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# Part Two

## The Mediation Process

# Mediation Goals

- Help you reach an agreement that's in the best interest of the children
- Work out the details of your parenting plan
- Reduce conflict between the parents
- Enhance understanding of the other parent's point of view
- Focus on what works best for your children



# What is Discussed in Mediation?



- A parenting plan that is in the best interest of your children

**Family Code Sections 3011 and 3020**

# What is NOT Discussed in Mediation?

- Child Support
- Spousal Support
- Property and other monetary disputes



# What Can be Included in a Parenting Plan?

- Child sharing plan
- School year schedule
- Summer schedule
- Holidays and birthdays
- Vacations
- Transportation and exchanges
- Phone calls
- Extra-curricular activities



# Parenting Plan Considerations

- Age and emotional stage of development of each child
- Planning for change as your children grow
- Letting your children know about schedule changes
- Your child's special needs
- Telling your children when they will see the other parent



# Legal Custody May be Discussed

- Legal custody includes the right to make decisions about a child's residence, health, education, and welfare
- Legal custody is either joint or sole
  - Joint legal custody = both parents have the right to make decisions
  - Sole legal custody = one parent has the exclusive right to make decisions



Family Code Sections 3003 and 3006



# Physical Custody Might be Discussed

- Physical custody is either joint or sole
  - Joint physical custody =
    - Both parents share significant periods of physical custody that assures frequent and continuing contact with both parents
    - Does not necessarily mean equal time share
    - One parent may still be designated as the primary caregiver for the purpose of receiving public benefits
  - Sole physical custody =
    - One parent provides primary supervision and physical control of the child
    - Other parent still retains rights of visitation





# Custody Considerations When There is Domestic Violence

- If an act of domestic violence is committed by a parent, the court presumes that they should not have custody of the children
- This presumption may be challenged at a court hearing regarding custody of your children
- Domestic violence orders are handled outside of the mediation process

Family Code 3044

# Mediation in Napa is “Non- Recommending”



- Mediation in Napa is “non-recommending,” which means, if no agreement is reached, the following will occur:
  - The matter will be referred back to court
  - The mediator will not discuss what happened during your sessions
  - The mediator will not make a recommendation to the judge



# Confidentiality Exceptions

- Mediation is confidential with the following exceptions:
  - Mediators can recommend to the judge that an attorney be appointed for the child if appropriate
  - Mediators must report the following to the local child protection agency or law enforcement
    - Abuse or neglect
    - A person's intent to kill



# Mediation Process

- The first mediation session starts with separate interviews
- The parent who filed the current request goes first
- After the initial interview, parents are expected to meet together unless domestic violence is alleged
- Generally, the participants only include the legal parents and the mediator
- Some cases may have two mediators assigned to help



# Special Rules if There is Domestic Violence

- Restraining Orders are to be obeyed at all times
- A separate waiting room is available for each party
- Mediation will begin with separate sessions
- A support person may be present during the mediation session
- Joint sessions may take place based on the Mediator's discretion if the restraining order allows for "peaceful contact for the purposes of child sharing"
- If you feel unsafe at any time, the Mediator will end the joint session and interview both parents separately

# Important Points to Keep in Mind

- Children do best when parents get along
- Put aside your differences for your children's sake
- Come to mediation with an open mind



# Mediation Guidelines

## ■ Do

- Focus on child's best interest
- Come with an open mind
- Prepare to discuss several possible options

## ■ Don't

- Focus on the other parent
- Reject a proposal without consideration
- Let others make decisions for you



# During Mediation

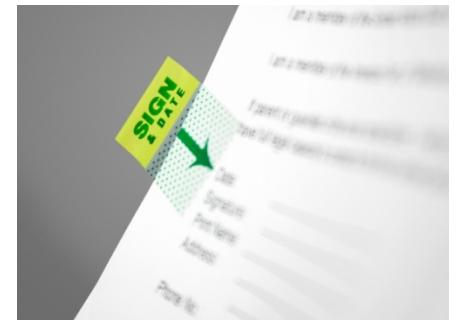
- Each parent presents their proposals for child sharing and custody
- Parents negotiate and compromise to reach an agreement
- The mediator
  - Remains neutral
  - Does not represent either side
  - Helps both parties reach an agreement





# Mediation Outcomes

- Agreement Reached
  - Both parents sign
  - Forwarded to judicial officer for approval
- Partial Agreement
  - Agreed upon terms
    - Signed by parents
    - Forwarded to judicial officer for approval
  - Remaining issues
    - Further mediation or
    - Returned to court for decision
- No Agreement
  - Returned to court for decision



# When Represented by an Attorney

- If either or both parents are represented by an attorney, the agreement must be approved and signed by the attorney or attorneys before it is sent to the judge for signature



# Who Are Your Mediators?

- Masters Degree (or higher) in a behavioral science such as psychology, social work, marriage, family, or child counseling
- A minimum of two years experience, knowledge of the court system and community resources



# Children in Mediation

- Mediators may use their discretion in deciding if it is necessary to interview your children
- Mediators are trained to work sensitively in these matters
- Children are not asked to choose sides or to choose between parents





# Mediator Limitations

- Mediators may not discuss your case with:
  - Judicial Officers
  - Attorneys, including your own
  - Either parent alone outside of mediation
  
- Mediators cannot:
  - Give legal advice
  - Discuss child support, spousal support, or division of property
  
- Mediators may not mediate if there is an open Child Welfare Services (CWS) case involving the same children



# Frequently Asked Questions

How do I get my mediation appointment?	The court will send notice of your mediation appointment after both parties have completed orientation.
When are appointments?	Scheduled Monday-Friday for 90 minutes, at 8:30, 10:30, 1:30 and 3:15.
What if someone fails to attend mediation?	A failure to appear will be noted in your court record which is accessible at any hearing. The judge may also impose a monetary sanction.
How much does it cost?	It is free if you appear as scheduled
What if someone is late?	Mediation cannot start until both parties arrive. A late arrival of 15 minutes will result in a reschedule of the appointment.

# Frequently Asked Questions, cont.

Who Should attend?	Both parents attend together. <b>Do not bring children.</b>
Can I reschedule?	Only in an emergency! Call (707) 299-1240 to confirm your appointment at least 72 hours in advance.
Where is mediation held?	Mediation sessions are held in the Family Court Services Offices <ul style="list-style-type: none"><li><input type="checkbox"/> Lower Level of the Historic Courthouse</li></ul>



# End of Part Two

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