

Best Practices for Custody, Parenting Time, and Change of Domicile Evaluations

In October of 2009, the Michigan Judicial Institute held a custody evaluator training for friend of the court personnel. During one session, the moderators collected best practice tips from those in attendance. Those tips are compiled below. Most are phrased as questions that FOC personnel can ask the parents (or simply consider) when addressing the issues of child custody, parenting time, and change of domicile. Note: Child custody “best interest” factors (i) and (l) do not appear in the following list because those factors were addressed during a different session of the MJI training.

Child Custody Factors

(a) The love, affection, and other emotional ties existing between the parties involved and the child.

Questions to Ask:

Note: This factor focuses on the current bond between the child and the parents.

- What is the current situation?
- What is the current emotional bond between the parents and the child?
- How was the bond formed?
- Which bond is stronger?
- Does the child show more respect to one parent than the other?
- Which parent give priority to the child, placing the child ahead of hobbies, work, or other activities?
- Which parent has the ability to give love, affection, and guidance?
- Which parent tries to listen to what is really going on with the child (the reality of the situation). Look for red flags indicating that a parent is not involved.

(b) The capacity and disposition of the parties involved to give the child love, affection, and guidance and to continue the education and raising of the child in his or her religion or creed, if any.

Questions to Ask:

Note: This factor focuses on the future bond between the child and the parents.

- Are there any special needs of the child like a learning disability, physical challenge, or health issue?
- Do the parents have any mental health issues?
- Are there any issues relating to a religious upbringing and/or cultural traditions?
- Which parent will allow the child to participate in religious activities?
- How does each parent handle discipline?
- How does each parent show love?
- Which parent has the ability (capacity) to provide guidance?
- Which parent can help the child become a responsible and productive adult?

- Which parent is a better role model for the child?
- Which parent is more involved in the child's education? Attends teacher conferences? Volunteers at school?
- Which parent is more involved in the child's extracurricular activities? Attends ballgames? Which parent coaches his or her child's sports teams?
- What is the character of each parent? Is one parent in and out of jail or consistently unemployed?
- Which parent makes arrangements so that the other parent can participate in the child's activities?
- Suggestion/Example: Ask each parent what kind of relationship he or she has with the child. Then ask each parent what kind of relationship the other parent has with the child.
- Ask each parent individually questions regarding their child's development. For example when did the child start to talk, when did the child start to walk, when did the child learn his or her ABCs? Answers to these questions provide information about a parent's willingness to actively participate in the child's life.

(c) The capacity and disposition of the parties involved to provide the child with food, clothing, medical care or other remedial care recognized and permitted under the laws of this state in place of medical care, and other material needs.

Questions to Ask:

Note: Try to gather information from various documents.

- Which parent has the ability (capacity) to provide basic needs for the child?
- Which parent has the ability (capacity) to earn income?
- Where are the parents employed? How many hours do they work each week?
- Which parent manages the finances? Which parent pays bills and which parent has knowledge of major expenses like the mortgage?
- Which parent is more willing to provide for the child?
- Can either party provide medical insurance for the child? Which parent is willing to do that? Which parent denies health-care coverage for the child?
- Which parent is providing medical and remedial care?
- Who takes the child to the doctor when the child gets sick?
- Do you know the name of the family doctor?
- Have alternative medical care philosophies (e.g., religious beliefs) caused a parent to reject certain medical treatments?
- Does the child have any special needs? If so, are both parents aware of the cost to care for the child?
- Which parent actually established the home?
- Which parent makes sure that the child's needs are met? Who is involved in the day-to-day raising of the child?
- Has a stay-at-home parent always been a stay-at-home parent? What are his or her future employment plans? Does either parent have educational degrees or specialized training?

Note: For an at-home parent, think about how the court order could impact the capacity to support the children. Consider alimony, part-time work, and daycare expenses. Is it worth going back to work?

- How much do the child's extracurricular activities cost? How much is paid for uniforms, shoes, etc.? (Parents who are more involved will know those expense details.)
- How much does it cost to get school supplies and clothes?
- How much does it cost for a week's worth of groceries?
- Which parent plans to pay those costs?
- How do the parents spend money?
- Do the parents have marital debt?
- How will credit card debt be paid? Who will be responsible for it? Ask about all marital debt.
- What will be the living arrangements?
- Will there be any other people in the home with the child?
- What is going to change?

Note: Parents focus on the custody issue. Encourage them to think about the parenting time schedule and work back from there. When they talk about custody, discuss the meaning of joint, sole, legal, and physical custody.

- Is the real issue parenting time or child support? "Put your ears on."
- Tell me about the child's physical health. Who are the child's doctors? Who sets appointments? Who takes the child to medical, dental, and counseling appointments?

(d) The length of time the child has lived in a stable, satisfactory environment, and the desirability of maintaining continuity.

Questions to Ask:

- What is the child's current sense of comfort and stability?
- Where will the child physically live?
- Look at the home's total environment; not only physical structure, but stability/functioning.
- What is a "functioning" home? (The training participants defined that as meaning "not dysfunctional.")
- Which parent will attempt to maintain a stable environment?
- Ask each parent: What is a "stable environment"?

Note: Don't hold it against a parent who has to leave and find another place to live.

- Does the child have ties with the neighborhood? Do friends visit the home on a regular basis like as a hangout?
- Does the child have pets in the home?
- Is the child properly supervised?
- Do the parents want the child to live within a certain school district? Will the school district change?
- What events, if any, have caused instability for the child?
- Has either parent had multiple divorces?

- Will a third party residing in one parent’s home affect the child’s stability?
- Are there any substance abuse issues relating to the child or parents?
- For both parents, what are the future plans?
- Which parent provides the child with a sense of comfort and belonging? How does the child refer to each parent’s residence? Where is “home”?

(e) The permanence, as a family unit, of the existing or proposed custodial home or homes.

Questions to Ask:

- Who now lives in the marital home?
- Who moved out of the marital home?
- How long has the family lived in the marital home?
- Do the parents like the area where they live?
- What are the home and neighborhood like?
- How many bedrooms and bathrooms?
- Which parent intends to stay in the area?
- Which parent has family in the area as a support system?
- What kind of contacts does the child have with the extended family, including stepparents?
- How are the schools in the area?
- Do the parents agree that the children will stay in the same school district?
- To the parent who is not living in the marital home, do you intend to stay in the same area?
 - If yes, will the children attend the same school?
 - If yes, will the children participate in the same activities? Have the same friends over?
- If one parent has a new residence, how many bedrooms does it have?
- Where does the child sleep?
- Do any other children live nearby?
- Is there a playground nearby?
- How is the child adjusting to the move?
- Do the parents have any new relationships?
- Has the child been exposed to the new relationship or introduced to a significant other?
- Does one parent now change residences frequently?
- How are the parents going to function as a family now?

Note: It’s not about who has the nicer home; it’s about stability, permanence, and the functioning of the home.

- Does one parent rely heavily on childcare? (That may suggest that they aren’t really involved with the child.)
- Do the parents have any substance abuse issues now or in the past?
- Do the parents have any mental health issues? If yes, are they taking medication?
- Ask whether the parents have a plan for what will happen to the marital home?

(f) The moral fitness of the parties involved.

Questions to Ask:

Note: Always screen for physical abuse during the investigation.

- Are the parents honest?

Note: Look at issues of fidelity.

- Where do the parents take the child?
- What kind of people is the child exposed to?
- Does either parent have a history of substance abuse?
- Does either parent currently have a substance abuse problem?
- Does either parent have a criminal history? (Remember that there is a difference between arrest and conviction.)
- Does each parent have a valid driver's license? (This goes to the issue of safety for the child. How can you drive the child to school or attend other activities if you don't have a license?)
- Has either parent had multiple relationships?
- Look at the parents' relationships with other people, how they interact with others, and how that affects the child. What if the parent is involved with someone who was arrested or convicted?
- Ask whether the parents' moral character has affected the development of the child in any way.
- Have any relatives or friends been charged with CSC?
- Has either parent abused the child?
- Where do the parents take the child? Who and what is the child exposed to while with the parents? Try to identify safety issues and determine if there is proper supervision. Does anyone use illegal substances in the child's presence while the child is with a parent?

(g) The mental and physical health of the parties involved.

Questions to Ask:

- Look at both parents' overall health and how it relates to the child.
- Remind each parent that the court will consider this factor in terms of how it affects the child.
- A parent with a disability will not have this factor weighed against him or her.
- What is the emotional health of each parent? If parties accuse one another of a disorder (i.e. bipolar disorder), ask if a doctor has made that diagnosis. Was it a psychiatrist or family doctor? Obtain verification.
- Have they sought treatment? Are they on medication? Are they taking medication as it's prescribed?

Note: If the accusation is unsubstantiated, you can't really do anything.

Note: Don't penalize parents who have recognized they have mental health issues. It's good that they seek help and get treatment for it.

- How has a parent's mental health affected the child now and in the past?

- Note: Explore allegations regardless of whether a parent has been diagnosed by a medical professional. Why does one parent think that the other parent has a problem?
- Note: Regardless of whether there's been diagnosis or treatment, look to the behavior the parents exhibit. Are their decisions good or harmful to the child?
- Ask the parents if they would agree to a psychological evaluation? Who will pay for it?
 - Ask questions that would elicit information regarding behavior.
- Note: Look at the full scope and history of the parent's behavior. People sometimes act "crazy" after a divorce. Is it really long-term behavior, or did it result from the divorce?
- Are there any substance abuse problems?
 - If yes, how long has the behavior been going on?
 - If yes, what are the patterns? For example, does drinking affect a parent's care for the child?
 - Does either parent have concerns about the other parent's moral character and its affect on the child? Is the child worried?
 - Are there any other mental or physical health issues that would affect the parent's ability to care for the child? Any medications or chronic illnesses?
 - Common allegations of physical health issues:
 - seizure disorder
 - narcolepsy
 - back problems
 - migraines
 - Has the parent introduced the child to their "other person"? Does the "other person" have regular contact with the child?
 - Bring the other parent into conversations even if not present.
 - Ask for specific examples of how an alleged mental or physical condition affects the child. If a parent has been diagnosed and is being treated, is that treatment effective? Does the parent comply with the treatment program so the condition does not significantly impact the parent/child relationship?

(h) The home, school, and community record of the child.

Questions to Ask:

- Examine the child's development.
- Look at the child's behavior in the home, discipline methods, and relationships with other people.
- Depending on age, is the child respectful; does the child do chores; is the child comfortable; do the child sneak out?
- Does the child have friendships in the neighborhood?
- How is the relationship with siblings, stepsiblings, and other relatives?
- Has there been any juvenile court involvement?
- What is the child's involvement in the community? Examples: juvenile court involvement, Girl Scouts, extracurricular, day care providers, Boy Scouts, sports

teams, relationships with friends, extended family, employed child's relationship with employer, CPS involvement.

- If the child is too young for this factor, then ask about the child's medical treatment. Is the child taken to appointments? Is the child developing normally?
- Does the child do better with one parent than the other?
- How does the child perform academically after the child has been with mom or dad?
- How is attendance at school after being with mom or dad?
- How is behavior at school after being with mom or dad?
- What do the parents argue about? What issues are going to be problems in the future?

Note: Assess whether one parent's discipline methods or general parenting style is more or less effective than the other parent's. (This is somewhat related to factor (b), but also (h).

(j) The willingness and ability of each of the parties to facilitate and encourage a close and continuing parent-child relationship between the child and the other parent or the child and the parents.

Questions to Ask:

- How will the parents interact to facilitate parenting time?
- Does one parent make derogatory statements about the other parent or the other parent's family, significant others, or siblings?
- Does one parent deliberately schedule conflicting activities at times when he or she knows that the other parent has parenting time with the child?
- Does one parent prevent the child from seeing the other parent?
- Does one parent deliberately interfere with parenting time in disguised ways like calling to just "check on" the child?
- Do the parents freely exchange information about the child?
- Is one parent willing to be flexible by rescheduling parenting time when that serves the best interests of the child?
- If there are special events, like a family reunion, that interfere with one parent's parenting time, can the parents work together so that the child can attend?
- Are both parents willing to adjust parenting time because of work schedules?
- How effectively do the parents communicate about parenting time?
- When one parent gets the child, does either become overemotional, especially during transfers? Does either say things like, "You're my best buddy, I can't leave without you." How is it coming across to the child?
- Ask both parents separately.
 - How is the child doing in school?
 - How old is the child? What grade is the child in?
 - Do you attend school functions?
 - Are you involved with extracurricular activities?
 - Do you help with homework?
 - How does the child behave at school?

- What responsibilities does the child have at home?
- What kinds of friendships does the child have in school and in the neighborhood?
- Do you know the child's playmates?
- What do you propose for custody and parenting time? What would you like to see happen?
- How are you going to share parenting time?
- What is your plan for co-parenting now that you live apart?
- How do you plan to communicate with each other.

(k) Domestic violence, regardless of whether the violence was directed against or witnessed by the child.

Questions to Ask:

- What is the usual disciplinary action for the child? Time out? Privileges taken away?
- What happens if the child does not do assigned chores? What actions are taken?
- Is one parent primarily or solely responsible discipline?
- Has there been any physical violence in the home? Whom did it involve?
- Was/is there an inequality of power in the marriage?
- Are the family members involved in any other court actions? Is there a PPO?

Note: If there has been some kind of abuse, interview parents separately. Fear may make the person being victimized very hesitant to reveal everything. Many survivors of domestic violence remain silent because they worry that disclosure will hurt them later.

- How do the parents answer questions? Does one parent remain quiet or quickly agree to everything being said? How do the parents behave when together? Does one talk much more than the other?
- Ask about police contacts and whether charges were filed. Time frames and history of behavior should be established. Is there a longstanding pattern, or has dissolution of the marriage brought forth problems that did not exist previously?

Parenting Time Factors

Post-judgment: Motion has been filed for change in parenting time.

Questions to Ask:

Note: The issue is stability and what the child is accustomed to.

- Why are people asking for changes in parenting time? What has changed?
- Can the parents agree on a new schedule?
- What are each parent's primary concerns about changing the parenting time schedule?
- Is there a risk of domestic violence at the exchange site?

Questions to Ask a Noncustodial Parent Who Requests a Change in Parenting Time.

- Does the child have any special needs?
- What kind of parenting time are you looking for?
- What is your work schedule?
- Do you exercise all the parenting time that you have now?
- Does the other parent have the children ready when you come to pick them up?
- What are the living arrangements in your new home?
- Where will the child sleep?
- Will the child have his or her own bedroom?
- Do you return the child's clothes after each parenting time visit?

Questions to Ask the Custodial Parent.

- Will a change in parenting time destabilize either home.
- Do you have concerns about the child's current schedule?
- Do you and the other parent live near each other?
- Does the other parent exercise parenting time?
- Does the other parent pick up and drop off the child at the correct times?
- Is there any abuse or neglect of the child by the other parent?
- Has the other parent ever not returned the child on time?

Change in Domicile

Requesting custody of children and permission to leave the state of Michigan.

Questions to Ask Parent Requesting the Move:

- Tell me the details of your prospective move? Why do you consider a move necessary? Are there reasons of convenience in addition to the announced reasons of necessity? How do you see the pros and cons for both you and the child?
- How will this move improve the quality of life for the child?
- Do you know what school the child will attend?
- If you move, what sort of revised parenting time schedule do you envision?
- Is the child very involved in extracurricular activities where you live now?

Questions for Nonrequesting Parent:

- Do you think the other parent will accept the job and move regardless of whether the court approves the change in domicile?
- What kind of parenting time schedule would you propose if the other parent does move?
- Do you think it is important for the child to maintain a relationship with the other parent?
- Will either parent gain financially by changing the current parenting time schedule?
- Are your objections financially motivated?

- How has parenting time worked since the divorce? Summarize any problems.
- If the court grants the change of domicile, do you have any concerns that the other parent won't comply with the order?
- Has the noncustodial parent provided documents regarding the proposed new school, community (crime, community options), and new employer? The FOC interviewer may want to do some Internet research about the proposed new community.
- How does the parent see the move affecting the relationship between the child and the noncustodial parent?