

## **AN INTRODUCTION TO FAMILY COURT SERVICES-MEDIATION**

When there are disagreements about child custody and visitation in your case, Family Court Services Mediation will help resolve these disputes. Carefully review and read the following information:

### **WHAT IS MEDIATION?**

Mediation is required by law if there is a disagreement about the custody of your children. Mediation is a process for parents to negotiate disputes in an effort to settle their child custody and/or visitation disagreements. You, as parents, have total control over the success of mediation. It allows you the chance to determine what the custody and visitation agreement will be. A negotiated agreement is less expensive, more satisfactory to all, is arrived at sooner and easier, and involves much less emotional strain. **Best of all, it is the result of cooperative parenting rather than a judge's decision.**

### **HOW MEDIATION WORKS**

Mediation occurs in two separate phases:

1. Phase I is a half-hour parent education video. Orientation is mandatory. Call 207-7340 to **SCHEDULE** an appointment to attend Orientation **BEFORE** your court date. Orientation class is held Monday through Thursday from 12:15 to 1:15 PM. Orientation will prepare you to make the best use of your time in Phase II.
2. Phase II, the actual mediation, will happen on the morning of your hearing. Both parents will meet with a third person trained as a mediator who is educated about the needs of children. The mediator will help you understand how divorce affects children, and will show you how to best help your children. The mediator will also show you how successful shared parenting can occur and will guide you in reaching an agreement.

**The key to successful mediation is the willingness of the parents to focus on the needs and desires of the children.**

### **HOW TO PREPARE FOR MEDIATION**

Give and take is required in mediation. No parent can expect to get everything he or she wants; there are simply too many differences of opinion. Mediation can help you in deciding, for yourselves, what will be in your children's best interest. Mediation is most successful if each of you comes prepared.

1. **Think about your children**, their needs, and desires, what makes them happy or sad. Remember their needs may not be your needs, and their relationship with the other parent may be different from yours. Help them to keep two parents in their lives.
2. **Your divorce is the result of an unhappy marriage.** This does not automatically mean the other parent was not a good parent. Parenting skills must be judged on their own merits, not in terms of your own unhappiness or inconvenience.
3. **Children need both parents.** If children had their own way, mom and dad would quit fighting and the family could live happily after ever. Remember, even if the parents live apart, each is still mom and dad to the children. You must protect that image for your children.
4. **Evaluate your situation.** How can you help provide for your children? What are your strong and weak points? Do the same for the other parent, honestly. Do the children have special needs? What kind of relationship do the children have with the other parent, and should this be improved? Are there things the other parent does well, or that the children really benefit from?
5. **Complete the mediation worksheet you will receive from the mediation clerk.** Prepare some plans and proposals for shared parenting, and take into account the children's needs and the ability of both parents. A good-shared parenting plan builds upon the strengths of each parent, and is better than any plan that excludes one of the parents. Include your proposals for primary care, visitations, holidays, vacations, weekends, contact with relatives, school, recreation, sporting and social activities, and special events (birthdays of relatives, church activities, etc.).
6. **Bring a yearly calendar showing all holidays and events that are special to you or the children.** Learn the school calendar. Have your work schedule handy, especially vacation times. Bring a list of your and the children's activities.

### **WHAT IS SUCCESSFUL MEDIATION?**

Mediation does not have to result in a 100% agreement on everything to be successful. Naturally, the more issues agreed upon, the better the result. However, there are many issues, and you may agree on only some of them. This is still good, as there will be that much less to worry about in court. This allows the judge to focus on just the remaining disputed issues of custody, and allows your case to finish sooner. When the court finally makes a custody/visitation order, issues that you have already worked out will probably be included. Don't be fooled into thinking that only the larger issues of custody and visitation are important. There are many details to work out, such as babysitters, transportation, telephone calls, birthdays, visiting with relatives, vacations,

clothing at each parent's home, who will do laundry, etc. If these details are not resolved, agreements on the larger issues may collapse, and quickly.

### **BEST INTERESTS OF THE CHILDREN – WHAT ARE THEY?**

Basically, an agreement that is in your children's best interests will assure your children of:

1. A happy childhood
2. Social involvement in the community
3. Good physical and mental health
4. Feeling good about themselves, and you
5. Maturing as they grow older
6. A safe home where they are not threatened, abused, neglected, or exposed to frequent family conflict
7. Frequent and continuing contact with both parents (unless there is significant violence, abuse, neglect, habitual use of illegal drugs, or continual use of alcohol).

**The State legislature declares as public policy that the health, safety, and welfare of children shall be the Court's primary concern in resolving custody disputes. It is also the Court's policy that children have frequent and continuing contact with both parents as long as this does not endanger the children.**

### **TERMS YOU NEED TO UNDERSTAND**

#### **Child Custody – What is it?**

Parents hear the terms custody and visitation frequently, but these are just general descriptions. Custody and visitation are not just rewards for being a good parent, but assignments. Each parent will have responsibilities and duties to take care of regarding the children and each other.

#### **Legal Custody**

Having the right and responsibility to make decisions about the health, education, and welfare of a child. Legal custody focuses on immediate and long-range issues, such as choice of a school, whether a child wears braces, etc. These decisions must be made, and often involve the parent with legal custody having to sign or give permission.

#### **Physical Custody**

Having the right and responsibility to provide a home and supervision for a child. Physical custody focuses mainly on the child's day-to-day needs for food, clothing, shelter, supervision, guidance, and companionship.

**“Custody” is further defined in Family Code Sections 3002 through 3007.**

The decision to grant legal or physical custody, whether sole or joint, is based on how the child’s needs can best be met. It is not based on being a superior parent alone. Children need both a mother and a father to care for them. Thus, shared parenting arrangements are preferred. Unless one parent has been very irresponsible, joint legal custody is likely. Physical custody may be joint or sole, depending on the capacity of each parent to contribute to child rearing. A primary physical caretaker will usually be decided upon, so that the child has his or her own place. However, the child’s family should include both parents and their homes should be sources of comfort. A variety of arrangements are possible, as long as the parents are cooperative and work together.

The determination of legal custody depends on the amount of communication the parents have with each other, their ability to cooperate, willingness to trust each other, and their demonstrated responsibility. If there is too much conflict, joint legal custody is not likely. The determination of physical custody, however, is influenced by other things as well, such as the distance between parent’s homes, location of things familiar to the child (e.g., school, church, friends), parent’s employment, access to childcare, etc. Physical custody should go to the parent who can best and most conveniently provide a home and can offer the least disruption to the child’s life and activities. The closer that parents live to each other, and the better they get along with each other, the more likely it is that joint custody will be granted.

**POSSIBLE RESULTS OF MEDIATION**

No two mediation sessions are alike. However, most are successful to one degree or another.

**Full Agreement:**

If the parents resolve all issues, or if they resolve the important issues and promise to informally work out the details, a full agreement has been reached.

**Partial Agreement:**

If there are one or more important issues remaining in dispute, but other issues have been resolved, this is a partial agreement.

**No Agreement:**

Should the parents be unsuccessful in resolving any of the important custody issues, there is no agreement.

The mediator will make a report to the Court in all cases. The report will state the terms of the agreement, and will identify those issues that remain contested. For those issues still unresolved, the report will outline the proposal and concerns of each parent as well as stumbling blocks to a voluntary solution. The mediator will make a recommendation in all cases, based on the children’s best interests.

**Temporary Agreement:**

Some parents might be willing to try a possible shared parenting agreement, but they are not ready to make a permanent agreement. In such an instance, they may agree to test an agreement out, on a trial basis, but with the understanding that the issues can be mediated again or that, they can still go to court if they are not happy. This is reported to the Court, often with a recommendation that a temporary agreement be adopted and that further mediation occur upon the end of the trial period. Some custody disputes take time and energy to resolve, and this allows for the continued care of the children while the parents work on the issues.

**Terminated Mediation:**

If one or both parties become verbally or physically abusive, the mediation will be ended. Such behavior poses a significant threat that one of the parties may be intimidated or bullied, and certainly the safety of all concerned is jeopardized. The events will be reported to the Court.

**PARENT ORIENTATION/EDUCATION**

The Solano County Family Court requires that every parent who is to participate in mediation **must attend an orientation/education session before the actual mediation session**. This orientation session prepares the parents by informing them of the nature, goals and extent of mediation and what each parent can expect from mediation. Valuable time is thus not taken from the mediator to explain these things. Additionally, the developmental needs of children are discussed, as well as the benefits of cooperation and the negative consequences of parental conflict.

**Orientation/Education is:****1. Mandatory**

No mediation will be allowed until the orientation/education session has taken place. You only have to attend once within a one-year period.

**2. Takes about 30 minutes**

The orientation sessions are scheduled and attended on a day before your court hearing.

**Children should not be brought to these sessions unless otherwise instructed.**

Other parents will be present at these sessions as well.

**3. The mediation session:**

Both parents attend and are assisted by a trained mediator. Separate appointments may be requested in some cases. Children are not to attend unless otherwise scheduled. A judge will review the report when you go to court. Copies

of the mediation report will be provided to the parties or their attorneys before the court hearing.

### **GENERAL INFORMATION**

1. Mediation is provided only for court cases pending litigation and there is a custody disagreement. Mediation is not offered to the public at large, nor is it offered after resolution of the court case, unless further mediation is ordered by the judge.

2. You may not select your mediator. We have a panel of mediators and cases are assigned by rotation according to availability of a mediator.

3. The mediator will file a written report and recommendation in all cases. If the parents fail to agree, the mediator will make suggestions to the judge about your case. Be aware that the mediator usually is not told all of the information about your case and is doing their best with what is known. The more information you can supply as background, the better the mediator will be able to understand the case and determine what is in the children's best interests. Be thorough, concise and complete in your verbal discussion with the mediator. This information is not to prove your case, but serves as background to orient the mediator as to the important points of your case. Any paperwork you have should be presented in court, and not to the mediator.

4. Mediation is **confidential**; only the parents, attorneys and the judge will be made aware of all pertinent facts. Access to the report is restricted. The report will not be shown to anyone else without a court order. The mediator will not speak about your case unless subpoenaed to court. **An exception to the confidentiality of the mediation session is made if the mediator suspects child abuse or neglect, or domestic violence that is a threat to the child.** A referral will be made to the appropriate agency.

5. Allegations of child abuse or neglect that are knowingly false may result in court ordered sanctions (Family Code Section 3027).

6. Mediation reports are provided to the attorneys and the judge only. An exception is made in the case of parents representing themselves; they will receive a copy of the mediation report. Otherwise, you must obtain a copy from your attorney. **In no event are mediation reports to be shared with your children.**

7. Failure to appear for a scheduled orientation/mediation session may result in court-ordered sanctions against the offending party. If only one party appears for mediation counseling, that party has the option of being interviewed by the mediator. If the mediator interviews that person only, a report and recommendation will be submitted to the court.

8. Parents are urged to review the Family Code. There is much information about dissolution, domestic violence, child custody, child visitation, and mediation procedures. Many of your questions and concerns may be answered by reading the Family Code. The Law Library has copies of the Family Code that can be reviewed.

9. The Court may consider, among other things, which parent is more likely to allow frequent and continuing contact with the non-custodial parent. The Court shall not prefer a parent as custodian because of that parent's sexual gender (Family Code Section 3040).

10. If a child is of sufficient age and maturity, the Court shall consider and give due weight to the wishes of the child. If the child is a witness in court, the Court will control the examination of the child and will protect the best interests of the child. The Court may prevent the child from being called as a witness if the best interests of the child require this. An alternative means of obtaining information regarding the child's preference may be provided (Family Code Section 3042).

11. If you have an attorney, you need to speak with him/her about your concerns. An attorney can represent you best when fully informed about your desires.

### **MEDIATOR RULES**

#### **The mediator CANNOT:**

1. Speak to the attorneys or the judge regarding what happened in the mediation session unless both parties and their attorneys consent.
2. Speak to either party individually before or after the mediation.
3. Mediate the case if previously one or both parents saw the mediator as a professional counselor.
4. Require you to agree.
5. Refer you to an attorney.
6. Speak to witnesses.
7. Investigate your charges that the other parent was neglectful, abusive to you or the children, is a drug addict, alcoholic or is a criminal.
8. Discuss property issues or financial support issues.
9. Interview children at the initial mediation session.

10. See a party separately unless prearranged by Family Court Services.
11. Interview by telephone unless prearranged by Family Court Services.
12. Review documents unless they serve as factual support for allegations of misbehavior of the other parent or other circumstances important to the children.

### **WHAT IS DISCUSSED IN MEDIATION**

Mediation serves as an alternative to a trial, but for custody and visitation matters only. Issues to be discussed and decided upon include:

1. Where the children will be living.
2. How, when and where visitations might occur.
3. Vacation schedules.
4. Contacts with the children's relatives on both sides of the family.
5. All aspects of shared parenting; other necessary details, such as transportation, childcare, etc. Discussion will also revolve around identifying the needs of your children, each parent's ability to meet those needs, how conflict will negatively affect your children, and how the children's best interests can be protected through responsible shared parenting.

### **NON-ENGLISH SPEAKING PARENTS**

If you do not speak English, an interpreter will be necessary. You may arrange for an interpreter to attend the mediation session but, if you do, make sure that it is someone with whom both parents will be satisfied.

### **DOMESTIC VIOLENCE**

#### **What is domestic violence?**

It is the use of physical force, restraint, or threats of force to compel one to do something against one's will, or to do bodily harm to a person with whom one resides, or the mother or father of one's child.

#### **Domestic violence includes:**

Assault (pushing, choking, hitting, biting, etc.)  
Sexual assault  
Unlawful entry  
Destruction of property  
Keeping someone prisoner or kidnapping

Theft of personal property  
Infliction of physical injury or murder  
Psychological intimidation or control (stalking, harassment, threats against children or others, violence against pets, etc.)

**The presence of domestic violence is ALWAYS harmful to children and inappropriate in all families!**

Children who have witnessed or overheard severe or repeated incidents of violence involving their parents are likely to be traumatized. These children are at risk for developing emotional behavior and social problems. Even those children who do not directly witness spousal abuse are likely to suffer in their development. Even very young children and infants who are not thought to be aware of the violence are negatively affected.

**The right to have separate orientation/mediation in cases involving domestic violence:**

Where there has been a history of domestic violence between parents, that parent alleging domestic violence victimization in a written declaration under penalty of perjury, or the parent who is protected by a domestic violence restraining order, may request to meet with the mediator separately. This request form will be in the packet of materials provided for you and should be used if you meet the requirements for separate sessions and would like to have separate sessions. A copy of the written declaration under penalty of perjury or the domestic violence restraining order must accompany the request. Copies of other related documentation, such as police reports or medical reports, may also be submitted.

**The right to have a support person or separate orientation/mediation sessions in cases involving domestic violence:**

Where there has been a history of domestic violence between parents, the parent alleging domestic violence victimization may request permission to bring a **support person** to mediation. This support person is for the purpose of providing moral and emotional support only, and is usually, but not limited to, someone from the Domestic Violence Center or a neutral party may be used. The support person may not participate in the discussions, may not act as a legal advisor, may not act as an advocate, and is only to accompany the parent in the mediation process. The support person may be removed from the mediation session for violating any of these rules, or even if their mere presence serves to disrupt the mediation process.

Alternatively, a victim of domestic violence may choose to request a **separate session**. The parents will not meet with each other, but will meet one at a time with the mediator only. This allows the mediation process to go on while still

protecting the safety of the domestic violence victim. This does not result in different mediation times; the parties have one mediation appointment, which is split in half. Separate sessions do not usually result in a complete agreement. The victim of domestic violence must decide whether to have a normal mediation, or ask for either a support person or a separate session. This must be done before the orientation/mediation session begins. The request must be made to the mediation clerk. The requesting parent must also supply a copy of the domestic violence restraining order that they are currently protected by, or lacking that, sign under penalty of perjury a declaration that domestic violence has occurred. This form may be found at the office of the mediation clerk.

### **SEPARATION ANXIETY**

The breakup of a child's family is a terrible thing. The child's whole world is falling apart. Think back to when you were young, and remember how terrifying it was to only become separated from your parents while at the store – you were lost, alone, frightened, probably crying, and you didn't know what to do. Imagine having your mom and dad hating each other, having them separate, having one of them tell you how awful the other is or watching them fight and hit each other.

It is natural for children to become confused, afraid, unsure and untrusting, even if the parents are being friendly and cooperative towards each other. It takes time for children to adjust even in the best of circumstances. Remember, the parents have created this terrible problem for the children, and only the parents can help them through this problem. It takes time, patience, love, understanding and guidance, from both parents.

Children may exhibit the following behaviors when their parents have separated:

1. When it is time for a visitation with the other parent, your children may be nervous, afraid, clinging, whining and generally upset.
2. Upon the return of your children from visitation, they may be unruly, wild, aggressive and maybe even resentful towards you.
3. During the early stages of parental separation, the children may show abrupt mood changes, have trouble sleeping, display regressive behavior (wet the bed, use baby talk, act immaturely for their ages, etc.), have various illnesses (such as stomach aches, headaches, nausea, diarrhea), or even exhibit profound fear or panic.

These problems are normal reactions of children to the stress of their parents separating. They should become less frequent and less intense when:

The parents avoid conflict and act cooperatively.

The parents understand the symptoms may be normal reactions to stress, and do not automatically assume the children are neglected or abused by the other parent.

Time passes and the children get used to the new circumstances.

You help to ease the children's fears by offering love, comfort and support.

If the problems persist or worsen, it is wise to seek professional help. It is possible that one or both parents are acting improperly but, lacking evidence in support of this, the parents should focus their attentions on the children.

### **LOCATIONS AND TELEPHONE NUMBERS**

#### **Orientation Locations:**

**Fairfield:** Hall of Justice  
2<sup>nd</sup> Floor, Department 26  
600 Union Avenue  
Fairfield, CA 94533

#### **Family Law Division (Court and Clerk's Offices):**

**Fairfield:** Hall of Justice  
600 Union Avenue  
Fairfield, CA 94533  
(2<sup>nd</sup> Floor, North Wing)

**Vallejo:** Justice Building  
321 Tuolumne Street  
Vallejo, CA 94590

#### **Family Court Services (Mediation Clerk):**

Hall of Justice  
600 Union Avenue  
Fairfield, CA 94533  
(2<sup>nd</sup> Floor, North Wing – inside Family Law Division)

#### **Solano Legal Access Center/Family Law Facilitator's Office:**

Hall of Justice  
600 Union Avenue  
Fairfield, CA 94533  
(2<sup>nd</sup> Floor)

#### **Law Library:**

Hall of Justice  
600 Union Avenue  
Fairfield, CA 94533  
(3<sup>rd</sup> Floor, North Wing)

**Telephone Numbers:**

Mediation Information: (707) 207-7344

Family Court Services: (707) 207-7347

Family Law Division (707) 207-7340 (Fairfield)

Family Law Division (707) 561-7840 (Vallejo)