

Superior Court of California, County of Contra Costa

ATTORNEY OR PARTY WITHOUT ATTORNEY (<i>Name, Address, and SBN</i>): TELEPHONE NO.: _____ FAX NO.: _____ Email Address (<i>optional</i>): _____ ATTORNEY(S) FOR: _____	FOR COURT USE ONLY
_____ PETITIONER/PLAINTIFF: vs _____ RESPONDENT/DEFENDANT:	
STIPULATION AND ORDER APPOINTING PRIVATE CONFIDENTIAL MEDIATOR OR CHILD CUSTODY RECOMMENDING COUNSELOR	CASE NUMBER: _____

1. Pursuant to the stipulation of the parties, attached hereto, the court finds there are contested child custody and/or visitation issues and the parties have stipulated to a private confidential mediator or child custody recommending counselor, at their expense, pursuant to Family Code §3164 to mediate such issues. The parties understand they are entitled to use services provided by the Court's Family Court Services department and are opting instead to use private mediation services. The Court orders the appointment of:

Name: _____ Email: _____
 Address: _____ Telephone: _____
 Fax: _____

in place of court-connected mediation services regarding the child custody and visitation issues raised in (name of document and filing date):

2. _____ (name) is appointed as:

- Private Confidential Mediator.** The confidential mediator shall conduct the equivalent of a "Tier One" mediation with the parties.
- Child Custody Recommending Counselor.** The child custody recommending counselor shall provide the parties and the Court a written a report and recommendations in accordance with Family Code §3183.

3. The mediation shall be conducted in accordance with and shall comply with Family Code §§216, 1815 and 3160 through 3188, and the applicable provisions of California Rules of Court.

4. **TERM OF PRIVATE MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR**

- a. The PRIVATE MEDIATOR'S/CHILD CUSTODY RECOMMENDING COUNSELOR appointment shall continue until the court orders otherwise, or until the mediator/child custody recommending counselor has concluded the mediation and issued the appropriate written instrument regarding the above-described child custody and visitation issues, whichever first occurs.
- b. For a term of ___ months (or ___ years), commencing on the filing of this Order, all custody and visitation issues that are before the Court or arise between the parties shall be submitted for mediation to the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR.

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5. EX PARTE COMMUNICATION. Absent written stipulation of the parties, there shall be no ex parte communication between the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR and any party or between the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR and any attorney of record in this action, except to schedule appointments, coordinate collateral contacts, or as permitted or required by law. Information shared during separately conducted mediation/child custody recommending counseling sessions shall be disclosed to all parties and shall not constitute ex parte communication.
6. DOCUMENTS AND INFORMATION. The parties shall immediately provide the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR with copies of all pleadings, motions, declarations, correspondence or other documents that relate to the contested issues to be considered by the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR. The MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR may have access to any Children and Family Services history, prior Family Court Services or prior private CCRC reports and recommendations, and shall keep this information confidential as required by law. With the exception of such documents as are subject to a valid claim of privilege, the parties shall provide all records requested by the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR within five (5) days of request by the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR. All documents provided to the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR by a party (directly or through counsel) shall be contemporaneously provided to the other party. The parties shall make themselves and their minor children reasonably available to the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR for mediation and interview.
7. RELEASES. Upon request by the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR, the parties shall promptly sign all documents required to allow access by the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR to documents and information in the possession of therapists, counselors, physicians, psychiatrists, psychologists, evaluators, educators, educational institutions, police and other law enforcement authorities, hospitals, social workers, child protection entities and staff. No release provided to the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR pursuant to this Order, nor the disclosure or production of any documents or information to the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR pursuant to this Order shall constitute a waiver of any valid privilege.
8. CONFIDENTIALITY.
 - a. The MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR shall take such steps as are necessary to protect the therapeutic privilege of any minor child and, in doing so, may decline to provide any party or counsel with information disclosed by a child or that child's therapist which would otherwise be privileged. In the event that the Court requires disclosure of privileged information or testimony, such information or testimony shall be provided to the Court in camera in the absence of the parties. Counsel for the parties shall not disclose the details of such information or testimony.
 - b. All reports or recommendations authored by or received from the CHILD CUSTODY RECOMMENDING COUNSELOR are confidential. No such report or recommendation may be provided or made available to or discussed with any person except the parties, counsel for the parties in the action, and any person allowed access by law or to whom the Court permits access by written order issued upon prior notice to all parties.
 - c. No person who has access to a report or recommendation by the CHILD CUSTODY RECOMMENDING COUNSELOR shall make a copy or disclose the content thereof to the minor child or to any person not entitled to access pursuant to this Order. The parties shall not mention or discuss within the hearing of any minor child any statement made by the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR.

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9. Both parties acknowledge and understand the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR will accumulate information, including the potential collection of relevant corroborating information or documents. Both parties understand some of the information and documents may include "hearsay." "Hearsay" is defined by Evidence Code §1200(a) as "evidence of a statement that was made other than by a witness while testifying at the hearing and that is offered to prove the truth of the matter stated." Evidence Code §1200(b) provides, "Except as provided by law, hearsay evidence is inadmissible." By approving the appointment of the CHILD CUSTODY RECOMMENDING COUNSELOR, each party is waiving the right to object to the admissibility of the report being received into evidence based upon the report including case-specific hearsay. Each party acknowledges being advised to seek the advice of independent counsel to understand the legal effect of the waiver discussed above BEFORE approving the "Stipulation and Order Appointing Private Confidential Mediator or Child Custody Recommending Counselor."

10. NAMES AND BIRTHDATES OF MINOR CHILDREN.

The names, birthdates, and gender of the parties' children are:

CHILD'S NAME	DATE OF BIRTH	M/F
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11. FEES AND COSTS OF THE MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR

a. The allocation of fees and costs of the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR shall be

- subject to later reallocation between the parties as may be ordered by the Court.
- between the parties as follows:

Petitioner	%	Respondent	%	Other	%
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Other (specify):

b. Should a report or recommendation be issued by the CHILD CUSTODY RECOMMENDING COUNSELOR and should that report or recommendation proceed to hearing, or should the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR be requested by a party to attend a hearing or deposition, the party requesting the attendance of the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR shall provide the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR with ten (10) days written notice of the date and time of the appearance, and shall, no less than twenty-four hours prior to the appearance, advance and tender the fees requested by the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR for preparation and appearance.

c. Any objection to any statement, invoice, or bill submitted by the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR for payment by a party shall be in writing and delivered to the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR within ten (10) days of the date of mailing of the statement, invoice or bill. Without prejudice to any right to initiate or maintain any other action, and provided jurisdiction exists, any dispute regarding the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR's fees or costs shall be brought to the immediate attention of this Court by the disputing party by filing and service of a motion, with written notice to the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR pursuant to CCP §1005(b).

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12. ADDITIONAL ORDERS

- a. Prior to the commencement of mediation, the parties may obtain such advice as they require regarding Civil Code §47 and immunity.
- b. The parties shall promptly advise the Court should the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR be unable or unwilling to accept appointment pursuant to this Order.
- c. Upon notice to the parties, the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR may make written application to the Court for such further instruction, information, and assistance as may be necessary for the completion of the tasks set forth herein. Once the appointment has been accepted by the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR, the MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR may upon a showing of good cause and upon written notice to the parties, petition the Court to withdraw as MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR.
- d. The MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR shall provide the Court with the immediate written notice if at any time during the mediation a situation arises that is immediately dangerous to the minor child or to any party, family member, child, attorney, judge, or mental health professional involved in the action. Such notification may be made on an ex parte basis, and may be accompanied by an application for ex parte relief.
- e. The MEDIATOR/CHILD CUSTODY RECOMMENDING COUNSELOR shall execute, file and serve the "Consent to Appointment as Private Confidential Mediator or Child Custody Recommending Counselor and Declaration re Qualifications" (Local Form FamLaw-301) within ten (10) court days for receiving a filed copy of this Order.

13. Hearing on the contested issues of custody and visitation was previously set and is hereby confirmed for _____(date) at _____(time) in Dept. _____.

The parties stipulate the Court may enter the foregoing as an Order:

Date	(Type or Print Name)	(Signature of Petitioner)
Date	(Type or Print Name)	(Signature of Respondent)

Approved as to content and form:

Date	(Type or Print Name)	(Signature of Attorney for Petitioner)
Date	(Type or Print Name)	(Signature of Attorney for Respondent)

IT IS SO ORDERED.

Date _____	(Signature Judicial Officer)
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