



Diane L. Dornburg, Managing Attorney

Rachel Leigh, Staff Attorney

Nicole Beaman, Executive Director

WHAT IS DIVORCE?

A legal process required to terminate a marriage relationship

- Lawyers
- Legal language, legal documents
- Court dates and Deadlines
- Discovery
- Mediation
- Trial
- Judge's decision
- Contempt actions
- Modifications

WHAT IS DIVORCE?

Iowa Code Chapter 598: Dissolution of Marriage

Petitioner is the spouse who files. Respondent is the other spouse.

Petition is filed by the Petitioner. Respondent must personally receive the Petition, Original Notice and related documents.

90-day waiting period starts when the Respondent is “served.”

TYPES OF DIVORCE

Contested

- Something or everything is in dispute, so court hearings and Judge's decision are needed

Uncontested

- One spouse files, the other either does nothing (default) or signs off

Cooperative

- Filed as a traditional divorce, then spouses and their lawyers work together to resolve issues without contested hearings

Collaborative

- Spouses sign a collaborative participation agreement, a contract that they will resolve all their issues without seeking court involvement except to sign the final court orders

WHERE IS THE DIVORCE?

Jurisdiction: If the Respondent lives in Iowa and is personally served in Iowa, there is no residency requirement.

Jurisdiction: If the Respondent lives outside Iowa or is served by publication of notice in a newspaper, the Petitioner must live in Iowa for more than one year before filing.

Venue: The case can be filed in the county where either the Petitioner or Respondent lives.

LAWYER OR DO-IT-YOURSELF?

NEED A LAWYER if

- * child paternity or custody is disputed
- * there is real estate
- * there are pensions or complicated financial assets

LIMITED REPRESENTATION

* Lawyers will help with a limited part of the case, for example:

- prepare child support guidelines worksheets
- review an agreement

NOT ALLOWED! ONE LAWYER REPRESENTING BOTH SPOUSES

Iowa Judicial Branch website

[Representing Yourself | Iowa Judicial Branch \(iowacourts.gov\)](https://www.iowacourts.gov/representing-yourself)

[Court Forms | Iowa Judicial Branch \(iowacourts.gov\)](https://www.iowacourts.gov/court-forms)

[eFile | Iowa Judicial Branch \(iowacourts.gov\)](https://www.iowacourts.gov/e-file)

SELF-REPRESENTED LITIGANTS

THE DIVORCE PROCESS

- Hearings on Temporary Matters
 - Until the case is done
 - Custody and parenting time
 - Child support
 - Spousal support (alimony)
 - Bill payment
 - Residence in home
 - Mediation required before hearing
 - Hearings on affidavits with limited opportunity for testimony

MEDIATION

- Meet with a neutral third-party, trained mediator to resolve problems
- Meeting is required, agreement is not required
- Central Iowa standard
 - 3 hours, caucus style, facilitative
 - Required before court date
- Everything said and done in mediation is confidential except for agreements signed by all
- Agreements are enforceable

TRIAL PREPARATION AND TRIAL

- Discovery
 - Written questions to the other party (interrogatories)
 - Depositions under oath of the other party or any witness
 - Requests for documents from the other party
 - Subpoena documents
- Deadlines
- Witnesses
- Exhibits

CHILD SUPPORT GUIDELINES

Child support must be calculated using Child Support Guidelines

Step 1: Each parent's gross income

Step 2: Deduct from each parent's gross income

- * federal and state income taxes
- * mandatory pensions, occupational license fees, union dues
- * prior child support and spousal support obligations
- * child care expenses of employed custodial parent

Step 3: Determine each parent's percentage of their combined incomes

Step 4: Use Schedule of Basic Support Obligations to determine the amount of support for this size family with this total income

Step 5: Apply each parent's percent to the Basic Support Obligation to determine each parent's share of support

FINAL DECREE

Property and debt division

- “Equitable division”

Spousal support (alimony)

- Types
 - Traditional alimony, which is permanent. Generally, spouses have to have been married for many years and there is significant income difference
 - Rehabilitative alimony is awarded to a spouse that needs some education or training to become self-supporting
 - Reimbursement alimony is awarded to a spouse that contributed in a significant manner while the other spouse increased his or her earning potential.

MODIFICATIONS

Child custody, visitation and child support can be modified if there is a change of circumstances

Child custody

- Material and substantial change of circumstances
- permanent, not temporary
- not anticipated at time of prior order
- relates to child's best interest

Parent seeking change can show superior ability to care for child

Change is in child's best interest

CONTEMPT OF COURT

Requires proof beyond a reasonable doubt (criminal standard)

The party knew what was required under the court order

Willfully violated the court order

May result in

30 days in jail for each violation

change in parenting time or custody

DOMESTIC ABUSE

Iowa Code, Chapter 236 Protective Orders

[Domestic Abuse Guide April 2019 2EC17477F3001.pdf](#)



Child Custody: Best Interest of the Child

1. The characteristics of each *child*, including age, maturity, mental and physical health.
2. The emotional, social, moral, material, and educational needs of the *child*.
3. The characteristics of each parent, including age, character, stability, mental and physical health.
4. The capacity and interest of each parent to provide for the emotional, social, moral, material, and educational needs of *the child*.
5. The interpersonal relationship between *the child* and each parent.
6. The interpersonal relationship between *the child* and its siblings.
7. The effect on the *child* of continuing or disrupting an existing custodial status.
8. The nature of each proposed environment, including its stability and wholesomeness.
9. ***The preference of the child, if the child is of sufficient age and maturity.***
10. The report and recommendation of the attorney for the child or other independent investigator.
11. Available alternatives.
12. Any other relevant matter the evidence in a particular case may disclose.

What is divorce?

Adult's view

A legal process required to terminate a marriage relationship

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Child's view

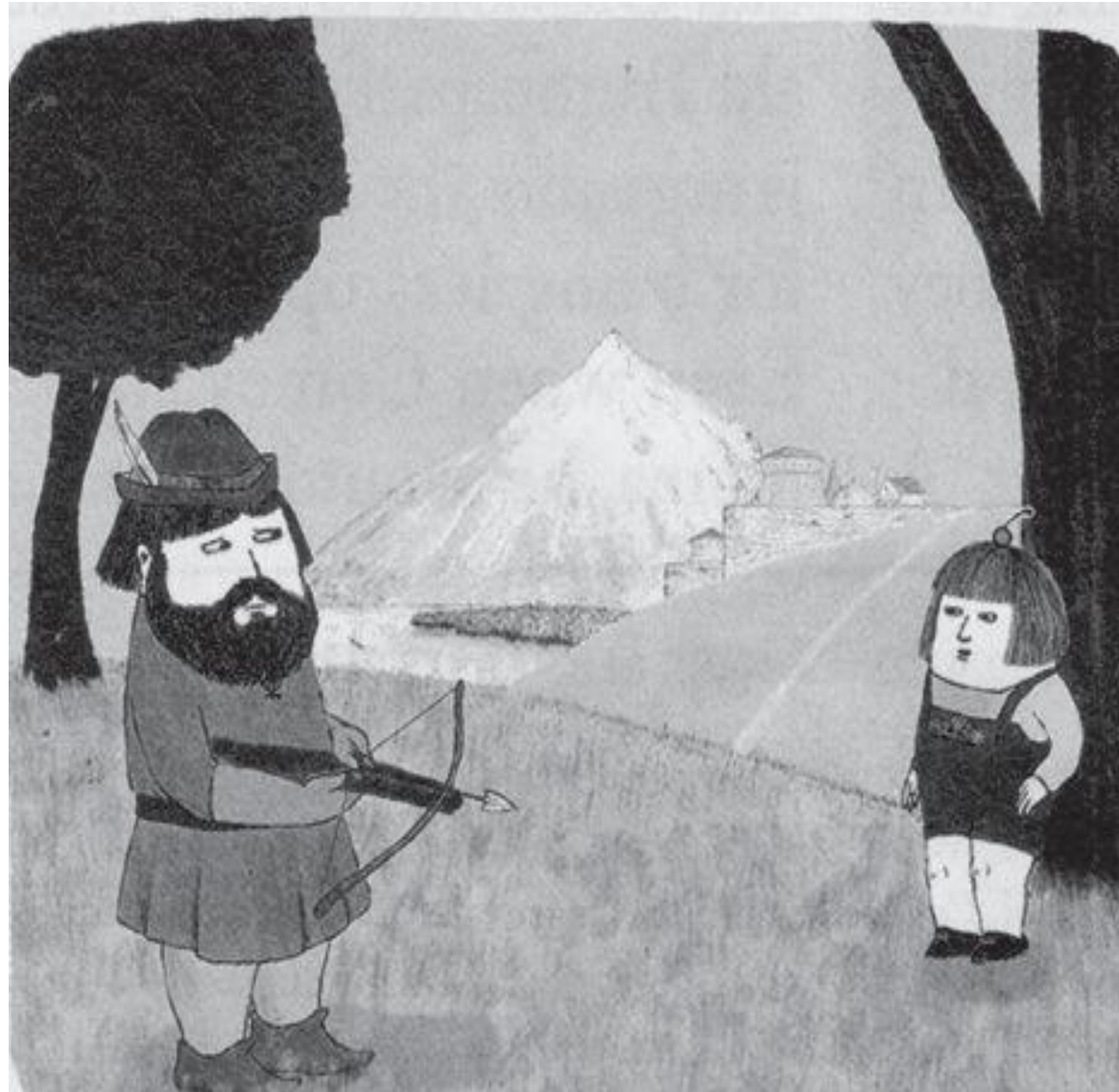
A series of events that typically begins long before a parent initiates court proceedings.

- Pre-Dissolution
 - Conflict
 - Emotional/physical separation
- Dissolution Proceedings
- Post-Dissolution

The rest of childhood and adolescence . . .

I feel betrayed





Now I see why you only get me every other weekend..

Caption provided by Mindy Mitnick



The Child's Voice

Historically, children were not considered active participants; rather, their role was defined through theories of socialization in families and schools and by biological and psychological theories (Taylor et al., 2007).

Since the UN General Assembly adopted the Rights of the Child on November 20, 1989 (UNCRC, 1989), it has been more widely accepted that children are active participants in matters that affect them.

Theoretically, it is not possible to truly address voice of child without hearing directly from the child (Lundy, 2007).

CHILD'S ATTORNEY

Iowa Code
Section 598.12A

Iowa Court rules,
Chapter 62

II B Definitions: 1. **“Child’s Attorney”**: A lawyer who provides independent legal counsel for a child, and who owes the same duties of undivided loyalty, confidentiality, and competent representation as are due an adult client.

Purpose: to give the child a voice in the proceedings

Attorneys work one-on-one with children to listen, support and advocate for child-focused resolutions in high-conflict custody cases.



IOWA CENTER FOR
Children's Justice

Supporting Kids. Strengthening Families.

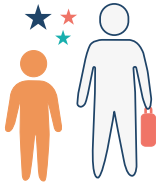
DIANE L. DORNBURG, MANAGING ATTORNEY

RACHEL LEIGH, STAFF ATTORNEY

NICOLE BEAMAN, EXECUTIVE DIRECTOR

WHAT WE DO

Iowa Center for Children's Justice is a non-profit organization elevating children's views in custody matters and promoting child-focused solutions through legal representation, education and alternative dispute resolution.



LEGAL REPRESENTATION FOR CHILDREN

Iowa Center for Children's Justice attorneys are appointed by the court to represent children ages 6-16 in high-conflict divorce or custody matters in Polk and Dallas counties



DIVORCE WORKSHOPS FOR CHILDREN

Trained facilitators teach children about divorce in a supportive, compassionate, and age-appropriate setting. Children participate with kids their age and learn coping skills for lifestyle changes due to divorce.

WHAT WE DO



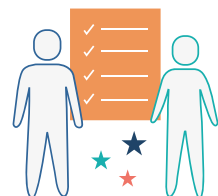
CHILD-FOCUSED MEDIATION

Experienced attorney-mediators work with parents in custody disputes to find solutions that support the children and benefit the entire family.



PARENTING COORDINATION

After a parenting plan is in place, we work with parents to resolve day-to-day parenting conflicts.



NEUTRAL EVALUATION

We offer an impartial evaluation of divorce or custody disputes with the parents involved in the case.

CHILD REPRESENTATION

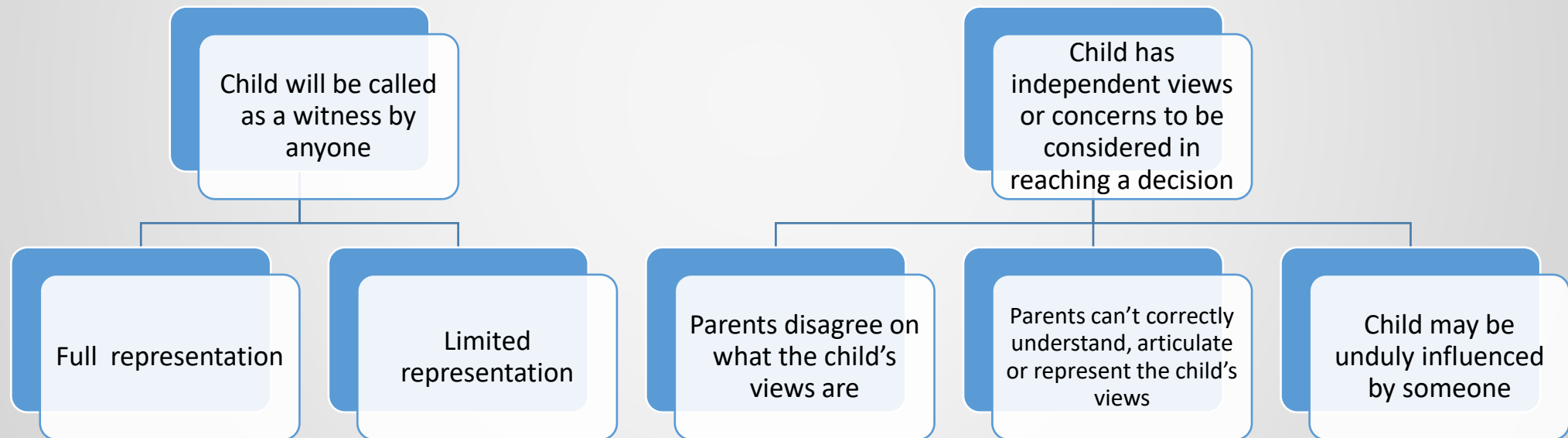


Who we represent

Our attorneys are appointed to represent a child in a family law case where

- A child is age 6 to 16
- A child resides in Polk County or Dallas County
- A divorce, custody or modification, child guardianship or contempt case is pending
- A case is high-conflict or another factor warrants a child having representation

WHEN SHOULD A CHILD BE REPRESENTED BY A CHILD'S ATTORNEY?



OTHER CIRCUMSTANCES FOR A CHILD TO HAVE AN ATTORNEY

- **Special** physical, mental health or educational **needs** of a child
- Consideration of **extraordinary remedies** such as supervised visitation, terminating or suspending visitation with a parent, or awarding custody or visitation to a non-parent
- **Relocation**
 - Reduction of the child's time with a parent or sibling
 - Disruption of education or other important connections of child

OTHER CIRCUMSTANCES FOR A CHILD TO HAVE AN ATTORNEY

- Effects on the child of
 - illegal or excessive **drug or alcohol use** by a parent
 - a parent's **mental health** problems
 - **domestic violence**
- Disputed paternity or disestablishment of paternity
- Past or present child **abduction**, or risk of future abduction
- Past findings or present allegations of **child abuse, neglect, or DHS** involvement
- A need for more evidence relevant to the child's circumstances

The role of the child's attorney in full representation

- All communications between the child and their attorney are confidential and are not shared with anyone without the child's permission.

- Visits with the child may occur at the child's homes, but the child's attorney does not do home inspections or custody evaluations.

- The child's attorney meets with the child at least twice and as often as needed.

- The child's attorney consults with therapists, teachers and other professionals who know the child.

The child's attorney does not prepare a report or testify!

The child's attorney and the parents

- With the consent of the parents' lawyers, the child's attorney may meet with parents to understand the dynamics of the family and the parents' goals and perspectives.
- The child's attorney may meet with parents to develop a child-focused parenting plan.
- The child's attorney does not give legal advice to parents.

The child's attorney and the legal process

- The child's attorney attends all court hearings affecting the child.
- The child's attorney participates in mediation, advocates for the child's position in settlement efforts and approves final agreements on the child's behalf.
- The child's attorney participates in trial and presents evidence in support of the child's position, including calling and cross-examining witnesses.
- If the child is a witness, the child's attorney prepares the child to testify and assists the court in structuring the best way for the judge to hear the child's point of view.
- The child's attorney advocates for the child's position and presents the child's requests to the judge

FEES FOR CHILD REPRESENTATION

SIMPLIFIED SLIDING FEE SCALE

Retainer based on each parent's gross annual income

Gross annual income less than \$50,000 – no retainer

GAI \$50,001 to \$100,000 – retainer is \$500

GAI \$100,001 to \$200,000 – retainer is \$1000

GAI \$200,001 and above – retainer is \$2000

Hourly rate for billing against retainer or to request attorney fees in final judgment -- \$175/hour

Limited
Representation:
Appointment
for a specified
purpose

- Meet with the child 2-3 times to carry out the purpose of the appointment

Limited
Representation:
Appointment
for a specified
purpose

- If the child is going to be a witness
 - Prepares and assists the child with testifying

Limited
Representation:
Appointment
for a specified
purpose

- If the child's position on a specific topic is desired by the parents or the court
 - Meets with the child to determine the child's position
 - No outside investigation, no evaluation, no report on family relationships or other matters
 - Prepares a Statement of Child's Requested Relief – approved by the child -- for parents or court

Limited
Representation:
Appointment
for a specified
purpose

- Other focused, limited purpose. Examples:
 - Review medical records to recommend whether records should remain confidential or be used as evidence
 - Determine whether a Guardian ad Litem is needed to represent the child's best interest and request a GAL to advocate for the child's best interest
 - To bring the child's views into mediation

DIVORCE WORKSHOPS

(TEMPORARILY SUSPENDED DUE TO COVID-19)

For children whose parents are getting divorced

- Not for children of never-married parents or in modification cases

For children ages 6 to 16

For children whose parents are getting divorced in **Polk County**

Divorce Workshops

- Age-appropriate groupings
 - Grades K-2, 3-5, 6-8 and 9-12
- Education about the divorce process
- Activities to help with coping skills
- Permission to share thoughts and feelings with other kids and safe adults
- Children know they are not alone



NEW:
Dispute
Resolution
Services

- Child-focused Mediation
- Child Specialist in Collaborative Practice
- Neutral Evaluation
- Parenting Coordination



Transformative processes

LITIGATION

- Parents perfect their individual narratives
- Parents and their lawyers marshal evidence in support of their narratives
- Parents' lawyers present stories to a judge hoping the judge will believe their whole story and not believe the other parent's story
- Judge imposes a legal decision which may or may not offer a solution or a healthy path forward for the family



Transformative
processes

LITIGATION

- Families experience trauma from repeated exposure to past events which have caused them pain



Transformative processes

TRANSFORMATIVE PROCESSES

- Help parents shift out of the win/lose dichotomy of the reptilian brain
- Help focus on creating future-focused solutions.
- Help people move out of where they are now and into a place where they can solve problems and do better in the future

Child-Focused Mediation

- Child-related issues only (no property, alimony, general divorce issues)
- Caucus-style or conference-style
- Single session or extended mediation
- Facilitative or transformative
- 2-Mediator team

Child-inclusive mediation

When a child wants to express feelings or preferences as part of the mediation and parents want the child's voice to guide their agreement.

A team of two mediators: one works directly with the child and the other works with the parents. The mediators also collaborate.

Attorney mediators assist parents involved in custody cases to develop child-focused parenting plans.

Extended Mediation

- Multiple shorter sessions to allow for assignments, reflection and processing
- Development of parenting plans
 - Detailed to provide clear expectations and avoid future conflict
 - Joint physical care
 - Parallel parenting
- Family- and child-focused
- Builds new communication and problem-solving skills



Child Specialist in Collaborative Process

Collaborative Practice is a voluntary dispute resolution process in which parties settle without resort to litigation

Collaborative Team

- The Collaborative Team is a group of professionals, each skilled in their own area of expertise, working for the benefit of the clients and the clients' family
- The child's attorney serves as part of the collaborative team as a child specialist
- Attorneys consult with children and parents to offer advice, provide guidance and assist in developing a child-focused parenting plan
- This process gives children a voice and helps foster child-focused parenting solutions.

NEUTRAL EVALUATION

Neutral Evaluation is a voluntary and confidential opportunity for parties in a child custody case to obtain a balanced and unbiased assessment of their case from an experienced, specially trained expert or team.

Minnesota model is Social Early Neutral Evaluation with a team

- * one male/one female
- * one lawyer/one child specialist or mental health professional

Neutral Evaluation



The parties meet in person with evaluator or team



Each presents their view of their situation and their proposals



The evaluator identifies each side's strengths and challenges and provides an evaluation of a predicted outcome of a trial



The evaluator may make recommendations to the parties and may assist them in negotiating a settlement



Neutral evaluation sessions are clearly defined and structured and typically are scheduled to last about three hours

Neutral Evaluation



Neutral evaluation of child-related issues may occur at any time before or after the filing of a case



Neutral evaluation gives parties a realistic perspective on the likely outcome of their case



Neutral evaluation can provide a unique opportunity to hear and understand each other's view of their case



Neutral evaluation may assist in the settlement of a case



PARENTING COORDINATION

AFTER

A parenting plan (temporary or permanent) is in place



PARENTING COORDINATION

- Child-focused process
- Conducted by a licensed mental health or family law professional or family law mediator with practical professional experience with high conflict family law cases

Parenting
Coordinator
assists coparents
implement their
parenting plan

By

- Facilitating the resolution of their disputes in a timely manner
- Educating coparents about children's needs
- With prior approval of coparents or the court, making decisions within the scope of the court order or appointment contract


For High
Conflict
families who

- repeatedly utilize litigation as means of resolving custody and parenting issues
and who are therefore
- highly skilled in adversarial processes, skills which undermine effective co-parenting.



MENTAL HEALTH DATABASE

A resource for family law attorneys
and courts to locate appropriate
mental health professionals to
meet the needs of children and
families in family law cases



MENTAL HEALTH DATABASE

| Counseling | | |
|-------------------------------|--|---|
| Co-Parent Counseling | Meeting with two parents together to discuss and resolve parenting issues | <ul style="list-style-type: none">➤ Not covered by insurance➤ Cost is divided between the parents➤ Not Confidential |
| Discernment Counseling | A brief therapy for couples who are uncertain whether they want to continue their relationship | <ul style="list-style-type: none">➤ Not covered by insurance➤ Cost is divided between the spouses➤ Confidential |

Mental health database

| | | |
|--|---|--|
| Reunification/ Reconciliation Therapy | A type of parent-child therapy designed to heal the relationship between a parent and child after there has been child refusal of contact | <ul style="list-style-type: none">➤ This is not a strictly defined therapy in the mental health world➤ May or may not be covered by insurance |
| Reintegration Therapy | A type of parent-child therapy designed to establish or re-establish the relationship after a lack of contact between parent and child | <ul style="list-style-type: none">➤ This is not a strictly defined therapy in the mental health world➤ May or may not be covered by insurance |

Mental health database

| Evaluative | |
|-----------------------------|---|
| Parenting Skills Assessment | An evaluation of a parent's ability and capacity to provide adequate care for their child |
| Psychological Evaluation | <ul style="list-style-type: none">• A focused assessment of a parent to determine the existence of a mental health condition which affects the children's safety or well-being• Conducted by a psychologist |
| Brief Focused Assessment | An alternative to full forensic custody evaluation focused on a predetermined, specific family issue |
| Forensic Custody Evaluation | <ul style="list-style-type: none">• An in-depth analysis and report that provides detailed psychological information about each family member and their respective roles in the parent/child relationship• Makes recommendations for parenting arrangements• Professional guidelines vary between mental health professionals |
| Child and Family Reporter | <ul style="list-style-type: none">• Appointed by the court to gather and report information about matters which impact a child's interests and well-being in custody and parenting time cases• Governed by Rule 63, Iowa Court Rules and Iowa Code Section 598.12B |

Mental health database

| Supportive | |
|--|---|
| Divorce Coaching | A non-therapeutic process which guides and supports divorcing spouses, helping them navigate the process and make the best possible decisions for their future |
| Parenting Coordination | A child-focused dispute resolution process which combines parent education, dispute assessment, collaborative problem-solving, conflict and communication management in high-conflict child custody cases |
| Therapeutic Supervised Visitation (TSV) | Allows parents to visit their children in a safe and appropriate environment with a mental health professional who provides constructive feedback to the visiting parent |
| Child Specialist | 1-2 sessions with parents to work through a specific issue regarding the child |

**501 SW 7th Street, Suite G
Des Moines, Iowa 50309
515-414-9562**

