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A Practitioner's Guide to Third Party Helpers in Florida Family Court Cases

What is the difference between a social investigation and a parenting plan evaluation?

What is a minor child evaluation? When might I want to ask for a Guardian ad Litem to be involved in my client's case? Can a parenting coordinator help? Florida family law practitioners should be familiar with the various types of third-party helpers that can be enlisted for their family law cases.

Florida statutes and family law rules describe four ways that the parties or Court can enlist the assistance of a neutral third-party in Florida family law cases. They are through a Social Investigation, Minor Child Evaluation, Parenting Coordinator, and Guardian ad Litem. Other names are sometimes used to refer to a third-party helper or process, but the best practice is to conform the court order to a role defined by Florida statutes and/or the Florida Family Law Rules of Procedure. The statutes and rules governing the respective processes inform who can be appointed to help and what should be in the court's order appointing the third-party helper for that process. The attorney should include the applicable rule and statute that the third-party helper is operating under in the proposed order. It is also often helpful for the order to mention any case-specific issues or questions that the third-party helper should address. There are many factors when deciding which tool, if any, to use. Of course, affordability is usually at the top of your client's list. But there are other things to consider.

1) Social Investigation (SI) (Section 61.20, Florida Statutes; Rule 12.364, Florida

Family Law Rules of Procedure): This is typically considered the most comprehensive tool available. As the name states, it is primarily an investigation surrounding the social factors involving the family. Practitioners sometimes also call this process a “Parenting Plan Evaluation”, “Custody Evaluation”, or “Timesharing Evaluation”. There is not a uniform or common understanding of what the investigative process is, or what the SI report should entail. Every expert is different, as are their processes and reports. Some professional organizations have published guidelines or best practices for the process (see Association of Family and Conciliation Court’s Guidelines for Parenting Plan Evaluations in Family Law Cases, 2022), but they are not state-specific and do not refer to or incorporate Florida’s statute or rule governing SIs. The social investigator will typically interview the parents, children, and others who know the family, and will usually visit the parents’ homes. The Investigator should also review pertinent documents, like school/medical records, samples of communications between the parents, and the court pleadings.

Rule 12.364, Florida Family Law Rules of Procedure, outlines what an Order for a SI should contain. The rule also says that the written study should contain recommendations about a parenting plan. So all social investigations should include parenting plan recommendations (these are not two separate processes).

§61.20, Florida Statutes requires that a mental health professional, qualified staff of the court, or representative from Department of Children and Families conduct the investigation.

Rule 12.364, Florida Family Law Rules of Procedure requires that the investigative report include “a written statement of the facts found in the social investigation on which the recommendations are based.” Most experts will also include an analysis of the statutory factors

in §61.13(3), Florida Statutes in their report, although this is not specifically required by the rule or statute governing SIs.

There is a common misconception that a SI is only appropriate if the case involves mental health issues. And some psychologists suggest that all SIs should include formal psychological (psychometric) testing of the parents, children, or both. However, neither the statute nor the rule governing SIs suggest this interpretation. Psychological evaluations and formal assessments may be helpful in some cases, but they are not required (see Association of Family and Conciliation Court's Guidelines for Parenting Plan Evaluations in Family Law Cases, 2022, Section 10). Rule 12.364, Florida Family Law Rules of Procedure states that a SI may be ordered, "***When the issue of timesharing, parental responsibility, ultimate decision-making, or a parenting plan for a minor child is in controversy, ...***" (emphasis added). There is no requirement that there be alleged mental health components to the case, only that a parental issue is in dispute.

The mental health of the parties is one-half of one of the twenty statutory factors to consider when making recommendations about parental issues. An expert appointed pursuant to §61.20 is typically equipped to assess this factor in the forensic interview setting and can often do so without formal assessment tools. If formal testing is warranted, the social investigator may request that the parents receive psychometric testing during the investigation or as one of the recommendations in the report. Many of the other statutory factors are fact-based and do not require expert witness testimony (geographic viability of the proposed plan; the home, school, and community record of the child, preference of the child, etc.). Rule 12.364 describes the SI process as a "study concerning all pertinent details relating to the child and each parent". The

rule requires the Investigator to provide their written study directly to the court and the parties at least thirty days prior to a hearing (absent court order otherwise).

It is possible for the Court to order a “limited” SI that might direct the expert to investigate and address a certain aspect of the case, or perhaps just do a home study. The trend towards ordering “limited” SIs can be attributed to the cost and time it takes most experts to complete a SI. In some circumstances, it may be more appropriate to order one of the other third-party processes discussed herein, instead of a limited SI.

- **PROS:** It is a comprehensive process that should consider any situation or factor relevant to the parental issues in the case. §61.20 states that the “technical rules of evidence” do not exclude the SI report from the court’s consideration, with implications about hearsay evidence. But keep in mind that expert witnesses are generally permitted to testify about the facts or data they relied upon to arrive at their opinion, if it is typically relied on by experts in the field, even if hearsay (§90.704, Florida Statutes).
- **CONS:** It is often the most costly and time-consuming process. Many experts take twelve to twenty-four months to complete a SI, with costs ranging from \$15,000-\$50,000 (or more!), making it out of reach for many litigants. The process may be overkill for some cases. The report may be stale by the time it is received (some children may have even “aged out” or reached the age of 18 by the time the expert completes the SI).

2) Minor Child Evaluation (MC Evaluation) (Rule 12.363, Florida Family Law Rules

of Procedure): Many practitioners are unaware of and/or unfamiliar with this process; as a result, it is less used than the other third-party processes mentioned herein. Rule 12.363 refers to a MC Evaluation as an “examination,” “evaluation,” “testing,” “interview,” and “investigation.” Unlike the SI process, there are no statutory references to a MC Evaluation. The rule requires that the court determines the need to appoint an expert for a MC Evaluation if the parties do not agree that one is required. There is no guidance in the rule about what would constitute that need. Rule 12.363 governing MC Evaluations was amended in 2014 to remove references to “social investigations”, differentiating SIs from MC Evaluations. The rule presumes that an expert will conduct the MC Evaluation but removed the term “licensed mental health professional” from the rule. The Rule requires that the Order for MC Evaluation includes the expert’s area of expertise and professional qualifications. The MC Evaluation may have a narrower scope than a SI, depending on the Order. For example, a court may order a MC Evaluation if wishes to hear from the child without requiring the child to testify in court. Unlike the SI rule, this rule requires that the MC Evaluation report be completed within seventy-five days of the order of appointment. Like the SI, there is not a consensus on what the MC Evaluation report should look like. The rule requires that the Evaluator send the parties a copy of the report thirty days prior to a hearing, but the Evaluator should not provide a copy to the court unless the parties and their attorneys agree in writing.

- **PROS:** This will likely be a quicker process than a SI since the rule requires the report be completed within seventy-five days. Therefore, it may be less comprehensive than a SI and significantly less costly (ranging from \$3,500 - \$10,000). Attorneys and other professionals can conduct a MC Evaluation, if they qualify as an expert. The MC Evaluation can be more focused and tailored to the

case's needs. The basis of an expert's opinion is generally admissible, even if hearsay, if it is typically relied on by experts in the field (§90.704, Florida Statutes).

- **CONS:** Scope may be too limited, especially if other issues arise during the MC Evaluation. The MC Evaluation expert may not be a mental health expert. Coupling the MC Evaluation with a SI will take longer and be more expensive in total than if the court had just started with a SI. A limited SI may be preferable to a MC Evaluation.

3) Parenting Coordinator (PC) (Section 61.125, Florida Statutes; Rule 12.742, Florida Family Law Rules of Procedure): A PC is an impartial third party whose role is to assist the parents in successfully creating or implementing a parenting plan. Practitioners often think of this as the last tool in the toolbelt, but it is best utilized as soon as it becomes evident that the parents may be “high conflict” litigants. PCs can be attorneys or mental health professionals. A PC is required to have training as both a mediator and a PC and must be “qualified” in the circuit that the case is pending. Each circuit has different processes for the PC to be approved or “qualified” to act as a PC in that jurisdiction. Unlike the other processes mentioned herein, the PC process is considered confidential, with some limited exceptions. The PC will typically work mostly with the parents, and not necessarily the child(ren). PCs help parents interpret and implement their parenting plan. PCs do not have the power to change anything substantive, absent the parents' agreement (see Rule 12.742, Florida Family Law Rules of Procedure). There is usually a psychoeducational component to the process, focusing on communication, conflict management, and parenting styles, as well as problem-solving skills. PCs can request status conferences to report a parent's non-compliance with the process. The PC typically charges by the hour and requires regular retainers.

- **PROS:** PCs offer a quicker and usually more economical way to resolve conflict between parents about their parenting plan than traditional, adversarial litigation. PCs will often respond to parents in real time to help resolve an issue. The process is aimed at effectuating real change to break the cycle of conflict between the parents. The process is confidential, with exceptions.
- **CONS:** A PC can be considered too costly for unrepresented litigants. The PC does not have decision-making authority to resolve disputes in most circumstances. An attorney-PC may not have the necessary skills to effectuate real change and break the cycle of conflict between the parents. A mental health professional-PC may not have the knowledge and insight into the law and legal system to be able to predict an outcome in court (a useful tool when trying to keep parents out of court).

4) Guardian ad Litem (GAL) (Sections 61.401-61.405, Florida Statutes): A GAL has broad investigative and evaluative powers to act in the child’s best interest. Unlike a social investigator, minor child evaluator, or parenting coordinator, a GAL is a party to the proceeding. The GAL acts as “next friend”, “investigator”, or “evaluator”, and may “investigate the allegations of the pleadings affecting the child”, file pleadings, request and review documents, write interim reports, ask for other third parties to be involved in the case (evaluations, health care professionals, etc.), testify, and make oral or written recommendations during the pendency of the case. The GAL can recommend that the family utilize the services of other third-party helpers. The GAL’s statutory powers, privileges, and responsibilities are used to advance the best interests of the minor child. Unlike SIs and MC Evaluations, the statute does not contain any threshold requirement of a showing of need to appoint a GAL.

Non-experts may act as a GAL. Family courts used to permit trained volunteers to act as

GALs in family court cases. Now, volunteer GALs are only used in dependency and delinquency cases. If you want a GAL appointed in your client's family law case, you will have to retain someone acting as a private GAL. The statute requires a GAL to file a written report that "may include recommendations and a statement of the wishes of the child", at least twenty days prior to a hearing. Like SIs and MC Evaluations, there is not a consensus on what a GAL should do or what the written report should look like, but that criteria are more likely to be tailored to the circumstances and issues involved, and any specific concerns or issues to be addressed should be spelled out in the order appointing a GAL.

The GAL appointment automatically discharges thirty days after the entry of a final order or judgment in the case.

- **PROS:** A GAL has broad powers to act in the child's best interest. A GAL can be more active and responsive during the pendency of the case than a Social Investigator or Minor Child Evaluator. GALs typically charge by the hour. This could be more economical than the other processes, depending on the circumstances. GALs do not have to be expert witnesses. Although the statute requires GALs to maintain some documents confidentially, it also says that the GAL may disclose the information in a report to the court, in the GALs discretion (§61.404, Florida Statutes).
- **CONS:** GALs do not have to be expert witnesses. This may impact the scope of the GAL's testimony during a hearing if they do not qualify as an expert (hearsay concerns). GALs typically charge by the hour. This open-ended arrangement could end up costing as much or more as a SI or MC Evaluation.

Each of these court-appointed helpers can request, recommend, or refer the parents or child(ren) to receive other third-party services (counseling, psychoeducational classes, anger

management, psychological testing, etc.), when appropriate. There can be multiple helpers involved with the family unit. All the family's helpers should be willing to work as a team. It is important that any mental health professional helping the family have experience with the dynamics often involved with families entrenched in litigation. It is important to interview any potential expert or person being considered for appointment to do a SI, MC Evaluation, or act as a PC or GAL. Like anyone, experts and others who serve in these capacities often do so because of their own personal experiences. Ask them what they understand their potential role to be, what their process involves, what tests might be administered, the potential costs, and timeline for completion. The cost of any of these processes can be equitably apportioned between parties, although sometimes the judge will require the party who requested the appointment of the helper to initially bear the expense up front. The nature and complexity of the issues involved should drive which type of process and professional is best suited for the case.