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Social Study Evaluation

WHAT YOU NEED TO KNOW TO BE PREPARED FOR A SOCIAL STUDY EVALUATION

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Most Texas courts will order a social study evaluation to be completed if conservatorship (custody) or possession of and access to a child are being contested. The *Texas Family Code* contains specific requirements for completion of a social study evaluation. It is important to be knowledgeable about the process of a social study evaluation. In Texas custody cases, the recommendations contained within a social study evaluation carry a great deal of weight with the Court. Many custody cases can be won or lost based upon these recommendations. As with all aspects of custody litigation, it is important to be prepared for what comes next in the process.

A thorough social study evaluation can take anywhere from 4 to 18 months to complete. During this time, the social study evaluator will conduct individual interviews with both parties to the case, joint interviews with each party and the child, and individual interviews with the child. The social study evaluator will request that each parent submit several references to be consulted regarding his/her parenting skills and involvement with the children. The social study evaluator will also conduct an in-home interview at each parent's residence during this process. The social study evaluator will also consult with relevant collateral resources, such as school teachers, counselors, and healthcare providers. Once the social study evaluator has completed the evaluation he/she will prepare a written report detailing his/her findings and recommendations. These recommendations can include: which parent should be the primary conservator of the child, the residency restriction on the primary residence of the child, and the possession and access schedule for both parents. Although the Court is not bound by these recommendations they can be very persuasive evidence for the Court.

SOCIAL STUDY EVALUATORS

Texas courts generally order a social study evaluation at the temporary orders hearing in cases where conservatorship or possession of or access to a child is being contested. If the parties are unable to agree on a social study evaluator, then the Court will appoint a social study evaluator.

Once a social study evaluator has been appointed, it is wise to research on the person appointed to complete the social study evaluation. The *Texas Family Code* contains specific minimum qualifications for social study evaluators in Texas. Most social study evaluators in Texas have a human services/mental health background. The qualifications of social study evaluators in Texas can include licensed professional social workers, licensed professional counselors, and psychologists. The state licensing board can provide information regarding the social study evaluator appointed in your case to provide their professional standards and ethics. For example, the *Texas Administrative Code* contains the professional standards for most mental health professionals. It could also be helpful to search the internet and/or review his or her résumé.

YOUR SOCIAL STUDY INTERVIEW

During the social study evaluation process, the social study evaluator will conduct personal interviews with each parent and the children. The social study evaluator should interview each child individually outside of the presence of the parents. Additionally, the social study evaluator should interview each parent individually (individual interview). Finally, the social study evaluator should interview the child/children with each parent (group interview). These interviews could all take place on the same day.

The purpose of these interviews is for the social study evaluator to ask any questions of the parents and/or the children out of the hearing of the other. Another purpose of these interviews is for the social study evaluator to gain insight regarding the parent-child relationship of each parent and the children through personal observation of the parents and the child. It is important to prepare for both the individual interview and the group interview with the social study evaluator. These interviews are the parent's opportunity to allow the social study evaluator to observe parenting abilities and skills first hand. Therefore, although this process may seem a bit unnatural, it is important you engage with your children during these interviews as you do on a daily basis.

THE “HOME VISIT”

The *Texas Family Code* requires that the social study evaluator conduct an evaluation of the home environment of each party in a custody dispute, unless the court order states that the home environment is not an issue being disputed. This is referred to as the “home visit.”

The social study evaluator will provide the date and time that the home visit will occur. Make sure to have an activity planned during this time, so that that social study evaluator has the opportunity to observe interaction with the children. If the home visit is to occur during breakfast or lunch, then proceed with the normal breakfast/lunch routine with your children. If the home visit is scheduled to occur during mid-morning or early afternoon, then consider playing a board game or doing homework with the children during this time. Do not just sit on the couch with your children staring at the social study evaluator. Keep in mind this will likely be the only opportunity for the social study evaluator to personally observe the parent with the children.

Finally, the social study evaluator must also conduct a personal interview of any and all persons that reside in the residence the subject of the social study. Therefore, if the parent has a roommate or relative residing with them, then they will also undergo a personal interview with the social study evaluator during this process.

COMPLETING YOUR SOCIAL STUDY QUESTIONNAIRE

There are many aspects to a social study evaluation. A typical social study evaluation will take from 8 to 18 months to complete. During this time period, the social study evaluator will review information provided by each party, including but not limited to collateral witnesses and documentation (this could include review of medical records, school records, police reports, etc.), references and reference letters, personal history questionnaires, and other written information. In addition to written information, the social study evaluator will also interview and observe both parents and the children, separately and with each parent.

COMPLETING YOUR SOCIAL STUDY QUESTIONNAIRE (CONT.)

During the social study process, each parent will be asked to provide written documentation to the social study evaluator. This can include information regarding the parent's childhood upbringing, educational history, medical history, parenting strengths and weaknesses, concerns regarding the other parent, and other relevant information requested by the social study evaluator. Each parent will also be required to disclose prior criminal history, medical history, and substance abuse history. It is important to be candid when providing this information to the social study evaluator. If there is a "past" to disclose, regardless of how distant it may be, the parent should err on the side of disclosing too much rather than too little. When completing your social study questionnaire, you should be the person to disclose any "skeletons in your closet."

We generally advise clients to complete the questionnaire by themselves initially. At some point prior to returning this information to the social study evaluator it is best to have your attorney review the information. Keep in mind that this is the opportunity for each parent to provide the social study evaluator with information relating to the support system, including family and friends that will be assisting the journey as a "single parent."

This is also the opportunity to indicate to the social study evaluator the parent's desires regarding parenting time with the children. If a parent desires to be the primary conservator of the children or to have equal parenting time with the other parent, then now is the time to tell the social study evaluator. In doing so, the parent must have a solid plan for how he or she intends to provide the children with a stable and consistent home environment during that parent's time. There should be a plan for how to provide for the children financially, emotionally, and mentally. Tell the social study evaluator the plan to get them to and from school/extracurricular activities on a daily basis. Additionally, provide the social study evaluator with the plan to meet the children's medical and educational needs. It is not enough to just say that a parent wants to be the primary conservator or share parenting time with the other parent. Have a plan and be prepared to discuss it. This means knowing the children's medical, educational, and emotional history and needs.

WHAT TO KNOW TO BE PREPARED FOR A SOCIAL STUDY EVALUATION

References and Reference Letters:

During the social study evaluation, each parent will be required to submit reference letters to the social study evaluator. The number of personal references and reference letters requested can range from 3 or more. The following are some points to keep in mind when deciding who the references should be and what the focus of the reference letters should be.

1. **DO NOT** have family members serve as all of the references. Although family members as references can be helpful, generally family members are thought to be more biased for obvious reasons. The purpose of providing the references in a social study evaluation is so that the social study evaluator can obtain information regarding the parenting skills and involvement from as many difference sources as possible. Therefore, school teachers, babysitters, neighbors, friends, and/or co-workers can serve as excellent references. They tend to be thought of as more neutral.
2. **DO NOT** submit more personal references and/or reference letters than requested by the social study evaluator. Doing so would illustrate that the parent cannot follow instructions. If a parent has have more references that you would like to submit, then advise the social study evaluator and request his/her permission to submit more references.
3. **DO** contact personal references and let them know that they may be contacted by the social study evaluator. Make sure the references know the name of the social study evaluator assigned to the case. Generally, the social study evaluator will mail a reference questionnaire directly to the references listed in the initial paperwork. Let the references know to expect a letter in the mail, email, or possibly a phone call from the social study evaluator.

4. **DO** make sure that the reference letters are completed and returned to the social study evaluator by the deadline. The social study evaluator will let the references know when he/she would like the completed reference letters.
5. **DO** make sure to inform the personal references that the point of them completing these letters is to discuss the parent's positive parenting qualities. In my opinion, this is a task that can be easily completed by having the references write about their personal observations of the interaction between the parents and the children. Such as, at sporting events or school activities.
6. **DO NOT** have the personal references include negative attributes about the other parent involved in the social study evaluation. These reference letters are an opportunity to have people provide positive feedback. This is not the time for resentments. Many social study evaluators will set a page limit for the reference letter. There is a specific procedure to discuss the concerns about the other parent during the social study evaluation. However, reference letters are not the time nor the place.

THE REPORT

The law has certain requirements for a social study report. The social study report must contain sections that address the following elements:

1. A personal interview of each party to the suit
2. An interview of each child at issue in the suit who is at least four years old
3. Observation of each child at issue in the suit, regardless of age
4. Collecting information from collateral sources
5. Evaluation of the home environment if that is in dispute
6. Consideration of the criminal history and contact with child protective services or any law enforcement agency regarding abuse or neglect
7. Assessment of the relationship between each child in the suit and each party seeking possession of or access to the child

THE REPORT (CONT.)

Further, additional elements that may be included are:

1. Balanced interviews and observations of each child at issue in the suit so that a child who is interviewed or observed while in the care of one party is also interviewed or observed while in the care of every other party to the suit
2. An interview of each individual living in the residence at issue
3. Evaluation of the home environment of each party seeking conservatorship, possession or access, regardless of whether the home is in dispute

The report must identify the evaluator, providing the name, license number, and qualifications of the person conducting the evaluation. The report must state the basis for the evaluator's conclusions or recommendations. It must identify if any of the actions required for the social study are not met and the reason. And, lastly, it must verify each statement of fact relied upon and note the source of the verification.

The evaluator is prohibited from offering an opinion about conservatorship, possession, or access unless every element required in the law has been completed. If the evaluator has only evaluated one side of the controversy, then he or she cannot make a recommendation about conservatorship, possession, or access, but can state whether the evaluated party appears suitable.

The report must be filed by the date set by the court and it must be made a part of the record in the case. Copies must be furnished timely to the parties or their attorneys.

Once the report is filed, it is before the court and does not need to be formally introduced into evidence. The evaluator may be called to testify as a witness and may be questioned on the accuracy of the information collected and the conclusions reached.

ABOUT THE AUTHOR

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Michelle May O'Neil founded the firm based on her desire to provide clients with high-quality representation in a personalized atmosphere. The firm, originally known as The May Firm, changed its name in 2009 after Ms. O'Neil married. She has over 20 years of experience representing men, women, and children related to family law matters such as divorce, child custody, and complex property division. Described by one lawyer as "a lethal combination of sweet-and-salty", Ms. O'Neil exudes genuine compassion for her client's difficulties, yet she can be relentless when in pursuit of a client's goals.

Ms. O'Neil became a certified family law specialist by the Texas Board of Legal Specialization in 1997 and has maintained her certification since that time. Representing clients in litigation before the trial court is an important part of her practice. In addition, family law appellate matters are a niche of Ms. O'Neil's practice. Lawyers frequently consult with Ms. O'Neil on their litigation cases about specialized legal issues requiring particularized attention both at the trial court and appellate levels. One judge said of Ms. O'Neil, "She cannot be out-gunned, out-briefed, or out-lawyered!"

A noted author, Ms. O'Neil released her second book *Basics of Texas Divorce Law* in November 2010, which is now in its second edition. Her first book, *All About Texas Law and Kids*, was published in September 2009 by Texas Lawyer Press. She has been honored by her peers with an "A-V" peer review rating by Martindale-Hubbell Legal Directories for the highest quality legal ability and ethical standards, and selected as a Barrister in the Annette Stewart Inns of Court, an organization devoted to the professionalism of the practice of law. From 2010 to present, Ms. O'Neil has been recognized in the top 5% of lawyers Statewide as a Texas Super Lawyer.

Ms. O'Neil shares with many of her clients the joys of having a blended family, having married her husband John in 2006, who has a 13-year old son.