and expenses paid. Good cause shall include, but not be limited to, a change of financial circumstances, the conduct of any party, or some unforeseen circumstance. Until such time as a motion to reallocate fees is decided by the court, the parties shall continue to comply with all existing orders regarding the allocation of fees and expenses.

### 3. Complaints

Comments or complaints regarding the performance of a custody evaluator appointed pursuant to this Rule shall be in writing and shall be submitted to the Judge for the Pickaway County Juvenile Court. A copy of comments and complaints submitted to the Judge shall be provided to the custody evaluator who is the subject of the complaint or comment. The Judge may forward any comments and complaints to the assigned Magistrate, if applicable, for consideration and appropriate action. The Judge will issue a timely disposition of the comment or the complaint and will notify the person making the comment or the complaint of the disposition. The Judge shall maintain a written record in custody evaluator's file regarding the nature and disposition of any comment or complaint.

### 4. Removal of Custody Evaluator

The Judge or Magistrate presiding over the case in which a custody evaluator was appointed may remove a custody evaluator upon a showing of good cause. Any party may file a motion in the case requesting removal and shall include specific information outlining what they believe to be good cause for removal. The motion shall be provided to all parties and the custody evaluator.

### 5. Resignation of Custody Evaluator

A custody evaluator appointed to perform a custody evaluation may resign prior to the completion of their evaluation only upon a showing of good cause, notice to the parties and their counsel, an opportunity to be heard, and with the approval of the court.

### 6. Access to Court Records

Once the order of appointment is filed, the custody evaluator may access the court file.

## (D) Responsibilities of Custody Evaluator

### 1. General Responsibilities

A custody evaluator appointed by the court shall be familiar with the duties and responsibilities outlined in this local rule, the order of appointment, and Sup.R. 91.01 - 91.09, including those set forth in Sup.R. 91.06.

2. Communication with the Court

If the custody evaluator requires assistance as outlined in Sup.R. 91.06(B) when one party resides in another jurisdiction, or if they require an amendment to the order of appointment as outlined in Sup.R. 91.06(C), the custody evaluator may request a status conference with Judge or Magistrate by contacting the assigned clerk. Any request must also be provided to all counsel and *pro se* parties, the guardian ad litem, and any attorney advocate, if one has been appointed.

(E) Custody Evaluation Report

1. Dissemination and Time Frame

A custody evaluator shall provide their Custody Evaluation Report to the assigned Judge or Magistrate. The court shall then provide the copies of the report to the attorneys and guardian ad litem on the case. If any party is not represented by counsel, the report shall be provided directly to that party. The written report shall be provided at least 30 days prior to the final status conference.

2. Required Notice

The written report shall include the statement:

**“The custody evaluator’s report shall be provided to the Court for distribution to all 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.”**

3. Prohibition Against Dissemination

Custody evaluation reports and recommendations shall not be disseminated to anyone other than the individuals listed in (E)(1) nor placed on social media. Reports of 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 of contempt which include fines and/or incarceration.

4. Court Access to Report

In accordance with Sup.R. 91.07(B), the court shall not review the report prior to trial unless the parties and counsel have agreed in advance for the purpose of conducting a settlement conference. If the court reviews the report in advance, it shall not consider the report for any other purpose until it has been properly admitted into evidence.

5. Discovery

The written report filed by the custody evaluator shall be subject to the Ohio Rules of Civil Procedure applicable to discovery in civil actions. Any records, information, or other materials relied upon by the evaluator may be subject to discovery pursuant to the Ohio Rules of Civil Procedure applicable to discovery in civil actions even if not filed by the custody evaluator.

6. Public Access

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

7. Use of Report

The court shall consider only those custody evaluations and reports completed by a custody evaluator appointed by the court. This provision shall not limit either party from retaining an additional expert or experts to review the custody evaluation and offer additional testimony as to its content.