

Summary GuideSM Comparing Roles in Family Cases

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Comparison of Roles in Family Cases*

ROLE	Statutory Basis & Related Rules	Duties	Party Status	Immunity & Testimony	Decision Power
Parenting Time Expeditor (PTE)	§ 518.1751 Judicial officer may appoint without consent of parties unless <i>allegation</i> of domestic abuse	Defined by statute and court order – uses med-arb process to enforce, interpret, clarify and address parenting time circumstances not specifically addressed by existing order & to determine if existing order is violated; no home visit required; may interview child if court-ordered or with agreement of parties Mandated Reporter	No	Immune from civil liability Statutory prohibition from subpoenaing or calling PTE as witness in court proceedings; prohibited from communicating with court except in limited circumstances	Enforces, clarifies, interprets parenting time decisions but is not binding and subject to court review
Guardian ad Litem (GAL)	§ 518.165; Rules 901 - 907 Judicial officer may appoint without consent of parties	Defined by statute, rules, court order and case law – independent investigation, considers child's wishes, presents written reports; always meets with child and does home visit unless specifically exempted by court; advocates for best interest of child Mandated Reporter	Always in Juvenile Ct.; may be made a party in Family Ct.; would be party any time child is deemed a party	Immunity per case law if actions within statute and rules Usually testifies; may not have substantive ex parte communication with court	None; may recommend settlements, recommendations only; court decisions
Custody Evaluator or Investigator	§ 518.167 Judicial officer may order upon request or without consent of parties	Defined by statute – investigates, reports and makes recommendations regarding custody and parenting time; interviews child if age appropriate; home visit not required, however, generally done NOT an advocacy role Mandated Reporter status depends on licensure of professional	No	Immunity per case law if remains within statute Testifies if requested & fees paid, if private; court's witness unless private evaluator	None; may recommend agreements with parties
Mediator	Multiple; § 518.619; Rules 114 and 310 Judicial officer may order mediation without consent of parties if no domestic abuse issues	Assists parties in reaching a durable resolution of issues; child only included if necessary and by agreement of parties and mediator or in child-inclusive mediation (see "Other Terminology") Mandated Reporter status depends on licensure of professional	No	Immunity pursuant to ADR statute § 604A.32 Incompetent to testify except in limited statutory exceptions, § 595.02, subd. 1a	None
Parenting Consultant (PC) (referred to as "Parenting Coordinator" in other states)	None Judicial officer MAY NOT order without consent of parties Appointment is generally pursuant to Rule 114.02(a)(10)	Defined by individual PC, parties and court order; generally, educates parties regarding child development issues, communication between parties; facilitates and makes decisions regarding ANY parenting issue in addition to schedule issues Mandated Reporter status depends on licensure of professional	No	ADR immunity if properly appointed Depends on court order – must testify if called, unless otherwise provided in court order or contract	Defined by PC and court order; use of PC decision for them to be binding subject to court review
Coach	None Judicial officer MAY NOT order without consent of parties	As defined by parent and PC – usually works with only one parent to educate regarding how to parent or how to manage the dissolution and custody process ("divorce coaching"); may work with both parents on parenting, communication and boundary-setting Mandated Reporter status depends on licensure of professional	No	No immunity Testifies if subpoenaed and fees paid	None
Therapist	Professionally regulated Judicial officer may order therapy without consent of parties	Provides therapy to individual parent, child or family group Mandated Reporter	No	No immunity Must testify if called, unless otherwise provided in contract or court order	None
Arbitrator	Varies; Rule 114.09 or chapter 572B, the Uniform Arbitration Act	One or a team of arbitrators given authority to make binding or non-binding decisions on matters submitted NOTE: there are very specific rules if arbitration is done pursuant to the Uniform Arbitration Act Not Mandated Reporter	No	Immunity pursuant to ADR statute § 604A.32 Incompetent to testify except in limited statutory exceptions, § 595.02, subd. 1a	Yes, unless agreement is contrary
SOCIAL Early Neutral Evaluation (SENE) and FINANCIAL Early Neutral Evaluation (FENE)	Rule 114	Usually a male/female team gives an evaluative opinion regarding the likely outcome of custody and parenting-related issues or financial issues when parties choose this option; parties present their positions, with their attorneys present; team gathers additional information as necessary; reports agreements; targeted to conclude within one month; FENE may be one or two evaluators Mandated Reporter status depends on licensure of professional (Mandated Reporter under Hennepin County Court Services policy)	No	Immunity pursuant to ADR statute § 604A.32 Incompetent to testify except in limited statutory exceptions, § 595.02, subd. 1a	None; may recommend settlements

*There may be additional statutes, rules and considerations that apply in Juvenile Court.

Decision-Making Process	Recommendation Authority	Confidentiality & Discovery	Caveats When Using The Process	When To Use	Fee Status
Clarifies and interprets prior orders; provides binding court review	Yes; limited by statute	Confidential unless all parties and PTE agree; but PTE may include reasoning in decision document; statements, notes and records confidential with limited statutory exceptions	Limited to schedule & access issues; may not make decisions inconsistent with order unless parties agree; see statute for domestic abuse considerations	When parties need decisions made on a relatively quick basis; during pending action to resolve temporary issues; post-divorce, post-custody-parenting time order; one-time disputes	Rate set by PTE; court must order <i>equitable</i> payment split between parties
Mediate; negotiate; makes recommendations; makes decisions	Yes; required to make recommendations in the best interest of the child; NOT limited to § 518.17 factors	Maintains confidentiality of case information except as necessary to work on behalf of child Discovery of GAL file generally by court order; complete file is discoverable	May not serve as PTE, PC, custody evaluator or any other role in same case; not a substitute decision-maker	Mandated if allegations of abuse; use when child's best interest is unclear	Set by court
Facilitate communication between parties	Yes, required to make recommendations based on § 518.17 best interests factors	Confidentiality defined by individual provider Discovery of complete file, including collateral contacts, generally by court order	Recommendations may take up to 120 days or more; private evaluations may be expensive; refer to AFCC guidelines for best practices	When there are questions about parents' abilities and emotional resources	Set by court or private evaluator
Mediate	No, but may evaluate positions of parties depending on type of mediation	Confidential process unless parties and mediator specifically agree otherwise Not discoverable	No decision-making power; may not be appropriate in domestic abuse circumstances	Prior to "mudslinging" if at all possible; whenever agreement is desirable outcome; to narrow issues for trial	Set by mediator; must be fair and reasonable
PC contract order – best decisions are defined subject to court review	Yes; may make recommendations to parties	Generally no confidentiality; defined by contract Generally, information and files discoverable, with exception of "safe harbor" information (see "Other Terminology")	May not change custody unless contract provides; may be removed by agreement of both parties or by order of the court for "good cause" shown; PC may choose to resign at any time	When parents need assistance in parenting, communication and/or need on-going decision-making on parenting issues; prior to filing; for temporary issues; post-judgment; see AFCC "Guidelines for Parenting Coordination" for best practices	Set by PC; must be fair and reasonable
Coach	No; educates parent(s)	Confidentiality defined by agreement; generally discoverable unless coach hired by attorney and protected as work product	If working with only one parent, may not have access to some of information that might be useful	When parent needs personal one-on-one assistance with parenting and/or dealing with legal process, etc. or, with both parents who wish to work on parenting communication and boundaries	Set by Coach
Therapist	Yes; makes only clinical recommendations for the party in treatment	Confidentiality professionally regulated; may be affected by specific court orders May have "safe harbor" clause in contract or court order Discovery pursuant to statute and court rules	May have one-sided view of situation; may become inadvertent advocate for client; for best practices refer to AFCC "Guidelines for Court-Involved Therapy"	When parent(s) or child have mental health, chemical dependency or emotional difficulties amenable to treatment or have issues that are not necessarily connected to, but are interfering with or exacerbated by, the legal process; reunification of estranged parent and child	Set by Therapist
Arbitration specific to the case	No	Confidentiality depends on specific agreement under which the arbitration is done; Arbitrator's personal notes NOT subject to discovery	Be sure to understand which rules are being used as all facets, including where decision is appealed, depends on terms agreed upon for process; generally no record made except decision	As an alternative to court decision; when parties want binding decisions on multiple issues; often used for personal property division	Set by Arbitrator; must be fair and reasonable
Mediate; negotiate; make recommendations; make decisions	Yes, to parties; to court only regarding case management tools such as chemical dependency evaluations	ENE process is confidential except for agreements and summary of remaining issues; parties may waive confidentiality and choose to use member of team for custody evaluation Generally NOT discoverable; Information from ENE process may NOT be used in litigation or subpoenaed except as noted above	Need to decide whether case is ripe for early neutral involvement; process may be intimidating for certain clients; may not be appropriate in domestic abuse circumstances	When it would be beneficial for parties to have candid assessment by experienced custody evaluators regarding custody and parenting time or financial issues; when early settlement would be beneficial; as possible alternative to full custody evaluation; to avoid costly litigation; to allow parties to tell their stories early on, before assuming a total adversarial posture	Court sets fees; some counties use a sliding scale rate chart; private ENE providers may set their own fees

Other Terminology

Alternative Dispute Resolution (ADR)

Any of several processes utilizing one or more neutral persons as an alternative to standard litigation. Includes mediation, arbitration, early neutral evaluation, consensual special magistrate, summary jury trial and neutral fact finding.

Child Inclusive Mediation

Mediation utilizing a child consultant, usually a therapist, who meets with a child prior to mediation and represents the child's voice and needs in the mediation room.

Closure Therapy

A short term therapy process to help parents disengage emotionally and focus on co-parenting.

Collaborative Law

A voluntary legal approach in which attorneys represent parties but agree not to use adversarial processes to resolve disputes. The parties and their attorneys agree that they will not utilize the court except for routine processing of agreed-upon matters. Parties and attorneys use group conferences to discuss issues and utilize experts as necessary.

Family Group Conferencing

A process used primarily in Juvenile Court that includes extended family members in a conference setting. Facilitators help family members develop a future and lasting plan that meets the best interests of a child or children involved in a case.

Initial Case Management Conference (ICMC)

A process in which judges are involved in cases shortly after the case is filed (usually within 30 days). Purpose is to explain court process to parties, seek resolution on some issues and to schedule future activities in their case. Motions are not heard, however, other actions such as referral to ADR, custody studies, psychological evaluations and financial appraisals may be ordered. Custody/parenting time issues may be referred to Social Early Neutral Evaluation and financial issues may be referred to Financial Early Neutral Evaluation.

Moderated Settlement Conference

An ADR process in which parties and/or their counsel present a summary of their facts and arguments to an ADR neutral knowledgeable in the substantive area who provides an evaluative opinion regarding outcomes.

Parent Education Program

Statutorily mandated under § 518.157 for each county. Specific programs for parents or children vary by county. Some counties require proof of attendance before judgment and decree will be signed.

Parenting Plan

A document created by parties to a dissolution/custody proceeding that defines parenting access, designates decision-making responsibilities and provides for a method of dispute resolution. It may also include other issues regarding the parties' children and use non-traditional "physical" and "legal" custody labels.

Restorative Justice

A philosophy based on indigenous wisdom that healing and repairing community ties is more important and more effective than punishment in changing behavior. Used in a variety of criminal and civil settings, neighborhoods and schools to restore offending individuals into the community.

Reunification Therapy

For many reasons, a parent and child may have lost contact or a child refuses to have contact with a parent. Reunification therapy addresses the reasons for the lost or difficult relationship and, if appropriate, gradually reintroduces the parent and child. The process focuses on each individual as well as the family system involved.

Safe Harbor Agreement

A provision in a court order or neutral's contract that allows a neutral to keep confidential information received from a child's therapist. The purpose is to give children a safe place to talk freely without fear that their statements will be disclosed.

Therapeutic Jurisprudence

A legal model which acknowledges that the legal process impacts the individual, recognizing its broader social context. It takes the perspective that the rules, legal procedures, and roles of the legal actors constitute a social force that either produces an emotional healing or harmful consequence. This model also regards the law as a social force that produces certain behaviors and consequences and encourages an interdisciplinary approach.

Other Professionals

Administrative Law Judge (ALJ)

An individual appointed by the Chief Administrative Law Judge. ALJs are knowledgeable in specific areas of the law and have a demonstrated knowledge of administrative procedures. These individuals conduct hearings regarding agency rule-making and hear and decide contested cases involving state agencies, commissions and boards. ALJs may mediate, arbitrate, or take other appropriate action on matters referred to the State Office of Administrative Hearings.

Child Support Magistrate

A judicial officer appointed to conduct child support hearings under the child support expedited process rules.

Child Protection Services

This system includes a number of highly-specialized units such as intake, screeners, kinship, permanency, and child services among its diverse and numerous functions.

Closure Therapist

An individual who works with both parties to help them move forward during and after the uncoupling/divorce process. The therapy is of limited duration, with the goal of establishing better communication and co-parenting.

Consensual Special Magistrate

An individual agreed to by the parties and confirmed by the court or appointed by the court to preside over pretrial and/or trial matters. The rulings and findings of this magistrate may be adopted in full or in part by the court. Findings are appealable as any other judge's order. Fees borne by the parties. Used to expedite a case or manage highly specialized issues.

Domestic Abuse Advocate

An individual who assists domestic abuse victims with preparation of petitions for protective orders. Even as non-lawyer, an advocate may attend court hearings, sit at counsel table, confer with victims, and, at the judge's discretion, address the court.

Neutral Child Specialist

A mental health professional with expertise in child development, child and adolescent psychology, family systems, and the principles of ADR. This specialist teams with parents and the other professional(s) assisting them in dissolution and post-dissolution decision-making about parenting plans. This specialist also makes recommendations but has no decision-making authority. Confidentiality is determined by the individual provider.