

Crisis!
Parenting Issues
How Self Help, the FLF Office
and Family Court Services Can
Help Address Challenging Cases

This workshop will explore the relationships between:

- The Self Represented Litigant,
- The Family Law Facilitator and/or Self Help Provider,
- And Family Court Services.

Using hypotheticals and group discussion, we will explore, compare, and discuss different jurisdictional practices.

Introduction:
Parenting in California

- Parenting in California has become challenging even for couples who chose to remain together to raise their children.
- Domestic Violence, crime, drugs, unemployment and poverty effect many families.
- Challenges to families coming to Family Court are even greater. These families are in crisis and need our help.

Today's Discussion

- We want to encourage discussion and demonstrate how the Office of the Family Law Facilitator or Self Help Center can work with Family Court Services to help lower the conflict and streamline the process for parties seeking custody and/or support orders in Family Court.

Family Court Services Overview

Family Court Services in California Courts are divided into two broad categories:

- 1) Confidential Courts
- 2) Recommending Courts

Family Court Services Overview

Confidential Courts

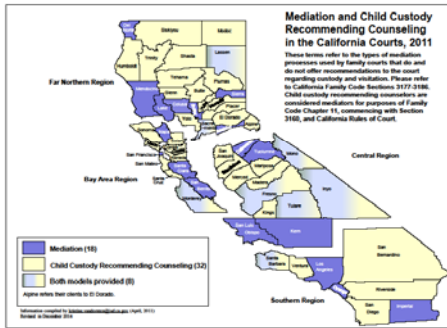
- Mediation processes are “confidential” to the parties and the mediator, meaning that the judicial officer will be apprised of the results of the mediation only if the parties reach an agreement.

Family Court Services Overview

Recommending Courts

- Effective 1/1/11, AB 939 amended FC §3183 changing the title of mediators making recommendations to the Court. Beginning in January 2012, recommending mediators are now called "child custody recommending counselors" and the mediation process in Courts utilizing this model is now called "Child Custody Recommending Counseling". So called "recommending courts" provide information to the judicial officer whether or not the parties reach agreement.

Mediation and Child Custody Recommending Counseling in California Courts 2011



FCS Operational Approaches

- A review of the map shows that most counties follow the "recommending" approach; however Los Angeles County is included in the "confidential" group, which means the total number of litigants is fairly equally distributed between the two approaches.

Statutory mission: (FC 3160-3165)

The Family Code outlines the statutory mission of Family Court Services as follows:

• FC§ 3160.

Each superior court shall make a mediator available. The court is not required to institute a family conciliation court in order to provide mediation services.

(Repealed and added by Stats. 1993, Ch. 219, Sec. 116.87. Effective January 1, 1994.)

• FC§ 3161.

The purposes of a mediation proceeding are as follows:

- (a) To reduce acrimony that may exist between the parties.
- (b) To develop an agreement assuring the child close and continuing contact with both parents that is in the best interest of the child, consistent with Sections 3011 and 3020.
- (c) To effect a settlement of the issue of visitation rights of all parties that is in the best interest of the child.

(Amended by Stats. 1997, Ch. 849, Sec. 5. Effective January 1, 1998.)

Family Code §§3160-3156 (cont'd)

FC§3162.

(a) Mediation of cases involving custody and visitation concerning children shall be governed by uniform standards of practice adopted by the Judicial Council.

(b) The standards of practice shall include, but not be limited to, all of the following:

- (1) Provision for the best interest of the child and the safeguarding of the rights of the child to frequent and continuing contact with both parents, consistent with Sections 3011 and 3020.
- (2) Facilitation of the transition of the family by detailing factors to be considered in decisions concerning the child's future.
- (3) The conducting of negotiations in such a way as to equalize power relationships between the parties.

(c) In adopting the standards of practice, the Judicial Council shall consider standards developed by recognized associations of mediators and attorneys and other relevant standards governing mediation of proceedings for the dissolution of marriage.

(d) The Judicial Council shall offer training with respect to the standards to mediators.

(Amended by Stats. 1997, Ch. 849, Sec. 6. Effective January 1, 1998.)

Family Code §§ 3160-3165 (cont'd)

FC§ 3163.

Courts shall develop local rules to respond to requests for a change of mediators or to general problems relating to mediation.

(Added by Stats. 1993, Ch. 219, Sec. 116.87. Effective January 1, 1994.)

FC§ 3164.

(a) The mediator may be a member of the professional staff of a family conciliation court, probation department, or mental health services agency, or may be any other person or agency designated by the court.

(b) The mediator shall meet the minimum qualifications required of a counselor of conciliation as provided in Section 1815.

(Added by Stats. 1993, Ch. 219, Sec. 116.87. Effective January 1, 1994.)

FC§ 3165.

Any person, regardless of administrative title, hired on or after January 1, 1998, who is responsible for clinical supervision of evaluators, investigators, or mediators or who directly supervises or administers the Family Court Services evaluation or mediation programs shall meet the same continuing education requirements specified in Section 1816 for supervising and associate counselors of conciliation.

(Added by Stats. 1996, Ch. 761, Sec. 4. Effective January 1, 1997.)

FLF/FCS Combined Services

- In many jurisdictions, combining the offices of Family Court Services and the Family Law Facilitator in the same physical space has resulted in decreasing stress for the parties and promoted faster and more efficient resolution of disputes.

FLF/FCS Combined Services

- Cross referral from the FLF to FCS and vice versa occurs frequently, speeding up the process for litigants.
- Some jurisdictions have gone a step further and placed a representative from the Local Child Support Office in the Clerk's Office or in FCS.

FLF/FCS Combined Services

- The new approach is to turn what used to be perceived as a negative: the effect of calculating child support based upon the timeshare of the non-custodial party into a positive: How to increase the parties' understanding of sharing custody and co-parenting and how this will effect the child support calculation.

FLF/FCS Combined Services

- Consider the timing of assisting parties with custody/visitation issues and child support issues.
- Most parents agree that time with their children is the most important issue before them.
- Letting them know that after they reach an agreement with the mediator in FCS they can access services from the FLF or the Self Help Center may alleviate stress in mediation and make it easier to reach an agreement.

FLF/FCS Combined Services

- Helping parents compartmentalize their issues by reducing the process into a series of steps to reach their goal increases understanding and the chance of reaching an agreement they can both live with.

Role Play and Group Discussion

- Break into small groups of 5 people or less
- Assign roles: Decide who will be the parties, the facilitator, the mediator, etc. Decide who will report back.
- If the hypo has more than one issue, which issue do you discuss first, evaluating how the order of the issues may determine the outcome. After picking the issue, conduct a 10 minute mediation role play, with the goal of reaching an agreement on the issue.
- Group interaction will include discussion questions in this PowerPoint.

Hypo #1

- Mom comes in to FLF to modify child support. She is angry because Dad has a 20% time share but never comes to see the kids. She wants her Child Support order to reflect this.
- Role Play between Mom and FLF. Other group members to observe the role play and contribute to the discussion of issues.

Discussion re Hypo #1

- 1) What issue should be resolved first?
– What does Mom need to know?
- 2) What techniques can you use to help Mom understand the law?
- 3) How does this bridge with Family Court Services?
- 4) Would it have been better to first resolve the timeshare issue?

Hypo #2

- Tom and Lisa married in 2005 and have two children, Ruby and Jakob.
- Tom is a veterinarian and Lisa is a Nurse.
- Lisa went back to work after Ruby was 6 months old, but cut back to part time (70%) when Jakob was 6 months old.
- Tom changed his practice to be closer to home for the children a few years ago, but his income did not change.
- Ruby is 14 and Jakob 10 when they separate in 2015.

Hypo #2 continued

- Lisa has filed a motion to determine custody/visitation and child support.
- Tom has not been to see the FLF.
- Neither party has yet seen a child support calculation.
- Both parties claim to be as bonded as the other parent with the children, and they both want their home to be the primary residence for the children.
- The parties are referred to Mediation.
- Role play with Mom, Dad, Mediator, FLF, and oldest child, Ruby.

Discussion re Hypo #2

- 1) What issue should be resolved first?
- 2) What techniques can you use to help the parties buy into an agreement?
- 3) Which model did you utilize? Confidential or Recommending?
- 4) Did having a roomful of “experts” help the process?

Discussion re Hypo #2 continued

- How many groups were able to reach a decision regarding legal custody?
- How many groups were able to reach a decision regarding primary residence?
- Who used confidential model v. recommending model?

Hypo #3

- Nancy and Jan are the parents of Terry and Liam, ages 16 and 15.
- They all lived together in San Diego until the end of the school year, when Nancy moved out.
- During the summer, the children spent alternate weeks with parents. The transition was going well until Nancy was offered a new job in Santa Barbara.
- Both parents want physical custody of the kids. They agree to share legal custody.

Hypo #3 continued

- Both parents are employed.
 - Jan is a Paramedic.
 - Nancy is a Psychologist.
- Presently, Jan earns more money than Nancy, but Nancy's job offer will bring her income up higher than Jan's.
- Role play with both parents, facilitator AND/OR Mediator, and teenage children, if you choose.

Hypo #3 - Discussion

- What do the parties need to know about the law to reach a decision?
- What techniques can you use to assist them in reaching an agreement?
- What results were you able to reach?
- Did the salaries or earning ability factor into the decision?
- Did the minors' participation effect the outcome?

Tiered Approaches in Different Courts

Fresno County Superior Court

- A “recommending” county, but in the past 3 years they have implemented a tiered approach:

Level I: Initial Confidential Mediation (60% agreement rate)

Level II: By Court order – Fact-finding with no recommendation

Level III: CCRC: Recommending mediation

Fresno reports a lot of success with this approach and only a one week waiting period for FCS appointments

Tiered Approaches in Different Courts

San Francisco Superior Court

- Level I: Confidential
- Level II: Go to Court hearing with following possible results:
 - The matter resolves
 - The matter is heard, orders made
 - Fact-finding ordered by Court, performed by either the same or different mediators (40-50% cases resolved after fact-finding)

Examples of Coordinating Services between FLF and LCSA Offices

- LCSA workers present in Court and/or available on the phone.
- Frequency of contact and accessibility of LCSA workers for litigants through FLF and (joint) efforts.
- Clerical and Staff Support assistance from LCSA in Clerks’ & FLF Offices.
- Case Management System Access by Court for LCSA staff (and vice versa).

Conclusion

- Combining resources of the FLF, FCS and LCSA to offer litigants more choices to resolve their custody & visitation disputes can effectively increase the parties' success rate in obtaining agreements in mediation and realistic orders in Court.
- Intersections between FCS, FLF and LCSA Offices promote empowerment of the parties

Conclusion

- Different Approaches can coexist simultaneously
- Innovation and collaboration between FLF & FCS and LCSA offices and staff can decrease workload and better serve litigants in obtaining agreements and orders in their children's best interest
- Faster, better orders and more agreements!
