

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

The four main ways the parties or Court can enlist the assistance of a neutral third party in Florida family law cases are through a Social Investigation, Minor Child Evaluation, Parenting Coordinator, and Guardian ad Litem. What is the difference between these tools and how do I figure out which choice is best for my client? 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):** 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. 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. The 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.

§61.20, Florida Statutes (2014) 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 (2024) in their report.

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 psychological evaluations of the parents, children, or both. However, neither the statute nor the rule governing SIs suggest this interpretation. Psychological evaluations may be helpful in some cases, but they are not required. 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, ...". 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 decisions about parental issues. An expert appointed pursuant to §61.20 is typically equipped to assess this factor and can often do so without formal psychological testing. 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).

The family law statutes and rules contain references to what appear to be other processes, such as a “Parenting Plan Recommendation” or “home study” (Rule 12.200(a)(1)(M); §61.122, Florida Statutes, for example). Rule 12.364 requires the SI written report to include recommendations about a parenting plan. And most experts will conduct a home study as part of the SI process. But 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-\$100,000, 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.

- 2) **Minor Child Evaluation (MC Evaluation):** Rule 12.363 refers to an “examination,” “evaluation,” “testing,” “interview,” and “investigation.” 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 include the expert’s area of expertise and professional qualifications. The MC Evaluation may have a narrower scope than a SI, depending on the Order. 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.

- 3) Parenting Coordinator (PC):** A PC is an impartial third party whose role is to assist the parents in successfully creating or implementing a parenting plan (§61.125, Florida Statutes). 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). There is usually a psychoeducational component to the process. 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). 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. PCs will often respond to parents in real time to 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):** A GAL has broad investigative and evaluative powers to act in the child's best interest (§61.401-61.405, Florida Statutes). Unlike a social investigator or a minor child evaluator, 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. 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 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 report should look like.

The GAL appointment automatically discharges thirty days after the entry of a final order or judgement 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 a therapist or counselor, when appropriate. There can be multiple helpers involved with one family. All the family's helpers should be willing to work as a team. 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. Ask them what their understanding of their role is, what their process involves, the potential costs, and timeline for completion. It is also important that any counselor or therapist helping the family have experience with the dynamics often involved with families entrenched in litigation and is willing to work as a team for the benefit of the family unit. The cost of any of these processes can be equitably apportioned between parties, although sometimes the judge will require the party requesting the appointment to initially bear the expense up front. Like anyone, experts and others who serve in these capacities often do so because of their own personal experiences. A practitioner should interview any potential third-party helper prior to the court appointment, if possible.