

PROBATION INVESTIGATIONS IN CUSTODY CASES: SOME THOUGHTS FROM THE BENCH

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It has been my pleasure to work with the Monroe Circuit Court Probation Department on “family investigations” in two different capacities. As the Supreme Court Family Court Coordinator in 2005 and 2006, I talked with Monroe Probation about “family investigations” as a component of the Monroe County Family Court Project. As a new Judge in the Monroe Circuit Court in 2007, I have appointed probation officers to complete “family investigations” in at least five divorce or paternity cases.

I strongly support the need for probation investigations in custody cases. When serious allegations affecting the safety of children are made in divorce or paternity cases, the Court usually appoints a custody evaluator or other professional to assess the children and parents. When the parents lack financial resources, the Court can order these services. Otherwise, the Court has little or no means to assess the safety risk to the children, or the validity of the parent’s complaints about each other.

Monroe County probation officers have provided an invaluable service to the Court by conducting home visits, interviewing parents and children, and obtaining criminal records and school records. These investigative efforts have helped to clarify the vague (but extremely serious) allegations of unrepresented parents and better inform the Court on the safety needs of the children. And, perhaps most importantly, probation officers are good at conducting these investigations. Even when the officers have been unsure of what is required of them, or “what the Judge wants” in a given investigation, the officers have done an excellent job of interviewing all the key people, and gathering insightful “facts” to bring to the Court’s attention.

Although I am a huge advocate of probation officers conducting “family investigations,” I also recognize the need to set parameters and protocols for these investigations. These are a few thoughts:

1. It is important to clarify to the attorneys and parties that the probation officer does not conduct a “custody evaluation” or an “assessment” of the parents. During the course of an investigation, the officer observes the situation in the home/s, asks the parties to identify any concerns, and conducts other specific and discrete tasks as requested by the Judge. The officer gives the Court “facts” that he/she has observed, or advises the Court of the serious concerns specifically raised by each parent in a probation interview. The officer does not assess the abilities or deficiencies of each parent, or the needs of each child. The officer is not qualified as an expert. The officer also obtains records that the *pro se* parents are not likely to obtain, such as criminal records of each parent and child, school records for the children, and substance abuse screens.
2. The Judge needs to be as clear and specific as possible when ordering a “family investigation.” The order should clarify whether a visit to one or both homes is required, and specify the parents, significant others, and children to be interviewed and observed.
3. The Judge needs to clarify if the probation officer is required to file a written report, what should be included in the report, and the date for filing the report and mailing it to the parties. The Judge should state in the order of appointment whether the probation officer is required to attend a hearing or to be available on the date of the hearing.
4. A Judge should only appoint a probation officer when the allegations of the parents seriously implicate the safety of the children (substance abuse, neglect, domestic violence, mental health), and the parents lack the funds to pay for a custody evaluator or other professional that can assess the mental health of the parents and/or children.

5. Probation reports should not offer recommendations on custody or parenting time, but may include options for services that could be helpful. For the most part, probation reports give the court “facts,” not recommendations.