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FAMILY COURT SERVICES
MEDIATION INFORMATION

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Revised 4/6/2026

WHAT IS MEDIATION?

Mediation is a process of dispute resolution, where the parents meet with a neutral person (the mediator) and attempt to create an appropriate parenting plan that is in their child's best interest. A parenting plan describes how the parents will divide their responsibilities for taking care of their child after separating or divorcing. The plan may include a general or specific schedule of days, times, weekends, holidays, vacations, transportation, pick-up/drop-off, limits on travel, and other details. There is no substitute for cooperative parenting.

Mediation creates an environment where it is safe to meet under reasonable rules of conduct and deal rationally with the issues affecting your child. The mediator facilitates the process in a way that encourages positive communications that are focused on what is best for the child. Mediators are professionals that receive training in topics related to family law cases, including child development and domestic violence.

THE FAMILY LAW PROCESS

Step 1: A party files a Petition for Dissolution, a Petition for Custody and Support, a Petition to Establish Parentage, a Request for Order for Custody and/or Visitation orders, or a Temporary Restraining Order indicating that there is a custody or visitation issue.

Step 2: The parties are ordered to attend mediation orientation. Mediation orientation in Sutter County is offered online at www.sutter.courts.ca.gov, under the pull-down menu for online services. You may complete this course on any computer with access to the internet or at the self-help computers in the courthouse lobby. Mediation orientation is designed to prepare you for your mediation session. Once you have completed mediation orientation, a notice of completion is electronically sent to the court.

Step 3: The parties schedule and attend mediation. In all custody and visitation cases where the parties do not agree on a parenting plan, California law requires them to attend mediation.

Mediation sessions are 1 hour and 30 minutes in length. Usually, the parties meet together with the mediator. If minor's counsel has been appointed by the Court to represent the child, that attorney would also be present at the mediation session. No other people are allowed in the mediation room, including attorneys for the parents, family members, or children.

If there are allegations of domestic violence between the parties, one or both parties may ask to attend mediation in separate rooms and/or bring a silent support person to the mediation session. See Page 8 for more information about domestic violence and child custody and visitation.

If an agreement (partial or full) is reached in mediation, a copy will be sent to any attorney in your case. The original agreement will be sent to the Court for your hearing (if there is a Request for Order before the Court with a hearing pending).

If an agreement is reached and both parties are self-represented, the agreement will be attached to a Stipulation and Order form for you to review and sign. Signing this document will allow your agreement to be made an order of the Court without having to appear in court.

Sometimes, the parties will agree to a follow-up mediation in order to evaluate how the parenting plan is working and/or to check on the progress of any other agreements or orders. This follow-up mediation may be included in your agreement or ordered at your court hearing.

If you are unable to reach an agreement in mediation, the mediator will report to the Court that no agreement was reached. If any party does not appear for mediation within 15 minutes of the start time, the session will be cancelled and the mediator will report to the Court which party did not appear.

Step 4: The parties attend the court hearing. If a Request for Order related to custody and visitation has a hearing pending, the parties attend their scheduled court hearing after completion of mediation. It is very important that you attend your court hearing (if there is one set), even if you have missed your mediation session. The parties may not have to return to court if a full agreement was reached with a Stipulation and Order attached that included a request to drop the hearing.

At your hearing, any full or partial agreements may be reviewed by the Judge. If approved, the Judge will make your agreement regarding custody and visitation an order of the Court. Once the agreement is signed by the Judge and filed by the clerk, you may obtain an official copy of your order for your records. If there is no agreement, the Judge will discuss available options with the parents, one of which is setting the matter for a trial.

If there is no hearing pending for custody and visitation, and the parties were unable to reach an agreement in mediation, one of the parties must file a Request for Order to get a hearing date to bring the unresolved issues before the Court.

CONFIDENTIAL NON-RECOMMENDING MEDIATION

Mediation sessions in Sutter County are confidential. This means that all communications, verbal or written, from the parties to the mediator made during the session are not reported to others (FC 3177). If no agreement is reached in mediation, the mediator will not make a recommendation to the court about the custody and visitation. However, there are three important exceptions:

1. The mediator may recommend to the Judge that an attorney be appointed to represent the children (FC 3114, 3184);
2. The mediator may recommend to the Judge that the parties be referred for a child custody evaluation (FC 3183(b); and,
3. The mediator may recommend to the Judge that a restraining order be issued to protect the well-being of the child or children (FC 3183(c).

Mediators are not allowed to have contact with any party (in person, by letter, by email, by fax, or by phone) regarding the mediation session before or after mediation takes place. Your

mediator will not appear at your court hearing. Your agreement, or a notice that no agreement was reached, will be provided to the judge in a written report prepared by the mediator.

Neither Family Court Services nor the mediator are permitted to give any party legal advice. They do not have the authority to enforce any custody and visitation orders that have been made. If you believe the other parent is not following the order, you can contact law enforcement and/or file the appropriate Request for Order with the court to seek enforcement.

The mediator can discuss any special requests and parameters regarding custody and visitation for the parties during the mediation session. These include, but are not limited to, parenting classes, drug and alcohol testing, anger management classes, or counseling. However, the mediation process and the mediator only address child custody and visitation related issues. They do not address other issues such as child support, spousal support, or property division.

LEGAL AND PHYSICAL CUSTODY DEFINED

Legal Custody: Legal custody determines who (one or both parents) will make the decisions concerning the child's health, safety, education, and welfare.

- Joint Legal Custody: Both parents shall share in the right and the responsibility to make the decisions related to the health, education, and welfare of the child (FC 3003). In exercising joint legal custody, the parents may act alone, as long as the action does not conflict with any orders about the physical custody of the children. However, you can ask for orders specifying when the consent of both parents is required before a decision is made on matters such as enrollment in school, participation in religious activities, selecting a doctor or dentist, and participation in extracurricular activities.

- Sole Legal Custody: One parent shall have the right and the responsibility to make all of the decisions relating to the health, safety, education, and welfare of the children (FC 3006).

Physical Custody: Physical custody determines with which parent the child will reside.

- Joint Physical Custody: Each of the parents shall have significant periods of physical custody. This may be equal time but not necessarily. Joint physical custody shall be shared by the parents to ensure the child has frequent and continuing contact with both parents (FC 3004).

- Sole Physical Custody: A child shall reside with, and be under the supervision of, one parent subject to the power of the court to order visitation with the other parent (FC 3007).

If domestic violence is an issue in your case, there are presumptions about custody, visitation, and the best interests of your child. See Page 8 for more information.

PREPARING FOR MEDIATION

Things to consider when preparing a parenting plan:

1. Age and stage of the child.
2. The child's psychological attachments and ability to adjust to change.
3. Past caretaking responsibilities of the child and social resources.
4. Each parent's strengths, weaknesses, and work demands.
5. Any disabilities or special needs of the parents or the child.
6. Substance abuse and/or mental health issues.
7. Child Welfare Services' involvement with your family.
8. The distance between the parents' residences.
9. Where the child will attend school.
10. Vacations and holidays.
11. Exchange locations and transportation details, such as which parent will drop off or pick up the child for scheduled visits.

Things to bring with you to your mediation session:

1. Patience, flexibility, a business-like attitude towards the process of mediation, and the concept of your child's best interest.
2. A calendar which identifies all of the holidays and school breaks.
3. Your work schedule and the other parent's work schedule if you have it.
4. A list of your child's extracurricular activities.
5. A draft of what you would like your parenting plan to look like.

SAMPLE PARENTING PLANS

How to Create a Parenting Plan for a Child Under Three:

- Provide your child the opportunity to bond with both parents.
- Protect your child from exposure to adult conflict.
- Learn how to soothe your child when he or she is distressed and especially at the transitions between caregivers.
- Create a plan that ensures both parents the opportunity to participate in the child's day-to-day care.
- Maintain a similar sleeping and feeding schedule in both homes.
- Sample schedules:

Birth through 6 months: Three non-consecutive days per week for two hours each day.

7 months through 12 months: Three non-consecutive days per week for three hours each day. Overnight, if appropriate.

13 months through 36 months: Three non-consecutive days each week for three hours each day. One weekend day for up to ten hours. Overnight, if appropriate.

How to Create a Parenting Plan for a Child from Three to Five Years Old:

- Follow a predictable schedule to make transitions easier for your child.
- Provide your child with structured time with other children in order to develop social skills and learn to feel safe and happy away from both parents.
- Allow your child to take a favorite toy when going between parents.
- Introduce change gradually.
- Consider having exchanges occur at school.
- Limit communication with the other parent in front of the child, especially if your relationship with the other parent is likely to be tense or hostile.
- Sample schedules:

1. Every Saturday or Sunday for eight to ten hours and one weekday for a period of up to four hours.
2. Alternate weekends from Saturday morning until Sunday evening and one weekday for a period of up to four hours.
3. Alternate Friday evening until Sunday evening and one weekday for a period of up to four hours, or one midweek overnight from after school until the next morning before school.
4. Parent A has every Monday morning until Wednesday morning, then Parent B has every Wednesday morning until Friday morning. Parents alternate weekends from Friday morning until Monday morning.

How to Create a Parenting Plan for a Child from Six to Nine Years Old:

- Set structure and routine by establishing a predictable time-sharing plan.
- Support the other parent's relationship with your child.
- Consider your child's temperament when developing a parenting plan.
- Consider your own work schedule and your child's school and activity schedule.
- Protect your child from parental conflict. If you and the other parent are unable to interact without conflict, plan the exchanges so that you have little contact with one another.
- Sample schedules:

1. Alternate weekends from Friday evening until Sunday evening and one or two weekdays for 3-4 hours.
2. Alternate weekends from Friday after school until Monday morning's return to school and one mid-week overnight from after school until the next morning to school.
3. One weekday for 3-4 hours, alternate Thursday after school until Monday morning, and alternate Thursday after school until Friday morning.
4. Parent A has every Monday morning until Wednesday morning, then Parent B has every Wednesday morning until Friday morning. Parents alternate weekends from Friday morning until Monday morning.
5. Alternate weeks from Friday after school until the following Friday after school.

How to Create a Parenting Plan for a Child from Ten to Eighteen Years Old:

- Introduce changes slowly and provide opportunities to discuss changes in advance.
- Strive to ensure consistency of rules, expectations and consequences in both homes.
- Support your child's growing independence while maintaining basic structure and expectations.
- Consider your child's school and extracurricular activities when making the schedule.
- Help your child balance time among parents, other family commitments, friends, school and outside activities.
- Seek the assistance of a counselor if your child refuses to see the other parent.
- Sample schedules:

    1. Alternate Friday evening until Sunday evening or Monday before school. One mid-week overnight from Wednesday after school until Thursday before school.
    2. Alternate Friday evening until Sunday evening or Monday before school.
    3. Parent A has every Monday morning until Wednesday morning, then Parent B has every Wednesday morning until Friday morning. Parents alternate weekends from Friday morning until Monday morning.
    4. Alternate weeks from Friday after school until the following Friday after school.

How to Create a Parenting Plan for the Holidays and Vacations:

- In most parenting plans, holidays and vacation periods take priority over the regular schedule.
- Consider your child's school schedule, as well as interests and activities that take place outside of school.
- There are many different ways to divide the holidays. Some examples are:

    1. You can split the day, where one parent has from 9:00 a.m. to 3:00 p.m. and the other parent has from 3:00 p.m. to 9:00 p.m.
    2. You can split a holiday weekend, where one parent has from Friday at 6:00 p.m. until Saturday at 6:00 p.m. and the other parent has from Saturday at 6:00 p.m. to Sunday at 6:00 p.m.
    3. You can alternate holidays every year, where one parent has the holiday during even-numbered years and the other parent has the holiday during odd-numbered years.

- There are also different ways to create a parenting plan during times that the child is out of school for holiday or summer breaks. Some examples are:

    1. During the child's school breaks, the parents can alternate weeks of custodial responsibility, with the exchange to occur on Friday evening.
    2. During the child's school breaks, the parents reverse the custodial plan so that the child is residing primarily in the home of the parent with whom they had less time during the year.

CUSTODY AND VISITATION WHEN THERE IS DOMESTIC VIOLENCE

Domestic violence is the willful intimidation, physical assault, battery, sexual assault, emotional abuse and/or other abusive behavior as part of a systematic pattern of power and control perpetrated by one partner against another. The frequency and severity of domestic violence can vary dramatically; however, the one constant component of domestic violence is one partner's consistent efforts to maintain power and control over the other.

How Does Domestic Violence Affect Custody and Visitation?

Though the Family Code presumes joint legal and physical custody is in the child's best interest, there is an exception. Family Code section 3044 states that there is a presumption that domestic violence is detrimental to the best interests of the child. Because of this presumption, if a domestic violence protective order is issued against you and you have minor children with the protected party, your rights to legal and physical custody of those children may be affected. The entry of such a protective order may also be grounds for modification of an existing child custody and visitation order. A finding of domestic violence may affect the conditions under which the judge will allow visitation to take place.

One example of a visitation condition that the judge may order in a case where domestic violence is alleged against one parent is supervised visitation. Supervised visitation provides a monitored, neutral environment so that non-custodial parents can interact with their child and focus on re-establishing or enhancing their relationship. The monitor is an observer and provides the court with an objective report.

There are two types of supervised visitation: (1) Professional supervision is where the visits are paid for and a trained person follows state guidelines to supervise the visit. (2) Non-professional supervision is when a family member or friend is agreed upon, or someone specific is ordered by the court, to supervise the visits and to follow state guidelines for non-professional supervisors.

Family Code section 3044(a) provides: "Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence within the previous five years against the other party seeking custody of the child, or against the child or the child's siblings, or against any person with whom the party has a relationship, there is a rebuttable presumption that an award of sole or joint physical or legal custody of a child to a person who has perpetrated domestic violence is detrimental to the best interest of the child, pursuant to Sections 3011 and 3020. This presumption may only be rebutted by a preponderance of the evidence." For more information, see Domestic Violence and Child Custody.