

Courts May Order Custody Evaluation When Parents Cannot Agree

Parents must decide how to care for their child(ren) once the family is no longer together due (for example) to a divorce. Parents often work together to develop a plan that is in their child(ren)'s best interest, but when they cannot agree, they may turn to a court of law to make decisions for them. Since the judge or magistrate who hears their case is unlikely to know either the parents or the child(ren), the court generally orders a custody evaluation.

Q: What is a custody evaluation?

A: A custody evaluation is a report based on a background investigation ordered by a judge or magistrate. It is used to help determine the best interests of the child(ren) when the parents cannot agree about custody. The evaluation can take the form of a psychological assessment, a guardian ad litem report, or a court investigation. The evaluation focuses upon parenting attributes, the child(ren)'s psychological needs and the fit between the child(ren) and each parent.

Q: Who conducts the custody evaluation?

A: The evaluation is conducted by several professionals appointed by the judge or magistrate. A psychologist conducts a psychological assessment. A "guardian ad litem" (GAL) acts as an advocate for the child(ren) and the child(ren)'s best interests. Often, a lawyer or a social worker serves in this role. A court employee serves as the court's investigator.

Q: Who pays for the custody evaluation?

A: The judge or magistrate usually issues an order stating who is expected to pay for a psychological assessment or a GAL's services. The order often states that the parents will pay the cost in equal shares or in proportion to their incomes. In some Ohio counties, the person who asks for the custody evaluation pays for it. By contrast, a court investigation usually has no initial costs, but some costs may be assessed by the court at the end of the case.

Q: What is a court order?

A: A court order is a document signed by a judge or magistrate that is binding on the parties to the legal case. An order relating to a custody evaluation will usually state "who, what, where, and when." Typically, this information instructs the parents in what they are to do, sets a timeline for doing it, and states whether the parents must pay any money for actions covered by the order. Parents must do what the order requires or risk being found in contempt of court.

Q: What is a psychological assessment?

A: A psychological assessment usually consists of an interview and one or more diagnostic tests conducted by a forensic psychologist. The psychologist must be independent, and therefore cannot have previously counseled either parent or the child(ren). The psychologist prepares a written

report for the parties, their attorneys, and the magistrate or judge to review, and in some cases, the psychologist may need to testify and be cross-examined at a custody hearing. The judge or magistrate will consider the assessment report in determining custody.

Q: What is the role of a guardian ad litem?

A: The GAL conducts an investigation to learn the facts of the case and then prepares a written report and recommendation no less than one week before any custody hearing. The court takes this report and recommendation into consideration when making a custody order. The GAL must: 1) meet with and interview the child(ren) and observe the child(ren) with each parent; 2) conduct at least one interview with the child(ren) alone; 3) visit the child(ren) at the residence; 4) meet with and interview the parents as well as others who may have relevant knowledge; 5) review relevant court documents and records; and 6) interview school personnel, medical and mental health providers, child protective services workers and any relevant court personnel. Where appropriate, the GAL may recommend that the court order psychological evaluations, mental health and/or substance abuse assessments, or other evaluations or tests of the parties as the GAL deems necessary or helpful to the court. The GAL must keep records of the time spent, what services were rendered, and what expenses were incurred. Finally, the GAL must file an accounting with the court and provide a copy to each parent.

Q: Why should a parent cooperate with the custody evaluation?

A: A parent's failure to cooperate with a custody evaluation likely will have a negative impact on the report and, in turn, on the judge or magistrate's order.

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This "Law You Can Use" column was provided by the Ohio State Bar Association (OSBA). It was prepared by Beverly J. Farlow of Farlow & Associates, LLC in Dublin.

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