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# PROVIDING ADVOCACY IN FAMILY COURT

BETH ASSELL, STAFF ATTORNEY & NIKKI KELLY, ADVOCACY SUPPORT PROGRAM MANAGER



**STANDPOINT**  
Attorneys & advocates against domestic & sexual violence

# WHAT IS STANDPOINT?

- Formerly known as Battered Women's Legal Advocacy Project
- 5 Attorneys: immigration, criminal/civil, family law, housing, employment, campus
- 7 Advocates: safety planning, resource referral, crisis intervention, legal advocacy, Title IX, support for advocacy organizations
- Statewide services that pertain to domestic and sexual assault
- Free, regardless of income
- No intake required

# TRAINING OBJECTIVES

1. Increase recognition that abuse oftentimes does not end post-separation, especially when the victim and abuser have children, and that victims can benefit from advocacy through all facets of the court system.
2. Develop familiarity with the family court system using a sample custody action which demonstrates the steps a client may encounter as they proceed through their court case.
3. Identify the ways that advocates may empower to support their clients through family court while advocating for their safety and the best interests of their children.



# FAMILY COURT

## GLOSSARY OF TERMS

**Complaint** - a document that describes what the plaintiff wants (money or some other type of relief) and why they believe they are entitled to that relief.

**FENE** - Financial Early Neutral Evaluation (FENE)

**Evidentiary Hearing**- Trial setting where information and documents are presented to the presiding officer (judge, magistrate, etc.) to help them make the desired decision.

**Exhibits** – Evidence to prove the case; includes testimony, documents, photographs, text messages, email, etc.

**Jurisdiction**- The court that can decide the case.

**Motion** – A written request to the judge asking them to decide certain legal matters

**OP** – Opposing Party

**Petition** - A civil pleading filed to initiate a matter in Court, setting forth the alleged grounds for the Court to take jurisdiction of the case and the relief requested.

**Petitioner** – The person who filed the legal action

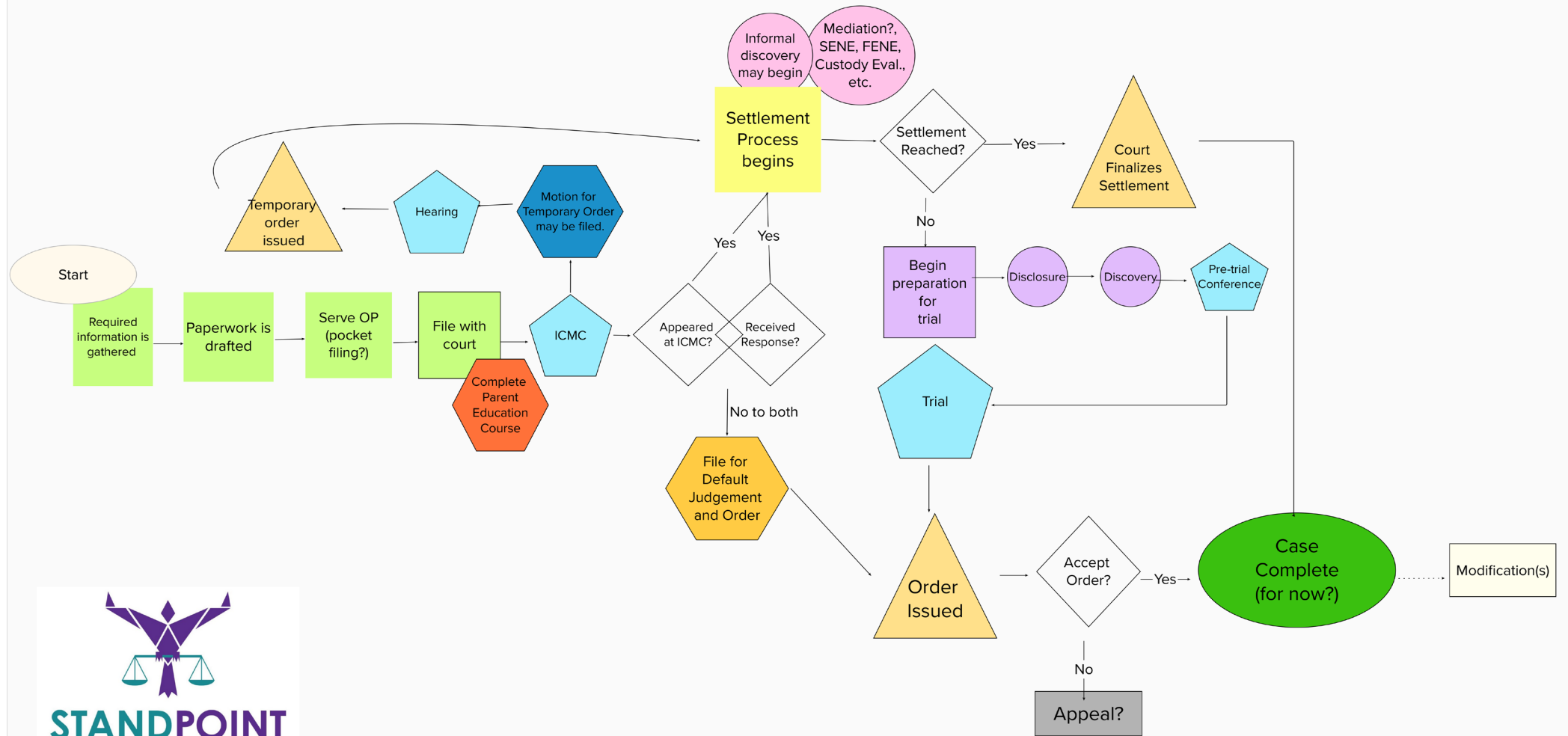
**Respondent** – The OP; The individual that may respond to the legal action

**SENE** - Social Early Neutral Evaluation (SENE)

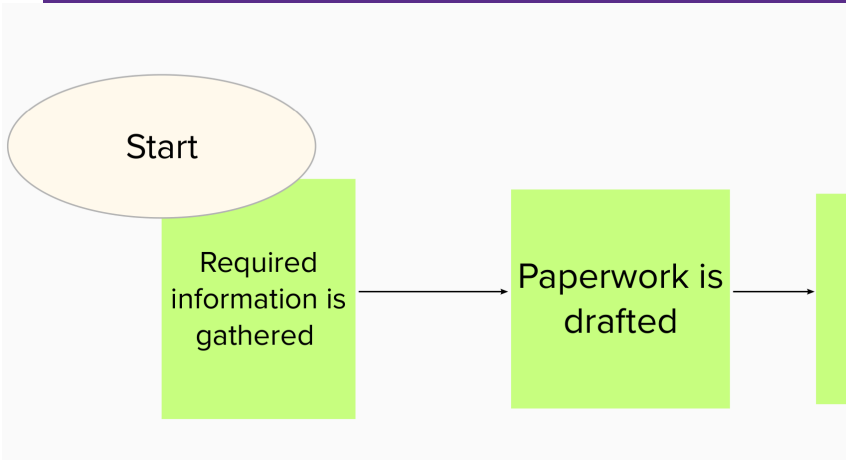
**Summons** - A legal document notifying the named person that a lawsuit or legal cause has been filed against or involves them and notifying them of any dates set for hearings and deadlines for responding to the complaint or petition. The purpose of a summons is to notify the persons concerned.

**Witnesses**-The people who speak in court for or against a party's case.

# Minnesota Divorce and Custody Case Progression



# THE JOURNEY BEGINS



- Minnesota is a “No Fault Divorce” state.
- Required Information\*
  - **\*It’s okay if the client doesn’t have some/all of this.**
  - SSNs, Financial statements, property records, copies of bills, **relevant** reports, etc.
  - This is one reason why you encourage collection of “important documents” during safety planning.
- The Paperwork
  - Varies according to the legal action, but will generally include
    1. Notice of action
    2. The action
    3. Support for the requested action

# What to File

## Summons and Petition/Summons and Complaint: starts an action

- Dissolution
- Establish Paternity
- Establish Custody and Parenting Time

## What to file in Response

- Answer and Counter Petition
- Response to [legal action]



## Key Notes About Custody

- A mother who was not married at the time of the child's birth is still the sole physical and legal custodian until a court orders otherwise.
- However, rights after paternity is established (ROP)
  - Right to pay child support
  - Right to file for custody and parenting time without establishing paternity
  - Right to seek custody or parenting time in an OFP (*Beardsley*)



**Note: Having father's name of birth certificate alone does not establish "legal" parentage.**

## A note about legal separation

- You do not have to get a legal separation if you want to live apart from your spouse!
- You do not have to get a legal separation prior to filing for divorce in the state of Minnesota!
- Legal separations are for people who do not want to get a divorce, but need a legal paper to settle...
  - Custody
  - Child Support
  - Property questions
    - If couple remains married, division of property is not final

**TO BE CONTINUED...**

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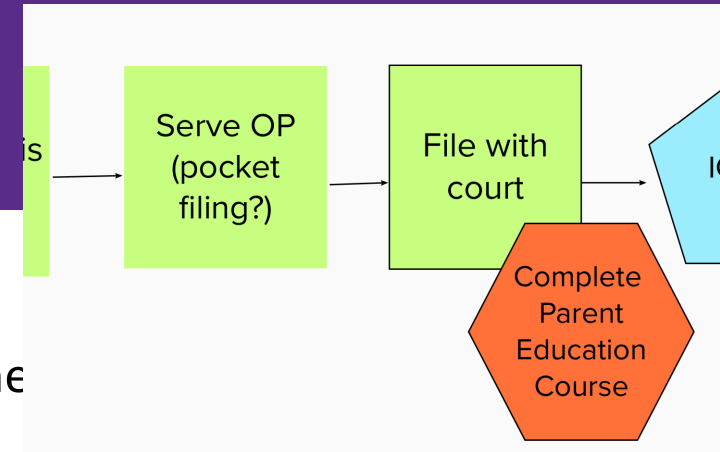
## ADVOCACY OPPORTUNITIES

- Assist their collection of required information
  - Provide safe internet access
  - Provide storage
  - Help them identify ways to request and obtain information.
- Provide education regarding their options
  - Joint custody, every-other-weekend...  
They're not the only options!
- Assist them with drafting pro se forms
- Provide emotional support and personal advocacy as needed.



# SERVICE

- Summons and Petition/Summons and Complaint
  - Service in hand by someone other than the petitioner
    - Process server, sheriff, good friend
  - Waiver of Service
- Everything else can be served by mail
  - This includes responses to divorce and custody actions and motions
  - Mail service can be completed by the party themselves
  - Only exclusion is Motion for Contempt (must be served in hand)
- E-service may be an option later in the case.
- Service by Alternate Means if personal service is not possible
- Pocket filings--Do the legal documents have a court file number?

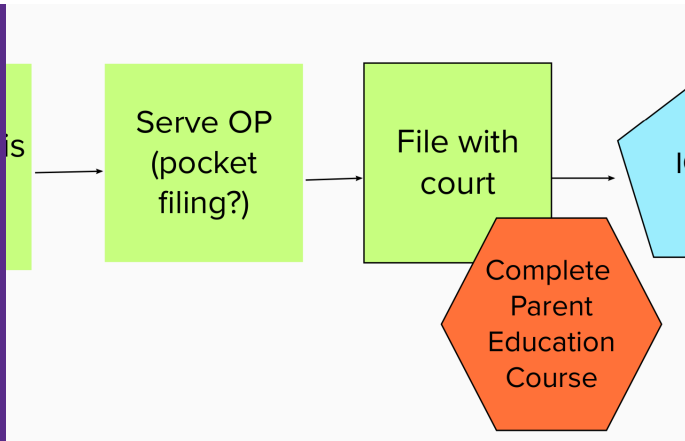




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## FILING/RESPONSE TIMES

- Answer to a Summons and Petition for Divorce: **30 days**
- Answer to a Summons and Petition for Custody: **21 days**
- Initial Motion: **Due 21 days before hearing**
- Responsive motion: **7 days before hearing (14 days if new issues raised)**
- If service by mail, **add 3 days** to prescribed period



## WHERE TO FILE (JURISDICTION AND VENUE)

- Must have lived in Minnesota for 6 months
  - Exceptions
    - OFPs
    - Emergency jurisdiction
- Which County Can I File In? (Venue)
  - Venue: Individual's desire to make a permanent home
  - Custody: filed where child lives or may be found
  - Divorce: filed in residence of either spouse
- Must file a certificate of service along with other required (original) paperwork.

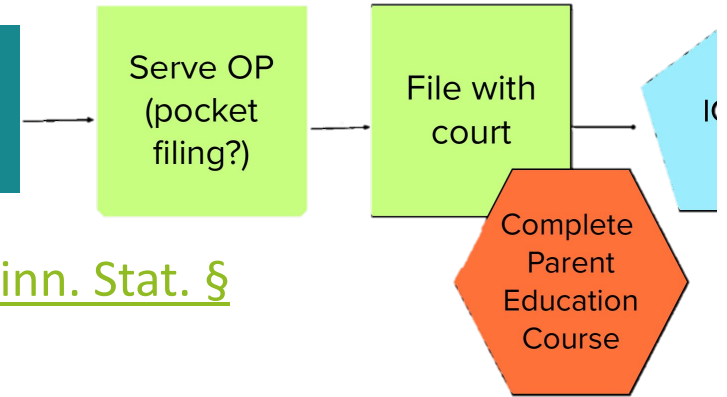
# Filing Fees

	Hennepin	Ramsey
Legal Separation	\$347	\$350
Dissolution	\$377	\$380
Paternity	\$297	\$300
Motion	\$75	\$75

Website to determine county specific fees: <http://www.mncourts.gov/Help-Topics/Court-Fees/District-Court-Fees.aspx?cookieCheck=true> -



# Parent Education Course



- When parents dispute custody or parenting time (visitation) in court, [Minn. Stat. § 518.157](#) requires that the parents attend a parenting education class.
- Courses are offered in-person and online and range from 4-8 hours in length.
- Children may be required to participate too.

- Must be a court approved course.
  - Approved courses vary by district and may be found here: <https://mncourts.gov/Help-Topics/Parent-Education.aspx>
- Must begin course within **30 days** of the first filing in the case and prior to an Initial Case Management Conference, if one is scheduled. File certificate of completion with the court once received.



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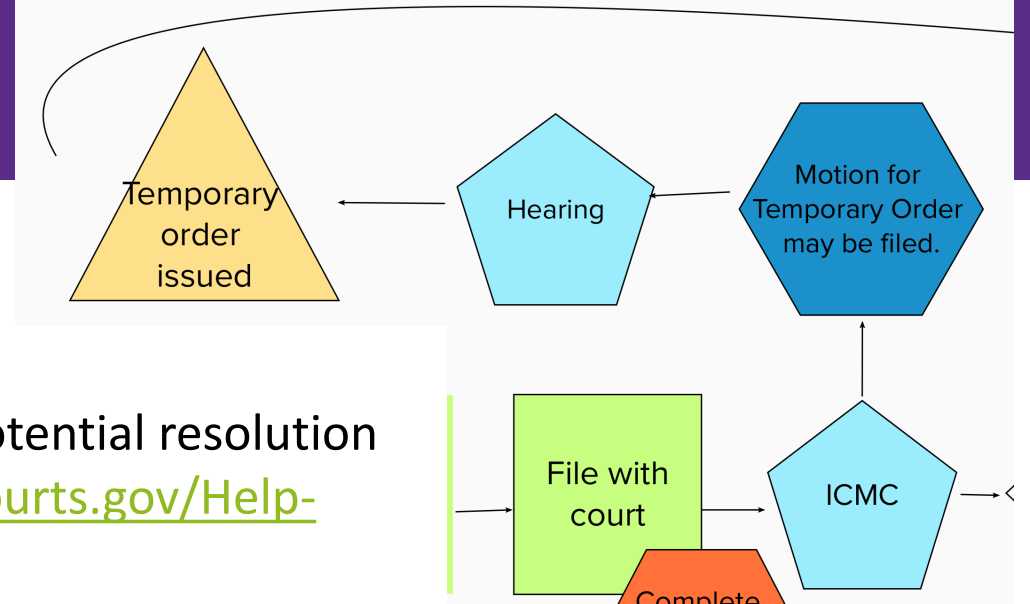
## ADVOCACY

## OPPORTUNITIES

- If petitioner, assist with service by helping them to identify candidates to complete service – NOT YOU!
- If Respondent, provide education regarding their options
  - Joint custody, every-other-weekend... They're not the only options!
- Assist them with drafting pro se forms
- Provide space and tools to complete the parent education course.
- Provide emotional support, resources, referrals, and personal advocacy as needed.



# ICMC AND TEMPORARY ORDERS



- Initial Case Management Conference (ICMC)
  - Issue identification, determination of case needs, potential resolution
  - County case management types: <https://www.mncourts.gov/Help-Topics/ENE-ECM.aspx>
- Temporary Orders
  - Address multiple items including
    - Custody and parenting time regarding the minor children
    - Child support
    - Division of property
    - Division of debts
    - Spousal Maintenance/Alimony
  - Can be changed by final order.

# MOTIONS

Motion: a request to the court to order or rule on an issue

- Modify Custody/Establish Temporary Custody
- Modify Parenting Time/Establish Temporary Parenting Time
- Modify Child Support/Establish Temporary Child Support
- Award Temporary Occupancy of Home

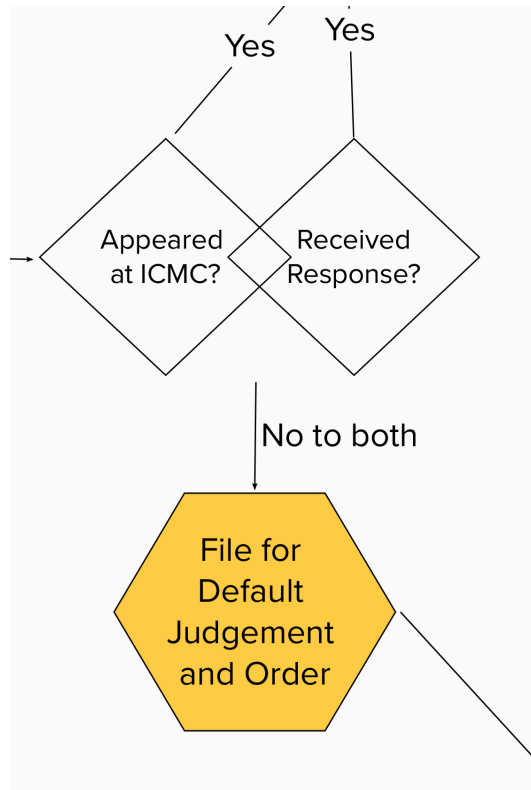
## Motion Categories

- Ex parte/Emergency
- Temporary
- Regular

### Note:

- ❖ Every motion **MUST** include an affidavit
- ❖ A motion asks the court to do something
- ❖ An affidavit tells the court why

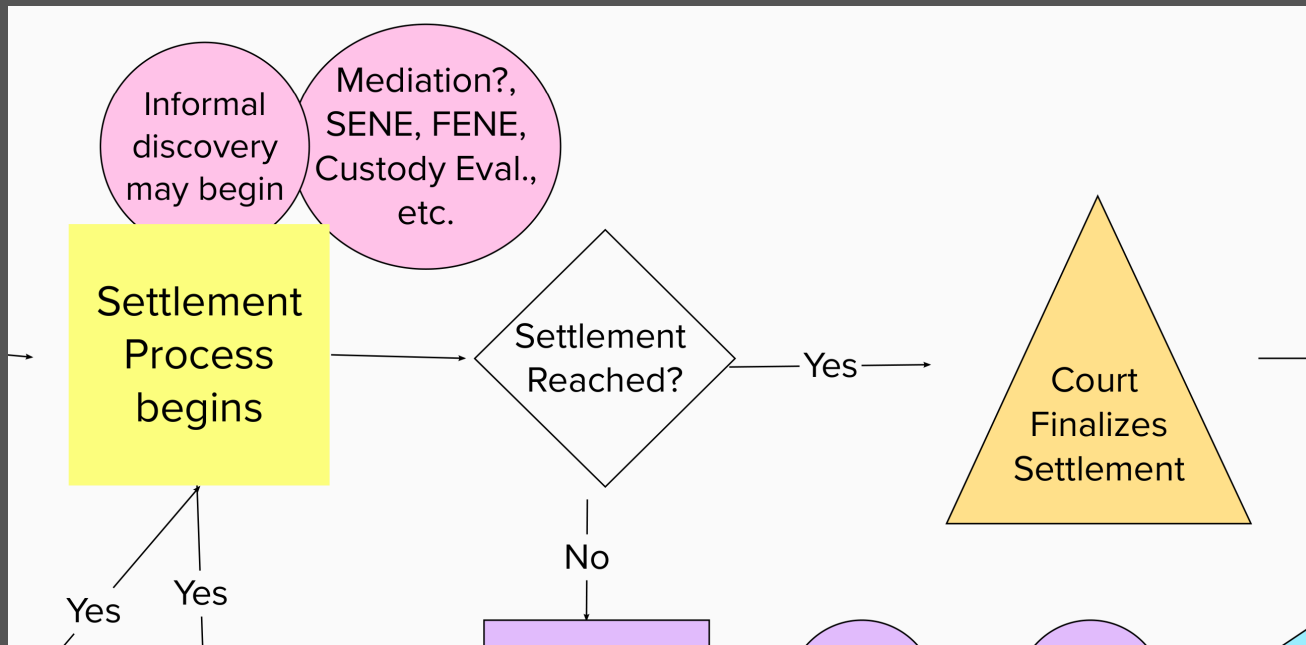
# DEFAULT



- Filed if there has not been a response from the OP.
- Requires a proposed order and default hearing.

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# SETTLEMENT OPTIONS



# ANCILLARY FAMILY COURT PROFESSIONALS

- Appointed when custody and/or parenting time issues.
- Are social workers, psychologists, attorneys or lay people.
- Obtains information about both parents.
- Provides recommendations to the court.
- May have limited training regarding domestic abuse.

**Important: Family court actors are NOT FRIENDS OR ADVOCATES.**

# ANCILLARY FAMILY COURT PROFESSIONALS

- Guardian *ad Litem* (GAL)
- Custody Evaluator (CE) or Investigator
- Mediator
- Parenting Time Expeditor (PTE)
- Parenting Consultant (PC)
- Parenting Coach (PC)
- Therapist



# ANCILLARY FAMILY COURT PROFESSIONALS – GUARDIAN AD LITEM

## Role

- Conduct an independent investigation
- **Advocate for the child's best interests**
- Maintain the confidentiality of information
- Monitor the child's best interests
- Present written reports

## Right to

- Access to the child
- Access to all information relevant to the child's and family's situation
- Given copies of all pleadings, documents, and reports by the party which served or submitted them
- Notified of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the case
- Participate in all proceedings

## Limits

- **Cannot be**
  - Custody evaluator
  - Parenting time evaluator
  - Mediator
  - Arbitrator
  - Parenting Time Expeditor
  - Substitute decision-maker
  - Evaluator charged with conducting a home study
  - **Attorney for the child**
- Must report child abuse and deprivation of parental rights
- Cannot talk to the judge without all attorneys present.

# ANCILLARY FAMILY COURT PROFESSIONALS – CUSTODY EVALUATOR

## Role

- Conduct an independent investigation to assess the child's best interests
- Present written reports
- Follows Minn. Stat. 518.167

## Right to

- Access to the child
- Access to all information relevant to the child's and family's situation
- Given copies of all pleadings, documents, and reports by the party which served or submitted them
- Notified of all court hearings, administrative reviews, staffings, investigations, dispositions, and other proceedings concerning the case
- Participate in all proceedings

## Limits

- **Cannot be**
  - Guardian ad Litem
  - Parenting time evaluator
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- Must report child abuse and deprivation of parental rights

# ANCILLARY FAMILY COURT PROFESSIONALS – THE ALTERNATIVE DISPUTE RESOLUTION (ADR) TRIO (SUMMARY)

## Mediator

- Tries to help parties resolve specific case issues.
- Cannot issue binding orders.

## Parenting Time Expeditor (PTE)

- Interprets and clarifies a custody or parenting order.
- Appointed via court order (with or without both party's consent) and limited by Minn. Stat. 518.1751.
  - Duration of appointment varies.
- Can issue binding decisions and sanctions as allowed by statute.
- Has access to the child and information.

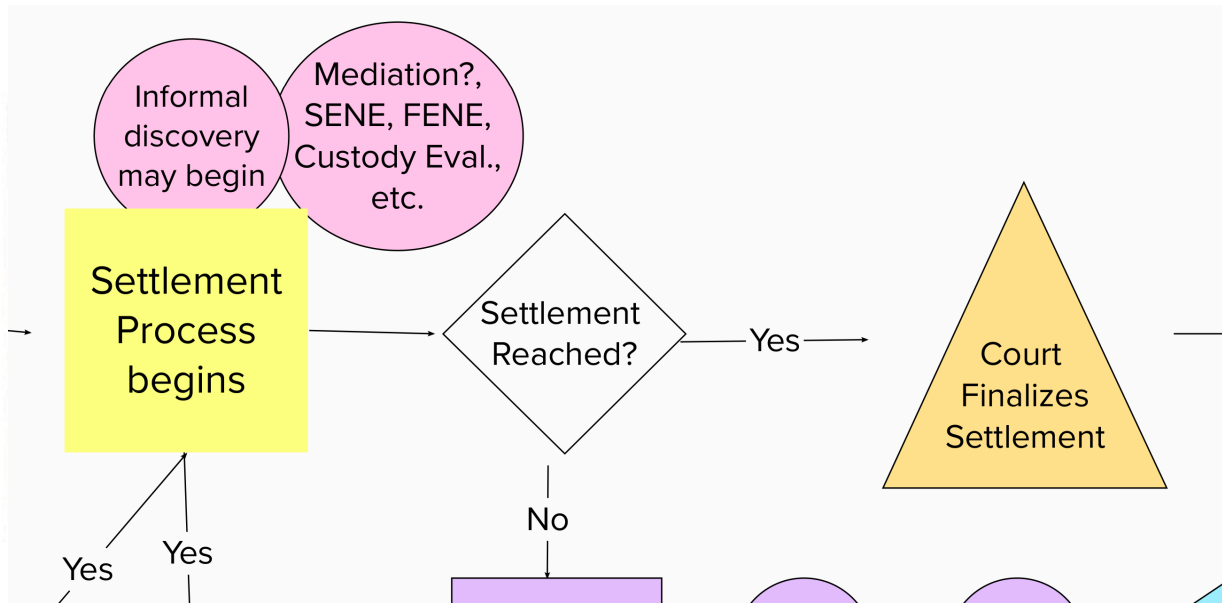
## Parenting Consultant (PC)

- Typically engaged after a court order is issued to address ongoing custody and parenting time disputes.
- Appointed via agreement of parties that is placed into court order (aka a "stipulation") and a contract with the PC.
  - NOT statutorily governed.
  - Duration of appointment varies.
- Can issue binding decisions and sanctions.
- Has access to the child and information.

# WORKING WITH ANCILLARY FAMILY COURT PROFESSIONALS

1. Know what the client wants for custody and parenting time
2. Teach the client to
  - a. explain why this is best for the kids
  - b. Connect everything to the kids
  - c. Think about the client and the other parent's strengths and weaknesses as a parent
  - d. Anticipate the other parent's points and address them
  - e. Expect that the other parent tapes all telephone calls with client and/or the kids
3. Assume the evaluator knows nothing
4. Help gather supporting information
5. Help identify people who can verify what the client says or have additional important information
6. Assist them to get copies of all mental health records
  - a. And encourage them to follow all recommendations of chosen mental health professionals
7. Remind them to
  - a. Treat the evaluator with courtesy
  - b. Return phone calls
  - c. Don't miss appointments
8. Explain that they can ask the evaluator what to expect prior to a home visit
9. Encourage them to keep a journal (Document)
10. If the client becomes upset during a meeting or telephone call, ask to take a break

# SETTLEMENT OPTIONS - MEDIATION



- **MN 518.619, subd. 2.** If the court determines that there is probable cause that one of the parties, or a child of a party, has been physically or sexually abused by the other party, the court shall not require or refer the parties to mediation or any other process that requires parties to meet and confer without counsel, if any, present.

# SETTLEMENT OPTIONS – FENE, SENE

## **ENE** *Early Neutral Evaluation*

An evaluative process

A forum in which attorneys present the core of the dispute to a neutral evaluator in the presence of the parties. This occurs after the case is filed but before discovery is conducted. The neutral then gives an assessment of the strengths and weaknesses of the case. If settlement does not result, the neutral helps narrow the dispute and suggests guidelines for managing discovery.

## **Mediation**

A facilitative process.

A forum in which a neutral third party facilitates communication between parties to promote settlement. A mediator may not impose his or her own judgment on the issues for that of the parties.

ADR Roster: <https://adrroster.courts.state.mn.us/>  
[Minnesota Judicial Branch - ENE-ECM \(mncourts.gov\)](https://mncourts.gov)

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## ADVOCACY OPPORTUNITIES

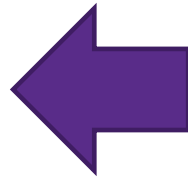
- Assist them with drafting notes and statements.
- Provide emotional support, resources, referrals, and personal advocacy as needed.



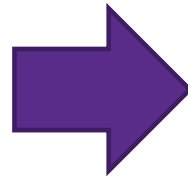
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## ADVOCACY OPPORTUNITIES – CONNECTING IT TO THE KIDS

- Chris always puts me down.



OR



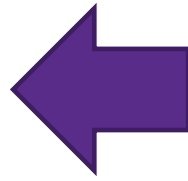
- Every day when Chris came home from work Chris shouted at me, “You’re too dumb to put dinner on the table on time. I don’t know why I put up with you.” The twins were there most of the time. During the last two months they’ve started calling me “dumb.”



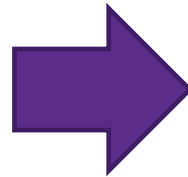
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## ADVOCACY OPPORTUNITIES – CONNECTING IT TO THE KIDS

- Pat drank all weekend.



OR

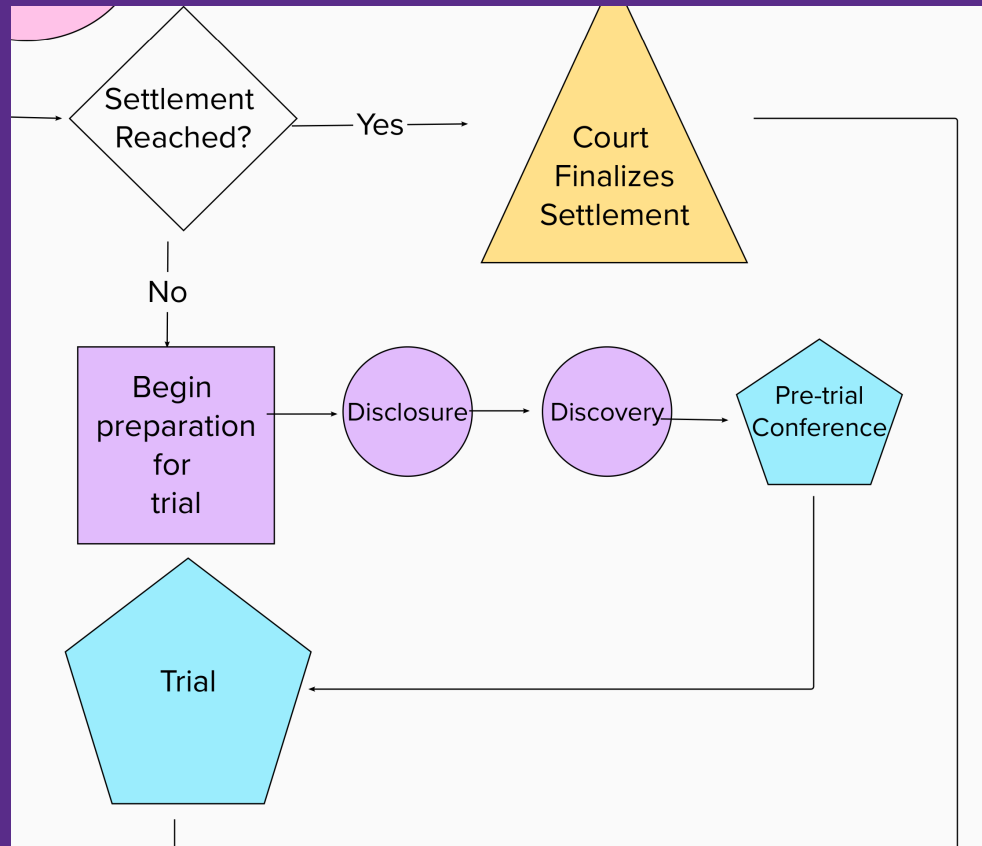


- Pat drank two cases of beer every weekend. Pat was too out of it to spend much time with the kids. Sometimes they asked Pat to take them to the park, but after awhile they stopped bothering to ask.

ADVOCACY  
OPPORTUNITIES –  
HELP YOUR CLIENT  
ANTICIPATE THE  
OTHER PARENT’S  
POINTS AND  
ADDRESS THEM

**Example 1:** I think that Shannon might tell the evaluator I am crazy because I take anti-psychotic drugs. I will tell the evaluator I take perphenazine to help me think straight. Since I started taking it one year ago, I cope much better. My psychiatrist has reduced my dose to the minimum possible and plans to end it completely after the stress of this divorce case is over.

**Example 2:** My suicide attempt last year actually turned my life around. I started going to a support group for domestic violence victims when I got out of the hospital. I left my partner after I realized the kids and I didn't have to live in constant fear he would actually shoot the pistol he pointed at us. Our lives are now peaceful and calm.



## TRIAL PREPARATION & TRIAL

- Trial Preparation can include both formal and informal discovery.
- Parties may attend court to affirm the issues require judicial intervention.
- Trial consists of witnesses and evidence relevant to the contested issues.

**PREVIOUSLY...**

Custody &  
Parenting Time

# BEST INTEREST OF THE CHILD FACTORS

MINN. STAT. § 518.17, SUBD. 1(A)

- (1) A child's physical, emotional, cultural, spiritual, and other needs, and the effect of the proposed arrangements on the child's **needs and development**;
- (2) any **special** medical, mental health, or educational **needs** that the child may have that may require special parenting arrangements or access to recommended services;
- (3) the **reasonable preference of the child**, if the court deems the child to be of sufficient ability, age, and maturity to express an independent, reliable preference;
- (4) **whether domestic abuse, as defined in section 518B.01, has occurred** in the parents' or either parent's household or relationship; the nature and context of the domestic abuse; and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs;

## BIOC, continued



- (5) any physical, mental, or chemical health **issue of a parent** that affects the child's safety or developmental needs;
- (6) the **history and nature** of each parent's participation in providing care for the child;
- (7) the **willingness and ability** of each parent to provide ongoing care for the child; to meet the child's ongoing developmental, emotional, spiritual, and cultural needs; and to maintain consistency and follow through with parenting time;
- (8) the **effect on** the child's **well-being and development** of changes to home, school, and community;
- (9) the **effect** of the proposed arrangements **on the ongoing relationships** between the child and each parent, siblings, and other significant persons in the child's life;

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## BIOC, continued, again

- (10) the **benefits** of the child in maximizing parenting time with both parents and the **detriment** to the child in limiting parenting time with either parent;
- (11) except in cases in which domestic abuse as described in clause (4) has occurred, the disposition of each parent to **support the child's relationship with the other parent** and to encourage and permit frequent and continuing contact between the child and the other parent; and
- (12) the **willingness and ability of parents to cooperate** in the rearing of their child; to maximize sharing information and minimize exposure of the child to parental conflict; and to utilize methods for resolving dispute regarding any major decision concerning the life of the child.



# Application of BIOC Factors, continued

Minn. Stat. § 518.17, subd. 1(b)

Must make detailed findings on each factor

May not use one factor to the exclusion of all others

Shall consider that the factors may be interrelated

Shall consider BIOC to promote the child's health growth and development through safe, stable, nurturing relationships between a child and both parents



# Application of BIOC Factors, continued

Minn. Stat. § 518.17, subd. 1(b)

Shall consider both parents as having the capacity to develop and sustain nurturing relationships with their children unless there are substantial reasons to believe otherwise

- Many ways that parents can respond to a child's needs with sensitivity and provide the child love and guidance, and these may differ between parents and among cultures

Shall consider evidence of a violation of section 609.507 (false allegation of child abuse) in determining BIOC

No presumption for or against joint physical custody, except:

- Shall use a rebuttable presumption that joint legal custody or joint physical custody is not BIOC if domestic abuse has occurred between the parents. In determining whether the presumption is rebutted, the court shall consider the nature and context of the domestic abuse and the implications of the domestic abuse for parenting and for the child's safety, well-being, and developmental needs.
- Shall use a rebuttable presumption, joint legal custody is BIOC

# Application of BIOC Factors, continued once more

Minn. Stat. § 518.17, subd. 1(b)

Shall not consider conduct of a parent that does not affect the parent's relationship with the child

Disability alone of the proposed custodian or the child shall not be determinative of the custody of the child

Disagreement alone over whether to grant sole or joint custody does not constitute an inability of parent to cooperate

Joint physical custody does not require an absolutely equal division of time

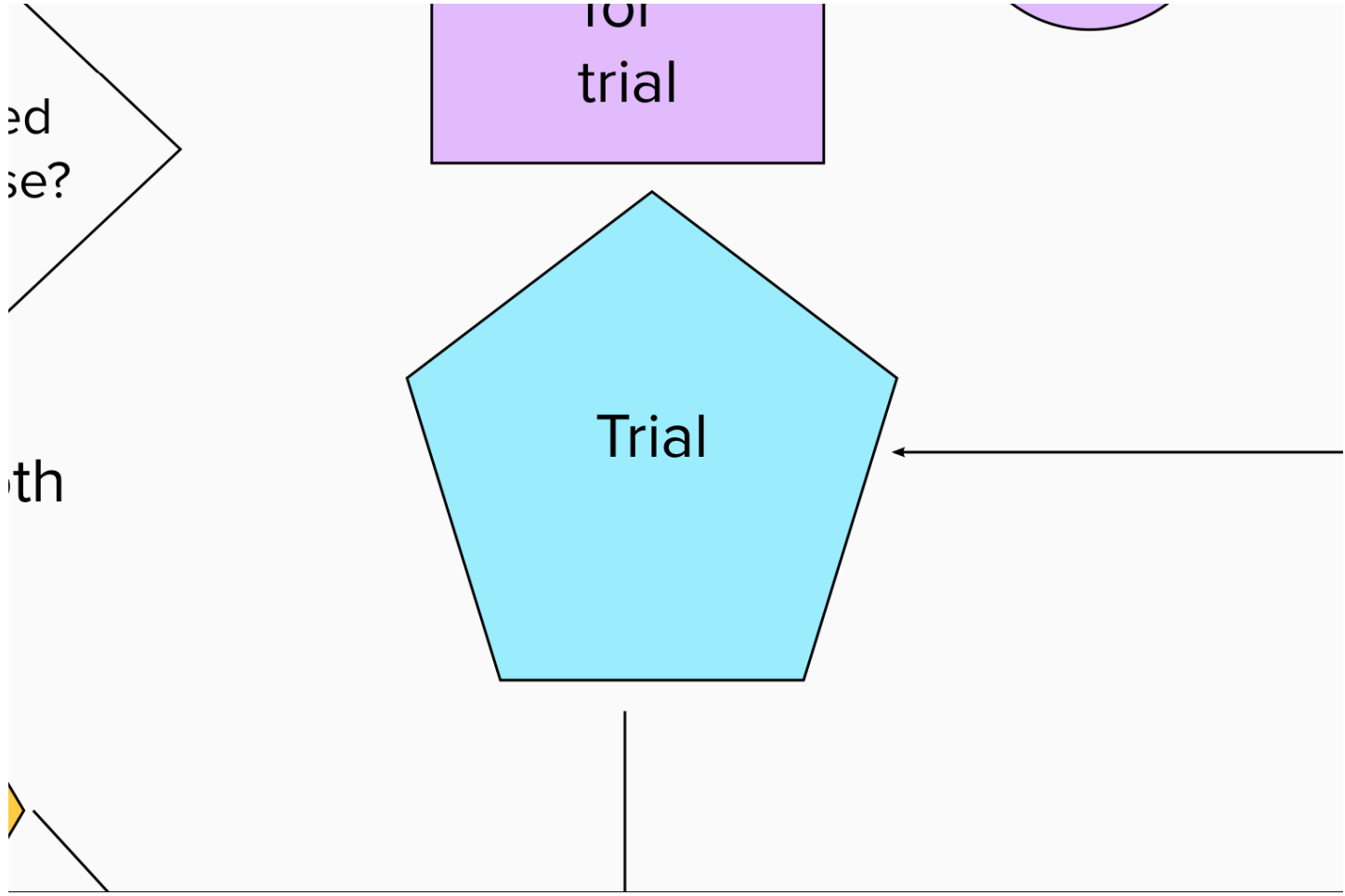
May not consider only a parent's past deployment or possible future deployment in determining BIOC, Minn. Stat. § 518.17, subd. 1(c)

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## ADVOCACY OPPORTUNITIES

- Assist them with drafting BIOC responses.
- Provide emotional support, resources, referrals, and personal advocacy as needed.





# THE TRIAL

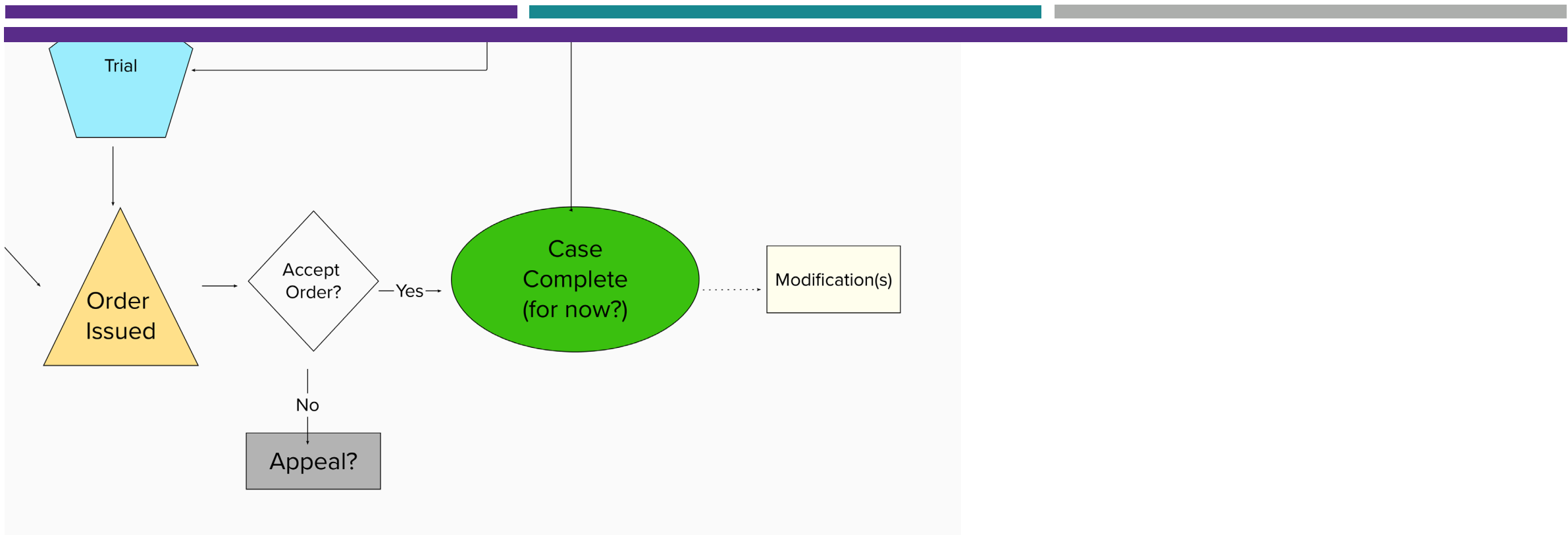
# THE TRIAL

- Trial order provides key instructions for preparation
  - Includes information about when/how to submit exhibits, witnesses, etc.
- Unlikely to receive a decision the day of the trial – taken under advisement.
- Once order is received, READ IT!

## SOME CHILD SUPPORT NOTES

- Both parents' gross income is considered in the calculation
  - Income may be imputed or deferred.
- Offset for parenting time for the obligor
- [Child Support Calculator](#)
- "Title IV-D" cases
  - Public Assistance
- County provides support enforcement

**An order does not guarantee compliance!**



# AFTER THE ORDER

# MODIFICATION

## MINN. STAT. § 518.18

- Custody and Parenting Time Orders
  - One year after decree; or
  - Two years after last request
    - Both parties agree;
    - Integration;
    - Endangerment;
    - Denial to move; or
    - Substantial change in circumstances
  - No time limitation if
    - Persistent and willful denial or interference with parenting time
    - Endangerment



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## ADVOCACY OPPORTUNITIES

- Provide emotional support during the trial.
- Post-order, provide emotional support, resources, referrals, and personal advocacy as needed.





## ...but most importantly

- Deprivation of Parental Rights and Kidnapping
  - If a victim is afraid that his/her abuser will abduct their child, call Standpoint for guidance.
- Do NOT help a victim move out of state without helping them to first speak to a competent family law attorney or Standpoint.
- AND If you do not know the answer, just ask us!



QUESTIONS?

# RESOURCES

- Child Focused Parenting Time Guide
  - [Child-Focused Parenting Time Guide \(mncourts.gov\)](https://www.mncourts.gov/child-focused-parenting-time-guide)
- Getting a Divorce: A Basic Guide to Minnesota Law
  - <https://www.lawhelpmn.org/self-help-library/booklet/getting-divorce-basic-guide-minnesota-law>
- Minnesota Guide and File
  - <https://minnesota.tylerhost.net/SRL/SRL>
- Pro Se forms
  - <https://www.mncourts.gov/GetForms.aspx>
- Self Represented Litigant Series
  - [Self Represented Litigants Series - RCDV:CPC \(rcdvcpc.org\)](https://www.rcdvcpc.org/)
- Technology Safety and Privacy: A Toolkit for Survivors
  - [Resources-Survivors — Technology Safety \(techsafety.org\)](https://www.techsafety.org/resources-survivors)
- What to Expect as a Self-Represented Petitioner or Respondent
  - [What to Expect as a Self-Represented Petitioner or Respondent \(mncourts.gov\)](https://www.mncourts.gov/what-to-expect-as-a-self-represented-petitioner-or-respondent)

# CONTACT US

[www.standpointmn.org](http://www.standpointmn.org)

Available Monday – Friday, 9am – 4pm CST.

Action Line 800-313-2666

Text Line: 612-743-7397

Email: [info@standpointmn.org](mailto:info@standpointmn.org)



# STANDPOINT

Attorneys & advocates against domestic & sexual violence