

MEDIATION ORIENTATION PACKET



SUPERIOR COURT OF CALIFORNIA, COUNTY OF MADERA

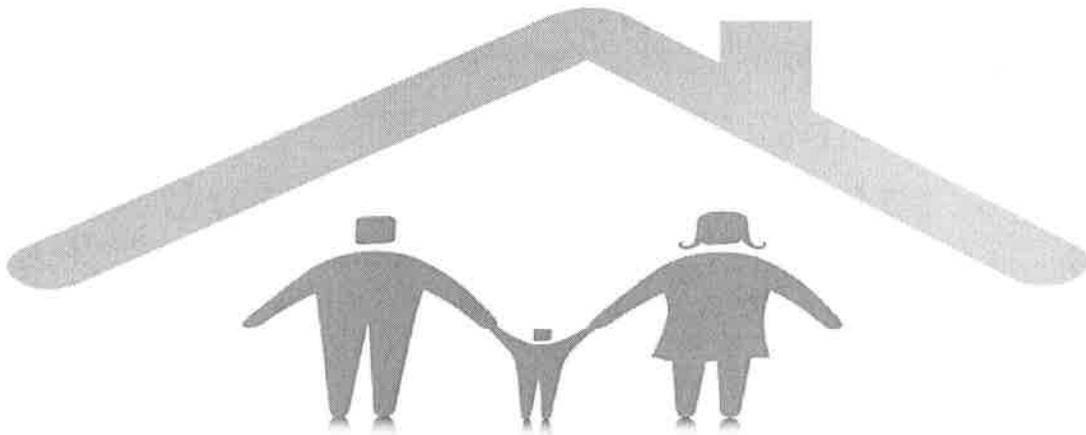
FAMILY COURT SERVICES

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Children's Rights During Divorce & Separation

“I have the right...”

- To be told that my mother and my father will always love me.
- To be told that the family “break-up” is not my fault.
- To be seen as a human being not a piece of property to be fought for or bargained over.
- To have decisions about me based on what is in my best interest and not on my parent's hurt feelings or needs.
- To love both my father and my mother without being forced to choose or feeling guilty.
- To know both my mother and my father through regular and frequent involvement in my life.
- To have the financial support of both my mother and my father.
- To be spared from hearing hurtful or negative comments about either of my parents.
- To be a child and not asked to lie, spy, or send messages between my parents.
- To be allowed to have affection for new people who come into my life without feeling guilty or being pressured.

BEST INTEREST OF CHILDREN

California's population includes a wide diversity of cultures, tradition, lifestyles, and family structures. Nevertheless, there are certain basic principles of parenting that promote the best interest of all children. Children benefit when both parents and those acting in the capacity work cooperatively to apply the kinds of parenting principles outlined below. When parents are unable to cooperate, each parent should strive individually toward these values.

- Homes that provide children with love, warmth and affection.
- Parents who assume individual as well as collective responsibility for the safety of their children.
- Parents who assume responsibility for financially supporting their children.
- Parents who strive to ensure that the children's physical, educational and social needs are met.
- Parents who know their children well by giving their children time and attention. Parents who are sensitive and responsive to their children's needs and feelings while still setting appropriate and firm limits to guide their development.
- Parents who recognize and support the importance of the other parent in their children's lives.
- Parents who exchange information respectfully and regularly regarding the care of their children to promote consistency in their children's lives.
- Parents who recognize and promote their children's development by being informed of appropriate needs and expectation for different age-level children and adapting their parenting practices accordingly.
- Parents who promote the children's confidence that either parent can take care of them.
- Parents who inspire in their children a zest for life and the confidence to manage themselves in the world.
- Parents who promote the healthy moral development of their children and teach appreciation of familial, societal and cultural values.
- Parents who respectfully listen to and consider each other's (i.e., parents) point of view.
- Parents who constructively resolve disagreements between themselves that affect their children and who seek assistance with such problems when needed.

ACHIEVING A GOOD RELATIONSHIP DISSOLUTION

- Accept that all-out war is not inevitable. In fact, such conflict is destructive.
- Recognize that compromise is always necessary. Mediate your differences.
- Stay in charge of your divorce. This is your separation, not your lawyers.
- Construct a new vision of your family.
(two households = one family).
- Make new rules for how to link your two households.
- Slow down the process. Children need time to adjust.
- Accept that your children need, and have a right to, both parents and households.
- For the sake of your children, cooperate with the other parent.
- Establish a limited partnership agreement between parents with clear rules.
- Accept that your children's binuclear family will expand to include new people in your ex's (and your) life.
- Remember the good (as well as the bad) parts of your relationship with the children's other parent.

- Let yourself face and grieve your losses.
- Forgive yourself as well as your ex.
- Let the anger go. Get on with your life!!

BASIC MEDIATION RULES

1. Each parent is treated with respect and has the opportunity to discuss his/her view point and concerns.
2. Each parent listens to the other and tries to find realistic solutions.
3. Each parent is asked to put the child/children first and focus on what the child/children need and can handle.
4. Each parent is asked to be decent with the other and to recognize that their child/children have a right to a relationship with both parents.
5. Shouting, screaming and threatening in any way are NOT allowed. Mediation must be a safe place for both parents.

WAYS TO COMMUNICATE

The way parents express their thoughts and feelings toward one another and to their child/children makes a huge difference on how well everyone adjusts to separation or divorce. One way that seems to work is to think about the other parent more formally, perhaps as a business associate or co-worker. Behaving and speaking in a more "business-like" manner can help you move away from the stress and trauma so you can focus on parenting your child/children. Here are suggestions to practice in the conduct of mediation:

1. Use common courtesy when you talk, just as you would at work or in a business setting.
2. Stay on the subject. Focus on your goal of doing what is in the best interest of the child/children.
3. Keep your emotions in check. Try to keep yourself under control, just as you would at work or in a business setting.
4. Be as clear, specific and detailed as possible when proposing arrangements.
5. Give the other parent the benefit of the doubt. Assume the other parent has good intentions regarding your child/children. Listen before you judge. Check out the facts.

GUIDELINES FOR DEVELOPING SUCCESSFUL CO-PARENTING

Your mutual and ongoing concern is the rearing of your children. Create a working relationship to successfully complete that task as co-parents.

Separate the roles. Remember you are no longer partners or significant others but you are still the parents of your children. Do not let your feelings get in the way of making decisions as parents. Get outside help if you cannot do this.

Outline what your children's needs are. Try to consider everyone's wants and needs but make your decisions based on what is the best interest of your children.

Your children have relationships with both parents which should be respected. Do not ask them or force them to choose between you. Do not discuss any issues with the other parent in the presence of the children. Be certain whenever discussing issues that the children are not attempting to listen in.

Communicate with one another about important events in your children's lives as well as events in your life ONLY if these affect your children. Do not discuss matters irrelevant to the business of co-parenting unless the other parent specifically agrees to do so. Respect your former partner's privacy. Do not seek the details of his/her life and do not intrude on his/her territory.

Anticipate change and plan for it. Your children's growth will require you to do so. Do not insist on continuing what does not work. Be flexible as situations change and commit yourself as much as you are able to experiment and to see what might work. Problems may arise when changes occur. In discussion with the other parent focus on what the problem is rather than who caused the problem.

Strive to be civil or business like. Be polite, courteous, decent and mature in your dealing with the other parent.

Let go of the past and realize the past may not be an accurate or reliable predictor of the future. Focus ONLY on parenting for today and in the future.

Make appointments to talk about business. Except for emergencies, call the other parent ONLY during business hours or agreed upon times. Always ask if the timing is convenient. If the timing is not convenient, make an appointment for another time. Any phone calls about the children should be limited to only that topic. Inform the other parent up front the issue you are calling to discuss.

Give the benefit of the doubt as to the other parent's behavior. Do not assume anything including the underlying reasons for behavior based on your past experiences. "Check it out" at this time.

Do's And Don'ts For Mediation child related issues:

- Do focus on the child's needs.
- Do not focus on parental needs.
- Do think of residence and contact as a separate issue relating only to what is best for the child.
- Do not discuss child support or property when trying to resolve a parenting plan.
- Do acknowledge a child's special needs according to his / her age, temperament, and development.
- Do not assume there is a standard plan that fits the needs of all children.
- Do acknowledge the other parent's strengths and bring up only valid concerns about the other parent's ability to care for the child.
- Do not bad-mouth the other parent.
- Do acknowledge that a child needs time with both parents, in a safe environment, developed by a parenting plan.
- Do not punish the other parent by withholding children.
- Do go to mediation prepared with:
 - A proposal for residence and a time-sharing plan
 - A calendar which identifies school holidays, work schedules, the schedule for the child's activities
 - A flexible and business-like attitude
- Do not go to mediation unprepared.

References:

Ahrons, C. (1994). *The Good Divorce*. New York: Harper Collins.

Emery, R. (1999). *Marriage, Divorce, and Children's Adjustment*, 2nd Edition. Thousand Oaks: Sage Publications.

Ricci, I. (1997). *Mom's House, Dad's House: A Complete Guide for Parents Who are Separated, Divorced, or Remarried* (2nd edition). New York: Simon & Schuster.

Domestic Violence and Child Custody

If you are involved in a family law case involving children and there has been domestic violence, here is important information about a law that affects you.

What is "child custody"?

There are two types.

- *Physical custody:* Whom the child lives with
- *Legal custody:* Who makes important decisions regarding the child's health care, education, and welfare

What is "domestic violence"?

It means to hit, kick, scare, throw things, pull hair, push, follow, harass, sexually assault, or threaten to do any of these things. It also includes other actions that make someone afraid of being hurt. Domestic violence can be spoken, written, or physical.

How does the judge decide if there is domestic violence in my case?

The judge will treat your case as a domestic violence case if, in the last 5 years,

- A parent was convicted of domestic violence against the other parent or
- Any court has decided that one parent committed domestic violence against the other parent or the children

Otherwise, the judge will decide based on all the evidence in your case. The judge cannot decide based only on the conclusions or recommendations of Family Court Services staff or a child custody evaluator.

What if the judge decides there is domestic violence in my case?

If a court decides there is domestic violence (now or in the past 5 years) against a parent or the children, the judge must follow special rules to decide custody of the children.

Usually, the judge *cannot* give custody to the person who committed domestic violence. But the judge can give that person visitation.

Are there exceptions?

Yes. The judge can give custody to the person who committed the domestic violence. To do so, the judge must consider whether:

- It is best for the child
- The person has:
 - Completed a 52-week batterer's program
 - Not committed any other domestic violence
- The person has obeyed court orders to:
 - Complete an alcohol or drug abuse program or a parenting class
 - Follow all terms of probation or parole or a protective or restraining order

This law applies to any person seeking custody, not only a parent. To read the law, see California Family Code section 3044 (attached). Other laws also apply.

Need Help?

For more information, contact:

www.FamiliesChange.ca.gov

This website about divorce and separation includes:

- Kids' Guide
- Teen Guide
- Parent Guide
- Child Support Information
- **Changeville.ca.gov** an interactive website just for kids!

 **www.courts.ca.gov** 



ADMINISTRATIVE OFFICE
OF THE COURTS
CENTER FOR FAMILIES, CHILDREN
& THE COURTS

Family Code Section 3044:

Rebuttable Presumption Based on Violence

(a) Upon a finding by the court that a party seeking custody of a child has perpetrated domestic violence against the other party seeking custody of the child or against the child or the child's siblings within the previous five years, 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 Section 3011. This presumption may only be rebutted by a preponderance of the evidence.

(b) In determining whether the presumption set forth in subdivision (a) has been overcome, the court shall consider all of the following factors:

(1) Whether the perpetrator of domestic violence has demonstrated that giving sole or joint physical or legal custody of a child to the perpetrator is in the best interest of the child. In determining the best interest of the child, the preference for frequent and continuing contact with both parents, as set forth in subdivision (b) of Section 3020, or with the non-custodial parent, as set forth in paragraph (1) of subdivision (a) of Section 3040, may not be used to rebut the presumption, in whole or in part.

(2) Whether the perpetrator has successfully completed a batterer's treatment program that meets the criteria outlined in subdivision (c) of Section 1203.097 of the Penal Code.

(3) Whether the perpetrator has successfully completed a program of alcohol or drug abuse counseling if the court determines that counseling is appropriate.

(4) Whether the perpetrator has successfully completed a parenting class if the court determines the class to be appropriate.

(5) Whether the perpetrator is on probation or parole, and whether he or she has complied with the terms and conditions of probation or parole.

(6) Whether the perpetrator is restrained by a protective order or restraining order, and whether he or she has complied with its terms and conditions.

(7) Whether the perpetrator of domestic violence has committed any further acts of domestic violence.

(c) For purposes of this section, a person has "perpetrated domestic violence" when he or she is found by the court to have intentionally or recklessly caused or attempted to cause bodily injury, or sexual assault, or to have placed a person in reasonable apprehension of imminent serious bodily injury to that person or to another, or to have engaged in any behavior involving, but not limited to, threatening, striking, harassing, destroying personal property or disturbing the peace of another, for which a court may issue an ex parte order pursuant to Section 6320 to protect the other party seeking custody of the child or to protect the child and the child's siblings.

(d) (1) For purposes of this section, the requirement of a finding by the court shall be satisfied by, among other things, and not limited to, evidence that a party seeking custody has been convicted within the previous five years, after a trial or a plea of guilty or no contest, of any crime against the other party that comes within the definition of domestic violence contained in Section 6211 and of abuse contained in Section 6203, including, but not limited to, a crime described in subdivision (e) of Section 243 of, or Section 261, 262, 273.5, 422, or 646.9 of the Penal Code. (2) The requirement of a finding by the court shall also be satisfied if any court, whether that court hears or has heard the child custody proceedings or not, has made a finding pursuant to subdivision (a) based on conduct occurring within the previous five years.

(e) When a court makes a finding that a party has perpetrated domestic violence, the court may not base its findings solely on conclusions reached by a child custody evaluator or on the recommendation of the Family Court Services staff, but shall consider any relevant, admissible evidence submitted by the parties.

(f) In any custody or restraining order proceeding in which a party has alleged that the other party has perpetrated domestic violence in accordance with the terms of this section, the court shall inform the parties of the existence of this section and shall give them a copy of this section prior to any custody mediation in the case.