

Child Custody and Visitation Investigations

An Informational Pamphlet for Parents

● *North Dakota Supreme Court*

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Preparing for your custody evaluation

The court has ordered a Custody Investigator to participate in your child custody/visitation case. You probably have many questions regarding the role of the investigator and what you can expect during your investigation. We know this is a very stressful time for you and, hopefully, this introduction will help you understand the nature of the investigator's involvement.

Introduction

When parents get divorced (or unmarried parents seek to establish legal rights of custody/visitation), the divorce (custody) decree must establish plans for child custody and visitation. In many situations parents can use mediation or their attorney's help to make their own decisions about custody. The settlement agreement is then submitted to the court for approval. When parents are not able to resolve disputes about child custody or visitation, the dispute may go to trial for a judge to decide. Prior to the trial, the court may require the family to participate in a child custody investigation (evaluation), which provides information about the family to assist the judge in making the best decision about the child(ren).

What is a custody investigation?

A child custody investigation is:

- A process initiated by court order
- An impartial assessment of your family and its members directed toward helping your family make a positive adjustment to separation/divorce
- Concerned with the strengths and weaknesses of your parenting skills and the skills of the other parent
- Based on knowledge of the separation/divorce process, child development, and family interactions
- Attentive to past events, present resources, and the future needs of the family
- Focused on the "best interests" of child(ren)

A custody investigation is **not**:

- A process for finding fault or blame
- A process for taking one parent's side in the custody dispute

What are the "best interests" of my child(ren)?

The court requires that child custody decisions be determined by the "best interest" principle. Defining the "best interests" of your child(ren) is a complex matter. However, it is generally recognized that:

- Your child(ren) have the right to love both their parents and to have access to each of you without interference. All children benefit from an absence of conflict between their parents. Children do better if their parents cooperate and work together, rather

than continuing to fight and run each other down. You and the other parent help your child(ren) by ending your fighting.

- Children need to be safe and secure, and protected from abuse and neglect.
- Children of different ages have different needs for access. A two-year-old child may not be able to tolerate the same schedule as a ten-year-old child. The custody investigator will consider your child(ren)'s specific needs as well as their adjustment to home, school, and social environment.
- Children need continuity; visitation schedules should be followed consistently so that your child(ren) feel that you care about them.
- Children do best when you can be supportive of their relationship with the other parent and the time spent with that parent.

What does a custody evaluation cost?

Parents are responsible for payment of the evaluation. Often times, the cost is shared equally by both parents, but sometimes the judge will order a different payment arrangement. Fees are set by the custody investigator and are usually based on an hourly rate. Depending on the complexity of the case, the full cost can range from a couple of hundred dollars to several thousand dollars.

Who is the custody investigator?

The custody investigator is a professional who is educated and trained in areas of knowledge relating to the divorce/separation process and its effects on families, child development, and assessment of children. The custody investigator is familiar with the factors the court must consider in making decisions about custody and visitation.

The role of the custody investigator is to assist the court by doing an impartial evaluation and submitting a report that makes recommendations regarding custody and visitation of your child(ren). The investigator is **not** an advocate for either parent's position but must remain neutral while clearly focusing on the needs and "best interests" of your child(ren).

The custody investigator does not provide counseling, formal mediation, or legal advice about your case. The investigator can provide you with information about other resources available to assist you and your child(ren). You need to discuss any legal aspects of your case with your attorney.

What happens in a custody investigation?

A custody investigator is chosen from the North Dakota Custody Investigator list which you can

find at <http://www.ndcourts.com/court/custodyinvestigatorroster/roster.htm>

You will receive a signed court order assigning a custody investigator to your case.

Interview: A child custody/visitation investigation will consist of separate interviews with each parent. Investigators see people as many times as they find necessary in order to acquire the information they need to complete the evaluation. The investigator may want to see you and the child(ren) in your home; however, a home visit is not always necessary.

The custody investigator will meet with your child(ren). The investigator understands that your child(ren) may be experiencing a broad range of feelings about their family situation. These feelings are explored with them. Interviews and observations are oriented to your child(ren)'s age(s). Parents often want to know; "Will the investigator ask my child(ren) with whom they want to live?" The investigator does not directly ask children to make a choice between their parents; however, thoughts, feelings, and experiences will be important to understanding their needs.

Your individual appointment(s) will give you the opportunity to present issues and concerns about the child(ren) and the other parent. Conferences with your child(ren) allow the investigator to observe parent-child interaction.

Information Gathering: The investigator may ask you to complete a Parent Information Questionnaire. You will be asked to sign a consent authorizing the investigator to obtain school, medical, psychological, social service, police, or other information, which contribute to a complete understanding of the family history and circumstances. The investigator may talk directly to family members, school personnel, day care providers, and other individuals and/or professionals who have been involved with your family. You may be asked to provide personal written references.

Other Evaluations: The court may need to evaluate the mental status of each parent. Psychological, drug, and alcohol testing may also be requested.

These evaluations require the specific expertise of a trained professional whose report may be incorporated into the custody investigation or submitted separately to the court.

If a parent resides out of North Dakota or in another jurisdiction, it may be necessary for the investigator to request a reciprocal investigation with another agency where the parent lives. Some agencies charge a fee for this service and payment would normally be one or both parents' responsibility.

It isn't possible to tell you exactly how long it will take to complete your investigation. Much depends on the complexity of your situation, number of interviews needed, etc. When other evaluations or out-of-state studies are required, additional time is necessary for these reports.

How do I prepare for my custody investigation?

Keep the following suggestions in mind:

- You may still have a lot of angry feelings toward the other parent, which may make you tend to criticize things you may not earlier have identified as serious. Remember that the investigator is trying to address the welfare of your child(ren) and not trying to punish parents for “bad behavior.” Don’t look at the custody investigation as a win/lose situation, but rather as an avenue to arrive at a good plan for your child(ren).
- In order to obtain the best and most accurate information, it is very important that you be open and truthful with the investigator. Ask questions if you do not understand something about the interviews or the investigation process.
- Separate your personal problems with the other parent from your parenting concerns.
- Use the investigator as a resource: Ask about reading materials, parent education courses, counseling, and other available help.

Specific suggestions in preparing for your investigation include:

- Keep your appointments and be on time. Contact the Custody Investigator in advance if you need to cancel or reschedule your appointment
- Organize your records and bring with you copies of court documents and/or any other records you have that relate to your case.
- Make notes of any specific information you want to relate or questions you want to ask.
- Let the Custody Investigator know if there are any changes in your circumstances on the status of your case.

What happens to the information?

The final product of almost every investigation is a written report to the court. The report organizes the information obtained the investigator’s observations and evaluation give the court a clear picture of your family. Based on the investigation, the investigator will normally make a recommendation regarding custody, as well as what specific visitation arrangements will most likely benefit the child(ren). The investigators will not make recommendations unless they’ve had access to both parents, or in the case of a parent living in another state, have incorporated an evaluation from that jurisdiction into their report.

The information collected during the investigation is for the purpose of the investigator’s evaluation and recommendation to the court. This information is not gathered to help either parent litigate or prepare the parent’s own case.

Confidentiality: You need to understand that the concerns you bring up during your interviews will be discussed with the other parent. A written report containing the information gathered and used in the investigation will go to the court and the attorneys. The investigator's case files are not part of the court file but can be subject to discovery (through deposition and at trial). The greatest concern about this lack of confidentiality revolves around statements of children. Children need to know that the investigator may not be able to keep secrets although they will make every effort to shield them from potential repercussions and problems.

A copy of the Custody Investigator Report will be provided to your attorney (or you if you do not have an attorney).

The investigators often are required to appear in court to testify as to their report and recommendations. Like any witness, the investigator is subject to examination by both parties.

It is very important that you remember that the judge, NOT the custody investigator, makes the decision regarding your child(ren)'s custody and visitation.

What if we reach an agreement about custody?

At any time during your investigation, you and the other parent may arrive at an agreement regarding your child(ren)'s custody plan. This is not unusual or unexpected. If you and the other parent decide to settle your dispute, you should let the investigator know. The investigation can be suspended and further interviews cancelled. If you and the other parent enter into a written agreement, you should provide the investigator with a copy of the agreement so the custody investigation case can be closed.

We strongly believe that children are best served when their parents are able to agree and plan together, and we encourage you to take whatever steps you can to decide your own custody/visitation arrangement.

What if I don't agree with the outcome of the investigation?

You may not agree with the investigator's conclusions or recommendations. It is important to know that the investigators are required to make recommendations. A recommendation, which favors one or the other parent, does not mean that the investigator is advocating for the parent. Also remember that the custody investigator's recommendation is **NOT** a decision. The report and recommendations are to assist the judge and are only part of the evidence that the judge considers in making a custody/visitation determination.

When your case goes to trial, you will have full opportunity to question the investigator about the investigation and recommendations, to present arguments challenging or supporting the investigation, and to present evidence in support of your own position regarding custody/visitation.

If you have concerns about your custody investigation you should:

- Discuss your concerns with your attorney
- Contact the Custody Investigator Review Board, who review complaints concerning the performance and conduct of custody investigators. Contact Mike Hagburg, North Dakota Supreme Court, 701/328-4215, for further information about the Custody Investigator Review Board.

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