

Guidelines for Child Custody Recommending Counseling

California rule of court 5.210 provides standards of practice for court-connected child custody mediation. Child custody mediation in California courts may be conducted in two ways, depending on whether the mediator may, "consistent with local court rules, submit a recommendation to the court as to the custody or visitation with the child." (FC 3183(a)). Mediation in which the mediator does not make a recommendation to the court regarding child custody and visitation is commonly referred to as "mediation". Effective January 1, 2011, AB 939 amended Family Code 3183 changing the nomenclature for mediators who make recommendations to the court. Commencing January 2012, mediators who make recommendations are to be known as "child custody recommending counselors" and the process is to be known as "child custody recommending counseling". Mediators who make recommendations regarding child custody are mediators for all other purposes in the Family Law Code (FC 3183 (a)) and the Rules of Court and are subject to all other requirements for mediators. Whereas it is widely perceived as an acceptable form of dispute resolution, "child custody recommending counseling" has been subject to critique. Out of a desire to address these concerns and to highlight child custody recommending counseling's alignment with the goals of mediation, a working group of Family Court Services mediation directors was formed in 2005 to develop these guidelines. These guidelines were reviewed in 2010 and 2011 to conform to changes in the legislation. The guidelines assume all the directives in the rules of court and family code for court-connected mediation and for domestic violence protocol. However, the intent of these guidelines is to emphasize and highlight some effective practices related to this child custody recommending counseling model. The guidelines are the product of numerous collaborative meetings, presentations and discussions.

Revised guidelines endorsed by the California Family Court Services
Directors' Association in June 2011.

Guidelines for Child Custody Recommending Counseling

I. Introduction and Overall Principles of “Child Custody Recommending Counseling”

These guidelines will serve to give practitioners a way to identify common elements of child custody recommending counseling. A court’s resources, local policy, and time constraints are some of the factors that may influence this process. Child custody recommending counseling is a model that is recognized in the California Family Code and is used in 41 of 58 county court systems.

This document contains descriptions of both mediation and child custody recommending counseling.

Mediation and child custody recommending counseling share many common elements. Experts in both mediation and child custody recommending counseling work to assist the parties in reaching mutually agreed-on resolutions. The primary purpose of both mediation and child custody recommending counseling is to facilitate the parties’ own decision making and to help the parties resolve their issues. The emphasis should be *mediation with recommendations*. The evaluative and recommending aspects of the work should not overtake or dominate mediation skills and strategies. They are a part of the process when parents cannot resolve their disputes. The scope of the recommending aspect of child custody recommending counseling is defined by the needs of the family and issues they have raised that relate to their children, expertise and training of the child custody recommending counselor who considers the information that is needed to make the recommendation, local court policy and resources and time constraints. A coherent approach to child custody recommending counseling envisions that program orientation, the child custody recommending counselor’s behavior, and the child custody recommending counselor’s report all reflect this emphasis. The following are two instances where this philosophy should be emphasized:

1. Orientation to mediation or child custody recommending counseling should emphasize that the primary objective of the process is to assist the parties in addressing their concerns and, if possible, reach a resolution.
2. During mediation and child custody recommending counseling, the mediator or child custody recommending counselor should focus on facilitating positive interaction and communication between the parties. For example, during child custody recommending counseling, if the

parties appear to be at an impasse, the child custody recommending counselor might choose to first offer suggestions to the parties to see if this can assist their decision making.

Child custody recommending counseling, rather than being one definitive style of dispute resolution, expresses and combines the approaches of various mediation styles—facilitative, transformative, problem solving, and evaluative. The child custody recommending counselor's contribution to the process will correspond to the parties' needs, requests, circumstances, and stage of mediation. The guiding principle will be the counselors respect for the participants and their concerns.

II. Orientation and Intake

Rules 5.210 and 5.215 of the California Rules of Court outline specific directives for courts to follow regarding orientation and intake procedures for mediation in child custody and domestic violence cases. The following are additional guidelines for mediation orientation and intake for courts that provide child custody recommending counseling.

Orientation

- The child custody recommending counselor is required to assist the parents in developing a parenting plan in the best interest of the child. The best interests of children must always be emphasized.
- The concept that child custody recommending counseling is a vehicle for the parents to reach agreements, where possible, should be discussed. The emphasis should be on facilitating a parenting plan. If safety issues are raised by a parent, facilitation of a parental plan should include discussion of parental concerns about safety, so that neither parents nor children are at risk if the parents develop a parenting plan. Parents should understand their choice to agree or not to any parenting plan .
- Descriptions should be provided, first, of the subject areas that may be discussed in child custody recommending counseling and included in a child custody recommending counselor's recommendations if the issues are not resolved. Second, descriptions should be provided of the ways by which a child custody recommending counselor may come to reach those recommendations.
- Information should be shared on the types of disputed issues generally discussed in recommending counseling and on the range of possible outcomes from the process.

- The orientation process may include suggestions for making the best use of information drawn from current research and professional experience, to facilitate the process.
- Addressing parental communication and how the parents plan to address their child's current and future developmental needs should be part of the orientation process.
- Limitations on confidentiality and disclosures about interviews with children must be discussed in the orientation process.

Intake and Screening

- Rules of Court 5.210 and 5.215 and Family Code section 3181(b) describe in detail those items that should be included in child custody recommending counseling intake forms as well as procedures dealing with the intake process.
- Intake forms for child custody recommending counseling must, under CRC 5.215, ask about any restraining orders, dependency petitions and any other safety-related issues; information about the availability of separate sessions at separate times must also be provided.
- Child custody recommending counselors must review both the intake forms and the court file, if available, prior to meeting with the parents together or separately.
- Screening for domestic violence must be done initially and throughout the process; in those domestic violence cases in which neither party has requested separate sessions, the professional must meet with the parties separately to determine whether joint sessions are appropriate.

III. The Child Custody Recommending Counseling Process

All child custody recommending counseling must be conducted in accordance with rules of court 5.210 and 5.215.

1. Before the child custody recommending counseling appointment: The child custody recommending counselor will read the court file and current declarations, if available. If the court file is not available before the session, it should be read as soon as it becomes available. It will be read before the child custody recommending counselor reports recommendations to the parties or the court. If the child custody recommending counselor is unable to read the file or other paperwork

prior to meeting with the parents, the child custody recommending counselor should meet separately first, to determine whether joint sessions are appropriate and to engage in the required screening process; this is required if there is any information indicating that domestic violence may be an issue.

2. At the beginning of the child custody recommending counseling session: Once the parents or parties are in the first session, together or separately, the child custody recommending counselor may provide additional information about the process:

- The child custody recommending counselor will define the scope of the session with the goal being to assist parents in reaching an agreement.
- The child custody recommending counselor will state the reasons for the local procedures for making recommendations, so that the parties understand that if they cannot resolve their differences the child custody recommending counselor will provide the parties and the court with a written recommendation regarding child custody and visitation prior to the hearing. Any other possible areas for recommendations should also be explained to the parents.
- The child custody recommending counselor will emphasize that this process provides the parties with an opportunity to develop their own parenting plan if that is possible.
- The child custody recommending counselor will state that making a recommendation only occurs if parents are not able to reach a resolution and that if a recommendation is to be made, a summation of information and justification for the recommendation may be given in the written report.
- The child custody recommending counselor will inform the parents that if a recommendation is presented, it will be provided in writing to the parents prior to the hearing and the parents will have the opportunity to cross-examine the child custody recommending counselor.
- The child custody recommending counselor will inform the parties that the judicial officer, not the child custody recommending counselor, will make the decision about child custody and visitation for the family, based on evidence presented in the case if the parents are unable to reach an agreement.

3. During the session, the child custody recommending counselor will:

- Make sure each party has time to express her or his concerns and will work to balance the power during this time by allowing no interruptions by the other party.
- Help the parents problem-solve while at the same time gathering information.
- Include, as needed, education on child development or effective parenting resources that may be available.
- Explore areas of both agreement and disagreement while concentrating on developing mutually agreed-on solutions.
- Take notes, as needed, so that each party's issues and concerns are recorded fairly and the information they offer can be reported accurately if that becomes necessary.

Collecting information. The child custody recommending counselor has discretion, unless otherwise ordered by the court, to review relevant data about the family and their child or children. Methods for collecting data might include

- Reviewing relevant documents, including police reports, and other documents if available.
- Observation of family dynamics.
- Assessing each parent's capacity for setting age-appropriate limits and for understanding and responding to the needs of the child.
- Assessing each parent's history of involvement and caring.
- Assessing each parent's history of or potential for abusing.
- Conducting age-appropriate interviews and observations with children.
- Conducting other interviews with outside parties as necessary.
- Collecting any other relevant corroborative or collateral information, as permitted by law, within the guidelines of confidentiality and local court policy and procedure.

Making recommendations: The child custody recommending counselor shall prepare a recommendation in a written report that must be delivered to the parties before the court hearing and to the court.

The recommendation may include:

- Physical and legal custody issues.
- Parenting/co-parenting plan.
- Holiday, vacation, and special event schedules.

- Referrals for family interventions (which might include appropriate treatment recommendations for family/parents/children).
- Suggestions for parental conduct and communication.
- Temporary recommendations, pending evaluation or further investigation.

Written report or testimony may include:

- Current status—what is the current parenting plan?
- Parents' work schedules and limitations.
- Parents' viewpoints.
- Child interview.
- Collateral information or summary.
- Rationale for the recommendation (from the child custody recommending counselor's perspective).
- Recommendations (many courts prefer receiving them on a separate page or pages that can be attached to the court order).
- Attach relevant documents.

Testifying in court, or taking depositions:

- All courts should have a local policy for requesting testimony from a child custody recommending counselor.

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