

Specific issue evaluations, and when are they needed?



Elizabeth J. McInturff, Esq.

This year's Maryland State Bar Association Legal Summit hosted an excellent presentation on an often-overlooked tool -- "specific issue evaluations" -- which sparked an excellent discussion on what they are and when they may be needed.

Specific issue evaluations are directed inquiries into specific custodial and best interest issues. These inquiries are governed by the requirements and procedures set forth in Rule 9-205.3.

Orders for specific issue evaluations must include the specific issue to be investigated, the fact-finding as to each issue determined by the court, and, if requested and ordered by the court, a recommendation as to each.

But what does that exactly mean, and when is it appropriate to request a specific issue evaluation?

The language of Rule 9-205.3 recently was updated and helps guide attorneys and the Court on the appropriateness of when to order a specific issue evaluation.

Specifically, the rule now defines specific issue evaluations as a "fo-

cus 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 as may affect the child's best interests." (Italicizes reflect the updates).

The committee note goes on to instruct that a specific issue evaluation is an "inquiry, narrow in scope, into particular issue or issues that predominate in a case."

Clearly, specific issue evaluations are not meant to take the place of or cover the breadth of a full custody evaluation. Indeed, the rule itself contains a committee note warning that a specific issue evaluation is not a "mini' custody evaluation" and not intended to replace "a comprehensive study of the general functioning of a family and of the parties' parenting capacities."

Previously the committee note provided that it would be appropriate to order a specific issue evaluation into the "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."

In April 2022, the committee note was updated to remove that example and replace it with a broader example that a specific issue evaluation may be required to delve into "questions concerning the appropriate school for a child with special needs and how best to arrange physical custody and visitation for a child when one parent is relocating."

Most notably, while the court-appointed evaluator has many of the same powers as a custody evaluator to including (unless subject to a protective order) reviewing court records, interviewing the adults

involved in the child's life and the child his or herself, the elements are limited to just those enumerated in 9-205.3(f)(1)(A)-(G) and (f)(2).

This limits the specific issue evaluator to making findings of fact pertaining only to the delineated issues and, only if requested by the court, recommendations as to each.

This is substantially different from a custody evaluator, who may make "factual findings about the needs of the child and the capacity of each party to meet the child's needs; and [] 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."

Additionally, a specific issue evaluator may not use any of the elements set forth in 9-205.3(f)(2)(E)-(G), e.g. consulting another "experts to develop information that is beyond the scope of the evaluator's practice or area of expertise," "if an 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."

Family law practitioners seeking evaluations by the court will be wise to weigh the needs of a specific issue evaluation versus a full custody evaluation. Where parents are largely co-parenting but in disagreement as to, for example, school placement of a special needs student, a specific issue evaluation may be a more appropriate -- and cost saving -- choice.

Elizabeth J. McInturff, Esq., a partner at JDkatz, PC, represents clients throughout Maryland and Washington, D.C., in complex family, civil and commercial disputes. For more information, visit www.jdkatz.com.

Get breaking news in your inbox every morning!

Visit TheDailyRecord.com to sign up to be a TDR Insider today.

MARYLAND
THE DAILY RECORD
YOUR TRUSTED SOURCE OF BUSINESS, LEGAL AND GOVERNMENT NEWS FOR 131 YEARS.