

Family Court Services child custody mediation: IMPLEMENTING A MULTI-TIERED APPROACH

Beyond the Bench XXII
Monday, December 2, 2013



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If you are not riding the wave of change...you will find yourself beneath it.

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Local Rules

RULE 5.5 MEDIATION AND CHILD CUSTODY RECOMMENDING COUNSELING (CCRC)

5.5.1 Purpose of Mediation and CCRC sessions (CCRCS)

The purpose of Mediation and a CCRC session is to reduce acrimony which may exist between the parties and to develop a custody/visitation plan which ensures the minor child(ren) frequent and consistent contact with both parents, when in the child(ren)'s best interests. (Effective July 1, 2013; Rule 5.5.1 renumbered effective January 1, 2006; adopted as Rule 34.1 effective July 1, 1999)

5.5.2 Types of Mediation and CCRC Sessions

The following services are offered by Family Court Services (FCS). Mandatory confidential mediation (Tier I below) shall be made available in all cases in which child custody is at issue; the remaining services shall be scheduled as directed by the family law judicial officer in the exercise of his/her discretion according to the availability of resources and the needs of each case:

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At-Court CCRC Session

A. **At Court CCRC Session.** An at-court session is scheduled by a judicial officer when, upon review of a parent's request for an ex parte order, the judicial officer determines that exigent circumstances exist such that an immediate hearing must be scheduled. Children who are five and older should be brought to court for at-court sessions. All at-court sessions shall be child custody recommending counseling sessions; the sessions are not confidential and the counselor shall submit a report and recommendation to the Court and parties. When possible, the recommending counselor will provide a report and recommendation to the Court and parties. When possible, the recommending counselor will provide a report and recommendation on the day of the at-court session; however, the counselor shall be provided adequate time to interview the parties and child(ren), make collateral contacts, and prepare the report and recommendation. There is no charge for child custody recommending counseling for at-court sessions, as these sessions are mandatory. Once a case has had an at-court CCRC session, future sessions may include any of the services set forth below.

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Confidential Mediation

B. Mandatory Confidential Mediation

1. Children shall not participate in confidential mediation unless otherwise directed by Family Court Services or the Court.
2. There is no charge for mandatory confidential mediation.
3. Mandatory mediation is confidential except:
 - a. The mediator shall report, but not comment on, the parties' agreement or inability to reach an agreement to the parties and the Court.
 - b. The mediator shall report suspected child abuse, elder abuse, and/or if someone is a danger to themselves or others.
4. Two types of mandatory mediation may be offered.
 - a. **Readiness Mediation:** When resources allow, an initial confidential mediation session may take place at the initial readiness (scheduling) hearing. The goal of readiness mediation is to assist parents in reaching an agreement that would meet the needs of the children pending Tier I mediation and further hearing. If an agreement is not reached during readiness mediation, then the Court may make a temporary order pending Tier I mediation and further hearing. The parents may, if they wish, come to a more complete agreement during readiness mediation.
 - b. **Scheduled Mediation (Tier I):** Unless custody/visitation has been resolved at the readiness hearing, parents will be given a date for confidential mediation at the readiness hearing.

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Further Services

C. Further Services Beyond Mandatory Confidential Mediation (Tiers II and III). If mandatory mediation has not resulted in an agreement, the judicial officer has discretion to refer the parties for further sessions with Family Court Services as provided in this section.

1. Tier II and Tier III sessions are not confidential. Any mediator who provided confidential mediation to the parents shall not be permitted to serve as a Tier II or Tier III counselor.
2. When permitted by law or rule, fees may be charged for Tier II and Tier III. If fees are to be charged, then parents shall be informed of the fees and given an opportunity to be heard before the judicial officer refers the parents for Tier II or Tier III services. The amount ordered, if any, shall be included in the minute order. The Court has jurisdiction to allocate the fees between the parties.

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TIER II and TIER III

A. Tier II.

The purpose of Tier II sessions is to provide the Court with facts pertaining to the parents' concerns, collateral contacts, etc. A report shall be provided to the Court and parties which may include, but not be limited to, a synopsis of the children's school attendance, medical issues, description of collateral contacts with law enforcement or Child Protective Services, etc. Unless otherwise directed by the Court, children shall not participate in Tier II sessions. Tier II sessions do not include the conclusions, recommendations, or opinions of the mediator.

B. Tier III.

Tier III sessions are child custody recommending counseling (CCRC) sessions. These sessions shall result in a report and recommendation. The counselor's recommendation shall be made available to the parties, at the FCS office, two (2) court days before the court hearing. If the recommendation is not available before the hearing, it shall be available in court at the time of the hearing. The counselor's report will be provided to the parties at the time of the hearing. Children who are five and older shall participate in Tier III sessions.

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Picture it.....



Superior Court of California,
County of Fresno, August 2012



- All under one roof
- 5 FL and 2 FS Judicial Officers
- Readiness Calendar Structure
- 10 full time Child Custody Recommending Counselors
- Recommending Only
- Interviewing all children 5 and older
- No-show rate of about 3%
- Agreement rate of about 27%

The "BEFORE" Picture

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Inspiration for Change

1. **Budget Crisis** - we lost FCS Counselors that would not be replaced
2. **FCS Backlog** – parties were having to wait 2+ months for a CCRC appointment

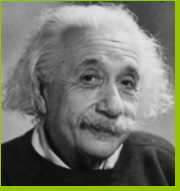
"A right delayed is a right denied" – Martin Luther King Jr.

3. **Inefficiency** - FCS was providing the same "size" service to every case, every time
4. **Reliance** - the delay to get into FCS exposed the parents' dependence on the Report and Recommendation from the CCRC and their lack of preparation in their own case

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In the middle of difficulty lies opportunity

– Albert Einstein



The Challenge

To modify Family Law and Family Court Services procedures to more effectively utilize our current staffing resources to reduce the time that it takes families to obtain custody orders, while still complying with the Family Codes and Laws.

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Our Mission Statement

Ensure the best interests of the children are served by providing impartial and timely resolution of disputes.

Our Building Blocks

- **Family Code – 3170**
 - Parties must be provided mediation if custody is contested
- **Family Code – 3175**
 - The mediation must occur before the judicial officer makes any custody orders



Our Goals

1. Timely Resolution
2. Better use of Resources
3. Empowering Parents

**THE SOLUTION
A TIER SYSTEM**

- Tier I – Non-recommending Mediation
- Tier II – Fact Finding Mediation
- Tier III – Child Custody Recommending Counseling
- At - Court CCRC
- Courtroom DV Mediation

FC 3161 – Purposes of Mediation

- Reduce acrimony
- Develop an agreement assuring the child close and continuing contact with both parents that is in the best interest of the child, consistent with FC3011 and FC 3020
- Effect a settlement of the issue of visitation rights

FC 3188 – Confidential Mediation

- Mediator may NOT make a recommendation to anyone other than the parties
- Partial agreement may be reported to the court (with parties' consent) with a description of the issues still in dispute, **without specific reference to either party**

Tier I – Confidential Mediation

After Tier I – The Judicial Officer may refer the parties back to FCS to participate in a Tier II – Fact Finding Mediation

Just the facts, ma'am. Just the facts.



- The parties will be Ordered to provide specific documents to FCS prior to the mediation appointment
- If the party fails to provide the Court ordered documents to the mediator, the mediator will note this in their report. The mediator is **NOT expected to obtain these documents on their own.**
- Clerical staff will provide CPS history and CLETs history to the mediator prior to mediation (**ONLY** as ordered by the Court)
- The mediator will review the facts with the parties.
- If the parties reach an agreement, the agreement will be provided to the Court
- The mediator will **create a report that summarizes the FACTS** reviewed during mediation and attach a copy of the documents to the summary report.
- The mediator will **NOT** provide any assessment, opinion and/or recommendation related to the FACTS in their report.

Tier II – Fact Finding

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After Tier II – The Judicial Officer may refer the parties back to FCS to participate in a Tier III – CCRC Session.



The “old” process. Including:

- Interviewing Children
- Providing a Report and Recommendation to the Court

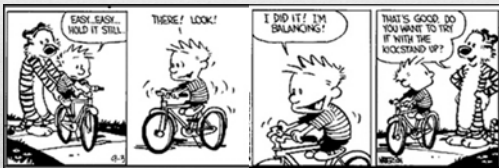
Tier III – CCRC/At-Court

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THE IMPLEMENTATION

“ALL THINGS ARE DIFFICULT BEFORE THEY ARE EASY”

- THOMAS FULLER



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Don't Underestimate the
Ripple Effect of a
Cannonball



- Child Protective Services
- Law Enforcement
- Domestic Violence Agencies/Advocates
- Attorneys
- Court Self-Help Center

Preparing Outside Agencies

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Accepting Resistance
as part of change

- Inform, inform, inform
- Being consistent
- Encouraging participation



just keep swimming
just keep swimming
just keep swimming
SWIMMING
swimming
-Finding Nemo

Preparing the Attorneys

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Informational/Skill Based

- Informational Introduction
- Regular staff meetings regarding procedures
- Skills based training from the AOC

Emotional Processing

- Reassurance from Administration and Judicial Officers
- One-on-One Processing
- Redefining our Purpose

Preparing the FCS Staff

“Change does not
ride in on the wheels
of inevitability, but
comes through
continuous struggle.”
— Martin Luther King Jr.

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Culture Shock!



- Live Orientation
- Additional Information on the Court Website
- Handouts in the Courtroom

Preparing the Parents

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THE RESULTS



“I believe that each era finds an improvement in law for the benefit of mankind”

- CLARENCE EARL GIDEON

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Reduced Wait Time for appointments with FCS

- 1st half of 2013 – 2+ month wait for mediation appointment
- 2nd half of 2013 -2 week wait for mediation appointment

Even FASTER Results in the Courtrooms

- Full agreements send to the courtroom for Judge’s signature the day of the mediation appointment
- Parents are inspired to reach agreements prior to being referred to mediation

Goal #1 – Timely Resolution

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Reduced wait time with NO ADDITIONAL MEDIATORS

- Mediators focused on the part that only they can do



Courtroom DV Mediation and MACRO put the Mediators in the Courtroom

- Increased collaboration between the Courtroom staff and the Mediators
- Solidified the Mediators as part of the Courtroom Team
 - Allows “customizable services”

Goal #2 – Better use of Resources

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- Taking ownership of their case and their family
 - They are their own investigators now
- No more “winning over the mediator”
 - More focus on the kids, less focus on the fight
 - Less “frequent fliers”
- Less pressure on the children
 - No need for parents to “coach” the children
 - The grown-ups have to take responsibility for the decisions
- Long lasting impact of successful Co-Parenting
 - The CCRC report had a one time impact
 - One agreement breeds future agreements
 - Rather than focusing on their concerns/allegations we focus on solutions and teach them how to co-parent and communicate

Goal #3 – Empowering Parents

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Unexpected Benefits

- Less subpoenas for mediators
- Less complaints about mediators
- More Co-Mediating amongst the mediators

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Please feel free to contact us with any questions, concerns, suggestions.

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"A pessimist sees the difficulty in every opportunity; An optimist sees the opportunity in every difficulty."

- Winston Churchill
