

Family Court Services Tier 1 Information

Orientation:

- ❖ Completion of the **Online FCS Orientation is ordered by the Court and is essential to your success in the Mediation session.** The Orientation will provide essential information about your upcoming mediation appointment.
- ❖ You can view the complete FCS ~~audio and~~ visual slide show Orientation **Online** at **www.fresno.courts.ca.gov/family/family_court_services.php**
 - ~~The same online slide show will be shown in the FCS lobby every Friday at 1:00pm in English and 2:30pm in Spanish~~

Please read this ENTIRE packet very carefully. **This packet must be completed PRIOR to Your** **Mediation Appointment**

- ✓ The mediator will use this FCS Intake Form to familiarize themselves with your family and to be better prepared to meet your needs during the mediation session.
- ✓ The FCS Intake Form will NOT be shared with the Judicial Officer or the other parties on the case.

Purpose of Mediation:

- ❖ The Family Court Services Mediator can help parties formulate a parenting plan regarding the following issues:
 - How the children will spend time with each party (regular time and holidays)
 - How the parties will make legal decisions about the children
 - How the children will be transported and exchanged for the visits
 - Participation in programs or services that may be beneficial for the family
 - Safety Considerations**Although parents are expected to actively participate in the mediation process, parents are in NO WAY obligated to agree to a parenting plan**
- ❖ Financial considerations including division of property, child support and spousal support are not addressed in Family Court Services Mediation.

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Confidentiality:

- ❖ Pursuant to Family Code §3188, Mediation is private and confidential. The mediator may not make a recommendation as to custody or visitation to anyone other than the parties participating in the mediation appointment. Other than reporting the parties' agreement to the Court, the mediator will not disclose what occurred in mediation with the following exceptions:
 - If the Mediator determines there is reasonable suspicion of **danger to one of the parties** or others, the mediator is required to report suspected child abuse, elder abuse, and/or if someone is a danger to themselves or others to the appropriate agency.
 - In the event of a **partial agreement** the Mediator will report the partial agreement to the Court. In addition, a list, in neutral terms, of the unresolved issues may be
 - provided to the Court with consent from all parties.

Documents:

- ❖ The Family Court Services Mediator has access to documents filed with the Court. The Mediator may discuss documents provided by the parents during the mediation session, for the sole purpose of facilitating an agreement between the parties regarding custody and visitation. The Mediator will NOT retain any documents presented by the parties during the Tier I mediation.

Interpreters:

- ❖ If you do not speak English, you must **bring your own interpreter** to your mediation appointment. Failure to bring your own interpreter may result in cancellation of your Mediation appointment.
- ❖ **Si usted no habla Inglés, usted debe traer su propio intérprete. La falta de traer su propio intérprete puede resultar en la cancelación de su Mediación de custodia de los hijos.**

Separate Sessions:

- ❖ Pursuant to Family Code §3181, where there has been a history of domestic violence between the parties or where a protective order as defined in §6218 is in effect, at the request of the party alleging domestic violence in a written declaration under penalty of perjury or protected by the order, the Mediator appointed pursuant to this chapter shall meet with the parties separately and at separate times.
- ❖ **If you feel that separate sessions are appropriate due to a history of domestic violence, please contact Family Court Services IMMEDIATELY to complete a "Request for Separate Sessions". This request should be submitted to Family Court Services at least five days prior to your Mediation appointment.**

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Common Terms:

- ❖ **Sole Legal Custody** – one parent has the right and responsibility to make decisions related to the health, education and welfare of the child.
- ❖ **Sole Physical Custody** – a child shall reside with and be under the supervision of one parent, subject to the Court ordering visitation for the other parent. Sole physical custody is ordered in cases when one parent has limited contact with the children, typically less than 33%.
- ❖ **Joint Legal Custody** – both parents share the right and responsibility to make decisions related to the health, education and welfare of the child.
- ❖ **Joint Physical Custody** – each parent has significant periods of time with the child. Joint physical custody shall be shared in such a way as to assure a child of frequent and continuing contact with both parents. However, joint physical custody does not always mean equal time with both parents.

For additional information:

www.fresno.courts.ca.gov/family/family_court_services.php

email: FresnoFCS@fresno.courts.ca.gov

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State of California FAMILY CODE Section 3044

3044. (a) 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 in subparagraph (C) of paragraph (1) of subdivision (b) of Section 3011 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

(b) To overcome the presumption set forth in subdivision (a), the court shall find that paragraph (1) is satisfied and shall find that the factors in paragraph (2), on balance, support the legislative findings in Section 3020.

(1) 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 pursuant to Sections 3011 and 3020. 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 noncustodial 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) Additional factors:

(A) 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.

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

(C) The perpetrator has successfully completed a parenting class, if the court determines the class to be appropriate.

(D) The perpetrator is on probation or parole, and has or has not complied with the terms and conditions of probation or parole.

(E) The perpetrator is restrained by a protective order or restraining order, and has or has not complied with its terms and conditions.

(F) The perpetrator of domestic violence has committed further acts of domestic violence.

(c) For purposes of this section, a person has "perpetrated domestic violence" when the person 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 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 a 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 a 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) (1) It is the intent of the Legislature that this subdivision be interpreted consistently with the decision in *Jaime G. v. H.L.* (2018) 25 Cal.App.5th 794, which requires that the court, in determining that the presumption in subdivision (a) has been overcome, make specific findings on each of the factors in subdivision (b).

(2) If the court determines that the presumption in subdivision (a) has been overcome, the court shall state its reasons in writing or on the record as to why paragraph (1) of subdivision (b) is satisfied and why the factors in paragraph (2) of subdivision (b), on balance, support the legislative findings in Section 3020.

(g) In an evidentiary hearing or trial in which custody orders are sought and where there has been an allegation of domestic violence, the court shall make a determination as to whether this section applies prior to issuing a custody order, unless the court finds that a continuance is necessary to determine whether this section applies, in which case the court may issue a temporary custody order for a reasonable period of time, provided the order complies with Section 3011, including, but not limited to, subdivision (e), and Section 3020.

(h) (b) In a 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 custody mediation in the case.

(Amended by Stats. 2019, Ch. 115, Sec. 29. (AB 1817) Effective January 1, 2020.)