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**WESTLAW Maryland Code and Court Rules**[Home Table of Contents](#)**RULE 9-205.1. APPOINTMENT OF CHILD'S ATTORNEY**West's Annotated Code of Maryland  
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MD Rules, Rule 9-205.1

**RULE 9-205.1. APPOINTMENT OF CHILD'S ATTORNEY**Currentness

(a) **Applicability.** This Rule applies to the appointment of an attorney for a child in actions involving child custody or child access.

**Cross reference:** See Code, Family Law Article, § 1-202 and the Maryland Guidelines for Practice for Court-Appointed Attorneys Representing Children in Cases Involving Child Custody or Child Access.

(b) **Factors.** In determining whether to appoint an attorney for a child, the court should consider the nature of the potential evidence to be presented, other available methods of obtaining information, including social service investigations and evaluations by mental health professionals, and available resources for payment. Appointment may be most appropriate in cases involving the following factors, allegations, or concerns:

- (1) request of one or both parties;
- (2) high level of conflict;
- (3) inappropriate adult influence or manipulation;
- (4) past or current child abuse or neglect;
- (5) past or current mental health problems of the child or party;
- (6) special physical, educational, or mental health needs of the child that require investigation or advocacy;
- (7) actual or threatened family violence;
- (8) alcohol or other substance abuse;
- (9) consideration of terminating or suspending parenting time or awarding custody or visitation to a non-parent;
- (10) relocation that substantially reduces the child's time with a parent, sibling, or both; or
- (11) any other factor that the court considers relevant.

**Comment:** A court should provide for an adequate and effective attorney for a child in all cases in which an appointment is warranted, regardless of the economic status of the parties. The court should make the appointment as soon as practicable after it determines that the appointment is warranted. A court should appoint only attorneys who have agreed to serve in child custody and child access cases in the assigned role and have been trained in accordance with Guideline 4 of the Maryland Guidelines for Practice for Court-Appointed Attorneys Representing Children in Cases Involving Child Custody or Child Access. In making appointments, the court should fairly and equitably distribute cases among all qualified attorneys, taking into account the attorney's availability and caseload. Before asking an attorney to provide representation pro bono publico to a child, the court should consider the number of other similar cases the attorney has recently accepted on a pro bono basis from the court.

(c) **Appointment Order.**

- (1) **Content.** An order appointing an attorney for a child shall:

(A) specify whether the attorney is to serve as a Child's Best Interest Attorney, Child's Advocate Attorney, or Child's Privilege Attorney;

(B) authorize the appointed attorney to have reasonable access to the child and to all otherwise privileged or confidential information about the child, without the necessity of any further order of court or the execution of a release;

(C) permit the attorney to participate in discovery under Title 2 of these Rules as though the child were a party;

(D) provide that the service and notice provisions in Title 1 of these Rules apply as though the child were a party;

(E) state any other duties or responsibilities required by the court;

(F) state when the appointment terminates; and

(G) unless the attorney has agreed to serve pro bono publico, include provisions concerning compensation for the attorney.

**Cross reference:** The court should write an appointment order in plain language, understandable to non-attorneys.

(2) *Copies to Parties and Attorneys.* The court shall send a copy of the order appointing an attorney for the child to each attorney of record and to each party, whether or not represented by an attorney.

**Cross reference:** As to the attorney's compensation, see Guideline 6 of the Maryland Guidelines for Practice for Court-Appointed Attorneys Representing Children in Cases Involving Child Custody or Child Access.

**Source:** This Rule is new.

#### **Credits**

[Adopted May 8, 2007, eff. July 1, 2007. Amended June 6, 2016, eff. July 1, 2016.]

#### **Editors' Notes**

#### **HISTORICAL NOTES**

##### **2016 Orders**

The June 6, 2016, order revised the Rule by changing the title of the Rule and by making other stylistic changes.

MD Rules, Rule 9-205.1, MD R FAM LAW ACT Rule 9-205.1

Current with amendments received through August 1, 2019.

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Appendix: Maryland Guidelines for Practice for Court-Appointed Lawyers Representing Children in Cases Involving Child Custody or Child Access

MD Rules, Child Custody or Access Guidelines

**MARYLAND GUIDELINES FOR PRACTICE FOR COURT-APPOINTED LAWYERS REPRESENTING CHILDREN IN CASES INVOLVING CHILD CUSTODY OR CHILD ACCESS**Currentness**INTRODUCTION AND SCOPE**

These Guidelines are intended to promote good practice and consistency in the appointment and performance of lawyers for children in cases involving child custody and child access decisions. However, the failure to follow a Guideline does not itself give rise to a cause of action against a lawyer nor does it create any presumption that a legal duty has been breached. These Guidelines apply to divorce, custody, visitation, domestic violence, and other civil cases where the court may be called upon to decide issues relating to child custody or access. Nothing contained in the Guidelines is intended to modify, amend, or alter the fiduciary duty that an attorney owes to a client pursuant to the Maryland Lawyers' Rules of Professional Conduct.

These Guidelines do not apply to Child In Need of Assistance ("CINA"), Termination of Parental Rights ("TPR"), or adoption cases. The appointment and performance of attorneys appointed to represent children in those cases is addressed by the *Guidelines of Advocacy for Attorneys Representing Children in CINA and Related TPR and Adoption Proceedings*.

**1. DEFINITIONS**

A court that appoints counsel for a minor child in a case involving child custody or child access issues should clearly indicate in the appointment order, and in all communications with the attorney, the parties, and other counsel, the role expected of child's counsel. The terminology and roles used should be in accordance with the definitions in Guidelines 1.1-1.3.

**1.1. CHILD'S BEST INTEREST ATTORNEY**

"Child's Best Interest Attorney" means a lawyer appointed by a court for the purpose of protecting a child's best interests, without being bound by the child's directives or objectives. This term replaces the term "*guardian ad litem*." The Child's Best Interest Attorney makes an independent assessment of what is in the child's best interest and advocates for that before the court, even if it requires the disclosure of confidential information. The best interest attorney should ensure that the child's position is made a part of the record whether or not different from the position that the attorney advocates.

**1.2. CHILD'S ADVOCATE ATTORNEY**

"Child's Advocate Attorney" means a lawyer appointed by a court to provide independent legal counsel for a child. This term replaces the less specific phrase, "child's attorney." A Child's Advocate Attorney owes the child the same duties of undivided loyalty, confidentiality, and competent representation as are due an adult client. A Child's Advocate Attorney should be appointed when the child is in need of a voice in court, such as in relocation cases, when there are allegations of child abuse, or where the child is sufficiently mature and sees his or her interests as distinct from the interests of the child's parents.

**1.3. CHILD'S PRIVILEGE ATTORNEY**

"Child's Privilege Attorney" means a lawyer appointed by a court in a case involving child custody or child access to decide whether to assert or waive, on behalf of a minor child, any privilege that the child if an adult would be entitled to assert or waive. This term replaces the term "*Nagle v. Hooks Attorney*." (*Nagle v. Hooks*, 296 Md. 123 (1983).) The court may combine the roles of Child's Privilege Attorney with either of the other two roles.

**2. RESPONSIBILITIES****2.1. DETERMINING CONSIDERED JUDGMENT**



The attorney should determine whether the child has considered judgment. To determine whether the child has considered judgment, the attorney should focus on the child's decision-making process, rather than the child's decision. The attorney should determine whether the child can understand the risks and benefits of the child's legal position and whether the child can reasonably communicate the child's wishes. The attorney should consider the following factors when determining whether the child has considered judgment:

- (1) the child's developmental stage:
  - (a) cognitive ability,
  - (b) socialization, and
  - (c) emotional and mental development;
- (2) the child's expression of a relevant position:
  - (a) ability to communicate with the attorney, and
  - (b) ability to articulate reasons for the legal position; and
- (3) relevant and available reports, such as reports from social workers, psychiatrists, psychologists, and schools.

A child may be capable of considered judgment even though the child has a significant cognitive or emotional disability.

In determining considered judgment, the attorney may seek guidance from professionals, family members, school officials, and other concerned persons. The attorney also should determine whether any evaluations are needed and request them when appropriate.

An attorney should be sensitive to cultural, racial, ethnic, or economic differences between the attorney and the child.

## 2.2. CHILD'S BEST INTEREST ATTORNEY

A Child's Best Interest Attorney advances a position that the attorney believes is in the child's best interest. Even if the attorney advocates a position different from the child's wishes, the attorney should ensure that the child's position is made a part of the record. A Child's Best Interest Attorney may perform the following duties in exercising the attorney's obligation to the client and the court, as appropriate:

- (a) Meet with and interview the child, and advise the child of the scope of the representation.
- (b) Investigate the relative abilities of the parties in their roles as parents or custodians.
- (c) Visit the child in each home.
- (d) Conduct individual interviews with parents, other parties, and collateral witnesses.
- (e) Observe the child's interactions with each parent and each other party, individually.
- (f) Review educational, medical, dental, psychiatric, psychological, or other records.
- (g) Interview school personnel, childcare providers, healthcare providers, and mental health professionals involved with the child or family.
- (h) File and respond to pleadings and motions.
- (i) Participate in discovery.
- (j) Participate in settlement negotiations.
- (k) Participate in the trial, including calling witnesses and presenting evidence and argument, as appropriate.
- (l) If the child is to meet with the judge or testify, prepare the child, familiarizing the child with the places, people, procedures, and questioning that the child will be exposed to, and seek to minimize any harm to the child from the process.
- (m) Inform the child in a developmentally appropriate manner when the representation is ending.

A Child's Best Interest Attorney shall not testify at trial or file a report with the court.

## 2.3. CHILD'S ADVOCATE ATTORNEY

If a Child's Advocate Attorney determines that the child has considered judgment, the attorney advances the child's wishes and desires in the pending matter. If a Child's Advocate Attorney determines that the child does not have considered judgment, the Child's Advocate Attorney should petition the court to (1) alter the attorney's role to permit the attorney to serve as a Child's Best Interest Attorney or (2) appoint a separate Child's Best Interest Attorney. A Child's Advocate Attorney may perform the following duties in exercising the attorney's obligation to the child and the court, as appropriate:

- (a) Meet with and interview the child, and advise the child of the scope of the representation.

- (b) Investigate the relative abilities of the parties in their role as parents or custodians.
- (c) Visit the child in each home.
- (d) Conduct individual interviews with parents, other parties, and collateral witnesses.
- (e) Observe the child's interactions with each parent and each other party, individually.
- (f) Review educational, medical, dental, psychiatric, psychological, or other records.
- (g) Interview school personnel, childcare providers, healthcare providers, and mental health professionals involved with the child or family.
- (h) File and respond to pleadings and motions.
- (i) Participate in discovery.
- (j) Participate in settlement negotiations.
- (k) Participate in the trial, including calling witnesses and presenting evidence and argument, as appropriate.
- (l) If the child is to meet with the judge or testify, prepare the child, familiarizing the child with the places, people, procedures, and questioning that the child will be exposed to, and seek to minimize any harm to the child from the process.
- (m) Inform the child in a developmentally appropriate manner when the representation ends.

A Child's Advocate Attorney shall not testify at trial or file a report with the court.

#### **2.4. CHILD'S PRIVILEGE ATTORNEY**

A Child's Privilege Attorney notifies the court and the parties of the attorney's decision to waive or assert the child's privilege by (1) filing a document with the court prior to the hearing or trial at which the privilege is to be asserted or waived or (2) placing the waiver or assertion of privilege on the record at a pretrial proceeding or the trial.

A Child's Privilege Attorney may perform the following duties in exercising the attorney's obligation to the child and the court, as appropriate:

- (a) Meet with and interview the child, and advise the child of the scope of the representation.
- (b) Interview any witnesses necessary to assist the attorney in determining whether to assert or waive the privilege.
- (c) Review educational, medical, dental, psychiatric, psychological, or other records.

#### **3. CONFLICTS OF INTEREST**

An attorney who has been appointed to represent two or more children should remain alert to the possibility of a conflict that could require the attorney to decline representation or withdraw from representing all of the children.

If a conflict of interest develops, the attorney should bring the conflict to the attention of the court as soon as possible, in a manner that does not compromise either client's interests.

#### **4. TRAINING AND CONTINUING EDUCATION**

Unless waived by the court, an attorney appointed as a Child's Best Interest Attorney, Child's Advocate Attorney, or Child's Privilege Attorney should have completed at least six hours of training that includes the following topics:

- (a) applicable representation guidelines and standards;
- (b) children's development, needs, and abilities at different stages;
- (c) effectively communicating with children;
- (d) preparing and presenting a child's viewpoint, including child testimony and alternatives to direct testimony;
- (e) recognizing, evaluating, and understanding evidence of child abuse and neglect;
- (f) family dynamics and dysfunction, domestic violence, and substance abuse;
- (g) recognizing the limitations of attorney expertise and the need for other professional expertise, which may include professionals who can provide information on evaluation, consultation, and testimony on mental health, substance abuse, education, special needs, or other issues; and
- (h) available resources for children and families in child custody and child access disputes.

Each court should require attorneys seeking appointments as child counsel to maintain their knowledge of current law and complete a specific amount of additional training over a defined interval.



## 5. QUALIFICATIONS

An attorney appointed to serve as a Child's Best Interest Attorney, Child's Advocate Attorney, or Child's Privilege Attorney should, as a minimum:

- (a) be a member of the Maryland Bar in good standing, with experience in family law, or have been approved to represent children through a *pro bono* program approved by the bench; and
- (b) unless waived by the court, have successfully completed the six hours of training specified in Guideline 4.

In addition, courts should seek to appoint attorneys who:

- (a) are willing to take at least one *pro bono* appointment as child counsel per year, and
- (b) have at least three years of family law experience or other relevant experience. In evaluating relevant experience, the court may consider the attorney's experience in social work, education, child development, mental health, healthcare, or other related fields.

## 6. COMPENSATION

### 6.1. COMPENSATION STRUCTURE

Each court should develop a compensation structure for the three roles of child counsel: Child's Best Interest Attorneys, Child's Advocate Attorneys, and Child's Privilege Attorneys.

### 6.2. COMPENSATION MECHANISM

Each court should take steps to ensure that child counsel are compensated adequately and in a timely fashion, unless the attorney has been asked to serve *pro bono publico*. Courts may use the following mechanisms to ensure attorney compensation:

- (a) Require one or more of the parties to deposit a significant retainer amount or a fixed fee determined by the court into an attorney escrow account or the court's registry.
- (b) If a party qualifies for a fee waiver, compensate child counsel out of available funds. See Guideline 6.3.
- (c) Enter a judgment for any unpaid fees.

### 6.3. FEE WAIVERS

Each court should prepare its budget to ensure that it has sufficient funds to cover the expense of counsel fees for children when the parties are not able to pay the full fees, or the court should develop a *pro bono publico* component to its program to provide counsel for children.

Each court should apply the same fee waiver procedure, forms, and standard for the appointment of child counsel that are set forth in the *Guidelines for Grant Recipients* for all family services funded by the Family Division/Family Services Program Grants. If a fee waiver is granted, the court should apply a cap on compensation that is appropriate to the role for which child counsel is appointed.

## Credits

[Adopted May 8, 2007, eff. July 1, 2007.]

MD Rules, Child Custody or Access Guidelines, MD R FAM LAW ACT Child Custody or Access Guidelines  
Current with amendments received through August 1, 2019.

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## RULE 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

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Chapter 200. Divorce, Annulment, Alimony, Child Support, and Child Custody (Refs &amp; Annos)

MD Rules, Rule 9-205.3

## RULE 9-205.3. CUSTODY AND VISITATION-RELATED ASSESSMENTS

Currentness

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

(7) **Specific Issue Evaluation.** "Specific issue evaluation" means a targeted 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.

**Committee note:** An example of a specific issue evaluation is an evaluation of a party as to whom the issue of a problem with alcohol consumption has been raised, performed by an individual with expertise in alcoholism.

(8) **State.** "State" includes the District of Columbia.

(c) **Authority.**

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

(3) 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.

(d) **Qualifications of Custody Evaluator.**

(1) **Education and Licensing.** A custody evaluator shall be:



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

(C) 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; or

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

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

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

(2) *Training and Experience.* In addition to complying with the continuing requirements of his or her field, a custody evaluator shall have training or experience in observing or performing custody evaluations and shall have current knowledge in the following areas:

(A) domestic violence;

(B) child neglect and abuse;

(C) family conflict and dynamics;

(D) child and adult development; and

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

(3) *Waiver of Requirements.* If a court employee has been performing custody evaluations on a regular basis as an employee of, or under contract with, the court for at least five years prior to January 1, 2016, the court may waive any of the requirements set forth in subsection (d)(1) of this Rule, provided that the individual participates in at least 20 hours per year of continuing education relevant to the performance of 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.

**(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;

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

(G) 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)(3) of this Rule, at the discretion of the custody evaluator, a custody evaluation also may include:

(A) contact with collateral sources of information;

(B) a review of additional records;

(C) employment verification;

(D) an interview of any other individual residing in the household;

(E) a mental health evaluation;

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

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

(3) *Optional Elements Requiring Court Approval.* The custody evaluator may not include an optional element listed in subsection (f)(2) (E), (F), or (G) 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 an assessment shall include:

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

(2) if there are allegations of domestic violence committed by or against a party or child, 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) whether a written report or an oral report on the record is required; and

(8) any other provisions the court deems necessary.

**(h) Removal or Resignation of Person Appointed or Approved to Perform an Assessment.**

(1) *Removal.* The court may remove a person appointed or approved to perform an assessment upon a showing of good cause.

(2) *Resignation.* A person appointed or approved to perform 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 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, or (ii) direct the custody evaluator to prepare a written report and furnish it to the parties 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 at least 30 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 Home Study or Specific Issue Evaluation.** Unless preparation of a written report is waived by the parties, an assessor who performed a home study or a specific issue evaluation shall prepare a written report of the assessment and furnish it to the parties. The report shall be furnished as soon as practicable after completion of the assessment and, if a date is specified in the order of appointment or approval, by that date.

(3) **Report of Mental Health Evaluation.** An assessor who performed a mental health evaluation shall prepare a written report and make it available to the parties solely for use in the case. The report shall be made available 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.

(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 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 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 by court employees, free of charge to the litigants.

(2) **Fee Schedules.** Subject to the approval of the Chief Judge of the Court of Appeals, 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 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.

**Credits**

[Adopted Sept. 17, 2015, eff. Jan. 1, 2016; June 20, 2017, eff. Aug. 1, 2017.]

**Editors' Notes**

**HISTORICAL NOTES**

**2017 Orders**

The June 20, 2017 order, in (d) added two categories of professionals to the list of individuals qualified to be custody evaluators.

MD Rules, Rule 9-205.3, MD R FAM LAW ACT Rule 9-205.3

Current with amendments received through August 1, 2019.

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## Statute Text

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§1-202.

(a) In an action in which custody, visitation rights, or the amount of support of a minor child is contested, the court may:

(1) (i) appoint a lawyer who shall serve as a child advocate attorney to represent the minor child and who may not represent any party to the action; or

(ii) appoint a lawyer who shall serve as a best interest attorney to represent the minor child and who may not represent any party to the action; and

(2) impose counsel fees against one or more parties to the action.

(b) A lawyer appointed under this section shall exercise ordinary care and diligence in the representation of a minor child.

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## **Child Custody in Maryland**

*Montgomery County v. Sanders*, 38 Md. App. 406 (1977).

Maryland courts resolve child custody disputes based on a determination of “what is in the child’s best interests.” The criteria for judicial determination include, but are not limited to, (1) the fitness of the parents; (2) the character and reputation of the parents; (3) the desire of the natural parents and any agreements between them; (4) the potential for maintaining natural family relations; (5) the preference of the child, when the child is of sufficient age and capacity to form a rational judgment; (6) material opportunities affecting the future life of the child; (7) the age, health, and sex of the child; (8) the residences of the parents and the opportunity for visitation; (9) the length of the separation of the parents; and (10) whether there was a prior voluntary abandonment or surrender of custody of the child.

*Taylor v. Taylor*, 306 Md. 290 (1986).

In addition to the factors set forth in the *Sanders* decision, a court considering an award of joint custody must also examine a range of factors particularly relevant to a determination of joint custody, including (1) the capacity of the parents to communicate and reach shared decisions affecting the child’s welfare; (2) the willingness of the parents to share custody; (3) the fitness of the parents; (4) the relationship established between the child and each parent; (5) the preference of the child; (6) the potential disruption of the child’s social and school life; (7) the geographic proximity of parental homes; (8) the demands of parental employment; (9) the age and number of children; (10) the sincerity of the parents’ request; (11) the financial status of the parents; (12) any impact on State or federal assistance; (13) the benefit to the parents; and (14) any other factors the court considers appropriate. The *Taylor* Court emphasized that the single most important factor in the determination of whether an award of joint legal custody is appropriate is the capacity of the parents to communicate and to reach shared decisions affecting the child’s welfare.

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§9-101.

(a) In any custody or visitation proceeding, if the court has reasonable grounds to believe that a child has been abused or neglected by a party to the proceeding, the court shall determine whether abuse or neglect is likely to occur if custody or visitation rights are granted to the party.

(b) Unless the court specifically finds that there is no likelihood of further child abuse or neglect by the party, the court shall deny custody or visitation rights to that party, except that the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

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§9-101.1.

- (a) In this section, "abuse" has the meaning stated in § 4-501 of this article.
- (b) In a custody or visitation proceeding, the court shall consider, when deciding custody or visitation issues, evidence of abuse by a party against:
  - (1) the other parent of the party's child;
  - (2) the party's spouse; or
  - (3) any child residing within the party's household, including a child other than the child who is the subject of the custody or visitation proceeding.
- (c) If the court finds that a party has committed abuse against the other parent of the party's child, the party's spouse, or any child residing within the party's household, the court shall make arrangements for custody or visitation that best protect:
  - (1) the child who is the subject of the proceeding; and
  - (2) the victim of the abuse.

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§9-101.2.

(a) Except as provided in subsection (b) of this section, unless good cause for the award of custody or visitation is shown by clear and convincing evidence, a court may not award custody of a child or visitation with a child:

(1) to a parent who has been found by a court of this State to be guilty of first degree or second degree murder of the other parent of the child, another child of the parent, or any family member residing in the household of either parent of the child; or

(2) to a parent who has been found by a court of any state or of the United States to be guilty of a crime that, if committed in this State, would be first degree murder or second degree murder of the other parent of the child, another child of the parent, or any family member residing in the household of either parent of the child.

(b) If it is in the best interest of the child, the court may approve a supervised visitation arrangement that assures the safety and the physiological, psychological, and emotional well-being of the child.

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