

## Common Terminology

### Alternative Dispute Resolution (ADR)

Any of several processes using 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 Protection Services

Child protection services has several diverse functions including highly specialized units such as intake, screeners, kinship, permanency and child services. These cases involve their own unique professional roles and processes.

### Collaborative Law

A voluntary legal approach in which attorneys represent parties but agree not to use adversarial processes to resolve disputes. 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.

### Initial Case Management Conference (ICMC)

An informal case planning conference in which the parties (and counsel if represented) meet with the court approximately 30 days after filing. The court explains the court process, identifies the issues to be resolved and schedule future activities in the case. Motions are not heard, however, the parties, counsel, if any, and the court discuss any appropriate ADR options and/or evaluations, valuations and/or appraisals that may need to be conducted. Referrals to SENEs and/or FENEs are typically made at this time.

### Parent Education Program

Statutorily mandated under Minn. Stat. § 518.157. Specific programs for parents or children vary by county.

### Parenting Plan

A document created by parents in lieu of an order for child custody and parenting time that must include: (1) a schedule of the time each parent spends with the child; (2) a designation of decision-making responsibilities regarding the child; and (3) a method of dispute resolution. It may include other issues regarding the child and substitute other terms for physical and legal custody, including designations of joint or sole custody. If alternate terms are used to designate decision-making responsibilities or allocation of residential time between the parents the plan must designate whether the parents have joint legal and/or physical custody or which parent has sole legal and/or physical custody solely for enforcement of the order where this designation is required for that enforcement and has no effect under the laws of this state, any other state, or another country that do not require this designation.

### Safe Harbor Agreement

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

## Other Professionals & Processes

### Brief Focused Assessment (BFA)

A BFA offers an alternative to comprehensive custody and parenting time evaluations. They are appropriate when family court cases present with discrete issues, limited in scope. BFAs assist the court's decision-making by providing answers to well defined, specific questions, identified by the court. BFAs can provide evaluative judgments on discrete issues and/or offer opinions or recommendations limited to the questions posed by the court, but do not offer custody recommendations because a full custody evaluation is not being completed. Typically, a BFA concludes with the submission of a written report to the court, the attorneys, or to a party directly if a party is not represented by an attorney. The report will summarize the focus of the assessment and will outline the procedures and information gathered in the process. A summary and analysis of the information may include opinions and/or recommendations related to the issues specified in the BFA. Refer to Association of Family and Conciliation Courts (AFCC) guidelines for best practices.

### Chemical Health Assessment/Substance Abuse Evaluation

A comprehensive evaluation by a licensed alcohol and drug counselor (LADC) to determine if someone has a substance abuse disorder and needs treatment, identifying the appropriate level of care.

### 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 process.

### Child Support Magistrate

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

### Closure/Decoupling 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.

### Domestic Abuse Advocate

An individual who assists victim/survivors of domestic violence with preparation of petitions for protective orders, development of safety plans, and helping survivors navigate the legal system. Even as a 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.

### Moderated Settlement Conference (MSC)

A voluntary, mediated, evaluative and non-adjudicative process designed to obtain resolution of family court matters that are ripe for trial. Discovery must be completed and the case is not appropriate for any other forms of ADR. The process offers the evaluative impressions of an experienced neutral moderator selected by the parties. The opinion of the moderator is provided to parties/counsel based on all of the information in the court file, as well as other information that may be provided to the moderator by the parties/counsel.

### Parent Coach

Typically works with a parent one-on-one with parenting, co-parenting and managing the dissolution and/or custody process. May work with both parents on parenting, communication and boundary-setting. Voluntary process as defined by parties, no immunity.

### Resist/Refuse Therapy

For many reasons, a child may resist or refuse to have contact with a parent. This is referred to as Parent-Child Contact Problems. This therapy addresses the reasons for that estranged relationship and, if appropriate, works to re-establish that relationship. The process focuses on each individual as well as the family system involved.

### Remote Expedited Temporary Relief (RETR) Program

The RETR program is a truncated, binding form of ADR intended to assist represented parties in need of temporary relief that the court is unable to provide as expeditiously as needed. This is a voluntary process and the ADR provider establishes the cost, type of submissions and video and/or telephone appearances. A temporary, non-appealable order without substantial findings would then be issued within 7 days.

### Special Master

Governed by Minn. R. Civ. Proc. 53. A court may appoint a master without party consent only to: (1) perform duties consented to by the parties; (2) hold trial proceedings and make or recommend findings of fact on issues to be decided by the court; and/or (3) address pretrial and post-trial matters that cannot be addressed effectively and timely by an available district judge. Unless the appointing order expressly directs otherwise, a master has authority to regulate all proceedings and take all appropriate measures to perform fairly and efficiently its court-ordered duties.

# Comparing Roles in Family Cases Summary Guide™

**Jim Street**

Tuft Lach Jerabek & O'Connell PLLC  
Maplewood

**Mary Madden**

Retired Referee

*Thank you to original author*

**Ellen A. Abbott**



Published by  
Minnesota Continuing Legal Education, Inc.

#### NOTICE:

This material is educational only.  
It does not constitute legal advice.

# Comparison of Roles & Processes in Family Court \*

Role	Statutory Basis & Related Rules	Duties	Party Status	Immunity & Testimony	Decision-Making Powers	Recommendation Authority	Confidentiality & Discovery	Caveats When Using the Process	When To Use	Fee Status
<b>Mediator</b>	Minn. Stat. § 518.619; Rule 114.02(c)(1)  Court may order without party consent unless a party claims domestic abuse	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 Professionals & Processes")  <b>Mandated Reporter status depends on licensure of professional</b>	No	Immunity pursuant to Minn. Stat. § 604A.32  Incompetent to testify except in limited statutory exceptions, Minn. Stat. §§ 595.02, subd. 1(m) and subd. 1a	None	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 cases with allegations of domestic abuse	Prior to formal litigation if possible; whenever agreement is desirable outcome; to narrow issues for trial	Set by mediator; must be fair and reasonable
<b>Social Early Neutral Evaluation (SENE) / Financial Early Neutral Evaluation (FENE)</b>	Rule 114.02(b)(1)	One or more neutrals (typically, a male/female team in SENEs) with experience in the subject matter of the dispute reviews information from the parties or their attorneys after the case is filed but before formal discovery is conducted. The neutral(s) may provide an evaluative opinion about the strengths and weaknesses of a claim, case or defense; and/or an opinion of settlement value after which further negotiations may occur. Estimated completion 30-60 days  <b>Mandated Reporter status depends on licensure of professional (Mandated Reporter under Hennepin Family Mediation &amp; Evaluation's policy)</b>	No	Immunity pursuant to Minn. Stat. § 604A.32  Incompetent to testify except in limited statutory exceptions, Minn. Stat. § 595.02, subd. 1(m) and subd. 1a.	None; may negotiate settlements	Yes, to parties; to court only regarding case management tools such as substance abuse evaluations	Confidential process except for agreements and summary of remaining issues. Parties may waive confidentiality and choose to use member of team for custody evaluation  Not discoverable. Information from ENE process may not be used in litigation or subpoenaed except as noted above	Typically used in cases for early neutral involvement; process may be intimidating for certain clients or if one party is not ready for separation; may not be appropriate in cases with allegations of domestic abuse; may also be used in post decree matters	When it would be beneficial for parties to have candid assessment by experienced evaluators regarding custody and parenting time or evaluators experienced in financial issues, especially spousal maintenance; 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 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
<b>Custody Evaluator</b>	Minn. Stat. § 518.167  Court may order county-provided evaluations without party consent	Investigates, reports and makes recommendations regarding custody and parenting time after considering and evaluating all factors in Minn. Stat. § 518.17; interviews child(ren) if age appropriate; home visit not required, but generally done  <b>Mandated Reporter status depends on licensure of professional</b>	No. Written report is admissible as evidence per statute	Immunity per case law if remains within statute  Testifies if requested; court's witness unless private evaluator; fees paid, if private	None; may facilitate agreements between parties	Yes, required to make recommendations based on § 518.17 best interest factors	Confidentiality defined by individual provider  Discovery of complete file, including collateral contacts, per statute	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
<b>Guardian ad litem (GAL)</b>	Minn. Stat. § 518.165; Rules 901-907  Court may appoint without party consent	Defined by statute, rules, court order and case law; mandatory or permissive; conducts independent investigation; always meets with child and does home visit unless specifically exempted by court; considers child's wishes if age appropriate; presents written reports; and advocates for child's best interest  <b>Mandated Reporter</b>	In family court only if child is made a party  Always in juvenile court	Immunity per case law if actions are within applicable statute and rules  Usually testifies; may not have substantive <i>ex parte</i> communication with the Court	None	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 or neglect; use when child's best interest is unclear	Set by court
<b>Arbitrator</b>	Rule 114.09; Chapter 572B – Uniform Arbitration Act	One or a team of arbitrators given authority to make binding or non-binding decisions on matters submitted  NOTE: Very specific rules if done pursuant to the Uniform Arbitration Act  <b>Not Mandated Reporter</b>	No	Immunity pursuant to Minn. Stat. § 604A.32  Incompetent to testify except in limited statutory exceptions, § 595.02, subd. 1a	Yes, unless specific agreement to the contrary	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; increasing and evolving use in family law across the country	Set by Arbitrator; must be fair and reasonable
<b>Consensual Special Magistrate (CSM)</b>	Minn. Stat. § 484.74; Rule 114.02(a)(2)	A neutral who manages the case and decides issues after the parties have presented their positions in a similar matter as a civil lawsuit presented to the court	No	Immunity pursuant to Minn. Stat. § 604A.32  Incompetent to testify except in limited statutory exceptions, § 595.02, subd. 1a	Yes	No	Non-confidential; CSM creates record as a court would which is discoverable	Trial Court countersigns, but does not change the CSM decision; decision is appealable to the Court of Appeals; parties bear the costs	When trial dates are not immediately available, addressing complex marital estates, sensitive circumstances and complicated legal issues	Set by CSM
<b>Parenting Time Expeditor (PTE)</b>	Minn. Stat. § 518.1751  Court may order without party consent unless a party claims domestic abuse	Appointed by agreement of the parties and court order; uses med-arb process to enforce, interpret, clarify and address parenting time issues not specifically addressed by existing order and determine if existing order is violated; no home visit required; may interview child if court-ordered or with party agreement  <b>Mandated Reporter</b>	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 and interprets prior orders; decisions binding subject to 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 equitable payment split between parties
<b>Parenting Consultant (PC) (Often "Parenting Coordinator" in other states)</b>	Appointment is generally pursuant to Rule 114.02(d)(2)  Court may NOT order without party consent	Duties defined by agreement of the parties; appointed by Stipulation and Order; generally, educates parties regarding child development issues and communication; facilitates and makes decisions regarding any parenting issue, including parenting time schedules, therapy, coaching and legal custody issues  <b>Mandated Reporter status depends on licensure of professional</b>	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 contract and court order – best use of PC decisions are that they are be defined to be binding 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
<b>Therapist</b>	Professionally regulated  Court may order without party consent	Provides therapy to individual parent, child or family group  <b>Mandated Reporter</b>	No	No immunity  Must testify if called, unless otherwise provided in contract or court order	None	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 and/or chemical dependency issues; emotional difficulties amenable to treatment; have issues that are not necessarily connected to, but are interfering with or exacerbated by the legal process; and/or reunification of estranged parent and child	Set by therapist

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