

# FAMILY LAW, MATTERS: IT TAKES A VILLAGE - EXPERTS IN CUSTODY PROCEEDINGS

By The Honorable Joanie Raymond

I recently had the honor of presenting with two esteemed colleagues, Syretta R. James, Ph.D., ABPP of Respire Behavioral Health and Lindsay Parvis, Esq. of Joseph Greenwald & Laake, PA for the Judicial College. The class, entitled, It Takes a Village: Complex Parenting Cases, was designed to encourage judges and magistrates to look at different types of experts (other than just custody evaluators) to make child-centered decisions in custody cases. A large part of the class was spent on discussing equal access to justice and how to provide these same benefits to litigants who cannot afford a panoply of experts. At the request of my friend, Magistrate Paul Eason, I have summarized much of what was discussed and how that discussion may be relevant to legal practitioners. The basic premise is that experts should be used to educate and help inform a Judge's or Magistrate's decision(s).

## **Custody Evaluations:**

If your client can afford a full-blown custody evaluation, you (and the Court) will get a great deal of useful information on the parents' parenting and cooperativeness skills, problem-solving skills, level of attunement and responsiveness and social behavioral functioning. You will learn about the child's social behavioral functioning, adjustment and temperament, social skills, developmental needs, school functioning and social involvement and relationship with others. There should be coverage of the family's social support structure, any history of IPV/DV, allegations related to estrangement and alienation. The evaluator will make recommendations as to parenting time, legal decision-making, and needed services and interventions.

As practitioners know, many litigants cannot afford a \$30,000.00+ custody evaluation and few jurisdictions have the resources to pay for these evaluations. A few jurisdictions have in house custody

evaluators that perform less robust custody evaluations at no cost or low cost to litigants; however, that is not a service universally available throughout the State of Maryland. If you happen to represent a litigant who is using the only resources at their disposal to hire you, it requires creative and strategic use of resources at your low-cost disposal. For instance, if one of the large issues in your case is abuse, consider that most custody evaluators often do not believe it is their role to decide if abuse has occurred. Thus, while a custody evaluator will provide a great deal of useful information and may give recommendations if in fact abuse has occurred, it may not be the best and most cost-effective tool if the sole question the litigants are looking to answer is whether abuse occurred. The Department of Social Services/Human Services or local Child Advocacy Center investigations may be more appropriate and at no cost to the family. Their testimony and reports can be subpoenaed and produced (after the Department's likely Motion to Quash is ruled on).

Another less frequently used option is a Specific Issue/Brief Focused Assessment. This is a focused study of an issue raised by the Court that likely affects the health, safety, and well-being of the child. No recommendations about custody are offered. This assessment type is a more affordable and focused way of addressing some of the Court's questions, but actual questions vary. Testing occurs in one or two sessions. Examples of Brief Focused Assessments include:

- Short-Term Access Assessment
- Access Resistance Assessment
- Substance Abuse Assessment
- Mental Health Functioning Assessment
- Assessment of Parental Conflict and Dynamics
- Treatment Needs/Recommendations for Child

- Child Preference Assessment
- Child Abuse Risk Assessment
- Relocation.

No matter what type of evaluation you are seeking, it is important that there is communication with the evaluator to ensure they can perform the evaluation and answer the questions being asked of them.

Last tip: Courts understand the difference between a Custody Evaluator appointed by the Court or by consent and agreement of parties and a rebuttal evaluator. Keep in mind that courts often see that rebuttal evaluator, hired primarily to critique the original evaluation, as a hired gun and do not have the presumed credibility of the evaluator appointed by the Court; therefore, try to agree on the evaluator that will be used from the start.

## **Counsel for Children:**

When considering counsel for children, party's counsel should look at what evidence they are seeking to get before the Court. Counsel for children are a costly expense, so party's counsel should always consider the goal and whether the information can be obtained another way. Perhaps the easiest choice is asking for a Child Privilege Attorney (CPA). If a child is in therapy and information is sought from a child's mental health provider, counsel cannot get this information in without a waiver of privilege from a Child Privilege Attorney. The expense of a CPA is often much less as the CPA is doing only a limited inquiry.

When a child has considered judgment, counsel will need to consider whether a Child Advocate Attorney (CAA) is required. Some judges and magistrates will regularly talk with children, others nearly never do so. You need to know your jurist. Further, it is difficult to predict what the youth will say in chambers, whether opposing counsel will insist on being present or recording or cross-examining

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## PGCBA HAPPENINGS

**4**  
**MAY** Family Law Seminar  
8:30AM  
Jury Assembly Lounge  
Upper Marlboro Courthouse

**10**  
**MAY** 2024 Golf Classic  
8:00AM  
Oak Creek Golf Course

**11**  
**JUN** Tort Law Seminar  
3:00PM  
Newton White Mansion

**11**  
**JUN** Annual Meeting/Elections  
6:00PM  
Newton White Mansion

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the youth. As instructed by *Marshall v. Stefanides*, 17 Md. App. 364 (1973), “[I]n its discretion, the court may decide whether to interview the child, out of the presence of the parties, with or without the consent of the parties, and with or without the presence of counsel; and, unless waived by the parties, the interview shall be recorded and immediately thereafter its contents made known to the parties and their counsel. See also, *Shapiro v. Shapiro*, 54 Md. App. 477 (1983); *Leary v. Leary*, 97 Md. App. 26 (1993); *Lemley v. Lemley*, 102 Md. App. 266 (1994); *Wagner v. Wagner*, 109 Md. App. 1 (1996); *Karanikas v. Cartwright*, 209 Md. App. 571 (2013).

Finally, when considering a Best Interest Attorney (BIA), counsel should again examine why they are seeking to have a BIA appointed. 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. Be specific in your motion and provide every one of the factors that is relevant in your case. It is also advised you provide detail on how counsel will be paid for. This Magistrate recommends you provide a long form financial statement if one has not already been filed in the case. If the opposing side has not filed a financial statement, it is recommended you provide information regarding that party’s income as well. Lastly, request child’s counsel as soon as you decide it is needed in your case. The comment to 9-205.1 states, “The court should make the appointment as soon as practicable after it determines that the appointment is warranted.” If you wait until you are 3 months from trial, you are unlikely to have counsel appointed.

**Parenting Coordinators and Co-Parenting Applications:**

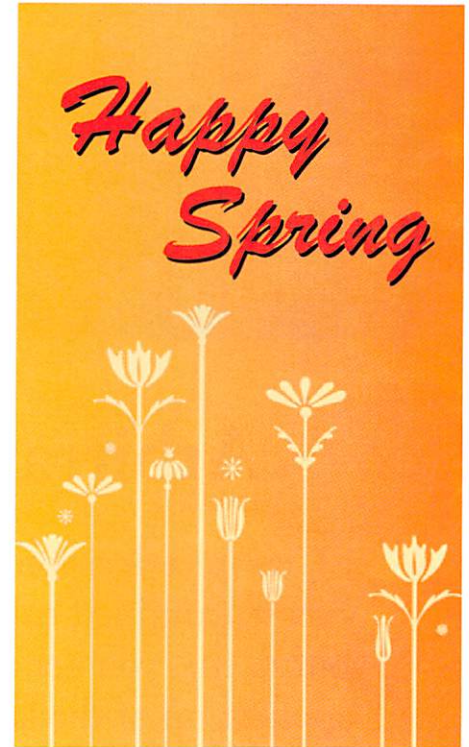
If communication and/or legal decision-making are expected to be a contested issue, consider the use of a Parenting Coordinator (PC). The cost of the PC is divided between the parties, and they can be less expensive per hour than an expert as PCs are fact witnesses. Remember that no privilege attaches, and the PC can be subpoenaed into court to educate the Judge or Magistrate about the parents’ style of communication and whether they are able to communicate effectively to make shared decisions or whether one parent stymies the process or bullies the other parent. PCs are particularly favored because they work with parents to reduce the effects or potential effects of conflict on the parties’ children. PCs educate parents, build empathy, teach flexible thinking and help manage and contain emotions. They can be helpful in those tough relocation cases by doing reality testing and brainstorming ways to deal with relocation in both scenarios – if the children go or if the children stay. Review Maryland Rule 9-205.2 as a refresher to see how PCs can help in your case.

The low-cost tool if legal decision-making is at issue and there are simply no resources to pay for a PL, is a co-parenting application. There are a variety of options now available: Our Family Wizard, AppClose, Talking Parents, Cozi, 2Houses, The Family Core, Google Calendar (calendar only), Coparently, Parentship, Apparently, etc. Ideally, the app used will have a robust messaging component that cannot be altered and can be easily downloaded and printed.

There are numerous other experts and fact witnesses you should evaluate at the start of your case: individual therapist, child therapist, family therapist, visitation supervisor, therapeutic access supervisor, or specialty experts (e.g. for a child with special needs).

*Joanmarie Raymond (Brubaker) served as a Frederick County Circuit Court Family Magistrate from 2016 to 2024 where she presided over family law matters, Children in Need of Assistance matters, Juvenile Delinquency*

*proceedings and the Title IV-D child support docket. Before that time, she had an extensive family and criminal defense practice. She was appointed to the Circuit Court bench as an Associate Judge in January 2024.*



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