

Glossary of Professionals Helpful in Assisting Divorcing Clients

Arbitrator

A Domestic Relations arbitrator is a neutral third party who can make a final and binding decision on property issues in divorce; and a binding decision on other issues, subject to change if there is a change of circumstances. In Michigan the arbitrator must be an attorney, under a law passed in 2001. Arbitrators are only appointed by agreement of the parties.

Child Custody Evaluator

A child custody evaluator is a mental health professional who evaluates a family to determine the best interests of the child or children in the context of divorce. Such a professional generally functions under an explicit court order as a neutral advisor to the court. Customarily, a custody evaluation consists of extensive evaluation of each parent, often including psychological testing; observations of each parent with the child or children; and contacts with collateral sources who can comment on the family's functioning. In Michigan, the evaluator often speaks specifically to the Best Interests standards provided by the law, and generally – but not always - also makes recommendations to the court that can include a parenting plan for the family. Child custody evaluators usually produce a detailed report that is often used to settle the case. Alternatively, the evaluator may testify at a hearing or trial to resolve the custody issues. Child custody evaluations are generally reserved for families at the highest levels of conflict, with disputes involving issues such as domestic violence, child abuse and neglect, substance abuse, and serious mental illness of a parent or child.

Child Specialist

The role of child specialist was originally developed as part of the team assisting divorcing parents within the collaborative law model. The child specialist is a mental health professional with intensive training in child development, child psychopathology, family systems, and divorce related topics. The child specialist functions as a neutral third party to inform the parents of the children's interests, concerns, and wishes. The child specialist generally meets with the children and may briefly evaluate them, observe them with each parent and/or speak with collateral sources. The child specialist then reports back to the parents and/or to the collaborative law team. The child specialist can work with the parents to develop a parenting plan. A child specialist may also be used in other forms of dispute resolution, for instance attorney-assisted settlement and mediation.

Child Therapist

Child therapists often operate at a little distance from the divorce process, but are important members of the team that assists the family. Child therapists can evaluate and treat children of divorce, and educate their parents about the children's problems, including those that are divorce-related. Child therapists help children own and name their feelings about divorce and express them in age appropriate ways. In high conflict divorce situations, child therapists can give children a "safe haven" from the tumult of litigation. Attorneys should think very carefully whether the benefits of including a child therapist in the litigation outweigh the almost certain damage to the therapeutic relationship with the child and the parents which will result. When asked to become part of divorce litigation, child therapists should weigh the costs and benefits to the family of their participation and perhaps secure legal consultation about the best course to take.

Collaborative Attorney

A collaborative attorney is an attorney who works with a divorcing client exclusively towards settlement. To this end, collaborative attorneys contract with their clients to disqualify themselves from a case if it goes to court. The attorney's goal is to solve problems jointly between the divorcing spouses, to develop effective post-divorce family relationships, and to prevent any court battles. Each party in a collaborative divorce has a collaborative attorney. Client and attorney may invite allied professionals to join the collaborative team, including divorce coaches, a child specialist, a mediator, and/or a financial specialist. Some or all of these allied professionals may be used, according to the requirements of the individual case.

Divorce Coach

A divorce coach is a mental health professional who is knowledgeable about family systems and about issues of separation and divorce. A divorce coach generally works with one parent to facilitate the resolution of conflict and the development of a good post-divorce relationship. Techniques include therapeutic interventions of various kinds, education, parent guidance, and crafting parenting plans. In general, divorce coaching is a brief, goal-oriented intervention. Like the role of child specialist, the role of divorce coach originated within collaborative law, but can be used in conjunction with other approaches to settlement, for instance mediation.

Financial Specialist

The financial specialist works in a neutral capacity in a collaborative or mediation case. The financial specialist is charged with providing education and empowerment to clients so that they are able to make informed and reasonable

financial choices as they face divorce. The financial specialist reviews and organizes all assets and incomes, and assists in developing viable financial options for both clients. The financial specialist can help the parties minimize their taxes and develop sound ways to meet any debt obligations.

Mediator

Mediators can be attorneys or mental health professionals. Mediators should generally have post-graduate training in order to practice effectively. All mediators work as neutrals in assisting the family. Mediators may work at two or more stages of the divorce process.

Early Stage Mediators assist the family early in the divorce process, sometimes even before a divorce is filed. Discovery is usually done during the mediation process, and the parties usually build a comprehensive agreement covering all the issues in the divorce. The parties often mediate without the attorneys present in the room, but consult attorneys between sessions. Attorneys are brought into the mediation sessions if needed. The mediator should be in touch with the attorneys if possible, writing memos and calling between sessions. There may be 2-5 two-hour sessions.

Late Stage Mediators work towards the end of the divorce process prior to hearing or trial. At this time, mediation is used to resolve impasses and issues the lawyers have not been able to resolve. This process almost always involves attorneys and clients in the mediation.

Mediators can use either a facilitative or an evaluative approach, depending on the needs of the family.

An Evaluative Mediator serves as a neutral third party who assists the parties in coming to an agreement and who may give his or her opinion of what might happen in court, or make a verbal or written recommendation as to the outcome of the case. [Available by agreement under Court Rule 3.216 in Michigan.] Evaluative mediation is generally used if facilitative mediation is unsuccessful or for some reason contra-indicated, often in late-stage divorce when the parties are unable to reach an agreement quickly.

A Facilitative Mediator serves as a neutral third party who facilitates a negotiation process between the parties. The mediator assists the parties in reaching a mutually satisfactory agreement, but does not make a decision or recommendation as to the content of the agreement, or tell the parties what the court would do in their situation, even if the parties do not reach agreement. Facilitative mediation is generally the initial approach used by a mediator with a divorcing family.

Parenting Coordinator (AKA Parenting Facilitator)

Parenting Coordination, also known as Parenting Facilitation, is an Alternate Dispute Resolution strategy that assists the families of high conflict divorce in implementing and monitoring parenting plans. Parenting coordination is generally defined as a process whereby a neutral professional, who may be a mental health professional or an attorney, helps parents or legal guardians to implement their parenting plans by facilitating the resolution of disputes between them. The parenting coordinator may provide education, make recommendations, and, with the prior approval of the parties and the Court, make decisions within the scope of the order of appointment.

In most states, parenting coordinators, whether attorneys or mental health professionals, may be empowered to make binding decisions on circumscribed family issues, after mediation processes have broken down. In Michigan, attorneys may do so, but mental health professionals are prohibited from arbitrating disputes of any kind. Nonetheless, orders are often written which allow mental health professionals to report their recommendations to the court, or, less frequently, to attorneys acting as arbitrators in lieu of the Court. The parties often then have a reasonable expectation that the mental health professional's view will be given considerable weight by the judge or arbitrator.

Nationally, mental health professionals are often seen as useful to families and the Court as parenting coordinators because of their extensive training in the psychology of children and families and in the psychodynamics and psychopathology that often contribute to high conflict divorce. Parenting coordinators who are mental health professionals are able to speak to parents in ways that access their worldview and problems; to communicate with children in developmentally appropriate ways and access their competency, opinions, and feelings; and to decide how to use the input of children.

Just as it is important to decide what a mental health professional functioning as a parenting coordinator can do, it is equally important to decide what he or she cannot do. Parenting coordinators do not make major decisions, such as decisions about significant changes in parenting time or substantial changes to existing court orders. Orders for parenting coordination should only be entered by explicit agreement of the parties; the parenting coordinator operates under the authority of the Court.